SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-375
District Docket No. XIV-06-257E

IN THE MATTER OF

ANTHONY CLYDE JONES

AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: April 8, 2008

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

This matter came before us on a certification of default filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-4(f). It arises out of respondent's practicing law while ineligible, commingling of personal and client funds, and failing to properly maintain his attorney records. For the reasons explained below, we determine to impose a reprimand on respondent.

Respondent was admitted to the New Jersey bar in 1998. At the relevant times, he maintained an office for the practice of law in Teaneck and New York City.

On June 26, 2006, the Supreme Court temporarily suspended respondent, effective June 27, for failure to satisfy the award of a district fee arbitration committee. In re Jones, 188 N.J. 1 (2006). Respondent remains suspended to date.

From September 30, 2002 to July 14, 2006, respondent was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Service of process was proper. On July 16, 2007, the OAE mailed a copy of the complaint to respondent at the following last known home and business addresses: 177 Van Buskirk Avenue, Teaneck, New Jersey 07666 and 36-38 West 123d Street, New York, New York 10027. The complaints were sent via regular mail and certified mail, return receipt requested. The certification is silent with respect to whether the letters sent to New York were delivered. Nevertheless, on July 31, 2007, the OAE received a receipt for the delivery to the Teaneck address, which was signed by a Brendan Lawrence. The letter sent via regular mail was not returned.

On August 13, 2007, the OAE sent a letter to respondent at the same addresses, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction.

According to the certification of record, the letter sent to the Teaneck address via regular mail was returned with the notation "return to sender, no such number, unable to forward." The certification is silent with respect to whether the certified letter was delivered. Furthermore, although the certification states that the letters sent to the New York address were not returned, it fails to disclose the outcome of the Post Office's attempts to deliver the certified letter.

Despite the certification's lack of clarity with respect to respondent's actual receipt of the five-day letter, on August 29, 2007, respondent wrote to the OAE, acknowledged receipt of the complaint, admitted the allegations as true, and stated that he "will accept the penalty imposed." In mitigation, however, respondent asserted that he could not afford to pay the assessment to the CPF. He also stated that he never took any client funds for his own benefit.

By September 7, 2007, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

On October 15, 2007, the OAE submitted a supplemental certification, to which an October 4, 2007 letter from respondent was attached. In the letter, respondent reiterated the statements made in his August 29, 2007 letter to the OAE.

According to the first count of the complaint, respondent was declared ineligible to practice law on September 30, 2002, for failure to pay the annual assessment to the CPF. He remained ineligible until June 14, 2006.

On May 18, 2006, respondent appeared before us on an OAE motion for his temporary suspension, stemming from his failure to comply with a fee arbitration determination. At that time, respondent provided his business card to the OAE and to us, reflecting that he was an attorney-at-law in New Jersey and New York, with an office in both locations.

On July 10, 2006, respondent appeared for an OAE demand audit that covered the period September 30, 2002 to that date. There, respondent stated that he had represented approximately eighteen clients, between September 30, 2002 and July 2006, in several different New Jersey state and municipal courts. He had

also represented New Jersey clients in real estate transactions and had drafted wills.

Respondent stopped practicing law only after he was temporarily suspended in June 2006. On July 14, 2006, he paid the CPF assessment in full.

Based on these facts, the first count of the complaint charged respondent with practicing law while ineligible, a violation of RPC 5.5(a).

According to the second count of the complaint, "[r]espondent admitted to the OAE that he never maintained client ledger cards, receipts, disbursement journals or deposit slips; nor did he perform monthly reconciliations for his trust account." During its review of respondent's trust account, the OAE discovered that respondent had written trust account checks "for personal purposes, including church tithes, child support and other personal items."

The complaint alleged that respondent "routinely wrote checks to himself for non-fee related purposes from his attorney trust account." He maintained no personal checking account, using his trust account for personal business instead.

According to the complaint,

> [R]espondent had few clients and low activity in his trust account and the OAE's review of respondent's records revealed that his client funds remained intact. Respondent received rent on a client's behalf and wrote a check out of his attorney trust account to the client in February 2003, and conducted a real estate closing and allowed the proceeds to pass through his account in September 2004. All of the other monies received and deposited in the trust account were respondent's fees.
>
> [Complaint,Second Count,¶5.]

Respondent deposited personal funds into his trust account, including four stock dividend checks, between March 10, 2003 and September 4, 2004, used counter checks, without the required designation "attorney trust account," and often used counter checks for personal disbursements.

Respondent maintained two business accounts. The first account was with Bridge View Bank and was properly designated as a business account on pre-printed checks, but not on counter checks. The account was closed on March 3, 2003. Respondent opened the second business account on September 18, 2003. This account did not comply with the recordkeeping rules because its designation was simply "Anthony C. Jones, Esq."

Respondent admitted to the OAE that he "did not maintain checks, deposit slips, business receipts or disbursement journals for the business account as required."

Based on these facts, the second count charged respondent with violations of RPC 1.15(a) (commingling) and RPC 1.15(d) (recordkeeping violations).

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent was ineligible to practice law between September 2002 and July 2006. His representation of clients during this period violated RPC 5.5(a), which prohibits a lawyer from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction."

Respondent also violated RPC 1.15(a), which prohibits the commingling of personal and client funds, when he used his trust account as his personal checking account.

Finally, by admittedly failing to maintain client ledger cards, receipts and disbursements journals, and failing to perform monthly reconciliations of his trust account, respondent violated RPC 1.15(d). He also violated RPC 1.15(d) by his

admitted failure to maintain checks, deposit slips, business receipts, and disbursement journals for his business account.

There remains for determination the appropriate quantum of discipline for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 5.5(a).

An admonition is the appropriate measure of discipline for the commingling of legal fees and trust account funds. In the Matter of Edward M. Farynyk, DRB 95-168 (February 20, 1996) (attorney accumulated almost $431,000 in legal fees in his trust account, which we considered to be the "passive commingling of personal and client trust funds," a violation of RPC 1.15(a)).

In the absence of negligent misappropriation of client funds, an admonition is typically imposed for recordkeeping violations. See, e.g., In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (random audit uncovered "numerous recordkeeping deficiencies"); In the Matter of Marc D'Arienzo, DRB 00-101 (June 28, 2001) (attorney did not use trust account in connection with his practice and did not maintain any of the required receipts and disbursements journals or client ledger cards); and In the Matter of Nedum C. Ejiogu, DRB 99-070 (December 28, 1999) (select audit uncovered numerous

recordkeeping deficiencies, in addition to a failure to comply with the rule governing contingent fee agreements).

An admonition may still result even when the above two violations are combined. See, e.g., In the Matter of William P. Deni, Sr., DRB 07-337 (January 23, 2008); In the Matter of Eric J. Goodman, DRB 01-225 (July 20, 2001); and In the Matter of Lionel A. Kaplan, DRB 02-259 (November 18, 2002).

Respondent's commingling of personal and client funds was passive and did not result in any misappropriation of client or other trust funds. Therefore, an admonition would be the appropriate measure of discipline for his commingling and recordkeeping violations. There remains for consideration, however, his violation of RPC 5.5(a).

Practicing law while ineligible, without more, is generally met with an admonition if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006 (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (admonition for practicing law during nineteen-month ineligibility; the attorney did know he was ineligible.

If the attorney is aware of the ineligibility, a reprimand is usually imposed. See, e.g., In re In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); and In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar).

Here, although the complaint does not allege that respondent was either aware or unaware of the ineligibility, the circumstances lead to the conclusion that he must have known of his status. Respondent is a sole practitioner and, as such, was the person primarily responsible for the payment of the fee, which was not paid for four consecutive years.

Notwithstanding respondent's other infractions, the ultimate discipline need not go beyond a reprimand. See, e.g.,

In re Hoffberg, 185 N.J. 131 (2005) (attorney practiced law while ineligible, negligently misappropriated clients' trust funds, and grossly neglected a client matter); In re Murphy, 181 N.J. 319 (2004) (attorney practiced law while ineligible, grossly neglected a real estate matter in failing to insure that the purpose of the escrow had been satisfied, failed to promptly disburse escrow funds to his clients, failed to maintain proper trust and business accounting records, and failed to cooperate with the disciplinary system in the investigation of the matter); and In re Maioriello, 140 N.J. 320 (1995) (attorney practiced law while ineligible for one year, failed to maintain proper trust and business account records in nine matters, exhibited a pattern of neglect and lack of diligence, and failed to communicate with clients in six of the matters).

One final consideration is respondent's failure to file an answer to the complaint. Generally, in a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Kivler, 193 N.J. 332, 338 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be

appropriate to be further enhanced"). In this case, enhancement would result in the imposition of a censure. For the following reasons, however, we believe that an increase in the level of discipline is unwarranted.

Respondent did not completely ignore the complaint. In response to the OAE's "five-day letter", respondent wrote to the OAE, admitted the violations, and consented to whatever measure of discipline was to be imposed upon him. After the record was certified to us, respondent wrote to the OAE again and reiterated the contents of his initial letter. This is not the type of obstinate conduct that the enhancement of discipline is meant to address. Moreover, based on the allegations of the complaint, it appears that respondent fully cooperated with the OAE during its investigation.

This would not be the first time that the discipline imposed on a defaulting respondent was not ratcheted up. In fact, in one matter, the Supreme Court reversed our enhancement of an admonition to a reprimand on a defaulting attorney and imposed an admonition instead. In the Matter of Donald R. Stemmer, DRB 98-394 (April 11, 2000). In that matter, the attorney failed to cooperate with the district ethics committee in its investigation of a grievance. Id. at 2. Despite the

committee's conclusion that the attorney had not acted unethically in the underlying matter, a formal ethics complaint was filed, charging him with failure to cooperate with disciplinary authorities (RPC 8.1(b)). Ibid.

In our decision, we noted that, ordinarily, the discipline for such misconduct is either an admonition or a reprimand. Id. at 3. Because respondent defaulted, we determined to impose a reprimand. Ibid.

The Supreme Court disagreed with us and entered an order for an admonition. In the Matter of Donald R. Stemmer, D-4 September Term 1999, March 7, 2000. According to the Court, "the purposes of discipline can be adequately served in this matter by the issuance of a letter of admonition." Ibid.

We have chosen not to enhance the discipline in other default matters. See, e.g., In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (admonition; formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to reply to the grievance in the underlying matter); In the Matter of Nejat Bumin, DRB 98-387 (March 25, 1999) (admonition; formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to provide

the district ethics committee with documents pertaining to his attorney bank accounts); and In re Kearns, 179 N.J. 507 (2004) (reprimand; attorney charged with lack of diligence, failure to communicate with the client, and failure to promptly pay funds to a third party based on his derelictions in the representation of clients in the refinancing of their home mortgage; specifically, the attorney failed to pay off existing mortgages timely and failed to forward closing documents to the new mortgagee timely, causing creditors to threaten his clients with foreclosure; the appropriate measure of discipline was a reprimand, which we chose not to elevate to the next degree because it would be "too severe a penalty"). Accordingly, we determine to impose a reprimand on respondent for his violations of RPC 1.15(a), RPC 1.15(d), and RPC 5.5(a).

Members Baugh, Lolla, and Neuwirth 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
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony Clyde Jones
Docket No. DRB 07-375

Decided: April 8, 2008

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh					X
Boylan		X			
Frost		X			
Lolla					X
Neuwirth					X
Stanton		X			
Wissinger		X			
Total:		6			3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel