SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-255
District Docket No. XIV-05-489E

IN THE MATTER OF	
GARRETT A. LARDIERE	
AN ATTORNEY AT LAW	

Decision

Argued: February 19, 2009

Decided: July 23, 2009

Walton W. Kingsbery appeared on behalf of the Office of Attorney Ethics.

Robyn M. Hill appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline filed by the District IIIA Ethics Committee ("DEC"). The two-count complaint charged respondent with violating RPC 5.3(a) (failure to take reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer is compatible with the professional obligations of the lawyer), RPC

5.4 (a lawyer shall not share legal fees with a nonlawyer), RPC 7.3(d) (a lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client), and RPC 8.4(a) (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another) (count one), and RPC 1.15(d) (recordkeeping violations), RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count two).

The DEC recommended that respondent be suspended for three months. In our view, a censure is the appropriate level of discipline.

Respondent was admitted to the New Jersey bar in 1973. He has no history of discipline.

Count One

In 2003, respondent entered into a business relationship with Vermont-based Equinox Research and Recovery Co., Inc. ("Equinox"). Equinox researched foreclosed properties to determine whether the sheriff's sale yielded surplus funds, and whether the funds remained on deposit in the New Jersey Superior

Court Trust Fund. Using a form letter that respondent created on his letterhead, Equinox contacted individuals whom it believed were entitled to funds held by the State, advised them of the existence of the funds, and offered to retrieve the funds, for a fee. The letter was signed by an Equinox employee. Equinox's toll free telephone number appeared on the letterhead. The letter did not disclose the fact that the signer was not affiliated with respondent's office. Respondent likened the signer to an independent contractor, testifying that he advised Equinox: "I'll sort of like borrow your employees and, and you could sign the letters under your name but it's from my office." According to respondent, Equinox wanted to use his letterhead because the letter would appear "more professional" if it appeared to be from an attorney's office.

Respondent admitted that he exercised no control over the manner in which Equinox contacted potential clients. He contended that the company was soliciting its own clients. When the putative owner of the funds responded positively to a solicitation letter, Equinox asked the owner to sign a contingency agreement with respondent. That agreement was

located on the bottom of the solicitation letter.[1] Respondent claimed that the contingency agreement was between the putative owner of the funds and Equinox, not him. The document, however, provides that the client authorizes respondent to represent him or her in the matter on a contingent fee basis.

Respondent testified that "when this work came in, Equinox Research and Recovery Company is my client. Their client is the person we're collecting money for." In respondent's view, Equinox's client was also his client, and thus, he had two clients in these matters.[2]

In several letters, Equinox advised the client of the amount of respondent's fee. Contrarily, respondent asserted that he and Equinox discussed the fee charged to the client before the mailing of the solicitation letters and that he and

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[1] Respondent was not the only attorney whose services Equinox used for these matters.

[2] If, as respondent contended, he had two clients in these matters, then he was involved in a conflict of interest, a violation of RPC 1.7; at a minimum, his clients would have had adverse interests as to the fee charged/paid. If Equinox was, as respondent also claimed, an independent contractor, or had another type of business arrangement with respondent, then RPC 5.4(b) (an attorney shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law) is implicated. Because respondent was not charged with violating either of these rules, however, we cannot find that he violated them. See R. 1:20-4(b).

Equinox negotiated his fee.[3] Equinox received a percentage of the funds recovered, and respondent received a percentage of Equinox's share, along with a flat fee of $750 per case. Several solicitation letters contain no indication that Equinox will receive a portion of the funds recovered. Another version of the solicitation letter inaccurately reflects the fee arrangement between respondent and Equinox.[4] Respondent did not consider this arrangement with Equinox to be fee-sharing with a nonlawyer, because Equinox was "getting paid for what they did."

Equinox performed the investigative work necessary to retrieve the surplus funds and then forwarded the file to respondent. The solicitation letter did not reveal that Equinox employees worked on the case. Respondent handled the legal issues involved in the release of the funds, such as the effect

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[3] In respondent's answer, however, he stated that Equinox determined the fee it charged the client.

[4] Although not discussed in the record, some of the solicitation letters contain the statement: "[w]e can in some cases, even advance you some of the money, so please call us to discuss this," or similar language (Ex.OAE-3-Ex.OAE-6;OAE-8). Because the correspondence was on respondent's letterhead, it appears that respondent, not Equinox, made the offer, which is prohibited by RPC 1.8(e) ("a lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation (exceptions omitted)). The complaint did not charge respondent with a violation of RPC 1.8(e).

of other liens (child support and welfare liens), against the funds. There are no allegations that respondent mishandled any of the matters.

When respondent received a recovery, he deposited the funds in his trust account and then disbursed the proceeds to the owner, to Equinox, and to himself. Respondent explained that:

> Under the new system, using my letterhead, the clients basically were told I was representing them [sic] is true, but Equinox, I still owed Equinox their fee, for getting the client.
>
> So instead of paying them a salary every day to do these letters for me, we agreed on that contingency basis, and it's not fee splitting, everybody is entitled to get paid for what they do.
>
> [T121-25 to T122-9.][5]

Respondent compared Equinox to "forwarders" in collection practice:

> They were forwarders. Forwarders are people that obtain clients, once they obtain them, if they have to go to Court for some reason, they refer them to you, and all collection attorneys are on these lists, forwarders, ten or twelve of them, you have to pay for them every year, they're quite expensive, and they would forward you cases.
>
> You would get cases from other attorneys throughout the States -- throughout the States, you would get them

[5] T refers to the transcript of the DEC hearing on March 13, 2008.

> from collection agencies, they were big in sending you cases.
>
> I believe I enumerated them in my, in one of my answers, all the different places where the cases come from. Equinox was just another forwarder, they would give me cases, they would give other attorneys cases, they would say we signed up this client, now go collect the money for it, and then send us the money.
>
> And then they would -- normally, what happened is they take the money, after you take your fee out, they take their money and then they pay the client, their client, what they're due.
>
> But they asked me to -- for bookkeeping purposes, for me to take out the clients' money and pay the client directly, this way they don't have to do any excess bookkeeping, that's what I did.
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> [T184-5 to 185-11.]

At the DEC hearing, although respondent acknowledged that he continues his relationship with Equinox, he asserted that the solicitation letters no longer appear on his letterhead.

The solicitation letters that Equinox sent to prospective clients did not contain the language required to be present on a solicitation letter under RPC 7.3. Specifically, pursuant to RPC 7.3(b)(5), the word "ADVERTISEMENT" must appear at the top of the first page of text. In addition, the following language must also appear in solicitation letters: "[b]efore making your choice of attorney, you should give this matter careful thought.

The selection of an attorney is an important decision." Finally, a notice must appear at the bottom of the last page of text that, if the letter is misleading or inaccurate, the recipient may report that fact to the Committee on Attorney Advertising. During the ethics hearing, the panel chair questioned respondent about the missing language:

> [Panel Chair]: And one last, would you consider, I'm going back to OAE-4, the solicitation letter to Mr. Frye, you would consider that a solicitation letter --
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> [Respondent]: Yes --
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> [Panel Chair]: -- just for clarification.
>
> [Respondent]: Correct.
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> [Panel Chair]: But there is no disclaiming language on here, like attorney advertisement, or if you have any complaints contact the Office of Attorney Ethics --
>
> [Respondent]: No --
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> [Panel Chair]: -- anything like that?
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> [Respondent]: No, why should we put up a problem when there isn't any?
>
> They will call me if there is a problem. They often do call me, I got your letter, what is this all about --
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> [Panel Chair]: Well you're aware that there are certain requirements with the office of attorney ethics of [sic] the rules of professional conduct that say whenever you send out an advertisement or a solicitation

> letter, it has to contain certain disclaiming wording.
> Are you aware of what that --
>
> [Respondent]: Well, it's not an advertisement, and I'm not, I'm not aware of what words it has to contain, no.
>
> [T158-24-T160-5.]

Certain documents in the record call into question respondent's professional independence in these matters. A letter that is a part of Exhibit OAE-11 brings this issue to the forefront. The letter is to respondent from an Equinox employee, and states, in relevant part, as follows:

> So, when a client calls you, you are supposed to give them a pep talk and then have them call us etc., as we know what is going on in the case and stand a better chance in getting them to sign at a higher rate. Case jumping drives our investigators crazy (and me too as I have to listen to them...and keep them interested in working on cases etc etc which is hard to do when they work on so many and so many die). So please note that this one is a 10% plus $750.00 matter to you.

Similarly, a letter that is part of Exhibit OAE-2 states:

> Dear Garrett:
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> I have signed up a client, Mr. Frank R. Jaconetti Jr. His home was foreclosed just this past week. Mr. Jaconetti Jr. had filed for bankruptcy (thru attorney Jeff Saper) but I have advised him that we can not recover the funds unless his bankruptcy

> proceedings have been dropped/dismissed. He is having a hard time with his bankruptcy attorney so [illegible] him to send a letter by certified mail stating that he wants the proceedings dismissed.

The complaint charged respondent with violating RPC 5.3(a), RPC 5.4, RPC 7.3(d), and RPC 8.4(a).

Count Two

In October 2005, the Office of Attorney Ethics ("OAE") conducted a demand audit of respondent's attorney trust and business accounts for the period from September 30, 2003 through September 30, 2005. In November 2005, the OAE advised respondent of seven recordkeeping deficiencies identified during the audit and expressed concern about a possible fee-sharing arrangement. The OAE instructed respondent to submit reconciliations for his trust accounts for specific months, with a listing of the outstanding checks and deposits in transit, as well as a list of names and amounts held for each client at the end of the specified periods. In December 2005, respondent advised the OAE that he had been unable to ascertain the individual outstanding checks for any given past month because he had "no formula to accomplish this, and it is beyond the scope of [his] knowledge and abilities." Respondent explained

that he had always been able to properly account for client funds in his account but realized that his records did not meet the OAE's accounting standards. He hired an accountant for assistance, and opened two new trust accounts.

In March 2006, the OAE directed respondent to appear for a continuation of the demand audit to be held on April 6, 2006. On April 3, 2006, respondent objected to the continuation of the audit, stating that he would no longer permit the OAE "'Carte Blanche' access to [his] records," and would allow the OAE only one hour to review his new 2006 accounts and reconciliations. Although respondent was present in his office during the review, he did not provide the OAE with the requested records.

By letter dated April 10, 2006, the OAE directed respondent to be present at the OAE's office on April 24, 2006 for a continuation of the audit. The letter advised respondent that, if he failed to appear with his records, the OAE would move for his temporary suspension. Respondent did not appear for the audit. The OAE filed a petition seeking his temporary suspension from practice. On May 23, 2006, the Court ordered respondent to comply with the OAE's directives within thirty days. Ultimately, the OAE received documentation from respondent for his trust accounts. In the OAE's view, because

respondent did not provide a list of deposits in transit or a list of outstanding checks, the reconciliations could not be verified. Moreover, the OAE asserted that respondent had not made "a good faith attempt" to reconcile the accounts. Respondent admitted that he was unable to ascertain the outstanding checks for any given month.

Respondent testified concerning the OAE's request for information:

> And what I got annoyed about was that every time I turned around, the investigators were making more demands of me, constantly, and I'm saying, well, you know, now there [sic] prejudicing my clients [sic] rights. They're looking at all my files, taking my work product, showing how I divide the fees between the client and my -- and the different clients, I said they have no right to this information, this is privileged information, even under the Privacy Act, I mean, a client should be protected from other people looking at their records.
> And I cited some other Constitutional issues which I want you to read in here (indicating), and, also, every time they sent me a letter I responded in kind, saying, you can't do this to me, I'm being prejudiced. I gave you enough information, you're acting like the Gestapo here. I took that defense. I was very much annoyed of

Government interfering with my private life, and that's how I looked at it.

[T123-11 to 124-10.][6]

The complaint charged respondent with violating RPC 1.15(d), RPC 3.4(c), and RPC 8.1(b).

As to count one, the DEC found that respondent violated RPC 5.3(a), RPC 5.4, and RPC 7.3(d). The DEC did not find a violation of RPC 8.4(a). The DEC concluded that Equinox had determined the amount of the fee charged to the client as well as respondent's fee.

As to count two, the DEC found that respondent violated RPC 1.15(d), RPC 3.4(c), and RPC 8.1(b).

In determining the appropriate measure of discipline, the DEC considered respondent's failure to cooperate with disciplinary authorities as an aggravating factor. The panel also considered, in aggravation, respondent's lack of remorse as shown by his failure to acknowledge the impropriety of his business relationship with Equinox. In mitigation, the panel considered respondent's lack of prior discipline and the absence of harm to any client.

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[6] The OAE investigator testified before the DEC that respondent initially was cooperative and forthcoming with his files and information.

As previously noted, the DEC recommended that respondent be suspended for three months.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

In count one, we find respondent guilty of violating RPC 5.4 for sharing fees with Equinox. In count two, we find respondent guilty of recordkeeping violations and failure to cooperate with the OAE, violations of RPC 1.15(d) and RPC 8.1(b). For the reasons discussed below, we dismissed the charged violations of RPC 3.4(c), RPC 5.3, RPC 7.3(d), and RPC 8.4(a).

As to count one, respondent was charged with violating RPC 5.3, for failure to supervise Equinox employees. That rule states:

> With respect to a nonlawyer employed or retained by or associated with a lawyer: (a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

Because Equinox was neither employed by nor retained by respondent, RPC 5.3(a) does not apply. That is not to say, however, that respondent's conduct is acceptable. He relinquished control of his cases to an organization of nonlawyers who were acting under color of his name in dealing with his clients. In addition, he failed to ensure that his clients' interests were protected.[7] Although respondent cannot be found guilty of violating RPC 5.3(a), we consider his conduct in this regard as an aggravating factor. See discussion *infra*.

As to RPC 5.4 (sharing a legal fee with a nonlawyer), it is difficult to determine the portion of the money exchanged between respondent and Equinox that represented his legal fee. Respondent was paid a flat fee of $750 per case, plus 10% of Equinox's fee. Was respondent's percentage a commission for his allowing Equinox to use his name to attract the business, and was the $750 his set fee for preparing documents and performing the legal work to retrieve the client's funds from the court, similar to an attorney's preparing closing documents in a real estate transaction? Or was the $750 his commission and the 10%

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[7] Because the complaint did not charge respondent with aiding the unauthorized practice of law, a violation of RPC 5.5, we do not address whether Equinox's services were legal or paraprofessional in nature.

his fee for preparing the documents? Or was this another type of a hybrid fee and commission? Was the money that Equinox received a legal fee, or payment to Equinox for the work it did in preparing the case, from which it paid respondent a fee or a commission? Was this an attorney sharing a legal fee with a non-attorney, or a non-attorney sharing a business payment with respondent?

However the payments are classified, they fall under the prohibitions of the rule. New Jersey Supreme Court Committee on the Unauthorized Practice of Law Opinion 25, 130 N.J.L.J. 115 (1992) ("Opinion 25") addressed a similar situation, and found the conduct unethical.[8] Opinion 25 found that an attorney violated RPC 5.4(a) by entering into an arrangement with a tax consulting group, whereby the group would pay an attorney to appeal a tax assessment on behalf of the group's client. The group solicited professional employment from homeowners for property tax appeals, entered into a contingent fee arrangement with them, processed the appeals for them, and engaged attorneys, as needed, for appearances before the county tax

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[8] Unlike the rules establishing other Supreme Court committees, such as the Advisory Committee on Professional Ethics and the Committee on Attorney Advertising, the rule governing the Committee on the Unauthorized Practice of Law contains no provision as to the binding effect of the Committee's opinions.

boards, at no additional cost to the clients. The attorney received a portion of the group's contingent fee. A review of Opinion 25 supports the conclusion that respondent violated RPC 5.4(a).

RPC 5.4 was enacted to preserve and to ensure an attorney's independent professional judgment. The rationale for the rule was concisely stated in Emmons, Williams, Mires & Leech v. State Bar of California, 86 Cal. Rptr. 367, 372-373 (Cal. App. 1970): "fee-splitting between lawyer and layman . . . poses the possibility of control by the lay person, interested in his own profit, rather than the client's fate."[9] RPC 5.4(a)'s prohibition against the sharing of legal fees with nonlawyers was designed to ensure that referrals are made in the client's interest, not in the interest of the party making the referral. Also, the rule is intended to preserve the lawyer's independent professional judgment by having the lawyer, not the referring party, retain control over the case. In re Weinroth, 100 N.J.

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[9] The plaintiffs in Emmons sought a declaratory judgment to nullify the defendant bar association's claim to a one-third forwarding fee arising from a matter that had originated in the defendant's lawyer referral service. The court held that the plaintiff's claim of illegality raised an abstract argument that did not affect entitlement to the fee to which the parties had already agreed by contract.

343 (1985). In Weinroth, the Court discussed the purpose of the predecessor of the rule:

> The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney. The policy served by this Disciplinary Rule is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client. The Disciplinary Rule also serves to discourage overzealous or unprofessional solicitation by denying compensation to a lay person who engages in such solicitation on behalf of a lawyer, or even as to another lawyer unless the latter has also rendered legal services for the client and the fee that is shared reflects a fair division of those services. For these policies to succeed, both indirect as well as direct fee-sharing must be banned so as fully to preserve the integrity of attorney-client relations.
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> The plain terms of the Disciplinary Rules and the salutary policy they serve indicate that infractions are to be regarded as serious matters.
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> [Id. at 349-50; citations omitted.]

In cases involving fee sharing with a nonlawyer or assisting a nonlawyer in the unauthorized practice of law, along with other violations, the discipline has ranged from a short suspension to a three-year suspension. See, e.g., In re Malat, 177 N.J. 506 (2003) (three-month suspension for attorney who entered into an arrangement with a Texas corporation to review various estate-planning documents on behalf of clients, for which the corporation paid him; attorney had a previous reprimand and three-month suspension); In re Carracino, 156 N.J. 477 (1998) (attorney suspended for six months for entering into a law partnership agreement with a nonlawyer, agreeing to share fees with the nonlawyer, engaging in a conflict of interest, displaying gross neglect, failing to communicate with a client, engaging in conduct involving misrepresentation, and failing to cooperate with disciplinary authorities); In re Moeller, 177 N.J. 511 (2003) (one-year suspension for attorney who entered into an arrangement with a Texas corporation (AES) that marketed and sold living trusts to senior citizens, whereby he filed a certificate of incorporation in New Jersey for AES, was its registered agent, allowed his name to be used in its mailings and was an integral part of its marketing campaign, which contained many misrepresentations; although Moeller was

compensated by AES for reviewing the documents, he never consulted with the clients about his fee or obtained their consent to the arrangement, and he assisted AES in the unauthorized practice of law, misrepresented the amount of his fee, and charged an excessive fee); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension in a default matter for attorney who assisted a nonlawyer in the unauthorized practice of law, improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation).

But see In the Matter of Geno Saleh Gani, DRB 04-372 (January 31, 2005). In Gani the attorney contracted with a Texas organization (ALS) to develop a New Jersey practice preparing living trusts. ALS used advertisements that included a return postcard and an 800 telephone number so recipients could communicate their interest in learning about Gani's services. Postcards returned by prospective clients were transferred to ALS, whose representatives contacted the potential clients. If the potential clients were interested in Gani's services, the ALS representatives gathered trust-related information from them. Although Gani spoke with the clients,

and addressed their individual needs, he did not inform the clients that the representatives gathering information were employed by ALS. After Gani's receipt of the information from the ALS representatives and consultation with the clients, he drafted the requisite legal documents, which were then presented to the clients by ALS delivery agents. Approximately 87.5% of each legal fee collected was paid to ALS. His arrangement with ALS also violated a number of disciplinary rules in connection with the advertisements. We imposed only an admonition, in light of the numerous mitigating factors in the matter, including Gani's otherwise unblemished sixteen-year career at the bar, his contrition and remorse, his cooperation, his cessation of the advertising, termination of the relationship with ALS, and refusal to accept referrals from New Jersey clients. We also considered letters submitted in Gani's behalf that attested to his good character, the lack of harm to clients, the passage of time, and the fact that Gani's New Jersey practice lasted only approximately one year.

In this matter, respondent's conduct is similar to Gani's but he lacks the mitigating factors, with the exception of the prior unblemished record. Thus, a reprimand is appropriate for the violation of RPC 5.4(a) standing alone.

As to the alleged violation of RPC 7.3(d), this is not a "runner" case, where an attorney pays an individual or group to recommend his services or to secure clients. Here, Equinox used respondent's name to lend credibility to its own organization. Respondent did not pay Equinox for garnering business for him. Rather, Equinox paid respondent for building its business, and for the work he did on the cases. Equinox was paid for the work it did on the cases. Because respondent did not violate RPC 7.3(d), we dismissed that charge.

We also dismissed, as duplicative, the remaining charge in count one, a violation of RPC 8.4(a).

In count two, the DEC correctly found that respondent violated RPC 1.15(d), based on his recordkeeping violations, and RPC 8.1(b), based on his failure to cooperate with the OAE. We generally do not find a violation of RPC 3.4(c) based on an attorney's failure to cooperate with the OAE, because the misconduct is subsumed in RPC 8.1(b). Further, RPC 3.4(c) applies to court orders. Even though in this matter, the Court had to issue an order compelling respondent's cooperation, because he did comply (at least to a degree sufficient for the

OAE to withdraw its motion for his temporary suspension), we determined that respondent did not violate RPC 3.4(c).

As to his recordkeeping dereliction, in his answer, respondent stated:

> All Bank reconciliation's [sic] are being performed continually and on a monthly basis. As a matter of fact, my bank reconciliation's [sic] have been performed each and every month for the past 34 years, with the exception of the few months that were subject of Complainant's audit. This was due to the fact of a high volume of Real Estate Closings within a short period of time and limited help. I realize that this is no excuse; however, I would have reconciled my bank books anyway in the next few months, because I like my ledgers and bank statements and record keeping to be in balance.
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> [AM¶3.][10]

Respondent misses the point. The reconciliations were most vital when his accounts had the most activity. The high level of activity in his account is not a mitigating factor for his failure to reconcile it.

Recordkeeping violations standing alone generally warrant an admonition. See, e.g., In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (failure to maintain an attorney trust

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[10] AM refers to the mitigating circumstances section of respondent's answer.

account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 04-258 (June 17, 2002) (numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, or a separate ledger book for all trust account transactions); and In the Matter of Arthur N. Field, DRB 99-142 (July 19, 1999) (attorney who did not maintain an attorney trust account in a New Jersey banking institution). But see In re Colby, 193 N.J. 485 (2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been reprimanded previously for the same violations and for negligent misappropriation). Here, if respondent's recordkeeping violation stood alone, an admonition would be sufficient discipline.

With regard to respondent's violation of RPC 8.1(b), ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Kevin R. Shannon,

DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (attorney failed to reply to the ethics grievance and failed to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (attorney failed to reply to the ethics investigator's requests for information about the grievance). But see In re Vedatsky, 138 N.J. 173 (1994) (reprimand for failure to cooperate with the district ethics committee and with us; the latter lack of cooperation stemmed from the attorney's failure to file an answer to the formal ethics complaint).

A reprimand may result if the failure to cooperate is with the arm of the disciplinary system, such as the OAE, that

uncovers recordkeeping improprieties in a trust account and requests additional documentation, which the attorney fails to provide. See, e.g., In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation of how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Respondent's stance toward the OAE seemed to arise not necessarily from a bad attitude, but from lack of knowledge or understanding of the OAE's authority. That unawareness does not, however, excuse him. Respondent's lack of cooperation with the OAE, requiring that office to file a motion for his temporary suspension, warrants a reprimand.

Respondent, thus, should be disciplined for fee sharing, failure to cooperate, and recordkeeping violations. There is, however, more to consider in aggravation.

As to the solicitation letters discussed above, although the proofs adduced at the hearing would have sustained a finding that respondent violated RPC 7.3(b)(5), the complaint did not charge respondent with a violation of that RPC. R. 1:20-4(b) requires the complaint to "set forth sufficient facts to

constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated." In the past, however, the Court concurred with our determination to find improprieties not charged in the complaint as aggravating factors. In re Pena, In re Rocca, In re Ahl, 164 N.J. 222 (2000). There, the Court noted the following:

> The DRB also concluded that, although respondents lied under oath repeatedly during the trial before Judge D'Italia, the complaint did not contain a sufficient allegation to place respondents on notice that perjury could be part of the ethics proceeding. The DRB found that respondent Pena suborned perjury when he conducted the direct examination of Rocca and Ahl, and that Rocca suborned perjury when he conducted the direct examination of Pena during the civil trial. However, the DRB concluded that such evidence of perjury and subornation of perjury could be considered as an aggravating factor.
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> [Id. at 231-232.]

We consider respondent's improper use of his letterhead as an aggravating factor.

Similarly, as discussed previously, respondent abdicated his responsibilities toward his clients. RPC 5.4(c) states that "a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such

legal services." The letters discussed above, Exhibits OAE-2 and OAE-11, bring this issue to the forefront, call into question respondent's professional independence in these matters, and give pause as to who is directing these cases. Respondent's being told by an Equinox employee to give his clients a "pep talk" and to have them call Equinox, who better knows what is going on in their case, brings into question whether respondent exercised any control over Equinox or indeed, over these cases. Respondent abdicated his responsibilities toward his clients and appears to have provided Equinox with no guidance or guidelines to ensure that the company's conduct was compatible with his professional obligations. In a recent case, we considered an attorney's failure to supervise an individual as part of a range of aggravating factors. In re Ejiogu, N.J. (2009). We chose to do the same here.

When we take into account respondent's misconduct and aggravating factors, we conclude that a censure or a three-month suspension is supportable. However, given respondent's previously unblemished thirty-five years at the bar, we deem a censure to be more appropriate. Respondent is not venal. Rather, he has a distinct lack of knowledge or a lack of understanding about his responsibilities as a member of the bar.

We also determine to require respondent to submit to the Office of Attorney Ethics ("OAE"), within sixty days of the date of this, decision, proof of completion of an OAE-approved course in trust and business accounting for attorneys.

Members Boylan and Lolla 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: for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Garrett A. Lardiere
Docket No. DRB 08-255

Argued: February 19, 2009

Decided: July 23, 2009

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan						X
Clark			X			
Doremus			X			
Lolla						X
Stanton			X			
Wissinger			X			
Total:			7			2

By Isabel Frank
Julianne K. DeCore
Chief Counsel