

within thirty days. We determine to impose a censure on respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1986. At the relevant times, he maintained an office for the practice of law in Parsippany. Respondent has been temporarily suspended since February 10, 2015, based on his failure to cooperate with the OAE's investigation in this matter and to appear for a demand audit.

On June 26, 2013, respondent received an admonition for lack of diligence (RPC 1.3), failure to communicate (RPC 1.4(b)), and failure to set forth, in writing, the rate or basis of his legal fee (RPC 1.5(b)) in an estate matter. In the Matter of Andrey V. Zielyk, DRB 13-023 (June 26, 2013).

Service of process was proper in this matter. On April 13, 2015, the OAE sent a copy of the formal ethics complaint to respondent's last known home address, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned, marked "Return to Sender Unclaimed Unable to Forward Return to Sender." The letter sent by regular mail was not returned.

On May 5, 2015,² the OAE sent a letter to respondent at the same address, 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), based also on respondent's failure to answer the complaint.

As of July 7, 2015, the return receipt for the certified letter had not been returned to the OAE, the letter sent by regular mail had not been returned, and respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

The single-count complaint alleged that, on May 12, 2014, the OAE sent respondent a letter, to his office address, asking him to provide an explanation and documentation concerning his handling of the Estate of Maria Medwid. The letter was returned to the OAE marked as "Not Known and Unable to Forward."

² Although the date reflected on the letter is May 5, 2014, the letter was clearly written and mailed in 2015.

On June 2, 2014, the OAE sent a second letter to respondent's office and home addresses, by regular and certified mail, directing him to provide an explanation to the grievance by June 16, 2014. On June 11, 2014, respondent requested, and was granted, an extension of that deadline to July 3, 2014.

Respondent failed to provide the OAE with the explanation and all documents requested in the OAE's letters of May 12, June 2, and June 12, 2014. Thereafter, the OAE attempted to contact respondent on numerous occasions, by telephone, in order to obtain the requested explanation and documentation, to no avail.

As noted, on October 29, 2014, the Court entered an order directing respondent to appear for an audit at the OAE and to provide previously requested documents. The order further notified respondent that failure to comply with the order may result in his temporary suspension, without further notice.

On October 30, 2014, in accordance with the Court's order, the OAE scheduled respondent's attendance at a demand audit on November 20, 2014. On November 13, 2014, attorney Michael P. Ambrosio informed the OAE that respondent would be unable to attend the audit because he had been admitted to an in-patient detoxification program.

On November 14, 2014, the OAE notified Ambrosio that the audit had been adjourned, and requested that he inform the OAE

when respondent was released from the detoxification program. The OAE did not receive any further notification from Ambrosio and, therefore, a new demand audit was scheduled for January 21, 2015.

On January 12, 2015, the OAE sent a letter to respondent informing him of the newly-scheduled demand audit. Respondent did not acknowledge the letter. He also failed to appear for the January 21, 2015 demand audit, and did not provide any of the requested documents identified in the Court's October 29, 2014 order. Consequently, the OAE filed a supplemental certification, informing the Court of respondent's failure to comply with the Court's previous order and requesting respondent's immediate temporary suspension. The Court granted the OAE's request on February 10, 2015.

On March 13, 2015, respondent informed an OAE disciplinary auditor, during a telephone conversation, of his belief that Ambrosio continued to represent him. In addition, he stated that he would advise the OAE, by March 19, 2015, whether Ambrosio would continue representing him or whether respondent would retain another lawyer.

As of April 13, 2015, respondent had provided the OAE with neither his explanation nor the documents as directed by the

Court. Accordingly, a complaint issued on that date, charging respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an 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)(1).

R. 1:20-3(g)(3) provides, in pertinent part:

Every attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information. . . . Attorneys shall also produce the original of any client or other relevant law office file for inspection and review, if requested, as well as all accounting records required to be maintained in accordance with R. 1:21-6. Where an attorney is unable to provide the requested information in writing within ten days, the attorney shall, within that time, inform the investigator in writing of the reason that the information cannot be so provided and give a date certain when it will be provided.

Here, respondent failed to comply with the OAE's requests for "an explanation and documentation concerning his handling of the Estate of Maria Medwid," which necessitated an order from the Court, requiring him to do so. Respondent ignored the Court's order, continued to avoid his obligation to provide the OAE with the requested information, and failed to appear for a demand audit. This non-cooperation resulted in another Court

order, temporarily suspending him this time. Still, he continues to ignore his obligation to provide the information to the OAE. Thus, respondent has repeatedly failed to cooperate with the OAE, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

Ordinarily, an admonition is imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house); In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (the attorney admittedly failed to cooperate with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter; the attorney had had no other final discipline since his 1983 admission to the New Jersey bar); and In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so; we took into consideration that the attorney's failure to cooperate was confined to the period during the investigation and that, thereafter, he appeared at

the DEC hearing and participated fully during the disciplinary process).

If the attorney has been disciplined before, as here, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 220 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, on a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation) and In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct).

Here, respondent's failure to cooperate with the OAE, coupled with his ethics history, warrants a reprimand. This matter was before us as a default, however, which necessitates enhancement of the discipline to a censure. In re Kivler, 183 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"). We, therefore, determine to impose a censure on respondent for his misconduct

Vice-Chair Baugh and Members Hoberman and Singer 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
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrey V. Zielyk
Docket No. DRB 15-232

Decided: May 2, 2016

Disposition: Censure

| Members | Disbar | Suspension | Censure | Dismiss | Disqualified | Did not participate |
|----------------|--------|------------|---------|---------|--------------|---------------------|
| Frost | | | X | | | |
| Baugh | | | | | | X |
| Clark | | | X | | | |
| Gallipoli | | | X | | | |
| Hoberman | | | | | | X |
| Rivera | | | X | | | |
| Singer | | | | | | X |
| Zmirich | | | X | | | |
| Total: | | | 5 | | | 3 |


Ellen A. Brodsky
Chief Counsel