

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-363
District Docket Nos. XIV-2017-0333E
and XIV-2017-0344E

In the Matter of

Ronald Schwartz

Attorney at Law

:
:
:
:
:
:
:
:

Decision

Argued: January 17, 2019

Decided: May 28, 2019

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation filed by the Office of Attorney Ethics (OAE), in which respondent admitted having violated RPC 1.15(a) (funds held in the trust account in excess of those reasonably sufficient to pay bank charges), RPC 1.15(d) and R. 1:21-6

(recordkeeping deficiencies), RPC 8.1(a) (false statement of material fact to disciplinary authorities), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1971. On July 15, 1985, he was suspended for three months for gross neglect of an appeal of a summary dispossess action. In re Schwartz, 99 N.J. 510 (1985). Respondent was reinstated by Court Order effective October 29, 1985. In re Schwartz, N.J. (1985).

By Court Order dated September 7, 2016, respondent was declared ineligible to practice law for failure to pay the 2016 annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). On December 11, 2017, respondent was deemed eligible to practice law and his status in the attorney registration system was changed to "Retired."

At all relevant times herein, respondent maintained a law office in Teaneck, New Jersey. At Bank of America (BOA), he maintained an attorney trust account (ATA) and an attorney business account (ABA).

On May 31, 2017, BOA informed the OAE of a May 26, 2017 overdraft of \$129.42 in respondent's ATA. On June 5, 2017, BOA reported a second,

June 1, 2017 overdraft of \$479.42. Consequently, by letters dated June 7 and June 8, 2017, the OAE asked respondent for a written explanation for the May 26 and June 1, 2017 overdrafts, and for his continued practice of law during his period of CPF ineligibility. Respondent failed to reply to those requests.

On June 30, 2017, the OAE sent respondent another letter requesting information. On that same date, the OAE received respondent's explanation of the overdrafts. In respect of the allegation that he practiced law while ineligible, he asked, "Why do you say that I have been practicing law? I retired from my practice in 2016."

On July 12, 2017, the OAE demanded copies of respondent's ATA and ABA bank statements from September 1, 2016 through the date of the letter, as well as canceled checks and deposit slips. On July 31, 2017, respondent sent to the OAE ATA bank statements for September 2016 through June 2017, and an October 2016 bank statement for the ABA, showing that it was "forced closed."

By letter dated September 26, 2017, the OAE scheduled respondent for an October 10, 2017 demand audit at which time he was required to make available the following documents: (1) ATA and ABA monthly bank statements, canceled checks, wire transfers, deposit items, debit and credit

items, and the account checkbooks; (2) monthly three-way ATA reconciliations; (3) client ledger cards for those clients whose funds were maintained in his ATA during the audit period; (4) cash receipts and disbursements journals for the ATA and ABA; (5) all client files with activity from September 1, 2015; (6) other documents that would help explain the overdrafts in the ATA; and (7) a completed Attorney Bank Account Disclosure Form.

By letter dated October 6, 2017, respondent stated that he would not cooperate with the investigation, explaining in part, "I retired from the practice of law more than a year ago. I do not believe you have any jurisdiction over me." On that basis, respondent neither produced the records or client files enumerated above, nor appeared at the October 10, 2017 demand audit.

By letter dated October 18, 2017, the OAE wrote to respondent in a final attempt to garner his cooperation, requiring both the previously requested documents and his appearance at a rescheduled, November 2, 2017 demand audit. The letter further required respondent's written explanation for his statement that he was retired from the practice of law, in light of his status as an active member of the New Jersey bar. Finally, the OAE cited case law supporting its position that it had jurisdiction over New Jersey attorneys who are on retired status.

Once again, respondent failed to submit the required documentation, failed to appear at the November 2, 2017 demand audit, and failed to provide proof that he was retired from the practice of law. Respondent stipulated, however, that he had not sought to change his status in the attorney registration system to retired status until December 11, 2017, long after the inception of the OAE investigation. Consequently, he stipulated that his statement that he was retired constituted a false statement to disciplinary authorities and a misrepresentation to the OAE, violations of RPC 8.1(a) and RPC 8.4(c), respectively. For his failure to cooperate with the investigation respondent admitted that he violated RPC 8.1(b).

Although respondent failed to produce records required for the demand audit, the OAE was able to reconstruct his ATA and ABA activity from bank statements. Respondent's ATA activity for the period from September 2016 to June 2017 revealed heavy usage of the ATA as a personal checking account. He made several deposits of personal funds, and numerous distributions from the ATA, in excess of \$14,000, which were unrelated to client matters.

Although respondent improperly used his ATA, the OAE determined that he had not misappropriated any client or escrow funds.

The OAE identified numerous recordkeeping deficiencies, as follows:
(1) ATA checks made payable to "Cash" (R. 1:21-6(c)(1)(A)); (2) funds

unrelated to the law practice were maintained in the ATA (R. 1:21-6(a)(1) and RPC 1.15(a)); (3) inactive balances were left in the attorney trust account (R. 1:21-6(d)); (4) no ledger card identifying attorney funds for bank charges (R. 1:21-6(d)); (5) no ATA receipts journal (R. 1:21-6(c)(1)(A)); (6) no ATA disbursements journal (R. 1:21-6(c)(1)(A)); (7) no monthly ATA bank reconciliations with client ledger, journals, and checkbook (R. 1:21-6(c)(1)(H)); (8) attorney funds for bank charges exceeded the allowable \$250 amount (RPC 1.15); (9) ATA records not maintained for the required seven years (R. 1:21-6(c)(1)); (10) client identification not indicated on ATA checks (R. 1:21-6(c)(G)); (11) ATA deposit slips lacked sufficient detail (R. 1:21-6(c)(1)(A)); (12) failure to maintain an ABA (R. 1:21-6(a)(2)); (13) no ABA receipts journal (R. 1:21-6(c)(1)(A)); (14) no ABA disbursements journal (R. 1:21-6(b)(1)(A)); (15) failure to deposit all earned legal fees into the ABA, rather than the ATA (R. 1:21-6(a)(2)); and (16) ABA records not maintained for the requisite seven years (R. 1:21-6(c)(1)).

Respondent stipulated that his actions amounted to a misuse of the ATA, in violation of RPC 1.15(a), and recordkeeping deficiencies, in violation of RPC 1.15(d) and R. 1:21-6.

The stipulation contains no indication that respondent engaged in the unauthorized practice of law during his year-long period of CPF ineligibility.

The parties cited a number of cases in support of their recommendation for a censure, agreeing that respondent's most serious offense was his false claim of retirement at a time when he had not yet sought retired status. The parties cited no mitigating factors, but cited respondent's 1985 three-month suspension as an aggravating factor that is too remote in time to be considered.

Respondent agreed to notify the OAE within thirty days of any decision to return to active status, to provide the OAE with monthly trust account reconciliations, on a quarterly basis for two years; and to attend the New Jersey Continuing Legal Education course in attorney trust and business accounting within six months of his return to practice.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, and RPC 8.1(b).

Respondent stipulated that, in response to an OAE investigation into overdrafts in his ATA, he failed to cooperate with investigators. He ignored their several written requests for documents and client files for the period from September 2015 to "the present," presumably December 11, 2017, the date that he officially retired from the practice of law. Respondent also failed to appear at two scheduled demand audits, and subsequently failed to produce requested documents or explain his actions. Indeed, respondent never provided the

books, records, and client files that the OAE requested of him. Respondent's actions constitute a failure to cooperate with ethics authorities, in violation of RPC 8.1(b).

During the OAE investigation, respondent provided two letters in which he claimed to be retired from the practice of law. Although respondent may have closed his office, an attorney must change his status to "retired" in the attorney registration system in order to be deemed retired from the New Jersey bar. Notwithstanding respondent's stipulated violations of RPC 8.1(a) and RPC 8.4(c), we were unconvinced that respondent lied, so much as he believed, when he shuttered his law office, that he was retired from the practice of law. Therefore, we dismiss those charges.

The OAE attempted to reconstruct respondent's ATA and ABA records, in light of the scant documentation that he provided, which revealed that he had used the ATA to deposit personal funds and that he had made at least twenty-seven disbursements to himself and others. Those disbursements, which totaled \$6,300, were unrelated to client matters.

Because the stipulation fails to attribute any of the funds in the ATA to clients or third parties, it cannot be said that respondent engaged in commingling. Nevertheless, his use of the ATA as a personal checking account was improper.

Further, RPC 1.15(a) states that a lawyer must hold funds belonging to clients and third parties "separate from the lawyer's own property.... Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein." Because respondent maintained personal funds in the ATA that were far in excess of an amount necessary to pay bank charges, and then used those funds for personal matters unrelated to clients, he violated RPC 1.15(a).

The OAE audit uncovered a profusion of recordkeeping deficiencies. Indeed, it appears that respondent maintained few, if any, attorney books and records required under the Rules. During the OAE investigation, he provided no attorney-maintained records at all, except several bank statements generated by BOA. Respondent's actions in this regard were in flagrant violation of RPC 1.15(d) and R. 1:21-6.

Finally, respondent's period of CPF ineligibility extended from September 7, 2016 to December 11, 2017, the date that he paid his delinquent 2016 and 2017 annual CPF assessments and changed his status to "retired." However, no evidence in the record suggests that he engaged in the unauthorized practice of law during his period of ineligibility.

In sum, respondent violated RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, and RPC 8.1(b).

Attorneys who keep personal funds in the trust account in violation of RPC 1.15(a), often commingled with client funds, and who are guilty of recordkeeping irregularities, have received admonitions. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (the attorney placed \$85,000 in personal loan proceeds in his trust account and commingled them with client funds; various recordkeeping violations also found) and In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of \$1,801.67; because the attorney maintained more than \$10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements).

Likewise, failure to cooperate with ethics authorities, without more, will result in an admonition. In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015).

In respect of aggravating factors, we determine that respondent's 1985 discipline is too remote in time to be considered. However, his failure to cooperate in the ethics investigation was particularly flagrant, inasmuch as he either failed to generate any of the books and records required to be maintained by New Jersey attorneys, or he simply refused to turn them over to

the OAE for its investigation. He also ignored not one, but two scheduled demand audits, thereby requiring additional OAE resources to reconstruct his attorney trust account records, which ultimately proved unsuccessful.


Based on the aggravating factors, an admonition is insufficient to address the totality of respondent's wrongdoing. We, therefore, determine to impose a reprimand.

If respondent returns to active status, he must notify the OAE within thirty days; provide the OAE with monthly trust account reconciliations, on a quarterly basis, for two years; and attend an OAE-approved course in attorney trust and business accounting within six months of his return to the practice of law.

Member Gallipoli, Member Rivera, and Member Zmirich voted for a censure, with the above conditions.

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

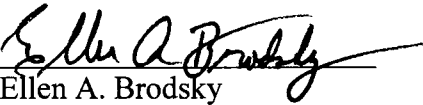
In the Matter of Ronald Schwartz
Docket No. DRB 18-363

Argued: January 17, 2019

Decided: May 28, 2019

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman	X			
Joseph	X			
Rivera		X		
Singer	X			
Zmirich		X		
Total:	6	3	0	0


Ellen A. Brodsky
Chief Counsel