

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-181
District Docket No. XIV-2014-0594E

IN THE MATTER OF
WILLIAM J. LAWLOR III
AN ATTORNEY AT LAW

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Decision

Decided: February 12, 2016

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

This matter is before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.15(b) (failure to safeguard funds) and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities).

For the reasons detailed below, we find that respondent violated both RPC 1.15(b) and RPC 8.1(b) and impose a reprimand.

Respondent was admitted to the New Jersey bar in 1989. He has no history of discipline. At the relevant times, he maintained an office for the practice of law in Jackson, New Jersey. By Order dated August 18, 2014, respondent was deemed to be ineligible to engage in the practice of law in New Jersey, effective August 25, 2014, for failure to make payment to the New Jersey Lawyers' Fund for Client Protection (CPF). To date, respondent remains ineligible.

Service of process was proper in this matter. According to respondent's last report to the CPF, he maintains a solo law practice at his home address. On April 7, 2015, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent at that address. An undated certified mail receipt was signed, apparently by respondent, and returned. The OAE confirmed that the certified mail was delivered on April 10, 2015. The regular mail was not returned. Respondent failed to file an answer to the complaint within twenty-one days of receipt of the complaint.

On May 8, 2015, the OAE sent a "five-day" letter to respondent, by certified and regular mail, at the same address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint

would be deemed amended to charge a willful violation of RPC 8.1(b). As of May 11, 2015, the certified mail was unclaimed but the regular mail was not returned.

Respondent failed to file an answer to the complaint. Consequently, on May 27, 2015, the OAE certified the record to us as a default.

In this case, on December 1, 2013, Thomas Jones filed a grievance alleging that respondent refused to return a \$5,000 deposit on a canceled real estate transaction. On February 15, 2013, Jones entered into a sales contract with respondent's father, William Lawlor, to purchase a property located at 7 Park Lane, Marlboro, New Jersey. The sales contract was contingent on Jones' ability to obtain a mortgage. Respondent represented his father; Jones was represented by Michael D. Pugliese, Esq.

In accordance with the sales contract, Jones issued a \$5,000 check as a deposit, payable to "William Lawlor Esq." Because the original check was lost, Jones sent a replacement check to respondent, dated April 15, 2013, payable to "William Lawlor III, as Attorney." On May 1, 2013, respondent deposited the \$5,000 check in his attorney trust account.

By letter dated June 17, 2013, the lender notified Jones that he was denied a mortgage for "inadequate collateral." In a letter dated

June 21, 2013, Pugliese informed respondent that Jones had been denied a mortgage, that Jones elected to terminate the sales contract, and that he sought the return of Jones' \$5,000 deposit. Respondent refused to return the deposit. On July 1, 2013, in another letter to respondent, Pugliese, again, requested the return of the deposit and reiterated the legal basis for seeking this return. Respondent did not return the funds.

On October 8, 2013, Jones wrote directly to respondent requesting the return of his deposit. Respondent neither replied to Jones nor refunded the deposit. This repeated failure to return the funds prompted Jones to file the instant grievance.

On July 25, August 26, and September 16, 2014, the District IIIA Ethics Committee (DEC) investigator assigned to the matter sent letters to respondent requesting a written reply to the grievance. Respondent failed to reply to any of these letters. The latter two letters were sent by regular and certified mail. In each instance, the regular mail was not returned. The return receipt for the August 26, 2014 letter was signed and returned to the investigator. The September 16, 2014 letter informed respondent that, if he failed to reply to the grievance within five days, the investigator would continue her investigation without his input and proceed to a complaint, charging him, at a minimum, with

failure to cooperate in violation of RPC 8.1(b). The certified mail was returned as "unclaimed."

Based on the nature of the allegations, the DEC transferred the matter to the OAE to investigate whether the \$5,000 was held intact in respondent's attorney trust account. On October 31, 2014, the OAE sent respondent a letter, by certified and regular mail, notifying him of the case transfer, requesting an explanation for his failure to respond, and requesting documentation to demonstrate that the funds were, and continued to be, held intact. The certified mail was returned unclaimed and the regular mail was not returned.

On November 21, 2014, the OAE sent respondent a final letter, by certified and regular mail, requesting his response to the grievance and the documentation, including financial records, to support a conclusion that the funds were held intact. Respondent was also advised that the OAE had the discretion to seek his temporary suspension based on his failure to cooperate. The green card was signed and returned to the OAE and the regular mail was not returned.

Based on respondent's failure to cooperate with disciplinary authorities and his failure to return the \$5,000 deposit, the OAE filed an emergent application with the Supreme Court seeking respondent's temporary suspension. In an Order dated March 3, 2015, the Court warned

respondent that he would be temporarily suspended if he failed to return the \$5,000 to Jones within ten days of the Order. On March 9, 2015, respondent issued a \$5,000 check payable to Thomas Jones.

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

On February 15, 2013, Jones entered into a sales contract with respondent's father, William Lawlor, to purchase property located at 7 Park Lane, Marlboro, New Jersey. The sales contract was contingent on Jones' ability to obtain a mortgage. In accordance with the sales contract, Jones issued a \$5,000 deposit check, payable to "William Lawlor III, as Attorney," which respondent deposited in his attorney trust account.

Thereafter, Pugliese notified respondent that Jones had been denied a mortgage and sought the return of the \$5,000 deposit. Respondent refused to return the deposit. After both Pugliese and Jones made several requests for the return of the deposit, to no avail, Jones filed a grievance. Respondent then failed to respond to the DEC's and the OAE's

multiple requests for a reply to the grievance and for other relevant information.

The facts clearly establish that respondent failed to return the \$5,000 deposit to Jones, in violation of RPC 1.15(b). Jones was entitled to receive those funds. Respondent was required to promptly deliver the \$5,000 to Jones, after respondent was notified that Jones was unable to obtain a mortgage. Nothing in the record suggests that respondent had a legitimate purpose for retaining the funds or that returning the funds would have been contrary to the sales contract.

Ordinarily, failure to promptly deliver funds to which a client or a third party is entitled results in an admonition, even if accompanied by other, non-serious violations. See, e.g., In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (for three years, the attorney did not remit to the client the balance of settlement funds to which the client was entitled, a violation by stipulation of RPC 1.15(b); the attorney also lacked diligence in the client's representation, failed to cooperate with the investigation of the grievance, and wrote a trust account check to "cash," violations of RPC 1.3, RPC 8.1(b), and R. 1:21-6(c)(1)(A); significant mitigation presented, including the attorney's unblemished twenty years at the bar); In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (attorney did not promptly disburse to a

client the balance of a loan that was refinanced; in addition, the attorney did not adequately communicate with the client and did not promptly return the client's file; violations of RPC 1.15(b), RPC 1.4(b), and RPC 1.16(d)); In the Matter of Walter A. Laufenberg, DRB 07-042 (March 26, 2007) (following a real estate closing, attorney did not promptly make the required payments to the mortgage broker and the title insurance company; only after the mortgage broker sued the attorney and his client did the attorney make the appropriate disbursements; violations of RPC 1.1(a) and RPC 1.15(b)); and In the Matter of Gordon Allen Washington, DRB 05-307 (January 26, 2006) (for a seven-month period, attorney did not disburse the balance of escrow funds that a party to a real estate transaction was entitled to receive; the attorney also lacked diligence in addressing the problem once it was brought to his attention; violations of RPC 1.3 and RPC 1.15(b)).

As previously noted, the complaint further charged respondent with a violation of RPC 8.1(b), based on his failure to cooperate with both the DEC's and the OAE's investigation. Specifically, between July 2014 and November 2014, both the DEC and the OAE sent numerous letters to respondent, requesting his written reply to the grievance and warning that his failure to respond would result in a formal charge for his

failure to cooperate. The OAE's requests also asked respondent to address the integrity of grievant's deposit.

Respondent replied to none of the DEC's or the OAE's requests. In fact, it was not until March 9, 2015, after the OAE filed an emergent application with the Court for respondent's temporary suspension, that respondent finally issued a \$5,000 check payable to Thomas Jones. Thus, the facts recited in the complaint clearly establish that respondent failed to respond to the DEC's and the OAE's lawful demands for information, in violation of RPC 8.1(b).

Ordinarily, failure to cooperate in a disciplinary matter results in an admonition. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee 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 the district ethics committee's requests for information about two grievances); and 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). An admonition may be imposed even if the attorney's failure

to cooperate is accompanied by other, non-serious violations. See, e.g., In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015) (attorney ignored the DEC investigator's multiple attempts to obtain a copy of his client's file and failed to file an answer to the formal complaint, in violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, in violation of RPC 1.4(b); we considered, in mitigation, the attorney's acceptance of full responsibility for the dismissal of his client's applications, the fact that he had refunded the entire legal fee to the client, and that he had erroneously believed that his reply to the grievance and a subsequent letter to the district ethics committee secretary admitting the allegations of the complaint satisfied his obligation to file a formal answer); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply the DEC's investigation of the grievance and did not communicate with the client); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with the DEC investigator's requests for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)).


Had respondent's misconduct consisted only of his violation of RPC 1.15(b) and/or RPC 8.1(b), and in light of his unblemished ethics

history, an admonition would be appropriate. Here, however, in perpetuation of his failure to cooperate with the DEC and the OAE in their investigation, respondent compounded his misconduct by allowing this matter to proceed by way of default. In a default matter, the otherwise appropriate discipline is enhanced to reflect, as an aggravating factor, an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008).

We, thus, determine to impose a reprimand. Vice-Chair Baugh and Member Clark 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 William J. Lawlor III
Docket No. DRB 15-181

Decided: February 12, 2016

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark						X
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			6			2


Ellen A. Brodsky
Chief Counsel