

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-241  
District Docket No. XIV-2016-0349E

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IN THE MATTER OF  
DONALD C. LEVENTHAL  
AN ATTORNEY AT LAW

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Decision

Argued: September 14, 2017

Decided: January 3, 2018

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.  
Respondent did not appear despite proper notice.

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

This matter was before us on a motion for reciprocal  
discipline filed by the Office of Attorney Ethics (OAE),  
following respondent's disbarment in New York for his violation  
of the New York equivalents of New Jersey RPC 1.15(d)  
(recordkeeping); RPC 8.1(b) (failure to cooperate with  
disciplinary authorities), and RPC 8.4(d) (conduct prejudicial  
to the administration of justice). The OAE seeks a three-month

suspension. For the reasons expressed below, we determined to grant the motion and impose a three-month suspension.

Respondent was admitted to the New Jersey and New York bars in 1987. From 1989 to 2015, his status with the New Jersey Lawyers' Fund for Client Protection (the Fund) was "retired." From 2015 to date, his status is listed as "holding." He has no history of discipline in New Jersey.

On July 15, 2015, the Grievance Committee for the Tenth Judicial District (the committee) filed a verified petition, charging that respondent failed to re-register as an attorney with the Office of Court Administration (the OCA) from 2010 to 2015 and that he failed to cooperate with the committee in its investigation of seven notices of overdrafts from the New York Lawyers' Fund for Client Protection (the NY Fund). Respondent failed to answer the petition.

The underlying misconduct was as follows:

Respondent maintained one escrow account ending in #9595, with disbursement checks designated as "Donald C. Leventhal, Esq." and a second escrow account ending in #7910, with disbursement checks designated as "Donald C. Leventhal." Both accounts were held with JPMorgan Chase Bank (Chase).

File No. N-89-145

On December 19, 2013, Chase notified respondent that it had returned two checks: check number 134 for \$56,195.72 and check number 135, for \$1,200, because the balance in respondent's account ending in #9595 was only \$20. Chase provided a copy of that notice to the NY Fund, which, in turn, notified the committee.

On February 3, 2014, the committee served respondent with a copy of the overdraft notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter. Respondent failed to submit his written response or the requested records.

On April 7 and April 30, 2014, the committee sent follow up letters to respondent. In the April 30, 2014 letter, the committee informed respondent that it could seek his immediate suspension from the practice of law for failing to cooperate. The committee also demanded respondent's written response, a completed questionnaire, and an explanation of his prior failure to cooperate within ten days of his receipt of the letter. Respondent, again, failed to reply.

File No. N-365-14

On February 10, 2014, Chase notified respondent that it had returned check number 993, for \$175, because the balance in his account ending in #7910 was only \$103.62.

On March 30, 2014, the committee served respondent with a copy of the overdraft notification and demanded a written explanation, along with his bank records, within twenty days of his receipt of its letter. Respondent did not reply in writing. In an April 29, 2014, telephone conversation, however, he promised the committee that he would deliver his files.

Nonetheless, on April 30, 2014, the committee demanded respondent's written response and records within ten days of his receipt of its letter. Still, however, respondent failed to reply.

File No. N-653-14

On March 14, 2014, Chase notified respondent that it had returned a debit payment to Verizon Wireless, for \$290, because the balance in his account ending in #7910 was only \$100.77. On May 2, 2014, the committee served respondent with a copy of the notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter.

Respondent failed to submit his written response or the requested records.

File No. N-1242-14

On May 12, 2014, Chase notified respondent that it had returned a debit payment to Xoom.com, for \$59.99, because the balance in his account ending in #7910 was only \$12.22. On June 24, 2014, the committee served respondent with a copy of the notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter. Respondent did not reply.

On September 9, 2014, the committee sent a letter to respondent in connection with its investigation into his failure to re-register (explained below), and reminded respondent that, on April 29, 2014, the committee had provided him with a copy of its prior letters, as well as four overdraft notifications, and that he had agreed, by phone, to provide his written responses and records, but had yet to do so. The committee further reminded respondent of its ability to seek his immediate temporary suspension and demanded that he submit his written explanation and completed questionnaire. Respondent did not reply.

File No. N-1904-14

On July 30, 2014, Chase notified respondent that it had returned check number 998, for \$185, because the balance in his account ending in #7910 was only \$0.32. On September 11, 2014, the committee served respondent with a copy of the notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter. Respondent failed to submit his written response or the requested records.

On November 14, 2014, the committee sent a follow up letter to respondent to which it received no reply.

File No. N-2228-14

On September 15, 2014, Chase notified respondent that it had returned a debit payment to Verizon Wireless, for \$300, and a debit payment to PayPal, for \$10.40, because the balance in his account ending in #7910 was only \$8.71. On October 22, 2014, the committee served respondent with a copy of the notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter. On November 14, 2014, the committee reminded respondent of his failure to reply and, further, requested his written explanation and records. Respondent did not reply.

File No. N-2252-14

On September 22, 2014, Chase notified respondent that it had returned a debit payment to Verizon, for \$647.86, because the balance in his account ending in #7910 was only \$271.69. On October 22, 2014, the committee served respondent with a copy of the notification and demanded a written explanation, as well as his bank records, within twenty days of his receipt of its letter. Respondent did not reply.

On December 11, 2014, the committee served on respondent judicial subpoenas *duces tecum* demanding his bank and bookkeeping records for his two attorney accounts for the period of January through October 31, 2014, and commanding his appearance at the committee's office on January 9, 2015.

On December 18, 2014, respondent requested, and was granted, an adjournment of his examination. Respondent promised to submit his banking records by January 9, 2015. On January 9, 2015, respondent hand-delivered bank statements for his two attorney accounts, but failed to submit the required bookkeeping records or written explanations for any of the seven overdraft notifications. Consequently, on January 18, 2015, the committee obtained respondent's bank records directly from Chase by subpoena.

By letter dated May 15, 2015, the committee directed respondent to appear at its office, on May 27, 2015, for an examination on the seven overdraft notifications. Respondent failed to appear. As of July 15, 2015, the date of the verified petition, respondent had failed to submit written responses or produce the required bookkeeping records.

File No. N-90-14

On February 3, 2014, the committee notified respondent that it was investigating his failure to register with the OCA for registration periods 1988-1989, 1990-1991, 1992-1993, and 1994-1995. The committee directed respondent to correct those failures and to submit, within ten days, a written explanation for his failure to properly register. The committee further instructed respondent to provide, within forty-five days, a copy of the registration receipt from OCA. Respondent neither submitted a written response nor complied with his registration obligations.

On April 7, 2014, by certified mail, the committee reminded respondent of his failure to comply with its prior request and demanded that he do so, within ten days.

On April 30, 2014, because the April 7, 2014 letter had not been claimed, the committee provided respondent another copy of



it, by certified mail, and directed that he comply with the committee's prior requests. Respondent failed to submit a written response.

On September 9, 2014, the committee served respondent with another copy of its April 30, 2014 letter and reminded him that the committee was authorized to seek his immediate temporary suspension for failing to cooperate with a disciplinary investigation. Although the committee directed respondent to comply with its requests, he failed to do so.

#### Motion for Default Judgment

On January 7, 2016, the committee filed a motion for default judgment, based on respondent's failure to file an answer to the verified petition. On April 27, 2016, the Appellate Division granted the motion.

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In its motion for reciprocal discipline, the OAE argues that respondent used his attorney trust accounts as his own personal bank accounts, issuing checks or disbursing payments for which there were insufficient funds on deposit on seven different occasions. Similar to the process in New Jersey, the committee served respondent with a copy of each of the seven notifications and requested an explanation for the overdrafts,

along with his required bookkeeping records. Although respondent failed to submit a written reply to any of the seven investigations, he provided ethics authorities with a copy of bank account (#7910) statements, pursuant to a subpoena *duces tecum*. He failed, however, to submit any of his subpoenaed bookkeeping records.

Additionally, although respondent requested, and obtained, an adjournment of an interview before ethics authorities, respondent later failed to appear at the committee's offices for that examination. Further, respondent failed to reply to the committee's investigation of his failure to register with OCA for four registration periods. Lastly, respondent failed to file his required answer to the committee's verified petition, resulting in the Appellate Division's granting the committee's motion for default and ultimately disbarring him.

The OAE acknowledges that disbarment is not the typical sanction in New Jersey for respondent's misconduct. Rather, the OAE argues, respondent's misconduct in New York should be met with a suspension in New Jersey. His disdain for ethics authorities was further highlighted both by his failure to inform the OAE of his disbarment and by his failure to reply to requests for information about his disbarment. Hence, the OAE

submits that respondent's misconduct should result in at least a three-month suspension in New Jersey.

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Following a full review of the record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the New York Appellate Division and find respondent guilty of violating New Jersey RPC 1.15(d) and RPC 8.1(b).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking

in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subsection (E), however, applies in this case because respondent's unethical conduct warrants substantially different discipline in New Jersey than he received in New York.

Specifically, respondent committed ethics violations as follows. Respondent violated RPC 1.15(d) and R. 1:21-6(a)(1) by using his trust account ending in #7910 solely for personal purposes, as evidenced by transactions from that escrow account, which was designated simply as "Donald C. Leventhal." He also violated RPC 1.15(d) and R. 1:21-6(a)(2) for failing to designate his attorney trust accounts as such.

Typically, recordkeeping irregularities 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 Charles D. Petrone, DRB 13-175 (October 23, 2013) (the attorney failed to maintain a trust account, and used a joint personal checking account that he maintained with his wife as his business account; failed to maintain business receipts and

disbursements journals; and deposited legal fees in his attorney business account, violations of RPC 1.15(d) and R. 1:21-6)).

Here, respondent also violated RPC 1.15(d) and R. 1:21-6(h) by failing to produce his records for review and audit by disciplinary authorities. Respondent's failure to comply with the requirements of subsection (h) also violated RPC 8.1(b), by operation of R. 1:21-6(i). Similarly, respondent's refusal to respond to inquiries and to provide requested records, his failure to register with the OCA and the New York Fund, as well as his failure to cooperate otherwise with disciplinary authorities, violated RPC 8.1(b).

Failure to cooperate with an ethics investigation generally results in an admonition. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011).

However, a reprimand may result if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, if it uncovers recordkeeping improprieties in a trust account and requests additional documentation, which the attorney fails to provide. See, e.g., In re Picker, 218 N.J. 388 (2014) (reprimand; an OAE demand audit, prompted by a \$240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses, though no trust funds were in

the account at the time; violation of RPC 1.15(a); in addition, the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit; violations of RPC 8.1(b)) and In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney 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).

We determined, however, to dismiss the alleged violation of RPC 8.4(d). The record lacks any information as to how respondent violated this Rule.

Although the starting point for discipline here is a reprimand, there are additional considerations that serve to enhance that discipline. The first is the volume of overdrafts respondent caused over the course of years. Second, respondent refused, for the most part, to participate in the investigation into these matters. Although he represented that he would send records, he never did so. Similarly, he obtained an adjournment of an interview, but failed to appear at the rescheduled examination. Respondent produced some records in response to a subpoena, but they were largely incomplete, indicating, in our view, a deliberate failure to cooperate. Finally, respondent failed to notify the OAE


of his discipline in New York. These factors elevate the discipline to a censure. The default nature of the proceedings against respondent in New York further enhances the appropriate quantum of discipline. See, 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").

Therefore, on balance, despite his lack of disciplinary history in New Jersey, and based on his misconduct and resulting disbarment in New York, we determine to impose a three-month suspension.

Member Gallipoli voted for a six-month suspension. Members Clark 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Donald Leventhal  
Docket No. DRB 17-241

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Argued: September 14, 2017

Decided: January 3, 2018

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Six-Month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark			X
Gallipoli		X	
Hoberman			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	1	2

  
Ellen A. Brodsky  
Chief Counsel