

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-138
District Docket No. XIV-2018-0154E

In the Matter of :
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Audwin Frederick Levasseur :
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An Attorney at Law :
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Decision

Decided: September 13, 2019

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 5.5(a)(1) (engaging in the unauthorized practice of law); RPC 7.1(a) (making false or misleading communications about the lawyer, the lawyer's services or any matter in which the lawyer has or seeks a professional involvement), and RPC 7.5(a) (using a firm name, letterhead, or other professional designation that violates

RPC 7.1). For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2005. He maintains a law office in Newark, New Jersey.

Service of process was proper in this matter. On January 31, 2019, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's office and home addresses. The United States Postal Service (USPS) database showed that, on February 4, 2019, the USPS had attempted delivery at respondent's office, but the "location could not be accessed." An update showed that another attempt at delivery would be made the following day. As of the date of the certification of the record, neither the certified mail nor the certified mail receipt had been returned to the OAE. The regular mail sent to respondent's law office was not returned.

On February 15, 2019, the certified mail sent to respondent's home address was returned as "unclaimed." The regular mail sent to the same address was not returned.

Respondent did not file an answer within the allotted time. Therefore, on March 7, 2019, the OAE sent a letter to respondent at the same addresses, also by regular and certified mail, informing him that, if he failed to file an answer to the complaint within five days of the date of the letter, the allegations of the complaint

would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b).

The USPS database showed that, on March 14, 2019, the certified mail had been delivered to respondent's office. The certified mail receipt, however, had not been returned. The regular mail sent to respondent's office was not returned. On April 2, 2019, the certified mail sent to respondent's home address was returned to the OAE marked "unclaimed." The regular mail was not returned.

As of April 5, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

By letter dated August 1, 2017, the law firm of Maselli Warren, P.C. requested from the Supreme Court Clerk's Office a copy of the certificate of malpractice insurance filed by respondent's law firm, Harbatkin & Levasseur (H & L). On that same day, the Clerk of the Court notified H & L that it had no record of the firm's certificate of insurance; requested a copy of it within fourteen days; and warned that, if H & L failed to comply, the Clerk would notify the OAE. Because H & L did not reply within the allotted time, the Clerk referred the matter to the OAE on February 28, 2018.

On March 27, 2018, the OAE asked H & L to provide, by April 10, 2018, a copy of its certificate of insurance and an explanation for the firm's failure to reply to the Clerk. Respondent did not reply. By letter dated April 12, 2018, the OAE reiterated its prior demand and requested a reply by April 26, 2018.

Respondent did not reply by the due date; however, in a letter faxed to the OAE on April 30, 2018, but dated April 27, 2018, he stated that, "while finalizing a response to your inquiry, I have located additional information related to the matter on April 27, 2018. I will tender a comprehensive response by Wednesday, May 2, 2018." Respondent did not reply by that date, prompting the OAE to send a letter on May 17, 2018, imposing a final deadline of June 1, 2018.

Respondent's April 27, 2018 letterhead identified the firm, at both the top and bottom of the page, as Harbatkin & Levasseur, PA.

In a May 18, 2018 fax, respondent informed the OAE that his law firm's corporate status had been revoked by the New Jersey Department of the Treasury, Division of Revenue when the request for malpractice insurance was made in 2017, and, therefore, he was operating the firm as an unincorporated business for profit. He was uncertain whether a revoked corporation was required to provide a certificate of insurance, but confirmed

that none was provided in 2017. Respondent added that he had closed H & L and has "strictly operated the firm in a general partner form until wind up [sic] its last few remaining open matters."¹

Even though the top of the letterhead identified the firm as "The Law Offices of Harbatkin & Levasseur, Attorneys at Law," the bottom of the letterhead kept the "PA" designation, identifying the firm as "The Law Offices of Harbatkin & Levasseur PA."

The Division of Revenue records showed that, on January 23, 2012, respondent incorporated the law firm Levasseur & Associates Professional Association. On April 18, 2012, respondent filed a Certificate of Amendment adding David M. Harbatkin, Esq. as a director, and changing the law firm's name to The Law Offices of Harbatkin & Levasseur PA.

On August 16, 2014, the Division of Revenue revoked the firm's corporate status because the firm had failed to file any annual reports.

From January 23, 2012 until August 16, 2014, respondent failed to obtain malpractice insurance, as required for professional corporations, for

¹ Respondent's letter added that the firm was primarily owned and operated by him, except for a few New York matters, presumably handled by Harbatkin, who was admitted to practice in New York; the firm's operations were "most analogous to that of a solo practice;" and, although the attorneys had envisioned "a burgeoning professional corporation" in 2012, "the plans did not develop as originally intended."

both Levasseur & Associates and H & L. Respondent, therefore, did not file the required certificates of insurance with the Supreme Court Clerk's Office.

According to the complaint, from August 17, 2014 to the date of the complaint, respondent's letterhead was misleading because the firm's corporate status had been revoked.

The complaint, thus, charged respondent with violating RPC 5.5(a)(1) (unauthorized practice of law – failure to maintain professional liability insurance (R.1:21-1A(a)(3)) and failure to file a certificate of insurance with the Clerk of the Court when practicing as a professional corporation (R. 1:21-1A(b)); RPC 7.1(a) (making false or misleading communications about the lawyer, lawyer's services, or any matter in which the lawyer has or seeks a professional involvement), and RPC 7.5(a) (use of a firm name, letterhead, or other professional designation that violates RPC 7.1).

We find that the facts recited in the complaint support some of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding this Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

R. 1:21-1A(a)(3) requires a professional corporation to obtain and maintain in good standing one or more policies of lawyers' professional liability insurance. R. 1:21-1A(b) requires a professional corporation formed to engage in the practice of law to file with the Clerk a certificate of insurance, within thirty days after filing its certificate of incorporation.

Respondent was incorporated as a professional association, as Levasseur & Associates, as of January 23, 2012, and then as The Law Offices of Harbatkin & Levasseur PA, as of April 18, 2012. The Division of Revenue revoked the firm's corporate status on August 16, 2014. In the interim, respondent was required to maintain professional liability insurance and to file certificates of insurance with the Clerk. Respondent did neither. Therefore, he was guilty of violating RPC 5.5(a) by engaging in the unauthorized practice of law.

Typically, violations of RPC 7.1(a) are found in circumstances where the attorneys make false or misleading communications to members of the public, not to disciplinary or judiciary officials. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (admonition where attorney used letterhead that identified three attorneys as "of counsel," despite his having no professional relationship with them; he was also guilty of violating RPC 8.4(d) because two of the attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary); In the Matter of Paul L.

Abramo, DRB 08-209 (October 20, 2008) (admonition for attorney who continued to use letterhead that contained the name of an attorney no longer associated with the firm); and In re DiCiurcio, 212 N.J. 109 (2012) and In re DiCiurcio, II, 212 N.J. 110 (2012) (companion cases; reprimands for attorneys who sent direct mail solicitation letters that violated RPC 7.1(a)(1); one misled a recipient that she could lose her driver's license for a traffic violation, three other letters failed to include required language that violated Attorney Advertising Guidelines and an opinion from the Committee on Attorney Advertising).

Here, the record does not establish that respondent used the letterhead with the improper "PA" designation to solicit clients or to seek a professional involvement. Rather, the complaint established only that respondent used improper letterhead twice (April 27 and May 18, 2018) when he replied to the OAE. Therefore, because we find no clear and convincing evidence that respondent used the letterhead seeking a professional involvement, we do not find that he violated RPC 7.1(a) or RPC 7.5(a), and dismiss these charges.

Further, although the original complaint did not charge respondent with violating RPC 8.1(b), the OAE's March 7, 2019 letter to respondent served as an amendment to the complaint, charging him with failure to cooperate with an ethics investigation. The failure to file an answer to an ethics complaint constitutes a violation of RPC 8.1(b). See In re Gonzalez, 230 N.J. 55 (2017).

Thus, the violations for which we impose discipline are RPC 5.5(a) and RPC 8.1(b). The baseline discipline for practicing law without maintaining required insurance is an admonition. See, e.g., In the Matter of Gerald F. Fitzpatrick, DRB 99-046 (April 21, 1999) (attorney practiced law in a professional corporation for a six-year period, without maintaining professional liability insurance). If the misconduct is accompanied by other violations or aggravating factors, greater discipline may be warranted. See, e.g., In re Velahos, 220 N.J. 108 (2014) (censure for attorney who failed to maintain liability insurance while practicing as a limited liability corporation; engaged in a partnership with a non-lawyer in the practice of law; committed a criminal act; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in connection with loan modification services he provided with his wife, a non-lawyer); In re Cavaliere, 216 N.J. 90 (2013) (censure for attorney who failed to maintain liability insurance; misrepresented to a random auditor that his professional liability insurance had expired, knowing that he had not obtained insurance as directed following a previous random audit; and failed to comply with recordkeeping rules); and In re Aponte, 215 N.J. 298 (2013) (censure for attorney who failed to maintain professional liability insurance while operating as a professional corporation; engaged in improper fee sharing and formed an impermissible partnership with non-lawyers in connection with mortgage modifications and bankruptcy filings;

engaged in lack of diligence, gross neglect, and pattern of neglect in handling bankruptcy files; and was guilty of recordkeeping violations).


Failure to cooperate with an ethics investigation, without more, usually results in an admonition. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to the district ethics committee investigator's repeated requests for information regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)), and In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)).

While ordinarily, violations of RPC 5.5(a) and RPC 8.1(b) would warrant the imposition of an admonition, because respondent permitted this matter to proceed as a default, the discipline is enhanced. "[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). We, therefore, determine to impose a reprimand.

Member Joseph 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Audwin Frederick Levasseur
Docket No. DRB 19-138

Decided: September 13, 2019

Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph			X
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1


Ellen A. Brodsky
Chief Counsel