

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-383
District Docket Nos. XIV-2012-0143E
and XIV-2012-0429E

IN THE MATTER OF
JOHN J. MURRAY, JR.
AN ATTORNEY AT LAW

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Decision

Decided: June 5, 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). Respondent was charged with commingling personal and clients funds (RPC 1.15(a)), failure to comply with the recordkeeping provisions of R. 1:21-6 (RPC 1.15(d)), and failure to cooperate with the ethics investigation (RPC 8.1(b)). We determined to dismiss the RPC 1.15(a) charge and to impose a reprimand on respondent for his violation of RPC 1.15(d) and RPC 8.1(b).

Respondent was admitted to the New Jersey bar in 1998 and to the District of Columbia bar in 2000. At the relevant times,

he maintained an office for the practice of law in Ocean and, later, in South Amboy. He has no ethics history.

Effective September 26, 2011, respondent became ineligible to practice law due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). He remained ineligible until January 10, 2014.

Effective November 16, 2015, respondent became ineligible to practice law due to his failure to comply with the mandatory continuing legal education (CLE) requirements for one or more of the compliance-reporting years from 2011 through 2015. He remains ineligible.

On a date not identified in the record, the District of Columbia suspended respondent from the practice of law for the "[n]on-payment of dues." The record does not reflect his current status in that jurisdiction.

Service of process was proper. On March 23, 2016, the OAE sent a copy of the formal ethics complaint to respondent's office address, which was also his residence, in South Amboy, by regular and certified mail, return receipt requested. Although the green card for the certified letter was not returned to the OAE, the United States Postal Service (USPS) confirmed that the letter was delivered on March 26, 2016. The letter sent by regular mail was not returned.

On April 25, 2016, the OAE sent a letter to respondent's South Amboy address, by regular and certified mail, return receipt requested. The letter informed respondent that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, the OAE would certify the record directly to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Although an "unknown individual" signed the green card, the letter sent by certified mail was returned to the OAE, marked "Moved August 2015." The letter sent by regular mail also was returned, marked "Moved August 2015."

On June 23, 2016, the OAE learned from the USPS that respondent no longer lived at the South Amboy address and that he had not provided the USPS with a forwarding address. Accordingly, on September 1, 2016, the OAE served respondent with notice of the complaint via publication of a notice in that day's edition of the Home News Tribune. Four days later, a notice was published in the New Jersey Law Journal.

As of November 1, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

* * * *

The facts are taken from the OAE's two-count formal ethics complaint, dated March 22, 2016.

Respondent maintained a law office located at 11 Charles Street, Ocean, Ocean County, New Jersey, until September 26, 2011, at which time he became ineligible to practice law. When respondent returned to active status, on January 28, 2014, he relocated his law office to his South Amboy residence. Throughout this period, respondent maintained his personal bank account and his attorney trust and business accounts at TD Bank.

On February 27, 2012, the bank notified the OAE that, on February 21, 2012, respondent's trust account was overdrawn by \$154.12, which included a \$35 overdraft fee. On March 7, 2012, the OAE sent a copy of the overdraft notice to respondent, at his Ocean address, and requested an explanation of the overdraft. Respondent did not reply to the letter.

On April 3, 2012, the OAE sent respondent a follow-up letter, at the same Ocean address, requesting an explanation of the February 21, 2012 overdraft along with "appropriate documentation" to support his explanation. Respondent failed to reply to that follow-up letter.

An ethics investigation commenced, and the matter was assigned to Deputy Ethics Counsel HoeChin Kim and Disciplinary Auditor Tiffany Childs. On May 11, 2012, Kim informed respondent

of the investigation, again, by sending a letter to him at the Ocean address. Kim enclosed the prior correspondence and, once again, requested a detailed and documented explanation of the overdraft as well as accounting records for respondent's attorney trust and business accounts. Respondent did not reply to the letter.

Therefore, the OAE subpoenaed the bank's records relating to respondent's bank accounts. Based on those records, the OAE was able to determine the origin of the overdraft. Specifically, on February 1, 2012, the trust account bank balance was \$0.88. On February 21, 2012, \$300 in cash was deposited into the trust account, which raised the balance to \$300.88. On that same date, a \$420 electronic payment to Verizon reduced the balance to negative \$119.12.

The next day, the bank posted a \$35 overdraft charge, which further reduced the trust account balance to -\$154.12 and prompted the bank to notify the OAE that the trust account was overdrawn. At the same time, \$155.12 was transferred from respondent's personal account to the trust account, raising the balance to \$1. The balance remained at \$1 through April 30, 2012. No transactions took place after the February 2012 deposit.

Between February 1, 2012 and April 30, 2012, respondent's attorney business and personal accounts were also in the red. On January 9, 2012, the business account was overdrawn by \$228.50. The bank took a charge off in that amount and closed the account.

On February 17, 2012, respondent's personal account was overdrawn by \$137.98. On February 21, 2012, respondent deposited \$2,140 into the account, which raised the balance to \$2,002.20. By February 24, 2012, the personal account had a -\$225.29 balance, due to a number of withdrawals, including the February 22 \$155.12 transfer to respondent's trust account. Respondent's personal account continued to reflect a negative balance during the months of March and April 2012. Thus, on April 25, 2012, the bank charged off the -\$404.77 balance and closed the account.

Because respondent never replied to the OAE's letters, the OAE conducted a trace and obtained a cell phone number. When the OAE dialed the cell phone number, on August 17, 2012, respondent's father, also named John Murray (Mr. Murray), answered the call. Mr. Murray stated that the cell phone number "should not be associated with respondent." Moreover, he informed the OAE that respondent had not resided at the Ocean address since February 2012 and, thus, requested that the OAE

refrain from associating that address with respondent. Further, Mr. Murray did not know respondent's whereabouts.

Sometime before August 30, 2012, the OAE learned that respondent had been arrested, on February 18, 2012. A Promis Gavel search resulted in the discovery of a South Amboy address for respondent.

On August 30, 2012, the OAE sent a letter to respondent at the South Amboy address, notifying him that a demand audit/interview would take place at its office on September 14, 2012. The letter directed respondent to produce, at that time, certain attorney accounting records for the audit period of August 1, 2010, to August 31, 2012.

On September 11, 2012, at 11:32 p.m., respondent left a voicemail message with the OAE, stating that he had just returned to his residence and discovered the OAE's August 30, 2012 letter. He acknowledged "the allegations made by the OAE," but explained that he had "accidentally used his trust account to pay his phone bill." Respondent stated that he would call back the following day.

On September 12, 2012, the OAE and respondent had a telephone conversation in which he stated that he had been in a motor vehicle accident and, thus, would not be able to appear for the September 14 demand audit. Further, he informed the OAE

that, because he was not practicing law (presumably at the time of the OAE's requests for his bank records), "he would not have the requested bank records of his trust or business account."

Based on respondent's representation and because his reply to the OAE's letters was long overdue, the OAE traveled to respondent's South Amboy residence to ensure that the audit would take place. The interview took place on September 14, 2012 "at a local establishment near respondent's home."

During the interview, respondent stated that, in September 2010, he established a small law practice, handling only five or six client matters. He opened an attorney trust account because, as a practicing lawyer, he was required to do so. Although respondent stated that he deposited earned fees into the trust account, which he then transferred to his business account, he claimed that none of his clients' matters involved funds that were required to be held in the trust account.

Respondent asserted that he stopped practicing law in September 2011, because, as the result of a motorcycle accident, he was unable to meet the demands of his practice. Thus, he did not pay the annual CPF assessment that year, even after he was placed on the ineligible list in September.

Respondent explained his failure to reply to the OAE's letters by stating that, due to "family problems," he had not

lived at the Ocean address since February 2012. When he moved in with "friends," his mail was not forwarded to him. Respondent confirmed that the South Amboy address was his current address.

Respondent was unable to recall what had caused the February 21, 2012 overdraft in the trust account. He speculated that he may have accidentally paid a Verizon bill from the account. The OAE sought to establish that the payment was not inadvertent, by reviewing the trust account bank records with him. Respondent admitted that, on February 21, 2012, he completed a \$300 "generic" deposit slip identifying the receiving account as "Law Office of John Murray" and reflecting the account number for the trust account. As stated previously, the deposit raised the trust account balance to \$300.88.

Respondent was shown the bank records reflecting the \$420 payment to Verizon from the trust account, which was made on the same date as the \$300 deposit. Despite the deposit, the payment to Verizon caused an overdraft of -\$119.12, which resulted in a \$35 fee, thus leaving a negative balance of \$154.12 in the trust account until the account was once again replenished, on that same date, with a \$155.12 deposit, which then raised the balance to \$1.

The \$155.12 deposit was in the form of a "bank check," which respondent admitted to having "signed."¹ Like the \$300 deposit slip, the "generic" deposit slip for the \$155.12 identified the receiving account as "Law Office of John Murray" and reflected the account number for the trust account. Respondent denied, however, that the handwriting on the deposit slip was his, but he admitted having made the deposits to cover the Verizon payment and to replenish the trust account. Respondent could not explain why he paid the Verizon bill from the trust account.

Based on respondent's payment of the Verizon bill from his trust account, the ethics complaint charged him with having violated RPC 1.15(a) (commingling), RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), and R. 1:21-6(a) (failure to maintain a business account into which all fees shall be deposited).

The second count of the ethics complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with a disciplinary investigation).

¹ The record does not include a copy of the check. The complaint's reference to "bank check" suggests that the check was a cashier's check. However, the claim that respondent "signed" the check suggests either that he issued the check or that he endorsed it.

On February 18, 2012, respondent was arrested in Tinton Falls for driving while intoxicated. At the time of respondent's arrest, he was in possession of more than twenty-six cellophane folds of heroin and two hypodermic syringes. Consequently, he was charged with third degree possession of a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10a(1); possession with intent to distribute a controlled dangerous substance, in violation of N.J.S.A. 2C:35-53(1); possession of drug paraphernalia, in violation of N.J.S.A. 2C:36-2; and possession of a hypodermic needle, in violation of N.J.S.A. 2C:36-6. He also received motor vehicle summonses for driving while intoxicated, reckless driving, failure to maintain lane, and operating a motor vehicle while in possession of a controlled dangerous substance.

Upon referral from the Prosecutor's Office, the OAE docketed the matter, but placed it on untriable status, in order to monitor the criminal charges. The overdraft matter also was placed in abeyance, pending the disposition of the criminal charges.

On March 29, 2012, upon written waiver of indictment from respondent, an accusation was filed against him for possession of a controlled dangerous substance (heroin), in violation of N.J.S.A. 2C:35-10a(1). On May 7, 2012, respondent was admitted

into Pretrial Intervention (PTI) for a term of twelve months. On September 25, 2013, the accusation was dismissed based on his successful completion of PTI.

On January 28, 2014, respondent returned to eligibility status and was reinstated to the active practice of law. In the summer of 2015, both OAE investigations were removed from untriable status, and the investigations resumed.

On September 28, 2015, in order to review respondent's accounting practices, the OAE subpoenaed TD Bank for his bank records from May 1, 2012 to October 1, 2015. The records established that, after the bank had closed his business account, in January 2012, respondent never opened another attorney business account. Instead, the bank records suggested that respondent used his trust account as a business account.

From May 2, 2012 until January 12, 2014, the trust account balance was \$1. On January 13, 2014, a \$1 deposit increased the balance to \$2. On October 10, 2014, a \$1,000 check, issued by Witktor and Anna Domagala, was deposited in the trust account, which raised the balance to \$1,002. On December 3, 2014, respondent made a \$1,000 cash withdrawal from the trust account, reducing the balance to \$2.

On August 31, 2015, a \$2,000 check, issued by Burlew Mechanical, LLC, was deposited in the trust account, raising the

balance to \$2,002. On September 2, 2015, respondent withdrew \$2,000 in cash from the trust account, which returned the balance to \$2. As of October 1, 2015, the trust account balance remained at \$2.

Effective November 16, 2015, respondent became ineligible to practice law based on his failure to comply with the CLE requirements imposed on New Jersey attorneys. On December 2, 2015, the OAE wrote to respondent, reminded him of the two ethics investigations that had been placed on untriable status, informed him that it intended to resolve them, and requested he call either Kim or Childs to schedule an interview in both matters. The letter, which included an outline of the recordkeeping requirements, was mailed to the South Amboy address, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned to the OAE, marked "Unclaimed." The letter sent by regular mail was not returned. Respondent did not reply to the letter.

On January 6, 2016, Kim and Childs left a voicemail message on respondent's home phone, requesting that he call so that the two matters could be resolved. Respondent did not return the call.

By letter dated January 21, 2016, the OAE informed respondent that a demand audit and interview would take place at

its offices on February 3, 2016, at 11:00 a.m. The letter, which included an outline of the recordkeeping requirements, was mailed to the South Amboy address, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned to the OAE, marked "Not Deliverable As Addressed." The letter sent by regular mail was not returned. Respondent neither appeared for the audit and interview nor communicated with the OAE about his inability to do so.

On February 9, 2016, the local Postmaster confirmed that mail was being delivered to respondent at the South Amboy address. As of March 22, 2016, respondent had not communicated with the OAE as to either investigation.

Based on the above allegations, respondent was charged with having failed to cooperate with the OAE in its ethics investigation, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

The facts recited in the complaint support some of 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). Notwithstanding that Rule, however, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

With the exception of personal funds "reasonably sufficient to pay bank charges," RPC 1.15(a) prohibits an attorney from commingling personal and trust funds in the trust account. The complaint, however, did not allege that respondent's trust account contained any funds belonging to clients or third persons. Indeed, respondent asserted that the trust account did not have any client funds on deposit.

Because respondent's trust account did not contain client or third party funds, respondent's deposit of personal funds into the account did not amount to commingling. Thus, RPC 1.15(a) does not apply. In re Ezor, 222 N.J. 8 (2015) (attorney who used his trust account as a personal account did not violate RPC 1.15(a) because the trust account did not contain any funds belonging to clients or third persons). Instead, such conduct constitutes a recordkeeping violation and, thus, a violation of RPC 1.15(d). In the Matter of Herbert R. Ezor, DRB 14-284 (March 23, 2015) (slip op. at 9).

Although the complaint alleged that respondent improperly used his trust account to pay the Verizon bill, it is not clear whether the RPC 1.15(d) charge includes this conduct. Indeed, the complaint cites R. 1:21-6(a), with specific reference to a lawyer's obligation to maintain a business account. Still, respondent may be found guilty of an additional RPC 1.15(d)

violation based on his use of the trust account as a personal account.

Specifically, R. 1:21-6(a)(1) requires funds entrusted to the attorney's care to be deposited in a trust account. Respondent's personal monies are not funds entrusted to his care. Thus, his deposit of those funds into the trust account violated R. 1:21-6(a)(1).

Rule 1:21-6(i) provides that an attorney who fails to comply with the trust account rule shall be deemed to be in violation of RPC 1.15(d). Although the complaint does not appear to have charged respondent with having violated RPC 1.15(d) on this basis, the allegations gave him sufficient notice of the allegedly improper conduct and the potential for finding a violation of that Rule for that reason.

Rule 1:21-6(a)(2) requires an attorney who practices law in this state to maintain a business account. Although respondent asserted that, after his September 2011 accident, he stopped practicing law, he never retired from the bar, and he never sought disability inactive status. Rather, he was ineligible due to his nonpayment of the annual attorney assessment to the CPF. Unlike a suspended attorney, an ineligible attorney is not prohibited from maintaining trust and business accounts. Thus, an ineligible attorney must

continue to maintain trust and business accounts. Accordingly, respondent violated RPC 1.15(d), by failing to open another business account after TD Bank closed his existing bank account on January 9, 2012.

Finally, respondent violated RPC 8.1(b), which prohibits an attorney from "knowingly fail[ing] to respond to a lawful demand for information from [a] . . . disciplinary authority." On September 12, 2012, respondent informed the OAE that the South Amboy address was valid. On February 9, 2016, the South Amboy Postmaster confirmed that respondent's mail continued to be delivered to that address. Yet, between December 2, 2015 and February 3, 2016, respondent ignored both a written and an oral request that he contact the OAE, and failed to appear for the February 3, 2016 demand audit and interview, without explanation. Indeed, as of March 22, 2016, the date of the ethics complaint, respondent still had not communicated with the OAE.

R. 1:20-3(g)(3) requires every attorney to "cooperate in a disciplinary investigation." By ignoring two requests that he contact the OAE and failing to appear for the demand audit and interview, without explanation, respondent violated RPC 8.1(b).

There remains for determination the quantum of discipline to be imposed for respondent's violation of RPC 1.15(d) and RPC 8.1(b).

An admonition is the usual form of discipline for recordkeeping violations that do not result in negligent misappropriation. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney committed several violations of R. 1:21-6, which included the failure to promptly remove earned fees from the trust account); In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an OAE audit disclosed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct); and In the Matter of Charles D. Petrone, DRB 13-175 (October 23, 2013) (attorney failed to maintain a trust account, used a joint personal checking account that he maintained with his wife as his business account; and committed other recordkeeping violations).

In addition, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. 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 District Ethics Committee (DEC) investigator regarding his representation

of a client in three criminal defense matters, a violation of RPC 8.1(b)); In the Matter of Jeffrey M. Adams, DRB 14-243 (November 5, 2014) (attorney failed to cooperate with the DEC'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. Koppenaar, DRB 13-164 (October 21, 2013) (attorney admittedly failed to cooperate with the DEC's attempts to obtain information about his representation of a client in an expungement matter). Here, respondent's disciplinary record is unblemished. Thus, an admonition also would be appropriate for his violation of RPC 8.1(b).


In our view, an admonition is the appropriate form of discipline for respondent's violation of RPC 1.15(d) and RPC 8.1(b). Although improper, respondent's use of the trust account as a personal account, as well as his failure to open another business account after the bank closed the one he had maintained there, did not result in the misuse of any trust funds. Further, although respondent ignored all of the OAE's attempts to communicate with him, the recordkeeping infractions were relatively minor in nature. This matter, however, is before us as a default, which necessitates enhancement of the discipline. 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, thus, determined to impose a reprimand on respondent. See In re Barringer, 222 N.J. 32 (2015) (reprimand imposed on defaulting attorney who violated RPC 1.15(d) and RPC 8.1(b)).

Members Gallipoli and Hoberman 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 John J. Murray, Jr.
Docket No. DRB 16-383

Decided: June 5, 2017

Disposition: Reprimand

Members	Reprimand	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