

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-091
District Docket Nos. XIV-2014-0476E
and XIV-2014-0486E

IN THE MATTER OF
WILLIAM S. WINTERS
AN ATTORNEY AT LAW

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Decision

Decided: November 16, 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 a violation of RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority). For the reasons expressed below, we determine that a censure is warranted.

Respondent was admitted to the New Jersey bar in 1993. At the relevant time, he maintained a law practice in East Brunswick, New Jersey.

Effective April 30, 2015, the Court temporarily suspended respondent for his "acknowledged" refusal to cooperate with the OAE. In re Winters, 221 N.J. 293 (2015).

Service of process was proper in this matter. On November 18, 2015, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's attorney, John McGill, III, who was authorized to accept service. On November 21, 2015, McGill faxed to the OAE an acknowledgement of service of the complaint, accepting service on respondent's behalf. On December 24, 2015, the certified mail was returned as unclaimed.

Respondent did not file an answer within the allotted time. Thus, on December 14, 2015, the OAE sent a letter by certified mail to respondent's counsel, informing him that, if respondent did not file an answer 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 an additional violation of RPC 8.1(b).

The certified mail receipt, which was returned indicating delivery, was signed by McGill.

As of the date of the certification of the record, no answer had been filed on respondent's behalf.

At the relevant times, respondent maintained trust and business accounts at Bank of America and Capital One Bank, N.A. One of the banks (the complaint did not specify which bank) notified the OAE about an overdraft in respondent's trust account. By letter dated September 12, 2014, the OAE asked respondent to provide an explanation for the overdraft.

Initially, respondent cooperated with the OAE, providing some of his trust account and bank records. Thereafter, by letter dated February 13, 2015, McGill notified the OAE that respondent declined to cooperate further and invoked his Fifth Amendment privilege against self-incrimination. According to counsel's letter, respondent acknowledged his "grossly poor recordkeeping" because he had never performed the required three-way reconciliations or maintained his books and records in compliance with R. 1:21-6, since opening his office approximately twenty-two years earlier.

McGill stated further that any attempts respondent would make to accurately account for respondent's handling of trust account funds would require expert accounting assistance for a total reconstruction of respondent's trust account spanning his years in practice, which would be at "an exorbitant and cost prohibitive rate, thereby prolonging the OAE's investigation for years." Counsel asserted that respondent "is not inclined to

incur such anticipated and prolonged stresses. Therefore, Respondent declines any further cooperation with the OAE's investigation" McGill acknowledged that, if a hearing were to ensue, respondent "could not successfully defend himself against those charges."

Respondent, therefore, agreed to consent to disbarment and to surrender his license to practice law. Counsel asked the OAE to prepare an Affidavit of Disbarment by Consent for approval by the Court. The OAE did so. On June 25, 2015, the Court rejected respondent's tendered consent to disbarment, ordered the disciplinary proceedings against him to resume, and continued respondent's temporary suspension. In re Winters, 222 N.J. 86 (2015).

Following the entry of the Court's Order of temporary suspension, and despite respondent's invocation of his Fifth Amendment privilege, he offered to produce certain exculpatory records if the OAE first provided the identities of the individuals whose funds had been taken. The OAE declined. Instead, by letter dated October 2, 2015, the OAE notified respondent's counsel that, on or before October 15, 2015, respondent was required to submit all of the information and documentation the OAE had previously requested. As of the date

of the complaint, November 17, 2015, respondent had not provided the information.

The complaint, thus, alleged that respondent's failure to produce the requested information, despite the OAE's numerous requests, constituted a continuing failure to cooperate with the OAE's investigation of respondent's knowing misappropriation of funds, a violation of RPC 8.1(b). The complaint requested that respondent be disciplined and that the Order of temporary suspension continue until respondent fully cooperates with the investigation, and all pending disciplinary investigations against him have been concluded.

The facts recited in the complaint support the charge 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 facts recited in the complaint establish that respondent failed to cooperate with the OAE's investigation, thereby violating RPC 8.1(b). Indeed, respondent expressly "declined[d]" any further cooperation with the OAE's investigation.

Ordinarily, an admonition is imposed for failure to cooperate with disciplinary authorities. See, e.g., In the

Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the ethics committee investigator regarding his representation of a client in three criminal defense matters); In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with ethics committee's attempts to obtain information from him about his representation of a client in a real estate matter); and In the Matter of Richard D. Koppenaal, 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).

Failure to cooperate with the OAE can result in greater discipline, however. Reprimands were imposed where the OAE uncovered recordkeeping improprieties in trust accounts and requested additional documentation, which the attorneys failed to provide. See, e.g., In re Del Tufo, 210 N.J. 183 (2012) (following an overdraft in the attorney's trust account, an OAE audit uncovered several recordkeeping violations, including the absence of client funds on deposit when the overdraft occurred, the deposit of personal and business funds into the trust account, including legal fees, and the payment of personal and business expenses from the trust account, among other

deficiencies; in addition, for a two-month period, the attorney did not reply to the OAE's initial request for a detailed explanation about the trust account overdraft, and hampered the OAE's efforts to schedule a demand audit by failing to return telephone calls or to reply to its correspondence; after a 2006 random audit, the OAE had advised the attorney that his practice of commingling personal and client funds was a violation of the recordkeeping rules); In re Macias, 121 N.J. 243 (1990) (the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation regarding how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

The discipline was enhanced to a censure where the attorney defaulted in the matter. In re Palfy, 220 N.J. 32 (2014) (on two occasions, the attorney failed to appear for an OAE demand audit and interview; subpoenaed bank records showed that one of the attorney's trust accounts had a negative balance, a violation of RPC 1.15(d)).


Here, because respondent failed to cooperate in an OAE investigation of knowing misappropriation, and then permitted this matter to proceed as a default, we determine that a

censure, as imposed in Palfy, supra, is the appropriate measure of discipline.

Members Hoberman and Rivera 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

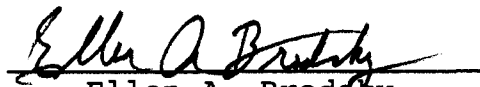
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William S. Winters
Docket No. DRB 16-091

Decided: November 16, 2016

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Recused	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli			X			
Hoberman						X
Rivera						X
Singer			X			
Zmirich			X			
Total:			7			2


Ellen A. Brodsky
Chief Counsel