

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-125
District Docket No. XIV-2016-0777E

In The Matter of :
William L. Huneke :
An Attorney at Law :
:

Decision

Decided: October 16, 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 the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.15(a) (commingling and failure to safeguard client funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent filed a motion to vacate the default. For the reasons set forth below, we determine to deny that motion and to impose a censure, with a condition, based on the record before us.

Respondent earned admission to the New Jersey bar in 1979. During the relevant time frame, he maintained a law practice in Toms River, New Jersey. He has no disciplinary history.

Service of process was proper in this matter. On January 31, 2018, the OAE sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at his home address.¹ The certified mail was returned, marked "Unclaimed, Unable to Forward, Return to Sender." The regular mail was not returned. Respondent failed to file an answer to the complaint.

On March 6, 2018, the OAE sent a "five-day" letter to respondent, by certified and regular mail, at the same address, informing him that, unless he filed a verified answer to the complaint within five days, 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 charge a willful violation of RPC 8.1(b). A certified mail receipt was returned,

¹ According to the Central Attorney Management System, respondent's home address is also his law office address.

signed by "SThompr," and the United States Postal Service confirmed delivery on March 9, 2018. The regular mail was not returned.

Respondent failed to file a verified answer to the complaint. Accordingly, on April 3, 2018 the OAE certified the record to us as a default.

On June 21, 2018, respondent filed a motion to vacate the default in this matter. To prevail on such a motion, respondent must satisfy a two-pronged test. First, he must offer a reasonable explanation for the failure to answer the ethics complaint and, second, he must assert a meritorious defense to the underlying ethics charges.

Respondent explained that he did not file an answer to the OAE's complaint because he never received a copy of it. Respondent claimed that he listed his house for sale in September 2017, and "[b]etween the process of packing, coupled with essentially living at [my] ill mother's house . . . I simply did not see" the OAE mailing containing the complaint. He conceded, however, that his domestic partner had signed for the OAE's certified mailing. Respondent failed to address receipt of the May 31, 2018 certified and regular mailing of our scheduling letter in this matter.

We conclude that respondent's explanation for his failure to file an answer is not reasonable. The certified mailing of the OAE complaint was signed for by respondent's domestic partner, at his address of record. Our

scheduling letter was sent via certified and regular mail to his address of record.

Accordingly, service of process was proper in this matter, and respondent's explanation regarding receipt of the formal ethics complaint is not reasonable and, thus, does not excuse his failure to file an answer to the complaint.

We add that, even if respondent had satisfied the first prong of the test, we still would deny his motion to vacate the default. In his motion, respondent asserts that, given his work history and status as a solo practitioner, he has had "little affirmative guidance as to how to administer trust accounts . . . [and] was simply unaware of the 'three-way reconciliation procedure'" and other recordkeeping requirements. As to the commingling allegation, he states that he did not know there was any timing obligation for the removal of legal fees from an attorney trust account.

By his own admissions, thus, respondent has failed to satisfy the second prong of the test, which requires that he assert a meritorious defense to the underlying ethics charges. Ignorance of the RPCs governing the practice of law in New Jersey does not constitute a legal defense to misconduct. Rather, "lawyers are expected to be fully versed in the ethics rules that regulate their

conduct." See In re Berkowitz, 136 N.J. 134, 147 (1994). Accordingly, we determine to deny respondent's motion to vacate the default.

The facts alleged in the complaint are as follows. During the relevant time frame, respondent was a solo practitioner, maintaining attorney trust accounts at Ocean First Bank (ATA1) and Hudson City Bank (ATA2). He maintained his sole attorney business account at Ocean First Bank (ABA). On September 16, 2015, the OAE informed respondent that he had been randomly selected for an audit. The audit took place on October 16, 2015. Respondent failed to produce three-way reconciliations of his attorney trust accounts, and his client ledger cards lacked sufficient detail, among other recordkeeping infractions. Given those deficiencies, the OAE was unable to complete the audit, and, thus, informed respondent that the audit would be continued on November 12, 2015.

On that date, the OAE again attempted to complete the audit, but respondent was unable to identify all of the funds held in his trust accounts. The OAE, thus, informed respondent that the audit would be continued on January 27, 2016, and directed him to produce three-way reconciliations, with supporting documentation, for ATA1 and ATA2, for the years 2014 and 2015.

On January 27, 2016, the OAE again attempted to complete the audit, but respondent failed to produce the required reconciliations, and was still

unable to identify all of the funds held in his trust accounts. Consequently, on March 4, 2016, the OAE sent respondent a recordkeeping deficiency letter, directing him to complete an Acknowledgment Form and two Trust Account Reconciliation Certification Forms, to be returned to the OAE within forty-five days. Respondent failed to complete the forms by the deadline. Therefore, on August 18, 2016, the OAE sent respondent a letter requiring completion of the forms within ten days, and warning respondent that, if he failed to comply, the OAE would charge him with violations of RPC 1.15(d) and R. 1:21-6.

The OAE's audit revealed the following recordkeeping and ethics violations in respect of ATA1: no receipts or disbursements journals maintained; no running check balance maintained; client ledger cards were lacking adequate descriptions; client ledger cards evidenced unresolved debit balances; no ledger card identifying attorney funds maintained; no monthly three-way reconciliations performed; outstanding checks were not resolved; trust funds on deposit exceeded trust obligations; and attorney's fees were commingled with trust funds.

Specifically, as of September 30, 2015, the balance of ATA1 was \$120,185.05. The OAE discovered that, for real estate matters spanning 2009 through 2013, respondent had written eighty-seven checks for attorney's fees, totaling \$64,400.30, but had never negotiated the checks. Those attorney's

fees, thus, remained in ATA1, along with \$6,040.41 of undisbursed client funds, and almost \$50,000 in unidentified funds.

The OAE's audit revealed the following recordkeeping and ethics violations in respect of ATA2: no ledger card identifying attorney funds maintained; no monthly three-way reconciliations performed; trust funds on deposit exceeded trust obligations; and the account was not properly identified as an attorney trust account.

The OAE's audit revealed, in respect of respondent's ABA, that no receipts or disbursements journals were maintained.

On September 9, 2016, the OAE granted respondent a ten-day extension to complete the audit forms. Once again, respondent failed to comply. On October 27, 2016, the OAE again directed respondent to complete the forms, warning him that, if he failed to comply, he would be charged with a violation of RPC 8.1(b). Again, respondent failed to comply. Consequently, on December 1, 2016, the OAE sent respondent a letter requiring completion of the forms within ten days.

On December 28, 2016, the OAE docketed the ethics investigation underlying this case. On January 11, 2017, the OAE directed respondent to provide, by January 18, 2017, a complete response to the OAE's March 4, 2016 deficiency letter, including: (1) an explanation of his previous failure to

comply; (2) a detailed accounting of all legal fees held in his attorney trust accounts, as of January 27, 2016, with supporting documents; and (3) a detailed accounting of all unidentified funds in his attorney trust accounts as of September 30, 2015, with supporting documents.

On January 20, 2017, the OAE received a letter from respondent that addressed some of the issues raised in the deficiency letter, but did not provide "a detailed explanation as to how he made the corrections requested" by the OAE. Moreover, respondent failed to provide the required three-way reconciliations of his attorney trust accounts, failed to explain the legal fees held in his attorney trust accounts, and failed to identify the \$51,744.31 held in his attorney trust accounts.

In response, the OAE informed respondent that it would be conducting a demand audit, on March 1, 2017, at respondent's home office. That demand audit letter was sent, by certified and regular mail, to respondent's home address. The certified mail was returned, marked "Unclaimed, Unable to Forward, Return to Sender," and the regular mail was not returned. On March 1, 2017, the OAE appeared at respondent's home office, as scheduled, but respondent was not present. The OAE telephoned respondent, who denied having received notice of the demand audit, and stated that he was on vacation, in Florida.

By letter dated March 1, 2017, the OAE then informed respondent that it would be conducting the demand audit on March 9, 2017, at the offices of the OAE, and gave him an itemized list of documents to produce. Respondent appeared for the demand audit, but failed to produce the required trust account certifications, the written explanation for the legal fees he was holding in ATA1, or the written explanation of the unidentified funds held in his attorney trust accounts.

On March 31, 2017, the OAE received from respondent an undated reply to its March 1, 2017 letter. The reply included a certification that only \$5,167.82 in attorney trust funds remained unidentified, but failed to explain why \$51,744.31 was unidentified as of September 30, 2015. The response provided information regarding the identification and disbursement of the trust funds, but failed to supply supporting ledger cards. Moreover, despite the OAE's instruction, during the October 2015 audit, to identify and disburse legal fees from ATA1, respondent failed to provide a list of earned fees held in his attorney trust accounts as of September 30, 2015, and claimed that he was "unaware there was a time frame for removing them."

In respect of ATA2, respondent claimed that he was sending a check for \$93 "to the State," but failed to provide proof that he had sent such funds to the Superior Court Trust Fund, and failed to provide an explanation regarding

\$1,092 he had withdrawn from ATA2, when he closed that account in July 2016, and deposited the funds into a personal bank account.

On May 16, 2017, the OAE directed respondent to produce, by June 9, 2017, "ledger cards, copies of checks issued to clients, an explanation as to whether the \$5,167.82 in unidentified funds was deposited with the Superior Court Trust Fund or was identified, a written detailed explanation of all legal fees held in ATA1 on January 27, 2016, and receipts and disbursements journals for [his] ABA."

On May 26, 2017, respondent telephoned the OAE, acknowledging receipt of its May 16 letter; he was directed to respond to the letter by the June deadline, but failed to do so. On August 4, 2017, the OAE filed with the Court a petition for respondent's immediate temporary suspension. On August 14, 2017, the OAE received a hand-delivered letter from respondent, in reply to the OAE's May 16, 2017 directive. The letter stated that respondent was "continuing the accounting for the balances from the sale/purchase of my residence and those of Sharon Thompson to confirm that the remaining balance(s) are from that."

On August 24, 2017, the OAE again directed respondent to provide an explanation of the disposition of the remaining \$5,167.82 of unidentified funds in ATA1, and documentation for the disposition of \$1,092 that he had

withdrawn from ATA2 in July 2016. Respondent signed a return receipt for that letter.

By September 28, 2017, respondent failed to reply to the OAE's directive. Accordingly, on that date, the OAE sent the Court a Supplemental Affidavit in support of the petition for respondent's temporary suspension; respondent received that document, as evidenced by a return receipt from the certified mailing. On October 4, 2017, the Court denied the OAE's motion for respondent's temporary suspension, instead directing that respondent comply with the OAE's directives within sixty days.

As of the date of the formal ethics complaint, respondent had failed to (i) provide to the OAE further information regarding the \$5,167.82 in unidentified funds in ATA1, including whether they had been deposited with the Superior Court Trust Fund; or (ii) provide evidence that he was entitled to the \$1,092 withdrawn from ATA2 and deposited in his personal bank account in July 2016.

* * *

The facts recited in the formal ethics complaint support all of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint 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 OAE's extensive but unsuccessful efforts to fully audit respondent's attorney trust accounts revealed that, in connection with real estate matters spanning 2009 through 2013, respondent wrote eighty-seven checks for attorney's fees, totaling \$64,400.30, but did not negotiate those checks. Those attorney's fees, thus, remained in ATA1, along with \$6,040.41 of undisbursed client funds, and almost \$50,000 in unidentified funds. Respondent admitted that he was not aware of his obligation to promptly remove legal fees from his trust accounts. Thus, by his failure to do so, respondent commingled personal and trust funds, in violation of RPC 1.15(a).

The OAE's investigation also revealed that respondent withdrew \$1,092 from ATA2, when he closed that account in July 2016, and then deposited those funds into a personal bank account. Respondent failed to comply with the OAE's multiple requests for an explanation of his right to those trust funds, along with supporting documentation. Respondent, therefore, has established no claim of right to those funds, and, thus, violated RPC 1.15(a) by failing to safeguard client funds.

The OAE's efforts to complete an audit of respondent's attorney trust accounts and attorney business accounts revealed a multitude of recordkeeping

infractions. Despite dogged efforts on the part of the OAE, respondent failed to correct those deficiencies, and failed to provide supporting documentation in respect of the deficiencies that he claimed he had resolved. Respondent, thus, violated RPC 1.15(d) and R. 1:21-6.

Finally, respondent systematically failed to comply with the OAE's extensive and patient attempts to audit his financial records. In spite of multiple extensions of time, specific OAE directives, and the threat of suspension, respondent failed to adhere to one of the fundamental obligations of New Jersey attorneys – cooperation with disciplinary authorities. Specifically, he failed to produce basic financial records, failed to reconcile his trust accounts, despite multiple directives to do so, and failed to appear for a demand audit. Respondent, thus, violated RPC 8.1(b).

In summary, we determine that respondent violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Admonitions have been imposed on attorneys who engage in commingling and commit recordkeeping violations. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (attorneys commingled personal funds in their attorney trust accounts and failed to comply with recordkeeping rules).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, even when accompanied by other non-serious ethics infractions, if the attorney does not have an ethics history. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney lacked diligence in the representation of his client, by failing to file a complaint on the client's behalf; failed to communicate with his client; and failed to cooperate with the ethics investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); the attorney had an unblemished disciplinary record since his 1990 admission to the bar); 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 investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (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)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he

would do so, a violation of RPC 8.1(b)).

A reprimand may result if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. 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; 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); the attorney explained that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE because they were in storage at the time; although the attorney had a prior three-month suspension and was temporarily suspended at the time of the decision in this matter, we noted that the conduct underlying those matters was unrelated to the conduct at hand); 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).

Here, we consider, in aggravation, the default status of this matter. "A respondent's default or failure to cooperate with the investigative authorities acts 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).

Absent the default component, the disciplinary precedent for respondent's ethics violations would warrant a reprimand. Given the default status, however, we determined to enhance the sanction in this case to a censure. See In re Abongwa, 230 N.J. 60 (2017) (censure imposed on attorney, in a default matter, for the negligent misappropriation of trust funds accompanied by failure to cooperate with disciplinary authorities; the attorney had no prior discipline).


In addition, given the recordkeeping infractions revealed by the OAE's efforts to audit respondent, we require him to provide the OAE with monthly reconciliations of his trust account, on a quarterly basis, for a period of two years.

Member Singer voted to impose a reprimand with the same reporting requirement.

Member Boyer 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 William L. Huneke
Docket No. DRB 18-125

Decided: October 16, 2018

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer				X
Gallipoli	X			
Hoberman	X			
Joseph	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	7	1	0	1


Ellen A. Brodsky
Chief Counsel