

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-007  
District Docket No. XIV-2014-0693E

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IN THE MATTER OF  
KEITH T. SMITH  
AN ATTORNEY AT LAW

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Decision

Decided: July 11, 2017

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

This matter was before the Board 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 having violated RPC 1.15(d) and R. 1:21-6 (recordkeeping) and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities). For the reasons detailed below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1989. On October 1, 2008, he received an admonition for misconduct arising out of a fee-sharing agreement (encompassing several matters) with

another attorney. After allowing a complaint to be dismissed, respondent failed to take steps to have the complaint reinstated and to contact his client about the status of his case, violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) and (c) (failure to communicate with a client). Additionally, respondent violated RPC 1.5(e), because the proportionality of fees shared with the other attorney was not reasonable. In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008). In a later disciplinary matter, respondent was found guilty of additional violations in several of the client matters underlying the fee-sharing arrangement. No new discipline was imposed, because the second disciplinary matter was "inexorably intertwined" with the admonition. In re Smith, 2009 N.J. LEXIS 1408 (December 14, 2009).

On June 3, 2011, respondent received a censure for misconduct in two client matters including gross neglect, a pattern of neglect, lack of diligence, failure to expedite litigation, and failure to cooperate with disciplinary authorities. In re Smith, 206 N.J. 137 (2011).

Respondent was declared ineligible to practice on four occasions between September 2004 and March 2010, based on his

failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Respondent was temporarily suspended from the practice of law, effective February 28, 2017, for his failure to comply with the determination of the District I Fee Arbitration Committee and was ordered to pay a sanction of \$500 to the Disciplinary Oversight Committee. In re Smith, 228 N.J. 2 (2017). He was reinstated on March 27, 2017. In re Smith, 228 N.J. 308 (2017).

Service of process in this matter was proper. By letter dated October 31, 2016, the OAE served a copy of the complaint on respondent at his office address, by both certified mail, return receipt requested, and regular mail. The certified mail was returned unclaimed and the regular mail was not returned.

On November 29, 2016, the OAE sent a second letter to respondent at his office address, informing him that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The letter was sent by certified mail, return receipt requested and regular

mail. The certified mail was returned unclaimed and the regular mail was not returned.

The time within which respondent may have answered has expired. As of January 9, 2017, the date of the certification of the record, no answer had been filed by or on behalf of respondent.

We now turn to the allegations of the complaint.

At all relevant times herein, respondent maintained an attorney trust account (ATA) at TD Bank and an attorney business account (ABA) at Cape Bank. The OAE conducted a random audit of respondent's books and records in August 2014. The OAE discovered several recordkeeping deficiencies during the audit. Thus, respondent was scheduled to appear at the OAE for a demand audit on December 16, 2014. Respondent failed to appear for the audit and the matter was rescheduled for January 14, 2015. Based on the information provided by respondent at the January 14, 2015 audit, the OAE subpoenaed additional bank records and conducted further investigation.

Respondent next appeared before the OAE on August 15, 2016. During that interview, and in a subsequent letter from the OAE, dated August 16, 2016, respondent was directed to provide to the OAE, by September 16, 2016, the following documents pertaining to the month of August 2016:

- a) Three-way reconciliations for the trust account;
- b) Copy of the bank statement, including canceled checks and deposits;
- c) Client ledger sheets for all clients for whom funds were held;
- d) Cash receipts journals;
- e) Cash disbursements journals; and
- f) Check book register.

Respondent failed to provide the additional information requested by the OAE. Hence, on September 23, 2016, the OAE sent another letter to respondent, directing him to provide a response and supporting records by October 7, 2016. Respondent has yet to respond.

Despite respondent's lack of cooperation, the OAE continued its investigation, which revealed the following recordkeeping violations:

- a) No trust receipts or disbursements journals for respondent's ATA, in violation of R. 1.21-6(c)(1)(A);
- b) Client ledger cards with debit balances, in violation of R. 1.21-6(d);
- c) No ledger card identifying attorney funds for bank charges, in violation of R. 1:21-6(d);
- d) Inactive balances left in respondent's ATA, in violation of R. 1:21-6(d);
- e) No running check book balance in respondent's ATA, in violation of R. 1:21-6(c)(1)(G);
- f) Insufficient detail in ATA deposit slips, in violation of R. 1:21-6(c)(1)(A);
- g) Unidentified trust balances held in ATA, in violation of R. 1:21-6(d);
- h) Failure to maintain an ABA, in violation of R. 1:21-6(a)(2); and
- i) Earned legal fees not deposited to ABA, in violation of R. 1:21-6(a)(2).

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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).

Specifically, respondent violated RPC 1.15(d) and R. 1:21-6 by failing to maintain his books and records in accordance with the RPCs or with generally accepted accounting principles. Respondent failed to maintain trust receipts or disbursements journals for his ATA; carried debit balances on his client ledger cards; failed to maintain a ledger card identifying attorney funds for bank charges; left inactive balances in his ATA; maintained no running checkbook balance for his ATA; failed to include sufficient detail in his ATA deposit slips; failed to maintain an ABA; failed to deposit his earned legal fees into his ABA; and carried unidentified trust balances in his ATA.

Additionally, although respondent initially appeared for two demand audits, he subsequently ceased cooperation with disciplinary authorities and their investigation into this matter. Specifically, he failed to respond to demands for very specific documentation for his ATA and ABA, a violation of RPC 8.1(b).

An admonition is the usual form of discipline for recordkeeping violations. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances; failed to promptly remove earned fees from the trust account; and failed to perform monthly three-way reconciliations, violations of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years, without prior incident, and that he had readily admitted his misconduct by consenting to discipline); In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified); and In the Matter of Samuel M. Manigault, DRB 13-370 (February 28, 2014) (attorney was unable to identify the clients or third parties associated with an unidentified trust account balance of \$47,040.27, which was uncovered by a random audit; the audit also revealed that the attorney did not keep a running cash balance for the trust account checkbook and failed to reconcile the client ledger account balance with his monthly trust account bank statements; mitigating factors included the attorney's acknowledged wrongdoing, the absence of harm to clients

or third parties, as well as his unblemished disciplinary history in more than eighteen years at the bar).

Likewise, admonitions generally 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 Martin A. Gleason, DRB 14-139 (February 3, 2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b); we considered, in mitigation, the attorney's acceptance of full responsibility for the dismissal of his client's applications, the fact that he had refunded the entire legal fee to the client, and that he had erroneously believed that his reply to the grievance and a subsequent letter to the district ethics committee secretary admitting the allegations of the complaint satisfied his obligation to file a formal answer); 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 about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)); and In the



Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (the 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, a violation of RPC 8.1(b); the attorney had had no other final discipline since his 1983 admission to the New Jersey bar).

Based on precedent, an admonition ordinarily would suffice for respondent's misconduct, but there is also the aggravating factor of respondent's default. 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"). Thus, in assessing the appropriate quantum of discipline in this matter, we begin with a reprimand as the starting point. Respondent's ethics history, however, operates as a further aggravating factor.

As noted, respondent was previously admonished in 2008 after allowing a complaint to be dismissed, failing to take steps to have the complaint reinstated, and failing to contact his client about the status of his case, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and RPC 1.4(c). Additionally, respondent violated RPC 1.5(e), because the proportionality of fees shared with the other

attorney was not reasonable. A year later, respondent was found guilty of additional violations in several of the client matters underlying the fee-sharing arrangement. No new discipline was imposed, because the second disciplinary matter was "inexorably intertwined" with the admonition.

Then, in 2011, respondent received a censure for misconduct in two client matters including gross neglect, a pattern of neglect, lack of diligence, failure to expedite litigation, and failure to cooperate with disciplinary authorities.

Although respondent's past ethics violations have not related to his recordkeeping responsibilities, he, nevertheless, has shown a propensity to violate the RPCs. Based on respondent's ethics history, we determine to further enhance the otherwise appropriate discipline and impose a censure for the totality of his misconduct.

Member Gallipoli voted for a three-month suspension.

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  
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Keith T. Smith  
Docket No. DRB 17-007


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Decided: July 11, 2017

Disposition: Censure

<b>Members</b>	<b>Censure</b>	<b>Three-month suspension</b>	<b>Did not participate</b>
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
<b>Total:</b>	<b>8</b>	<b>1</b>	

  
Ellen A. Brodsky  
Chief Counsel