

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-044
District Docket No. XIV-2012-0369E

IN THE MATTER OF :
:
MARC Z. PALFY :
:
AN ATTORNEY AT LAW : Decision
:

Decided: August 28, 2014

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter is before the Board on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The single count complaint charged respondent with recordkeeping violations (RPC 1.15(d)) and failure to cooperate with ethics authorities (RPC 8.1(b)). We determine that a censure is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1999. At the relevant time, he maintained a law office in Freehold, New Jersey.

Although respondent has no history of final discipline, the Court temporarily suspended him, effective October 26, 2012, for

failure to comply with fee arbitration determinations in three matters. In re Palfy, 212 N.J. 331 (2012), In re Palfy, 212 N.J. 332 (2012), and In re Palfy, 212 N.J. 333 (2012). On June 25, 2013, the Court issued another order for respondent's temporary suspension for his failure to comply with fee arbitration determinations in two additional matters. In re Palfy, 214 N.J. 110 (2013). Finally, the Court issued yet another order for respondent's temporary suspension, on June 26, 2013, for his failure to cooperate with the OAE in the instant matter. In re Palfy, 214 N.J. 105 (2013).

Service of process was proper in this matter. On October 22, 2013, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's office address in Freehold, New Jersey, and to his last known home address listed in the attorney registration records.

On November 6, and November 14, 2013, respectively, the certified and regular mail sent to respondent's office address was returned stamped "Return to Sender/Unable to Forward". On November 15, 2013, the certified mail sent to his home address was returned, stamped "Forward Time Expired," and showing a new forwarding address. The regular mail was not returned.

On December 6, 2013, the OAE sent a second letter to respondent, advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and that the record in the matter would be certified directly to us for the imposition of sanction. This letter was sent to the newly acquired forwarding address by certified mail, return receipt requested, and regular mail.

On December 13, 2013, an agent from respondent's office signed the return receipt for the December 6, 2013 letter. The regular mail envelope was not returned. Also on December 13, 2013, respondent telephoned the OAE, requesting more time to prepare an answer. He was given until January 3, 2014. He also provided an additional address to the OAE, personally guaranteeing that he would receive any correspondence sent there.

Respondent failed to file an answer by January 3, 2014.

On January 10, 2014, the OAE sent a final letter to respondent, informing him that he had to file an answer no later than January 22, 2014 or the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of sanction.

On February 12, 2014, the certified mail to the new address was returned, stamped "Return to Sender Unclaimed Unable to Forward". The regular mail was not returned.

As of February 20, 2014, the date of the certification of the record, respondent had not filed an answer to the complaint.

On May 7, 2014, counsel for respondent filed a motion to vacate the default, which we determined to deny.

To vacate a default a respondent must meet a two-pronged test. First, the respondent must offer a reasonable explanation for the failure to answer the ethics complaint. Second, the respondent must assert meritorious defenses to the underlying charges.

As to the first prong of the test, respondent made various claims that he did not receive the complaint that was sent on October 22, 2013, claiming that the OAE had sent it to incorrect addresses. Whether or not these claims bear out to be reasonable are of no consequence because, in his motion, respondent admitted that he had eventually received the complaint, on December 6, 2013, which had been sent to his correct office address. He went on to acknowledge that he had spoken with OAE Deputy Ethics Counsel Missy Urban that same day.

Respondent complained that the five days that the December 6, 2013 letter gave him to file an answer to the complaint was an insufficient amount of time. Presumably due to that concern, on December 13, 2013, respondent again contacted Urban at the OAE and requested an extension of time to file an answer. According to Urban's certification of default, respondent was given until January 3, 2014 to file his answer. Respondent claimed that he was expecting some type of correspondence confirming this extension, but that he never received it.

In any event, respondent attempted to explain why an answer was never filed, despite an extension to do so, blaming it on "inadvertence." He also cited challenges, such as a busy professional life at the time that his answer was due, along with several personal problems, including a custody battle and a seriously ill sister.

We find that respondent failed to satisfy the first prong of the test. He admitted receiving the complaint and being granted an extension of time to answer. He failed to abide by the stated deadline.

Respondent also failed to satisfy the second prong of the test. In his motion, he did not present meritorious defenses to the charges in the complaint. Essentially, the motion repeated

the problems that he was facing at the time, as well as his perceived deficiencies in the service of the complaint. He contended that, at all relevant times, he intended to address this matter and to comply with the requirements of the demand audit. He concluded by arguing that his default was entered only recently and that "the State" would not be unduly prejudiced by the granting of his motion. In short, respondent did not advance any meritorious defenses, or any defense for that matter. He simply rehashed his reasons for failing to answer the complaint. We, therefore, determined to deny his motion.

The facts of this matter are as follows:

By letter dated August 9, 2012, the OAE notified respondent that it had docketed a disciplinary matter against him and would be starting a financial investigation.¹ That letter also informed him that a demand audit/interview was scheduled for August 30, 2012. Respondent was required to produce client ledgers, bank statements, cancelled checks, checkbook stubs, deposit slips, and cash receipts and cash disbursement journals

¹ The investigation was prompted by several grievances filed against respondent, resulting in the OAE's determination to conduct an independent investigation of the financial aspects of those grievances.

for his trust and business accounts, as well as the client files for Raymond Sudol, Felicia Kenny, Hazem Elzomor, and Noushin and/or Behzad Asadpour.

On August 21, 2012, the OAE sent a second letter to respondent's home address, via overnight mail, reminding him that the demand audit/interview was scheduled for August 30, 2012. UPS confirmed delivery to respondent's home address.

Respondent failed to appear at the OAE on August 30, 2012.

At the time of the OAE's investigation, respondent's attorney trust account was listed in the attorney registration system as Sovereign Bank account number xxxx8431. On September 17, 2012, the OAE issued a subpoena to Sovereign Bank for that account, requesting bank records for January 1, 2009 through August 31, 2012. Sovereign Bank informed the OAE that respondent had closed that account before 2009. However, Sovereign Bank sent statements to the OAE for the requested period for another trust account that respondent maintained, account number xxxxxx7967. In 2009, the bank had charged off a negative balance of \$156.05 and closed the second account.

By letter dated September 27, 2012, the OAE rescheduled the demand audit/interview to October 23, 2012. The OAE asked respondent to bring the same records and files previously

requested in its August 9, 2012 letter. The September 27, 2012 letter was sent to respondent's home address, by regular and certified mail. On October 4, 2012, respondent signed the return receipt for that letter.

Respondent did not appear for the October 23, 2012 demand audit and interview.

* * *

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent failed to appear for a demand audit and interview on two separate occasions and, despite acknowledging receipt of the complaint and receiving additional time to answer, he failed to do so, violations of RPC 8.1(b). Also, the record reflects recordkeeping irregularities based on the closure of multiple trust accounts, one of which was the result of the bank's charging off a negative balance. That respondent had a negative balance in his trust account is sufficient to justify a finding of a violation of the recordkeeping rules and, in turn, RPC 1.15(d).

Recordkeeping infractions ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the OAE revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct) and In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline).

Failure to cooperate with disciplinary authorities results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (attorney failed to cooperate with the district ethics committee's demand for information about an ethics grievance; no prior discipline); In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining

counsel to assist her; no prior discipline); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to cooperate with the OAE despite his verbal assurance that he would submit the requested documents and a formal response to the grievance against him; prior admonition).

If the attorney has been disciplined before, but the attorney's ethics record is not serious, then reprimands have been imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).


Here, respondent should receive at least a reprimand for his recordkeeping violations and failure to cooperate with the OAE. An attorney guilty of these two violations was reprimanded. See In re Del Tufo, 210 N.J. 183 (2012). In a default matter, however, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure

to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). Therefore, we determine to impose a censure in this matter.

Member Gallipoli did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc Z. Palfy
Docket No. DRB 14-044

Decided: August 28, 2014

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			x			
Clark			X			
Gallipoli						X
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			7			1


Ellen A. Brodsky
Chief Counsel