

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-208
District Docket Nos. XIV-2014-
0025E & XIV-2014-0088E;
Docket No. DRB 15-210
District Docket No. XIV-2014-
0449E; and
Docket No. DRB 15-322
District Docket Nos. XIV-2014-
0591E & XIV-2015-0069E

IN THE MATTER OF

BARRY N. FRANK

AN ATTORNEY AT LAW

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Decision

Decided: May 2, 2016

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

These matters were before us on certifications of default
filed by the Office of Attorney Ethics (OAE), pursuant to R.
1:20-4(f). They were consolidated for our review for the purpose
of imposing a single form of discipline. All of the complaints
charged respondent with violating RPC 8.1(b) (failure to
cooperate with disciplinary authorities) (two counts in DRB 15-
208 and DRB 15-322; one count in DRB 15-210). For the reasons

set forth below, we determine to censure respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1977. He has no history of final discipline.

On September 16, 2014, respondent was temporarily suspended for failure to cooperate in a matter that is not under consideration here.

DRB 15-208

SERVICE OF PROCESS

Service of process was proper in this matter. On July 22, 2014, the OAE sent a copy of the complaint to respondent's office address in Englewood, New Jersey, by both certified mail, return receipt requested, and by regular mail. The certified mail receipt was returned, indicating delivery on July 28, 2014. The signature of the agent accepting the delivery was "Benjamin." The stamp used by the post office obscured Benjamin's last name. The regular mail was returned with a notation "return to sender unable to forward."

On November 17, 2014, after respondent's temporary suspension, the OAE sent the complaint to respondent at his home address, by regular and certified mail, return receipt requested. The certified mail receipt was returned, but did not

indicate the date of delivery. The signature of the agent accepting the delivery is illegible. The regular mail envelope was not returned.

On December 16, 2014, the OAE sent a letter to respondent advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be amended to include a charge of failure to cooperate. The letter was sent to respondent's home address by both certified mail, return receipt requested, and by regular mail. A certified mail receipt was returned, but the date of delivery was not indicated. The agent accepting the delivery was "cs frank." The regular mail envelope was not returned.

As of June 15, 2015, the date of the certification of the record, respondent had not filed an answer to the complaint.

ALLEGATIONS OF THE COMPLAINT

Count One (The Vega Matter)

On February 12, 2014, the OAE sent to respondent a copy of a grievance filed against him by Abilio Vega, and requested, by February 28, 2014, a written response to the allegations, as well as copies of the Vega client file, the Vega client ledger

card, all checks written on behalf of Vega, and all client ledgers, bank statements, cancelled checks, checkbook stubs, deposit slips, and cash receipts and cash disbursements journals for respondent's Attorney Trust Account (ATA) and Attorney Business Account (ABA) from December 2012 to the present. The letter was sent to respondent's office by regular and certified mail, return receipt requested.

On March 6, 2014, after the February 28, 2014 deadline, the OAE received respondent's reply to the grievance. He provided a copy of one check written from his New York business account issued on behalf of Vega. Respondent asserted that, because Vega was not his client, he did not have a Vega client file. Respondent claimed that he represented Moshe Abraham in a matter against Vega, that the matter had been resolved, and that the appropriate payments were being made.

On March 7, 2014, the OAE again asked respondent for a written reply to the grievance and a copy of all the previously requested documents, by March 21, 2014. The letter was sent to his office address by certified mail, return receipt requested, and by regular mail. The certified mail receipt was signed by "J. Parisi." The record does not reveal what became of the regular mail.

On April 2, 2014, the OAE asked respondent to produce, by April 15, 2014, additional information regarding the allegations contained in the grievance, a current address for Abraham (an employee of respondent's firm), and copies of the previously requested documents. Respondent did not reply.

In a June 26, 2014 letter, the OAE notified respondent that a Demand Interview and Production of Files and Related Materials was scheduled for July 10, 2014, at 10:00 a.m., at the OAE offices. The letter was sent to his office address by both certified mail, return receipt requested, and by regular mail. The certified mail receipt was signed by "J. Parisi." The regular mail was not returned. Respondent neither appeared for the demand interview nor produced the requested documents.

Count Two (The Aldaz Matter)

On March 19, 2014, the OAE sent a letter to respondent, at his office, enclosing a copy of a grievance filed against him by Eleuterio Aldaz and requesting, by April 4, 2014, a reply to the grievance, as well as his Aldaz client file, an explanation of respondent's relationships with William J. Munier, Esq., and Gorriti Waters Company, Inc., plus copies of client ledgers, bank statements, cancelled checks, checkbook stubs, deposit slips, cash receipts and cash disbursements journals for each of respondent's ATAs and ABAs, and three-way reconciliations from

July 1, 2010 to the present. The letter was sent by certified mail, return receipt requested, and by regular mail. The certified mail receipt bears an illegible signature. The record does not indicate what became of the regular mail. Respondent failed to provide a written reply to the Aldaz grievance or to produce the requested documents by April 4, 2014.

In an April 2, 2014 letter to respondent, the OAE again requested a reply to the Aldaz grievance, as well as a copy of the previously requested documents, by April 14, 2014. The letter was sent to respondent's office by certified mail, return receipt requested, and by regular mail. The certified mail receipt was signed by "T. Brooks." The regular mail envelope was not returned. Respondent failed to provide a written reply to the Aldaz grievance or to produce the requested documents by the April 14, 2014 deadline.

On April 24, 2014, the OAE again wrote to respondent, requesting his reply to its previous demands, by May 5, 2014, and further informing respondent that his failure to cooperate with the OAE, or to reply to the grievance and provide the requested documents, by May 5, 2014, could subject him to a complaint charging a violation of RPC 8.1(b). Respondent did not reply.

* * *

The complaint alleges sufficient facts to 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 was first notified of the Vega grievance and was directed to submit a reply to it, in February 2014. He eventually submitted a partial response in March that raised more questions than it answered. The OAE sent a request for additional information in April 2014 and a notice for a demand interview in June 2014, both of which produced no response. Although respondent initially provided a cursory "response" to the Vega grievance, he has fallen woefully short of his obligation to cooperate with disciplinary authorities and, therefore, violated RPC 8.1(b).

Respondent committed a second violation of RPC 8.1(b) concerning the Aldaz grievance. In March 2014 (merely two weeks after respondent initially replied to the Vega grievance), the OAE requested a reply to the Aldaz grievance. Respondent received a second notice in April and a third and final notice in May. Yet, he submitted no reply to the OAE regarding the Aldaz matter.

DRB 15-210

SERVICE OF PROCESS

On March 13, 2015, the OAE sent a copy of the complaint to respondent's home address by both certified mail, return receipt requested, and by regular mail. Neither the certified mail receipt nor the regular mail envelope were returned.

On April 1, 2015, the OAE sent a second letter to respondent, informing him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be amended to include a charge of failure to cooperate. The letter was sent to respondent's home address by both certified mail, return receipt requested, and by regular mail. The certified mail receipt was returned showing delivery on April 9, 2015 and bearing respondent's signature. The regular mail envelope was not returned.

As of June 15, 2015, the date of the certification of the record, respondent had not filed an answer to the complaint.

ALLEGATIONS OF THE COMPLAINT

On September 11, 2014, the OAE sent a letter to respondent, enclosing a grievance that Rafaela and Augusto Montenegro had

filed against him, and requesting, by September 26, 2014, a written reply to the allegations, as well as his Montenegro client file, client ledger card, copies of all checks written on behalf of the Montenegros, and all other client ledgers, bank statements, cancelled checks, checkbook stubs, deposit slips, and cash receipts and cash disbursements journals for respondent's ATA and ABA records from January 1, 2012 to the present. The letter was sent to respondent's office by certified mail, return receipt requested, and by regular mail. The regular mail envelope was returned with a handwritten note, "not at this address. Return to sender." The certified mail receipt was signed by "J. Parisi." Respondent provided neither a written reply to the Montenegro grievance nor the requested documents by September 26, 2014.

On October 30, 2014, the OAE again wrote to respondent, requesting a written reply to the grievance and a copy of all the documents previously requested, by November 12, 2014. The letter was sent to respondent's office address and home address by certified mail, return receipt requested, and by regular mail. The certified mail envelope sent to respondent's office was signed for by "Ana Lora." The certified mail envelope sent to respondent's home address was returned to sender as "unclaimed, unable to forward." The record does not reveal what

became of the regular mail sent to respondent's office or home address.

On December 16, 2014, the OAE once again wrote to respondent at his home address, requesting a reply to the grievance and copies of the documents by December 22, 2014. The letter was sent by certified mail, return receipt requested, and by regular mail. The certified mail was signed for by "CS Frank." The regular mail envelope was not returned. Respondent did not provide the information or documents requested.

In a January 29, 2015 letter, the OAE notified respondent that a Demand Interview and Production of Files and Related Materials was scheduled for February 23, 2015, at 10:00 a.m., at the OAE offices. The OAE sent that letter to respondent's home address by both certified mail, return receipt requested, and by regular mail. Respondent signed the certified mail return receipt. The regular mail envelope was not returned. Respondent failed to appear for the demand interview and failed to produce any of the requested records.

* * *

The complaint alleges sufficient facts to 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)).

Here, too, as in the Vega matter, respondent violated RPC 8.1(b). He was notified of the Montenegro grievance and was required to file a reply in September 2014. A second notice was sent in October 2014, a third in December 2014, and a letter scheduling a demand interview was sent in January of 2015. Respondent ignored all of these communications.

DRB 15-322

SERVICE OF PROCESS

On July 1, 2015, the OAE sent a copy of the complaint to respondent at his last known home address by both certified mail, return receipt requested, and regular mail. The certified mail envelope was returned to the OAE marked "unclaimed." The regular mail was not returned.

On July 30, 2015, the OAE sent a second letter to respondent, informing him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of sanction, and the complaint would be amended to include a charge of failure to cooperate. The OAE sent this letter to

respondent's home address by both certified mail, return receipt requested, and by regular mail. The certified mail was returned "unclaimed" and the regular mail envelope was not returned.

As of September 1, 2015, the date of the certification of the record, respondent had not filed an answer to the complaint.

ALLEGATIONS OF THE COMPLAINT

Count One (The Hernandez Matter)

On November 6, 2014, the OAE sent a letter to respondent informing him that Edith Hernandez had filed a grievance against him and requesting a written response to the allegations. The OAE also requested him to produce his Hernandez client file, his Hernandez client ledger card, and copies of all other client ledgers, bank statements, cancelled checks, checkbook stubs, deposit slips, and cash receipts and cash disbursements journals for respondent's ATA and ABA records from August 1, 2011 to the present. The OAE requested that respondent provide a written response to the grievance and produce the requested documents by November 17, 2014. The letter was sent to respondent's office and home address by both certified mail, return receipt requested, and by regular mail. The regular mail envelopes sent to respondent's office and home addresses were not returned. The certified mail receipt for the delivery to respondent's office was returned, however; the date of delivery was not indicated.

The signature of the agent accepting the delivery was "Ana Lora." The certified mail receipt, signed by respondent, for the delivery to his home address was returned, indicating a delivery date of April 9, 2015.

Respondent failed to provide a written response to the Hernandez grievance or the requested documents by November 17, 2014. Hence, on April 1, 2015, the OAE wrote to respondent at his home address and advised him that a Demand Interview and Production of Files and Related Materials was scheduled for April 23, 2015, at 10:00 a.m., at the OAE offices. The OAE sent the letter to respondent's home address by both certified mail, return receipt requested, and by regular mail. The certified mail receipt was returned without a date of delivery but was accepted and signed for by "Cynthia Frank." The regular mail was not returned.

Respondent did not appear at the OAE on April 23, 2015 for the interview, did not submit a reply to the grievance, and did not produce the documents requested in connection therewith.

Count Two (The McVeigh Matter)

By letter dated March 13, 2015, the OAE notified respondent that a disciplinary investigation had been opened against him to determine whether he had failed to notify the Honorable Margaret Mary McVeigh, P.J.Ch., of his suspension. Judge McVeigh informed

the OAE that the court held a case management conference on January 6, 2015 in a Passaic County matter captioned Wells Fargo, et al vs. Cueva, wherein respondent represented the defendant. Respondent failed to appear for the conference and had not notified the court that he would not be appearing.

The OAE requested respondent's written response to the grievance by March 27, 2015. The March 13, 2015 letter was sent to his home address by certified mail, return receipt requested, and by regular mail. The regular mail envelope was not returned. The certified mail receipt was returned without a date of delivery but was signed for by "Cynthia Frank." Respondent failed to provide a written response to the grievance.

On March 31, 2015, the OAE again wrote to respondent requesting a written reply to the grievance by April 27, 2015. The OAE sent the letter to respondent's home address by certified mail, return receipt requested, and by regular mail. The certified mail receipt was returned without a date of delivery, and was signed by "Robyn Frank." The regular mail was not returned. Respondent did not provide the information or documentation requested by April 17, 2015.

On April 23, 2015, the OAE wrote to respondent at his home address and notified him that a Demand Interview and Production of Files and Related Materials was scheduled for May 7, 2015 at

2:00 p.m., at the OAE offices. The OAE sent this letter to respondent's home address by both certified mail, return receipt requested, and by regular mail. Neither the certified mail receipt nor the regular mail was returned to the OAE.

Respondent did not appear for the interview and respondent still has not submitted a reply to the grievance.

* * *

The complaint alleges sufficient facts to 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)).

Here, too, respondent violated RPC 8.1(b). He was notified of both the Hernandez grievance and of the allegations lodged by Judge McVeigh. He failed to reply to the Hernandez grievance by November 27, 2014 and then failed to appear for the demand interview on April 23, 2015. He also failed to reply to the allegations made by Judge McVeigh by March 27, 2015 or by April 27, 2015. He further failed to appear for the demand interview scheduled for May 7, 2015.

In short, respondent ignored all communications made by the OAE in both the Hernandez and McVeigh matters, all in violation of RPC 8.1(b).

* * *

We turn now to the quantum of discipline to be imposed for respondent's misconduct. Generally, failure to cooperate with an ethics investigation results in an admonition, 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, a violation of RPC 8.1(b)); In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (attorney failed to cooperate with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter, a violation of RPC 8.1(b)); In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)); the Board took into consideration the fact 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); and 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). But see In the Matter of Spencer B. Robbins, DRB 14-315 (February 25, 2015) (admonition for attorney who failed to reply to the ethics investigator's three letters requesting information about a grievance, a violation of RPC 8.1(b); although the attorney was admonished in 2004 for a similar violation, he presented compelling personal and professional mitigating factors).

Although respondent has no history of final discipline, several factors render an admonition insufficient in this matter. Specifically, respondent failed to reply to disciplinary authorities, for almost one and one-half years, in connection with five separate grievances. Moreover, he is temporarily suspended for failing to cooperate with the OAE in an additional matter.

These aggravating factors alone raise the quantum of discipline to a reprimand. Respondent, however, has compounded his misconduct by his failure to file an answer to the three disciplinary complaints, despite several opportunities to do so. In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342


(2008). Thus, we determine to censure respondent for his misconduct.

Chair Frost voted to impose a three-month suspension. Member Gallipoli voted to disbar respondent based on his view that an attorney who refuses to cooperate with ethics authorities, on such a grand scale, manifests a disdain for the disciplinary process and for the responsibilities attendant to the privilege of practicing law.

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
Bruce W. Clark, Member

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Barry N. Frank
Docket Nos. DRB 15-208, DRB 15-210 and DRB 15-322

Decided: May 2, 2016

Disposition: Censure

Members	Disbar	Three- Month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Clark			X			
Gallipoli	X					
Hoberman						X
Rivera			X			
Singer						X
Zmirich			X			
Total:	1	1	3			3


Ellen A. Brodsky
Chief Counsel