

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-284
District Docket Nos. XIV-2013-
0514E and XIV-2013-0548E

IN THE MATTER OF
HERBERT R. EZOR
AN ATTORNEY AT LAW

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Decision

Decided: March 23, 2015

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). The complaint charged respondent with having violated RPC 1.15(a) (commingling), RPC 5.5(a) (practicing law while ineligible), RPC 8.1(b) (failing to cooperate with disciplinary authorities), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and

RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). For the reasons set forth below, we determined to impose a three-month suspension on respondent.

Respondent was admitted to the New Jersey bar in 1971. At the relevant times, he worked as a per diem attorney for Newman & Andriuzzi, a Clifton law firm. At the same time, however, he listed, on the attorney registration form, an address in Wood-Ridge as his office address.

In March 2001, respondent received a reprimand for negligently misappropriating funds belonging to one of "numerous owners of condominium units" whom he had successfully represented in property tax assessment appeals and for failing to comply with the client's requests for information about his case. In re Ezor, 167 N.J. 0594 (2001).

On February 12, 2014, respondent was temporarily suspended for failure to cooperate with the OAE. In re Ezor, 216 N.J. 582 (2014). He was reinstated on May 7, 2014. In re Ezor, 217 N.J. 366 (2014).

On September 23, 2014, respondent was again temporarily suspended for failure to cooperate with the OAE. In re Ezor, 219 N.J. 317 (2014). He remains suspended to date.

Respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF) during the following periods: September 20, 1999 to October 5, 2000; September 30, 2002 to May 5, 2003; September 25, 2006 to April 23, 2007; and September 27, 2010 to April 9, 2014.

Service of process was proper in this matter. On July 23, 2014, the OAE sent a copy of the formal ethics complaint to respondent's office address, in Clifton, and to his "personal" post office box, in Wood-Ridge, by regular and certified mail, return receipt requested. On July 30, 2014, Keisha Gonzalez signed for the letter sent to the office address. On August 1, 2014, H. R. Ezor signed for the letter sent to the post office box. The letters sent by regular mail were not returned.

On August 22, 2014, the OAE sent a letter to respondent at the same addresses, by regular and certified mail, return receipt requested. The letter directed him to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). On August 27, 2014, Nicole

Nettleton signed for the letter sent to the office address. On September 2, 2014, H. R. Ezor signed for the letter sent to the post office box. The letters sent by regular mail were not returned.

As of September 9, 2014, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

According to the complaint, respondent maintained an attorney trust account at TD Bank, as well as attorney trust and business accounts at Chase Manhattan Bank. On October 11, 2013, TD Bank notified the OAE of an overdraft in respondent's trust account.

On October 22, 2013, the OAE's Chief of Investigations, William Ruskowski, sent a letter to respondent, requesting an explanation for the overdraft by November 7, 2013. The letter was sent by regular mail to the Wood-Ridge office address, listed on the attorney registration system. Respondent did not reply to the letter, which was not returned to the OAE.

On the day before Ruskowski wrote to respondent, October 21, 2013, TD Bank notified the OAE of another overdraft in respondent's trust account. TD sent a third overdraft notice to the OAE on October 23, 2013. On October 31, 2013, Ruskowski

wrote to respondent, requesting an explanation of these overdrafts by November 18, 2013. The letter was sent by regular mail to the Wood-Ridge office address. Respondent did not reply to the letter, which was not returned to the OAE.

On November 13, 2013, five days before the given deadline, Ruskowski sent another letter to respondent, via regular and certified mail, return receipt requested, to the Wood-Ridge office address and to respondent's home address. The letter informed respondent that, if he did not reply to the October 22 and October 31, 2013 letters by November 20, 2013, the OAE would petition the Supreme Court for his immediate temporary suspension. Respondent did not reply to the letter.

The letter sent to respondent's home address by regular mail was returned, marked "undeliverable." The complaint does not disclose the disposition of the letter sent to respondent's home by certified mail.

The letter sent by certified mail to respondent's office address was returned to the OAE on December 31, 2013, marked "Return to Sender, Unable to Forward." The letter sent by regular mail was not returned.

According to the complaint, at the time these letters were sent to respondent, he had been ineligible to practice law since

September 27, 2010, due to his failure to pay the annual assessment to the CPF. On December 3, 2013, the OAE called the law firm listed for respondent in the attorney registration system and learned that respondent had not worked there for quite some time.

The OAE then learned that respondent was employed by the law firm of Newman & Andriuzzi. On December 3, 2013, the OAE contacted respondent at Newman & Andriuzzi, at which time he admitted receipt of the OAE's letters, but denied knowing that he was ineligible to practice law. Respondent promised to provide explanations for the overdrafts and for his continued practice of law, despite his ineligible status, by December 13, 2013.

On February 12, 2014, respondent was temporarily suspended as a result of his failure to follow through with his promise. In mid-March, 2014 respondent requested a meeting with the OAE so that he could explain the overdrafts and his practicing law while ineligible. On March 27, 2014, the OAE sent a letter to respondent, by regular and certified mail, return receipt requested, to a post office box number that he had provided to the OAE. The letter scheduled a demand audit at the OAE, on April 9, 2014.

At the demand audit, respondent stated that his trust account contained only personal funds. In reply to the OAE's request that he provide proof of the source of funds in the trust account, respondent produced "proof of pay checks from Newman and Andriuzzi, which corresponded with each of the deposits into his attorney trust account." Because respondent's trust account contained only personal funds, the OAE ran a judgment search to determine whether there were any outstanding judgments against him. The search uncovered four open judgments against him.

On April 11, 2014, the OAE interviewed respondent, by telephone, about the open judgments against him. Respondent denied the existence of the judgments, claiming that he had not had any judgments against him in fifteen or twenty years. The complaint alleged that this statement was false and that respondent knew it was a false statement at the time he made it.

According to the complaint, respondent deposited personal funds in his trust account to conceal them from his judgment creditors, an assertion that respondent denied. Presumably, the denial was made during the telephone interview with the OAE.

On April 11, 2014, respondent petitioned the Court for reinstatement, which the OAE did not oppose. On May 6, 2014, the Court reinstated respondent to the practice of law.

On May 28, 2014, after numerous unsuccessful attempts to contact respondent by telephone, the OAE sent him a letter informing him that, if he failed to contact the OAE about the four open judgments, within ten days of the date of the letter, he would be charged with "non-cooperation." Respondent did not reply to that letter.

On June 30, 2014, the OAE sent a letter to respondent, enclosing copies of the four judgments and informing him that, if he did not provide an explanation of the judgments by July 9, 2014, the OAE would petition the Court for his temporary suspension. As of July 18, 2014, the OAE had not received a reply to its July 9, 2014 letter.

On July 18, 2014, the OAE again petitioned the Court for respondent's temporary suspension. On September 23, 2004, the petition was granted.

In addition to RPC 1.15(a), RPC 5.5(a), and RPC 8.1(b), respondent was charged with having violated RPC 8.4(c), based on his misrepresentations to the OAE about the judgments against him and his concealment of assets from judgment creditors, and

RPC 8.4(d), also based on his concealment of assets from those creditors.

With one exception, 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).

With the exception of personal funds "reasonably sufficient to pay bank charges," RPC 1.15(a) prohibits an attorney from commingling personal and trust funds in the trust account. Respondent admitted to the OAE that he had deposited his pay checks into the trust account.

The complaint, however, did not allege that respondent's trust account contained any funds belonging to clients or third persons. Indeed, according to the complaint, respondent produced proof that the source of every trust account deposit was respondent's paycheck. Instead, respondent used his trust account as a personal account, a recordkeeping infraction and, more properly, a violation of RPC 1.15(d). R. 1:21-6(a)(1) provides that funds entrusted to the attorney's care shall be deposited in a trust account. R. 1:21-6(i) provides that an attorney who fails to comply with the trust account rule shall

be deemed to be in violation of RPC 1.15(d). Although the complaint did not charge respondent with having violated RPC 1.15(d), the allegations gave him sufficient notice of the allegedly improper conduct and the potential for finding a violation of that rule.

RPC 5.5(a) prohibits an attorney from practicing law in a jurisdiction where the attorney has been deemed ineligible to do so. In this case, respondent was working for Newman & Andriuzzi, on December 3, 2013, during his most recent period of ineligibility. Despite having told the OAE that he would provide an explanation for his continued practice of law, respondent did not do so. We find that, by practicing while ineligible, respondent violated RPC 5.5(a).

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent's February 12, 2014 temporary suspension stemmed from his failure to reply to the OAE's letters of October 22 and 31, and November 14, 2013, requesting information about the overdrafts in his trust account, as well as his failure to explain his continued practice of law, by the December 13, 2013 deadline established during his communication with the OAE, on December 3, 2013. After his May 2014 reinstatement from that

temporary suspension, respondent subsequently ignored the OAE's several attempts to contact him by telephone, as well as the OAE's May 28 and June 30, 2014 letters. For this conduct he was temporarily suspended again, on September 23, 2014. Respondent's failure to comply with the OAE's various requests for information described above violated RPC 8.1(b).

RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. As stated above, respondent was charged with having violated this RPC, based on his misrepresentations to the OAE about the judgments against him and his concealment of assets from judgment creditors. Despite the OAE's discovery of four open judgments, respondent denied that he had any outstanding judgments against him, a statement that the complaint alleged respondent knew was false at the time he made it. In addition, respondent made a misrepresentation to the OAE, when he denied depositing personal funds into his attorney trust account to avoid the judgment creditors. Based on these facts, respondent's statement to the OAE was a violation of RPC 8.4(c).

Finally, RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice. By maintaining personal funds in his attorney trust account,

respondent was able to conceal those monies from his judgment creditors, who, as a result, were denied the ability to seize the assets. This misuse of the trust account for the purpose of defrauding creditors constituted conduct prejudicial to the administration of justice, as seen below.

There remains for determination the appropriate quantum of discipline to be imposed on respondent for his violations of RPC 1.15(d), RPC 5.5(a), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d).

Attorneys who intentionally place personal assets in their attorney trust accounts to prevent creditors from seizing those assets have been censured. See, e.g., In re Weber, 205 N.J. 467 (2011) (attorney with an unblemished career of nearly forty years was censured for circumventing an IRS levy on his attorney business account by intentionally allowing the business account to lie dormant and using his trust account for both business and trust matters; the attorney also committed multiple recordkeeping violations); In re Al-Misri, 197 N.J. 503 (2009) (censure imposed on attorney who intentionally placed personal funds into his trust account to prevent a creditor from seizing the monies; the attorney also committed recordkeeping violations, grossly neglected a client's real estate matter and, in two separate real estate matters, practiced while ineligible

as a result of his failure to pay the 2003 annual attorney assessment to the CPF; although there were aggravating factors, that is, the attorney's two prior admonitions and his failure to abide by the OAE's several warnings about the improper use of his trust account for personal obligations, we gave "great weight" to the mitigating factors, which included the attorney's admission of the misconduct, the lack of harm to his clients, his sobriety of twenty years, and his devotion of many years to helping other drug-and-alcohol-dependent individuals through Alcoholics Anonymous, Narcotics Anonymous, and a lawyers' assistance program; nevertheless, we pointed out that, were it not for the attorney's dedication to helping others recover from their addictions, he would have received a three-month suspension); and In re Olitsky, 149 N.J. 27 (1997) (prior to censure becoming a form of discipline, three-month suspension imposed on attorney who intentionally commingled client funds, business funds, and personal funds for the purpose of circumventing an IRS levy; the attorney also committed recordkeeping violations and failed to safeguard client funds; prior private reprimand and admonition).

Practicing law while ineligible, without more, is generally met with an admonition, if the attorney is unaware of the

ineligibility. See, e.g., In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010) (attorney practiced law while ineligible for failure to file the IOLTA registration statement for three years); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services); In the Matter of William C. Brummell, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility). In this case, the complaint does not allege any facts that would support a finding that respondent was aware of his ineligibility during the time that he practiced law while on the ineligible list. Thus, an admonition is the appropriate form of discipline for this infraction alone.

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 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 ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the ethics investigator's request for information about the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with DEC investigator's requests for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)); and In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010) (attorney failed to reply to two letters from the ethics investigator seeking his version of the events).

A reprimand or censure is typically imposed for a misrepresentation to disciplinary authorities, as long as it is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney reprimanded for misrepresenting to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998)

(reprimand for attorney who lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and of the attorney's failure to consult with a client before permitting two matters to be dismissed); In re Powell, 148 N.J. 393 (1997) (attorney reprimanded for violations of RPC 8.1(b) and RPC 8.4(c) based on his misrepresentation to the district ethics committee that his associate had filed a motion to reinstate an appeal, when the motion had not yet been filed; the attorney's misrepresentation was based on an assumption, rather than an actual conversation with the associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client); In re Schroll, 213 N.J. 391 (2013) (censure imposed on attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when he knew that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney was also found guilty of gross neglect,

lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline); In re Falzone, 209 N.J. 420 (2012) (attorney censured for lying to the OAE during an ethics investigation; the attorney also failed to comply with the recordkeeping rules and to supervise his wife-secretary, thereby enabling her to steal \$279,000 from his trust account); In re Corbett, 202 N.J. 463 (2010) (attorney censured for misrepresenting to the OAE that a trust account shortage had been fully replenished; the attorney had placed personal funds in her trust account to pay for business expenses but negligently misappropriated client funds by issuing a check in error; the attorney, a municipal court judge, previously had received an admonition and a reprimand; in mitigation, it was considered that the negligent misappropriation was not the result of poor recordkeeping or abandonment of her recordkeeping responsibilities to an employee but rather an unfortunate administrative incident); and In re Allocca, 185 N.J. 404 (2005) (censure for attorney who made material misrepresentations to the ethics investigator about a real estate mortgage pay-off, payment of taxes, and recording of the deed, in order to obscure his mishandling of the underlying


matter; the attorney also lacked diligence in the case; no prior discipline).

For concealing assets from creditors by depositing personal funds in his trust account, respondent should be censured. In addition, he practiced law while ineligible, deposited personal funds in his trust account, was twice temporarily suspended for failure to cooperate with the OAE, and defaulted in this matter. We, therefore, determine to impose a three-month suspension on respondent.

Members Gallipoli and Zmirich voted to impose a six-month suspension. Vice-Chair Baugh 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 Herbert R. Ezor
Docket No. DRB 14-284

Decided: March 23, 2015

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Clark		X				
Gallipoli			X			
Hoberman		X				
Rivera		X				
Singer		X				
Yamner		X				
Zmirich			X			
Total:		6	2			1


Ellen A. Brodsky
Chief Counsel