

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-160
District Docket No. XIV-2015-0131E

IN THE MATTER OF :
RICHARD N. ZUVICH :
AN ATTORNEY AT LAW :
:

Decision

Decided: January 12, 2017

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 three-count amended complaint charged respondent with violations of RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 5.5(a)(1) (practicing law while ineligible), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.1(a) and RPC 8.4(c) (making a false statement of material fact to disciplinary authorities).

For the reasons detailed below, we determine that a three-month suspension is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1980. He maintains a law office in Colonia, New Jersey. Respondent has no history of discipline. He has been ineligible to practice law since November 17, 2014, for failure to comply with mandatory continuing legal education requirements, and since August 24, 2015, for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper in this matter. On March 23, 2016, the OAE sent a copy of the amended complaint by regular and certified mail to respondent's last known office address: 800 Inman Avenue, Colonia, New Jersey 07067. The certified mail receipt was returned indicating delivery and was signed by R. DiSpirito. The regular mail was not returned.

Respondent did not file an answer within the required time. Therefore, on April 18, 2016, the OAE sent a letter to the same address, by regular and certified mail, notifying him that if he did not file 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 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 certified mail receipt was returned indicating delivery on April

25, 2016, and was signed by R. DiSpirito. The regular mail was not returned.

As of date of the certification of the record, April 29, 2016, respondent had not filed an answer to the complaint.

Count One

Respondent was selected for a random compliance audit, scheduled to take place on September 4, 2013. After he requested several adjournments, the audit was rescheduled to November 26, 2013.

During the audit, the OAE auditor found that respondent failed to conduct monthly trust account reconciliations. Following the audit, by letter dated December 9, 2013, the OAE notified respondent of the following recordkeeping deficiencies:

- (a) clients' trust ledger sheets were not fully descriptive;
- (b) attorney business account imaged processed checks were not in compliance with R. 1:21-6(b);
- (c) the trust account had inactive ledger balances remaining in the account for extended periods;
- (d) a business receipts journal was not maintained;
- (e) a separate ledger sheet was not maintained for each trust client;
- (f) a schedule of client ledger accounts was not prepared and reconciled monthly to the trust account bank statement;
- (g) a running cash balance was not kept in the trust account

checkbook; (h) the designation on the attorney trust account was improper and not in accordance with R. 1:21-6(c)(1)(A); (i) the attorney trust account disbursements journal was not fully descriptive; (j) the total trust funds on deposit were in excess of trust obligation (unidentified funds in the trust account); and (k) the attorney trust account receipts journal was not fully descriptive.¹

The OAE's December 9, 2013 letter also notified respondent "that his failure to maintain records would not be permitted to continue" and that the random compliance auditor would return to his office on January 22, 2014. The audit was rescheduled three times, to February 25, March 24, and April 24, 2014 because respondent was unprepared for it and had a conflicting court appearance; inclement weather; and respondent's medical issues, respectively.

At the rescheduled April 24, 2014 audit, respondent failed to produce trust account reconciliations and client ledger cards for each client. He informed the OAE, however, that, henceforth, his accountant would perform monthly reconciliations of his trust account.

¹ The OAE previously had notified respondent about the same deficiencies listed in paragraphs 8(a), (g), (h), (i), and (j) above as a result of an April 15, 2002 random audit.

Thereafter, by letter dated May 27, 2014, the OAE informed respondent about the actions and documents he was to complete and submit to the OAE by August 11, 2014. Respondent, however, failed to provide the records outlined in that letter. Respondent's failure to reply to the OAE's demand for information constituted a violation of RPC 8.1(b) and his failure to comply with the recordkeeping rules violated RPC 1.15(d).

Count Two

On March 30, 2015, the OAE began a disciplinary investigation based on respondent's "complete failure to cooperate with the random compliance audit." The OAE scheduled a demand audit on May 12, 2015. Once again, respondent requested a postponement, resulting in a rescheduled date of May 21, 2015.

Although respondent appeared for the audit and produced his trust and business account statements, he failed to produce trust account bank reconciliations, trust account client ledger cards, receipts, and disbursements journals, or other records required by R. 1:21-6. He claimed that the computer on which he maintained the records had crashed prior to the demand audit.

When questioned about the monthly trust account reconciliation that his accountant was to prepare, respondent

replied that his accountant prepared only his taxes and he did not recall having earlier told the OAE that his accountant would perform the bank reconciliations.

The OAE again scheduled a demand audit on July 28, 2015, and required respondent to appear and to explain the steps he had taken to correct his recordkeeping deficiencies and to produce his records, including trust account records and reconciliations. When respondent appeared, he neither provided an explanation about any corrective action he had taken, nor produced trust or business account records or reconciliations.

As of the date of the amended ethics complaint, respondent had not corrected the deficiencies in his accounts nor had he taken any steps to recover or recreate his lost records or to reconcile his trust account. Nevertheless, he continued to transact business in that account, without maintaining the records required by R. 1:21-6.

Thereafter, by letter dated August 3, 2015, the OAE required respondent to provide, by September 18, 2015, various documents, including trust account reconciliations prepared by his accountant, his accountant's contact information, a written explanation outlining respondent's actions to bring his records into compliance, and an anticipated date for the completion of the reconstruction of his records. By letter dated September 17,

2015, respondent provided the OAE with some of the requested information: his current trust and business account bank statements, but no records maintained pursuant to R. 1:21-6; and the name of his accountant, but no contact information. Respondent asserted that he anticipated providing the OAE with his reconstructed records within forty-five to sixty days.

In a September 22, 2015 letter, the OAE notified respondent that his reply was inadequate and that he was required to provide the requested records by no later than October 30, 2015.

In an October 5, 2015 fax, respondent reported that he had retained Mary Teel, a certified QuickBooks Pro Adviser, to reconcile his trust account and was scheduled to meet with her on October 8, 2015. On November 11, 2015, respondent informed the OAE that he was still waiting for his trust account reconciliations to be completed, expected their completion by November 13, 2015, and would send them by overnight delivery that day.

Respondent failed to provide the reconciliations. On December 1, 2015, Teel informed the OAE that, over the November 28, 2015 weekend, she had spoken to respondent about his need for "bookkeeping" services but had not yet met with him or "seen any of his records."

Therefore, the complaint alleged, respondent had misrepresented to the OAE that his reconciliations would be completed by November 13, 2015, because he had not spoken to Teel until November 28, 2015.

By letter dated November 25, 2015, the OAE required respondent to appear on December 10, 2015, to explain why he had not complied with the OAE's multiple demands for records and to produce all records he had not previously provided. When respondent appeared, he did not produce the requested records, stated he was aware of the measures he had to take to correct his records, and asserted that he was scheduled to meet with Teel on December 12, 2015, to provide her with the records needed to reconcile his trust account.

On January 22, 2016, Teel informed the OAE that she could not estimate when she would provide respondent's reconciliations because respondent had not given her the necessary records, due to a May 21, 2015 computer crash.

As of February 19, 2016, respondent had not provided the OAE with his trust account reconciliation or other required records.

Respondent, thus, violated RPC 8.1(b) (failure to reply to a lawful demand for information from the OAE); RPC 1.15(d) and R. 1:21-6 (failure to comply with the recordkeeping rules); and

RPC 8.1(a) and RPC 8.4(c) (false statement of material fact to a disciplinary authority).

COUNT THREE

Respondent has been administratively ineligible to practice law since November 17, 2014. Yet, his trust and business account records demonstrate ongoing activity involving the practice of law, a violation of RPC 5.5(a)(1) (practicing law while ineligible).

* * *

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 allegations of the complaint establish that respondent was guilty of recordkeeping violations and, in fact, had not corrected some of the same violations that had been brought to his attention previously, in 2002. Moreover, for a period of almost two-and-a-half years, respondent repeatedly failed to comply with the OAE's requests for information and documentation, violations of RPC 1.15(d) and RPC 8.1(b), respectively.

Respondent also made false statements to the OAE. In April 2014, he informed the OAE that, going forward, his accountant would prepare his monthly reconciliations. More than a year later, however, at a May 2015 demand audit, he claimed that he had forgotten that he had made that representation, stating that the accountant prepared only his taxes, not his reconciliations. Later, in October 2015, he informed the OAE that he had retained Teel to reconcile his trust account, and that he would meet with her on October 8, 2015. On November 11, 2015, he told the OAE that he was waiting for the reconciliations to be completed and would send them by overnight delivery on November 13, 2015. None of this was true. According to Teel, she had spoken to respondent only in late November 2015, and had not even "seen" his records. Thus, respondent was also guilty of RPC 8.1(a) and RPC 8.4(c) (misrepresentations to the OAE).

Finally, as reflected by the law-related activity in his trust and business accounts during his period of ineligibility, respondent is guilty of practicing law while ineligible (RPC 5.5(a)).

The only issue left for determination is the proper quantum of discipline for respondent's ethics violations. Practicing law while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances

compelling mitigating factors, even if the attorney displays other, non-serious conduct. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms; he also failed to provide a client with a writing setting forth the basis or rate of his fee (estate and disability claim); thereafter, the attorney was so lax about keeping his client and the client's sister informed about the matter, that the client filed his own disability claim; the attorney also failed to reply to the ethics investigator's three requests for information; we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation, agreed to return the entire fee to help compensate the client for lost retroactive disability benefits, and had an otherwise unblemished record in his forty years at the bar); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (during an approximate thirteen-month period of ineligibility, the attorney handled three client matters; mitigating factors considered were that the attorney was changing careers to become a youth minister at the time; that he inadvertently failed to pay the assessment; that the services performed in the three client matters were for friends or acquaintances; that he quickly cured the ineligibility upon

learning of it; and that he had no prior discipline in his eighteen-year legal career); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney handled at least seven Division of Youth and Family Services cases that the Public Defender's Office had assigned to him; the record contained no indication that the attorney was aware of his ineligibility and he had no history of discipline since his 2000 admission to the New Jersey bar).

A reprimand is imposed when an attorney has defaulted, has an ethics history, has been previously disciplined for the same conduct, or is aware of the ineligibility but practices law nevertheless. See, e.g., In re Frayne, 220 N.J. 23 (2014) (default; reprimand imposed on attorney who practiced law while ineligible; there was no evidence that he knew that he was ineligible at the time; the attorney also failed to communicate with the client); In re Fell, 219 N.J. 425 (2014) (attorney, who was ineligible for a five-month period, represented a matrimonial client knowing of his ineligibility; we found that the mitigating and aggravating factors were in equipoise and did not affect the discipline); In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so); In re Jay,

210 N.J. 214 (2012) (attorney was aware of his ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney who practiced law while ineligible was aware of her ineligibility and had previously received an admonition for the same violation).

Here, because this matter proceeded as a default and the complaint is silent as to respondent's knowledge, it is not known whether respondent knowingly practiced law while ineligible.

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after the attorney's business account was closed, due to an overdrawn balance, he deposited a \$200 fee check into his trust account, which had a \$1 balance; due to insufficient funds in the client's checking account, when respondent withdrew funds against the \$200 deposit, he overdrew the trust account; a demand audit uncovered several R. 1:21-6 violations, including the attorney's failure to maintain trust or business receipts or disbursements journals, or client ledger cards, contrary to RPC 1.15(d); we considered the attorney's unblemished disciplinary history and his cooperation with ethics authorities by admitting his conduct).

Even in the absence of a negligent misappropriation, a reprimand may be imposed if the attorney failed to correct recordkeeping deficiencies that previously had been brought to the attorney's attention, engaged in additional acts of misconduct, had a disciplinary history, or defaulted. See, e.g., In re Michals, 224 N.J. 457 (2015) (reprimand by consent; an OAE audit revealed that the attorney had issued trust account checks to himself or others for personal or business expenses; because he maintained sufficient personal funds in his trust account, he did not invade client funds; the attorney failed to resolve several recordkeeping improprieties following a prior admonition for negligent misappropriation of client funds and recordkeeping violations); In re Autry, 222 N.J. 5 (2015) (default; attorney committed several recordkeeping violations, including commingling, and failed to fulfill the conditions imposed by an agreement in lieu of discipline; violations of RPC 1.15(d) and RPC 8.1(b)); In re Murray, 220 N.J. 47 (2014) (reprimand by consent; a random compliance audit by the OAE uncovered that the attorney had not corrected some of the same recordkeeping violations for which he had been admonished one month earlier); and In re Del Tufo, 210 N.J. 183 (2012) (attorney routinely deposited personal and business funds into his trust account and paid personal and business expenses out of that account; although the account was

overdrawn at one point, no trust funds were on deposit at the time; the attorney was also guilty of other recordkeeping deficiencies and of not cooperating with the OAE in the scheduling of an audit; prior admonition was balanced against compelling mitigating factors).

A failure to cooperate, although often found in conjunction with other ethics violations, may alone result in the imposition of a reprimand. See, e.g., In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous telephone 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).

If the attorney has defaulted, the discipline is enhanced to a censure. See, e.g., In re Palfy, 220 N.J. 32 (2014) (censure imposed on attorney who, on two occasions, failed to appear for a demand audit and interview; subpoenaed bank records showed that one of the attorney's trust accounts had a negative balance, which the bank had to charge off, a violation of RPC 1.15(d)).

Attorneys found guilty of lying to ethics authorities have received discipline ranging from a reprimand to a term of suspension. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to

mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on an attorney who misrepresented to the OAE that funds were in his trust account when he already had disbursed the majority of the funds (\$250,000) to various parties; he also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history in respondent's lengthy career, and his public service and charitable activities); In re Brown, 217 N.J. 614 (2014) (three-month suspension in a default for attorney who knowingly practiced law while on the IOLTA list of ineligible attorneys, failed to comply with the recordkeeping rules, failed to properly communicate the status of a matter to clients, charged an unreasonable fee, failed to promptly turn over funds to a client, failed to keep the funds separate until a dispute concerning their respective interests was resolved, misrepresented to the OAE that she had sent an email to the clients about charging them additional legal fees, and failed to cooperate with the OAE's investigation); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two

fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); and In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter). Longer term suspensions have been imposed in cases involving even more serious misconduct, including misrepresentation to ethics authorities. See, e.g., In re Katsios, 185 N.J. 424 (2006) (two-year suspension); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension); and In re Penn, 172 N.J. 38 (2002) (three-year suspension).

Here, individually, each violation alone would require discipline no greater than an admonition or a reprimand. However, discipline is enhanced in default cases. "[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). Had respondent been guilty only of failing to cooperate with the OAE, then, as in Palfy, a censure might have been appropriate. Here, however,

respondent not only defaulted and prolonged the OAE's investigation for almost two-and-a-half years without cooperating, but also lied to the OAE about having an accountant perform his trust account reconciliations, failed to learn from prior mistakes by failing to correct recordkeeping violations, and practiced while ineligible. There are no mitigating factors. Under these circumstances, respondent's conduct is more analogous to that of the attorney in Brown. Thus, we determine that respondent, too, should be suspended for three months and should not be permitted to apply for reinstatement until he cooperates with the OAE.

Vice-Chair Baugh 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 Richard N. Zuvich
Docket No. DRB 16-160

Decided: January 12, 2017

Members	Three-Month Suspension	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1


Ellen A. Brodsky
Chief Counsel