

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 08-233  
District Docket No. XIV-07-296E

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IN THE MATTER OF  
JAMES D. BRADY  
AN ATTORNEY AT LAW

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Decision

Decided: December 17, 2008

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

This matter was 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 violations of RPC 1.15(a) (commingling), RPC 1.15(d) (recordkeeping violations), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). For the reasons expressed below, we determine to censure respondent.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times, he maintained an office for the practice of law in Merchantville.

In September 2003, respondent was admonished for misconduct in two client matters, including lack of diligence, and failure to turn over one of his client's file to another attorney whom she had retained after respondent failed to conclude an estate matter, and recordkeeping violations. In the Matter of James D. Brady, DRB 03-176 (September 26, 2003).

During the following time periods, 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"): October 20 to December 6, 1988; September 30 to October 15, 1996; September 21 to 28, 1998; and September 25 to October 2, 2006.

Service of process was proper. On May 2, 2008, the OAE sent a copy of the formal ethics complaint to respondent's last known office address, 11 West Walnut Street, Merchantville, New Jersey 08109, via regular and certified mail, return receipt requested. On May 6, 2008, "Jim Brady" signed for the certified letter. The letter sent via regular mail was not returned.

On June 5, 2008, the OAE sent a letter to respondent at the same address, 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 the record, neither letter has been returned.

As of June 13, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

On November 10, 2008, Office of Board Counsel received from respondent a motion to vacate the default, which we determined to deny.

To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. Respondent has not satisfied either requirement.

Respondent admits that he received the complaint but states that it was misplaced as the result of his "support staff issues." He then asserts that he "foolishly put the matter of the lost Complaint aside." Respondent also claims that he expected to receive a reminder notice, but heard nothing further

until a default letter from Office of Board Counsel arrived in his office at the end of August 2008. Respondent makes no mention of the five-day letter that the OAE sent to him two months after it had served him with the complaint.

Respondent's claim that he ignored the matter of the lost complaint is not excusable neglect. Moreover, he has offered no meritorious defense, but instead admitted to the violations. Therefore, we determined to deny the motion and to proceed with our review of this matter as a default.

The first count of the three-count complaint alleged that, during a random audit in April 2007, the OAE uncovered the following violations of R. 1:21-6:

- a. An attorney trust account receipts book was not maintained [R.1:21-6(c)(1)(A)];
- b. An attorney trust account disbursements book was not maintained [R.1:21-6(c)(1)(A)];
- c. A schedule of client ledger account balances was not prepared and reconciled monthly to the attorney trust account bank statement [R. 1:21-6(c)(1)(H)];
- d. A running cash balance was not kept in the attorney trust account checkbook [R. 1:21-6(c)];
- e. Attorney personal funds were commingled with client trust funds [RPC 1.15(a)];

- f. A separate ledger sheet was not maintained for each trust client [R. 1:21-6(c)(1)(B)];
- g. The designation on the attorney business account bank statement was improper [R. 1:21-6(a)(2)];
- h. An attorney business account receipt book was not maintained [R. 1:21-6(c)(1)(A)];
- i. An attorney business account disbursement book was not maintained [R. 1:21-6(b)(1)(A)];
- j. Funds received for professional services were not deposited into the business account [R. 1:21-6(a)(2)]; and
- k. All checkbooks, check stubs, client ledger cards, bank statements, pre-numbered canceled checks and duplicate deposit slips for all trust and business accounts were not maintained for a period of seven years [R. 1:21-6(c)(1)].

[Complaint, First Count, ¶3.]

Based on these allegations, respondent was charged with having violated R. 1:21-6 and RPC 1.15(d)(recordkeeping violations)(mistakenly cited as RPC 1.15(b)).

The second count charged respondent with having violated RPC 1.15(a) (failure to hold client funds separate from the lawyer's funds). The charge stemmed from respondent's

admission, during the random audit, that he held more than \$100,000 in personal funds in his trust account. According to the OAE auditor's trust account reconciliation, the funds on deposit exceeded the total trust obligations by \$267,795.21. Despite numerous requests by the OAE, respondent failed to identify the amount of funds belonging to him and the amount belonging to his clients.

The third count of the complaint alleged that respondent failed to reply to multiple requests for the following specific information:

- a. A detailed bank reconciliation specifically identifying whose funds comprised the \$453,127.64 in his trust account as of May 31, 2007;
- b. A complete written explanation detailing the length of time and reasons why personal funds were commingled with trust funds;
- c. A complete explanation as to how legal fees on deposit in the trust account were reported for tax purposes;
- d. The following information was requested to be provided to the OAE within 45 days from July 18, 2007: complete documentation including a schedule itemizing and summarizing the removal of all earned fees and funds payable to clients and third parties from the trust account together with copies of

the trust checks to verify those disbursements.

[Complaint, Third Count, ¶12(a)-¶12(d).]

Respondent was first asked to produce the information on June 15, 2007. He failed to do so. He also failed to reply to the OAE's follow-up letters of October 10 and November 19, 2007.

In December 2007, respondent was given an extension until January 11, 2008 to provide the requested information. On December 18, 2007, he provided the OAE with copies of his trust account deposit slips from two banks. On January 10, 2008, he was given until February 15, 2008 to provide the remaining information.

As of April 30, 2008, the OAE had not received the information requested in its July 18, 2007 letter to respondent. Thus, he was charged with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The facts recited in 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's numerous recordkeeping improprieties violated RPC 1.15(d), which requires a lawyer to comply with the provisions of R. 1:21-6.

RPC 1.15(a) requires an attorney to hold the property of clients and third persons separately from the attorney's property. Respondent violated this rule, as charged in the second count, by maintaining more than \$100,000 in personal funds in the trust account.

Finally, respondent violated RPC 8.1(b) when, despite several requests and extensions of time, he failed to comply with the OAE's request for the information specified in the third count of the formal ethics complaint.

There remains the quantum of discipline to be imposed for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

In the absence of misappropriation of any kind, an admonition will be imposed when an attorney commingles personal and trust funds and commits recordkeeping violations. See, e.g., In the Matter of William P. Deni, Sr., DRB 07-337 (January 23, 2008) (attorney routinely deposited earned legal fees into his trust account, resulting in the commingling of more than one million dollars of personal funds with client funds; attorney



also committed other recordkeeping violations); In the Matter of Eric J. Goodman, DRB 01-225 (July 20, 2001) (attorney commingled personal and trust funds and committed several other recordkeeping deficiencies, in violation of RPC 1.15(a) and RPC 1.15(d); he also lacked diligence in failing to promptly distribute estate proceeds to the beneficiaries after the fiduciary bond was issued, in violation of RPC 1.3); and In the Matter of Lionel A. Kaplan, DRB 02-259 (November 18, 2002) (attorney commingled law firm funds and trust funds, committed other recordkeeping violations, and failed to supervise the bookkeeper who was responsible for the recordkeeping violations).

Ordinarily, if the attorney has been disciplined before, but his or her ethics record is not serious, as here, then reprimands have been imposed for failure to cooperate with disciplinary authorities. 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).

Reprimands also have been imposed upon attorneys who fail to cooperate with an arm of the disciplinary system, such as the OAE, when it uncovers recordkeeping improprieties in a trust account and requests additional documentation, which the attorney failed to provide. See, e.g., In re Macias, 121 N.J. 243 (1990) (failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint). See also, In the Matter of Gregory P. Arnotrading, DRB 07-240 (December 5, 2007) (slip op. at 19).

In this case, given respondent's prior admonition, the minimum measure of discipline for his misconduct would be a reprimand. However, respondent has defaulted in this matter. 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, 342 (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

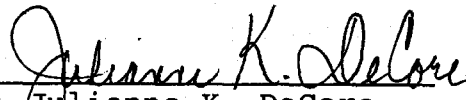
otherwise be appropriate to be further enhanced"). Therefore, we determine to impose a censure on respondent.

Member Boylan 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  
Louis Pashman, Chair

By:

  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of James D. Brady  
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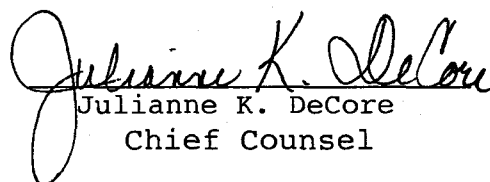
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Decided: December 17, 2008

Disposition: Censure

<b>Members</b>	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan						X
Clark		X				
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1

  
Julianne K. DeCore  
Chief Counsel