

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons expressed below, we determine to deny respondent's motion and impose an admonition.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1995. He maintains a law office in Pitman, New Jersey. He has no history of discipline.

The complaint alleged that respondent violated RPC 5.5(a) by failing to maintain required liability insurance, when practicing as a limited liability corporation. In 2016 and 2017, two attorneys, Philip Faccenda, Esq. and Benjamin Folkman, Esq., requested from the Clerk of the Supreme Court of New Jersey copies of respondent's certificates of insurance, because the attorneys were investigating potential claims for respondent's professional negligence.

In June 2016 and May 2017, the Clerk's office requested from respondent proof of his mandatory insurance coverage within fourteen days. Both letters notified respondent that, if he failed to comply, the Clerk would notify the Office of Attorney Ethics (OAE) of his non-compliance. Because respondent failed to reply, on June 29, 2017, the Clerk referred the matter to

the OAE. Thereafter, on July 12, 2017, respondent submitted a reply to the Clerk.

On July 19, 2017, the OAE requested a written reply to the Clerk's referral. By letter dated July 24, 2017, respondent denied knowledge of the two attorneys' requests for copies of his certificates of malpractice insurance, but admitted that he failed to maintain the insurance required by R. 1:21-1. Respondent's letter added that, for the most part, he had closed his law office due to severe financial problems and that he had been working full-time as an insurance agent. He practiced law only two-to-three hours per month.

During a September 2017 OAE demand interview, respondent acknowledged receipt of the Clerk's letters and of the letters from the two attorneys seeking copies of his insurance certificates, and admitted that his earlier statements to the OAE that he had not received the letters was not accurate.

The complaint, thus, alleged that respondent violated RPC 5.5(a)(1) by failing to maintain the mandatory liability insurance; RPC 8.1(b) and RPC 8.4(d) by failing to reply to lawful demands for information from the Supreme Court, a disciplinary authority; and RPC 8.1(a) and RPC 8.4(c) by misrepresenting facts to the OAE, in a written statement, when he denied having received letters from the two attorneys.

By letter-motion dated November 2, 2018, respondent maintained that he had not filed an answer to the complaint because the main allegation (a violation of RPC 5.5(a)(1)) was true. He was prepared to accept the sanction that came with a default judgment on that issue, and had previously provided explanations for his failure to maintain the insurance in two letters and at the OAE demand interview.

Respondent asserted that he had not noticed the additional charges against him until the day before our October 18, 2018 session, when he "re-reviewed the complaint." He denied that he had failed to reply to a demand for information from the Court or that he had made misrepresentations to the OAE.

Respondent admitted that his reasons for failing to file an answer were "not great," but in the interests of justice, requested that we vacate the default; accept his answer to the complaint, which was attached to his motion; and rule on the matter considering the additional information he provided.

In respect of the substance of the charges, respondent conceded that he received a letter from the Court Clerk in May 2017, but asserted that, shortly thereafter, he underwent significant medical treatment that had him "out of work" until mid-July. He suffered from medical issues – "debilitating headaches" leading him to believe that he was having a stroke or "some type of

bleed," causing two hospital visits, visits to urgent care facilities, family doctors, and multiple specialists; various treatments; and a referral to the headache treatment center at Jefferson Hospital, which led to further testing and medications. Respondent opined that his medical problems likely were caused by stress due to his financial pressures. His medical issues prevented him from working for a significant time. When he returned to work in early July 2017, he replied to the Clerk on July 12, 2017. Seven days later, he received the OAE's request for information, to which he replied on July 24, 2017.

Respondent denied that he misrepresented material facts to the OAE. He contended that he was confused about the OAE's inquiry regarding the attorneys' letters. Initially, respondent's written reply to the OAE stated that he had no knowledge of the lawyers' letters requesting copies of his malpractice certificates. He was aware, however, that both law firms had been investigating malpractice claims against him, but he did not recall receiving letters from them. At the OAE audit, he voluntarily informed the OAE that his written reply might have been mistaken, as his file contained the attorneys' letters. Upon further reflection, respondent opined that he did not receive the letters directly from the Faccenda or Folkman law firms. He first asserted that they were attachments to the Clerk's June 29, 2017 letter. Later, he claimed

that the only copies he had of the letters were those provided as attachments to the OAE's letter requesting information. Respondent pointed out further that he was not copied on the letters to the Clerk, that the letters had not been addressed to him, and that he did not independently have copies of the letters in his office files.¹

By letter dated November 13, 2018, the OAE requested that respondent's motion be denied, or in the alternative, that we require respondent to file, within fourteen days, a verified answer that "'contains a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint' as required by In re Gavel, 22 N.J. 248, 263 (1956) and R. 1:20-4(e)." The OAE pointed out that respondent's explanation for not filing an answer, that he elected not to do so because he knew he was guilty of the primary allegation, is not a reasonable basis for not filing an answer and, nevertheless, implied his "personal lack of diligence and competence."

¹ Two letters from attorney Philip Faccenda, Esq., dated May 27, 2016 and August 31, 2016, were addressed to Mark Neary, Clerk, and requested a copy of respondent's certificate of insurance or the name and number of his malpractice carrier. Similarly, attorney Benjamin Folkman's May 2, 2017 letter to the Clerk requested copies of respondent's certificates of insurance for 2014 through 2017. As respondent noted, he was not copied on any of the three letters.

As to the inadequacy of respondent's answer, the OAE pointed to paragraph 28 of the complaint, where respondent's answer simply "denied" the allegation that he "engaged in conduct involving misrepresentation and offered false statements to the OAE in connection with the investigation." Likewise, respondent denied paragraph 14 of the complaint that accused him of failing to reply to the Clerk's May 11, 2017 letter. The OAE found respondent's answer insufficient because it did not include the details set forth in his November 2, 2018 letter, to which his answer was appended.

To succeed on a motion to vacate a default, a respondent must address two areas in detail: (1) why the respondent failed to file an answer; and (2) specific meritorious defenses to the charges. Here, the OAE properly contended that respondent failed to assert a reasonable explanation for failing to answer the complaint. The OAE's argument as to the second prong is, however, unpersuasive. Respondent's November 2, 2018 letter provided meritorious, although undocumented, defenses to the charges. However, because respondent did not provide an adequate explanation for failing to answer the complaint, we determine to deny his motion to vacate the default.

A 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). Notwithstanding that Rule,

each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred. The facts recited in the complaint, however, support only one of the charges of unethical conduct.

Respondent admitted violating RPC 5.5(a)(1) and we find him guilty of this violation. We find that the charges relating to the Clerk's request for information (RPC 8.1(b) and RPC 8.4(d)) fail, however, because the Court is not a disciplinary authority, and, in any event, the attorneys' requests for information were not made in connection with a pending disciplinary matter. We, therefore, dismiss these charges.

As to the issue of misrepresentations to the OAE, the record does not contain clear and convincing evidence that respondent knowingly provided false information. The letters in this record were addressed to the Clerk of the Court, not to respondent, and bear no indication that copies had been sent to respondent. Moreover, the meager record contains no letters addressed directly to respondent, from the attorneys, requesting copies of his malpractice insurance. In addition, the complaint did not allege that respondent failed to reply to the attorneys' requests for the malpractice insurance information.

Despite respondent's initial misstatements to the OAE, nothing in the record supports a finding that he knowingly made a misrepresentation to the OAE. Even if he had done so, he attempted to correct what he believed to be a

misstatement. We, therefore, dismiss the charged violations of RPC 8.1(a) and RPC 8.4(c).

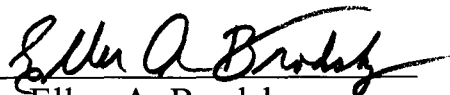
Therefore, only the RPC 5.5(a) violation is supported by the record. Practicing law without maintaining required insurance has been met with an admonition. See, In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (admonition for attorney who practiced law in a professional corporation for a six-year period, without maintaining professional liability insurance.

Based on the foregoing, for respondent's sole violation of RPC 5.5(a)(1), we determine to impose an admonition.

Member Joseph voted to grant respondent's motion and remand the matter for further proceedings.

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 Michael David Lindner, Jr.
Docket No. DRB 18-254

Decided: January 30, 2019

Disposition: Admonition

<i>Members</i>	Admonition	Grant/Remand	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli	X			
Hoberman	X			
Joseph		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0


Ellen A. Brodsky
Chief Counsel