

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-246  
District Docket No. XIV-2014-0035E

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IN THE MATTER OF :  
MICHAEL DENNIS BOLTON :  
AN ATTORNEY AT LAW :  
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Decision

Decided: May 3, 2016

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 violating RPC 8.1(b) and R. 1:20-3(g)(3) for failing to cooperate with the OAE's investigation. The complaint sought relief that included both the imposition of discipline and the continuation of respondent's temporary suspension until such time as he appears for an OAE audit and provides the OAE with certain trust account records. For the reasons expressed below, we determine that a censure is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1989 and the New York bar in 1990. At the relevant time, he maintained a law practice in Branchburg, New Jersey.

Respondent has no history of public discipline, other than his May 27, 2015 temporary suspension for failure to cooperate with the OAE's investigation. In re Bolton, 221 N.J. 484 (2015). He remains suspended to date.

Service of process was proper in this matter. On June 4, 2015, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's home office. The certified mail receipt was returned, indicating delivery on June 8, 2015. The signature of the recipient is illegible. The regular mail was not returned. Respondent did not file an answer.

On July 1, 2015, the OAE sent a letter to the same address, by regular and certified mail. The letter notified respondent that, if he did not file an answer to the ethics complaint within five days of the date of the letter, 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 include a willful violation of RPC 8.1(b).

The United States Postal Service (USPS) tracking information report shows that a certified mail notice was left

on July 6, 2015, but that, as of July 11, 2015, no authorized recipient had signed for the certified mail. The regular mail was not returned. As of the date of the certification of the record, July 15, 2015, respondent had not filed an answer to the ethics complaint.

According to the allegations of the complaint, on August 30, 1997, respondent was appointed the guardian for Mary Aileen Hand. In that capacity, he received her monthly pension checks in the amount of \$957.33, from which he was to make monthly payments of \$818.18 to Morris View Healthcare Center (MVHC), where Hand resided. For twenty-one months, he underpaid MVHC each month by \$83.23, submitting only \$734.95 per month. Since April 2012, respondent failed to forward any payments to MVHC for Hand's care.

On January 16, 2014, Special Morris County Counsel Robert Wood filed a grievance against respondent. On February 7, 2014, the Honorable Thomas L. Weisenbeck, J.S.C., removed respondent as Hand's guardian and appointed Thomas Torzewski, Esq., as Hand's temporary guardian.

On March 6, 2014, the OAE requested respondent's reply to Wood's grievance. On March 24, 2014, respondent admitted that he had underpaid MVHC, but claimed that he had made a mistake in doing so. Thereafter, on May 21, 2004, he submitted to the OAE

his January 2008 through April 2014 bank records relating to Hand. Afterwards, on June 4, 2014, an OAE auditor requested a complete accounting of the Hand guardianship funds.

On June 5, 2014, the OAE received a letter from Temporary Guardian Torzewski stating that he had received a \$5,743.98 check from respondent, which represented the balance of funds respondent held on Hand's behalf. On June 12, 2014, the OAE received respondent's accounting of the Hand guardianship funds. Respondent's accounting showed that, after the disbursement to Torzewski, he was still holding \$14,275.35 in his trust account on Hand's behalf. On June 18, 2014, the OAE asked respondent why he had not remitted the entire balance of the Hand funds to Torzewski. On June 20, 2014, respondent replied that he had discovered accounting errors in his records and planned to send the balance of Hand's funds to Torzewski.

On that same date, June 20, 2014, respondent forwarded a \$9,203.02 trust account check to Torzewski, which purportedly was the balance of the Hand Guardianship funds. This disbursement resulted in a negative \$2,447.93 balance in the Hand guardianship funds.

On July 22, 2014, the OAE demanded that respondent submit his bank records by August 22, 2014. Respondent did not do so. On October 9, 2014, the OAE scheduled a November 14, 2014 demand

audit. By fax, dated November 13, 2014, respondent requested a two-week adjournment of that demand audit. The OAE, therefore, rescheduled the audit to December 9, 2014 and again requested respondent's records. On December 1, 2014, respondent submitted deficient documentation to the OAE. As a result, by letter dated December 5, 2014, the OAE instructed respondent to bring to the demand audit the missing records, bank reconciliations, and all client files for whom he was holding funds.

Respondent appeared at the audit but brought only trust account reconciliations for July 2014 through November 2014. He did not provide the client ledger cards or files the OAE previously had requested.

During the audit, respondent agreed to permit the OAE to visit his law office to obtain an electronic copy of his QuickBooks trust account file. He failed to make arrangements with the OAE to do so, however. Later, he declined to provide that information, stating that he had "no faith in the accuracy" of the data and was concerned that the OAE might draw an "improper conclusion" from its review of the information. Respondent added that he hoped to retain an accountant to help him with QuickBooks. He agreed to contact the OAE on December 15, 2014 with an update of his progress.

Not hearing from respondent, the OAE left a voicemail message instructing him to be available on December 17, 2014, to provide the OAE with a copy of his QuickBooks file. After the OAE obtained a copy of that file, the OAE's review revealed that respondent was holding funds in trust for more than thirty-five matters totaling more than \$225,000. In eight special fiduciary matters alone, he held more than \$197,000. Seven of the eight accounts had been inactive for at least two and one-half years.

On January 8 and 28, 2015, the OAE sent letters via certified mail and fax, respectively, requesting an explanation, by January 20, 2015, for all funds respondent held in his trust account. Respondent did not reply to the requests.

Thereafter, on February 4, 2015, by regular and certified mail, the OAE scheduled a February 24, 2015 demand interview. The USPS attempted to deliver the certified mail twice before it returned it as unclaimed. The regular mail was not returned. Respondent did not appear for the scheduled demand interview.

The OAE's subsequent attempts to contact respondent by telephone were unavailing, as respondent did not answer his law office telephone or cell phone and his voicemail inboxes for both phones were full. Thereafter, the OAE faxed a letter to respondent, scheduling a demand interview on February 24, 2015. Respondent received the fax but neither appeared nor notified

the OAE that he would not appear. As before, the OAE was unable to leave a message on respondent's law office phone or cell phone because the voicemail inboxes for both were full. The OAE's subsequent attempts to telephone respondent were similarly unsuccessful.

On March 3, 2015, an OAE auditor made an unannounced visit to respondent's home law office. The auditor observed the same vehicle he had previously seen parked in respondent's driveway. Respondent, however, did not answer the door or the calls the auditor placed to both respondent's law office phone and cell phone. The auditor, again, was unable to leave a message because both of the voicemail inboxes were full. The auditor left a copy of his February 4, 2015 letter in respondent's mailbox.<sup>1</sup>

As of December 17, 2014, respondent had not been in contact with the OAE and ceased all cooperation. As a result, the OAE filed a motion for his temporary suspension. On April 22, 2015, the Court directed respondent to appear for an OAE audit and to submit "all outstanding trust account records for the period June 1, 2014, through December 31, 2014, and produce the nine fiduciary files requested by the [OAE] within thirty days."

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<sup>1</sup> The complaint mistakenly stated that the letter was dated 2014.

Thereafter, on April 23, 2015, the OAE sent letters to respondent, by regular and certified mail, scheduling a May 14, 2015 demand audit. The certified mail was returned as unclaimed. The regular mail was not returned. Respondent did not appear for the audit, did not provide the documents identified in the Court's Order, and did not notify the OAE that he would not appear for the audit.

Based on respondent's failure to comply with the Court's Order, the OAE sought his temporary suspension, which the Court granted, effective May 27, 2015.

The complaint, thus, charged respondent with violating RPC 8.1(b) for failing to cooperate with the OAE's investigation. It did not, however, charge him with violating RPC 8.4(d) (conduct prejudicial to the administration of justice), for failing to comply with the Court's order.

In addition to the imposition of discipline for respondent's failure to cooperate, the OAE asked us to continue respondent's temporary suspension until he appears for an OAE audit and produces all outstanding trust account records for the period June 1, 2014 through December 31, 2014, as well as the nine fiduciary files previously requested.

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).

The alleged facts and documentation clearly and convincingly establish that respondent not only failed to cooperate with the OAE's investigation, the only misconduct with which he was charged, but also failed to comply with the Court's Order.

Generally, failure to cooperate with a disciplinary 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); In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (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); 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; we considered 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 admitted that she submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until she finally retained ethics counsel to assist her).

A reprimand may result if the failure to cooperate is with the OAE under circumstances such as these, where the attorney fails to provide documentation in connection with an investigation of trust account improprieties. As we noted in In the Matter of Gregory P. Armotrading, DRB 07-240 (December 5, 2007) (slip op. at 19), a pattern of failure to cooperate with ethics authorities is an aggravating factor and may result in a reprimand. In In re Armotrading 193 N.J. 429 (2008), the attorney received a six-month suspension for negligent misappropriation, recordkeeping violations and the improper release of escrow funds. We found that the attorney's pattern of failure to cooperate with ethics authorities was so serious that it warranted increasing the discipline to a six-month suspension. See, also, In re Del Tufo, 210 N.J. 183 (2012) (reprimand where, following an overdraft in the attorney's trust account, he failed to reply to the OAE's request for a detailed explanation about the overdraft for two months and hampered the OAE's efforts to schedule a demand audit by failing to

return telephone calls or to reply to correspondence; eventually, the OAE audit uncovered several recordkeeping violations); and In re Macias, 121 N.J. 243 (1990) (reprimand for attorney who ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Here, respondent was given many opportunities to cooperate with the OAE but failed to do so, even after the Court ordered him to cooperate. Moreover, this matter is before us as a default. "[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." In re Kivler, 193 N.J. 332, 342 (2008). Thus, we determine to impose a censure.


Although the complaint requested that the discipline imposed include the continuation of respondent's temporary suspension until he cooperates with the OAE, we conclude that the Court's May 27, 2015 Order already provides that relief.

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  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Michael D. Bolton  
Docket No. DRB 15-246

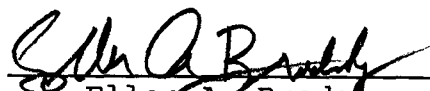
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Decided: May 3, 2016

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