

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 18-107  
District Docket No. XIV-2016-0776E

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IN THE MATTER OF :  
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JAMES H. WOLFE, III :  
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AN ATTORNEY AT LAW :  
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Decision

Decided: September 6, 2018

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 two-count complaint charged respondent with violations of RPC 1.15(a) (failure to safeguard client funds and negligent misappropriation of client funds), RPC 1.15(d) and R. 1:21-6 (failure to comply with recordkeeping requirements), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

For the reasons expressed below, we determine to impose a one-year suspension for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1979 and the Pennsylvania bar in 1980. He maintains a law office in Orange, New Jersey.

Respondent has an extensive ethics history; he has been disciplined six times. In 1998, respondent was admonished for failing to advise his clients of the status of their matters, including the fact that, on numerous occasions, their complaints had been dismissed, a violation of RPC 1.4(b) (then RPC 1.4(a)). In the Matter of James H. Wolfe, III, Docket No. DRB 98-098 (April 27, 1998).

In 2001, respondent received a reprimand for gross neglect, lack of diligence, and failure to communicate with a client. In re Wolfe, 167 N.J. 277 (2001). Also in 2001, respondent received a three-month suspension for misconduct in three client matters. His infractions included gross neglect, lack of diligence, failure to cooperate with ethics authorities, and failure to keep a client reasonably informed about the status of a matter. We determined that enhanced discipline was warranted, deeming respondent's ethics history to be an aggravating factor. In re Wolfe, 167 N.J. 278 (2001). He was restored to practice on November 27, 2001. In re Wolfe, 170 N.J. 136 (2001).

Respondent was again reprimanded, in 2001, for failing to communicate with a client over a three-year period. In re Wolfe, 170 N.J. 71 (2001).

In 2002, respondent was admonished for his failure to cooperate with ethics authorities; the substantive charges against him had been dismissed. In re Wolfe, 172 N.J. 322 (2002).

Finally, in 2009, respondent received his third reprimand, on a motion for discipline by consent, for gross neglect, lack of diligence, and failure to communicate with a client. He had filed a civil complaint on behalf of a client, but failed to oppose the defendant's motion to dismiss the complaint, which resulted in its dismissal. Afterwards, the client had difficulty communicating with him. Notwithstanding respondent's disciplinary history, in imposing only a reprimand, we considered the passage of time since he had been retained in the matter (thirteen years), his disclosure of the dismissal to the client, and his offer to make restitution to her. In re Wolfe, 199 N.J. 137 (2009).

Service of process was proper in this matter. On January 31, 2018, the OAE sent a copy of the complaint by regular and certified mail to respondent's Orange, New Jersey office address. The regular mail was not returned and the United States

Postal Service (USPS) tracking confirmation indicated that the certified mail was delivered on February 3, 2018. The certified mail receipt contained the initials "J.W." Respondent did not file an answer.

On March 5, 2018, the OAE sent a letter by regular and certified mail to the same address, notifying respondent that, if he 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 a willful violation of RPC 8.1(b).

The regular mail was not returned. As of the date of the certification of the record, March 26, 2018, the certified mail receipt had not been returned. However, the USPS tracking confirmation showed delivery of the letter on March 14, 2018.

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

We now turn to the allegations of the complaint.

### **Failure to Cooperate**

The complaint painstakingly described respondent's failure to fully cooperate with the OAE for more than a three-year period, from October 2014 through January 31, 2018, the date of

the ethics complaint. During that time, he failed to fully comply with numerous written requests for information and telephone calls seeking his compliance, and failed to appear for scheduled interviews or audits. When respondent did supply information, it was incomplete. The OAE petitioned the Court for respondent's temporary suspension for failure to cooperate, which resulted in respondent's partial reply. His failure to cooperate is detailed, as follows.

On September 12, 2014, the OAE scheduled a random compliance audit of respondent's business and trust accounts to take place on October 15, 2014. However, when the OAE arrived at respondent's office, his secretary denied having received notice of the audit and, nevertheless, stated that respondent was in the midst of a deposition and could not be interrupted. The audit, therefore, was rescheduled to December 3, 2014.

At the audit, respondent asserted that his "recordkeeping had not fully recovered" from a computer crash but he produced his trust and business account bank statements, manual and computerized journals, client ledgers, and copies of some deposit slips.

The OAE's reconciliation of respondent's records, as of November 2014, uncovered an \$11,840.18 unidentified balance.

In a January 16, 2015 letter to respondent, the OAE reiterated six recordkeeping deficiencies it had identified during the audit. The letter instructed respondent to confirm in writing, within forty-five days, that he had corrected each of the listed deficiencies, and to complete an enclosed certification form. Respondent failed to provide the OAE with either.

Thereafter, respondent ignored the OAE's September 24, 2015 telephone call and its March 1, 2016 letter, requesting his response to the January 2015 letter. Therefore, by letter dated May 9, 2016, the OAE informed respondent that, if he did not provide written confirmation that all of the deficiencies had been corrected, within ten days of the date of the letter, a formal ethics complaint would be filed against him.

By letter dated May 23, 2016, respondent submitted a copy of his trust account register and copies of bank statements, and requested a two-week extension to comply with the deficiency letter. His failure to supply the delinquent information resulted in the OAE's telephone calls to him on September 8 and September 19, 2016, requesting a reply to the deficiency letter.

As a result of respondent's failure to cooperate, on December 28, 2016, the OAE docketed the matter for investigation. The OAE's January 12, 2017 letter required

respondent to submit a detailed reply to the deficiency letter and an explanation for not submitting a timely reply. The letter further instructed him to appear at the OAE for an interview, on February 23, 2017, and to bring with him his trust account books and records. Respondent neither appeared nor provided the OAE with the information.

By letter dated February 23, 2017, the OAE scheduled a demand audit on March 9, 2017, and directed respondent to provide the documents previously requested. On March 7, 2017, respondent faxed his reply to the deficiency letter. Although he appeared at the demand audit, he failed to provide the previously requested documentation.

In letters dated March 9 and May 9, 2017, the OAE again requested the information that respondent had failed to submit, as well as a list of client names and the amounts he held for them in his trust account. The May 9 letter also warned that, if respondent did not cooperate, he could be subject to an ethics complaint charging him with a violation of RPC 8.1(b), and a motion for his temporary suspension. Respondent failed to comply, prompting another letter on May 30, 2017, again requesting the information.

On July 14, 2017, the OAE filed with the Court a petition for emergent relief, seeking respondent's immediate temporary

suspension. Thereafter, on July 17, 2017, respondent produced some information. An OAE reply letter that same date reiterated the previous request for a monthly listing of names and amounts held for clients in the trust account. Respondent then provided a copy of a July 23, 2017 submission to the Superior Court Trust Fund (SCTF).

On September 7, 2017, ruling on the OAE's motion, the Court directed respondent to turn over all outstanding documents and information to the OAE within sixty days. On September 8, 2017, the OAE notified respondent of the outstanding documentation he was required to produce and directed him to do so by October 6, 2017. Because respondent had failed to submit the requested information, the OAE reconstructed respondent's trust account records. The OAE's September 8, 2017 letter, thus, also requested that respondent confirm the accuracy of the records the OAE had recreated. The letter specifically noted the OAE's receipt of respondent's motion to deposit funds with the SCTF, and requested a copy of the receipt acknowledging that the SCTF had received and accepted the funds.

On October 12, 2017, the OAE called the SCTF to verify that respondent had submitted a certification and a \$10,805.18 trust account check, as he had represented. However, the SCTF could find no record of respondent's letter, certification, or check.



On November 5, 2017, respondent (1) submitted a partial reply to the OAE's most recent request for information (omitting trust account reconciliations and bank statements from March through August 2017); (2) certified to the disposition of client funds through August 31, 2017; and (3) claimed that the SCTF had returned his check. Because of missing documentation, the OAE was unable to verify the accuracy of respondent's trust account certification.

By letter dated November 7, 2017, respondent submitted to the OAE his Quicken reports from March 2017 through August 2017, but not the requested trust account bank statements.

On November 7 and 15, 2017, the OAE sent letters to respondent, and telephoned him on November 8, 2017, detailing the remaining deficiencies with his submission that needed correction.

As of the date of the certification of the record, respondent still had not provided the OAE with (1) a list of names and amounts held for the clients in his trust account for March through August 2017 (but he confirmed the accuracy of the OAE's recreation of his trust account records); (2) proof that the SCTF accepted the unidentified funds (\$10,805.18) that had remained in his trust account; and (3) trust account bank statements from March 2017 through August 2017. Also as of the

date of the complaint, respondent had not "successfully" deposited the unidentified funds with the SCTF.

### **Negligent Misappropriation and Recordkeeping Violations**

During the course of the audit, the OAE uncovered numerous recordkeeping deficiencies. Specifically, respondent (1) maintained inactive trust ledger balances in the trust account for extended periods; (2) showed debit balances on client ledger cards; (3) failed to perform monthly reconciliations; (4) failed to maintain a running cash balance in the trust account checkbook; (5) maintained trust funds on deposit in excess of total trust obligations, as revealed by the OAE auditor's trust account reconciliation; (6) maintained an improper designation on the bank statement; and (7) failed to retain required trust and business account records for seven years.

The OAE's investigation revealed that respondent invaded client and unidentified funds. Specifically, respondent disbursed \$990.85 to Jose Watley on July 7, 2013, when he held only \$136.85 on his behalf, thus invading \$854 of client and unidentified funds for more than three years. In addition, he disbursed two checks to himself, each for \$250, in connection with the Dennis Jenkins matter, when he held only \$250 on

Jenkins' behalf, which invaded \$250 of client and unidentified funds for more than three years.

Because respondent did not provide complete trust account records, the OAE reconstructed respondent's trust account records from December 31, 2014 to February 28, 2017. The reconstructed records revealed that, as of December 31, 2014, respondent should have been holding \$37,498.52, comprising amounts held for eight clients, \$30.63 of IOLTA funds, and \$10,805.18 in unidentified funds. On December 31, 2014, respondent's trust account bank balance was only \$36,394.52. He, therefore, invaded client and unidentified funds totaling \$1,104, the amount of the shortage in his trust account. Respondent did not hold his earned legal fees in his trust account and was not entitled to any of the \$10,805.18 unidentified funds. The shortage occurred from the overdisbursements in the Jenkins and Watley matters. On March 23, 2017, he corrected the shortage.

The facts recited in the complaint support the charges of unethical conduct to a clear and convincing standard. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and provide a sufficient basis for the imposition of discipline under R. 1:20-4(f)(1).

Respondent failed to cooperate with the OAE for more than three years. During that time, the OAE wrote and called respondent numerous times, giving him every opportunity to comply with its requests. Even after the Court ordered respondent to comply, he initially did so only in part, and, later, not at all. Respondent's conduct in this regard was egregious. He offered no explanation for his noncooperation, other than a passing reference to a computer crash.

An attorney's failure to cooperate with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account generally results in the imposition of a reprimand. 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, the attorney did not reply to the OAE's initial request for a detailed explanation about the trust account overdraft for two months, 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) 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).

Reprimands are also imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (on a motion for discipline by consent, attorney guilty of negligent misappropriation of client trust funds and recordkeeping violations); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds); In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and ran afoul of the recordkeeping rules by writing trust account checks to himself and making cash withdrawals from his trust account, practices prohibited by R. 1:21-6; although the baseline discipline for negligent misappropriation is a reprimand and, in a default matter, the otherwise appropriate level of discipline is enhanced,

a reprimand was viewed as adequate because of compelling mitigation); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).


In determining the appropriate level of discipline to impose, we have considered a number of aggravating factors. Respondent permitted this matter to proceed as a default. "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). Respondent's egregious ethics history is also a significant factor, warranting the enhancement of discipline. This is his seventh brush with the ethics system. Moreover, in the 2001 and 2002 matters he also was guilty of failure to cooperate with ethics authorities. And, here, too, he failed to fully cooperate for more than a three-year period, despite excruciating efforts on the OAE's part, and even after the Court entered its September 7, 2017 Order. There is simply no explanation for respondent's recalcitrance. He was given

every opportunity to comply with the OAE's multiple requests, yet failed to do so. Thus, while the otherwise proper discipline for recordkeeping violations, negligent misappropriation of trust funds, and failure to cooperate with ethics authorities might be a reprimand, the multiple aggravating factors here require that the discipline be enhanced to reflect respondent's propensity to violate the Rules of Professional Conduct and his failure or unwillingness to learn from prior mistakes. We, therefore, determine to impose a one-year suspension on this serial offender. We further determine that respondent not be permitted to apply for reinstatement until he has fully cooperated with the OAE.

Member 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 James H. Wolfe, III  
Docket No. DRB 18-107


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Decided: September 6, 2018

Disposition: One-year Suspension

<b>Members</b>	<b>One-year Suspension</b>	<b>Recused</b>	<b>Did Not Participate</b>
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
<b>Total:</b>	<b>8</b>	<b>0</b>	<b>1</b>

  
Ellen A. Brodsky  
Chief Counsel