Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-161
District Docket No. XIV-2018-0268E

In the Matter of

Loretta D. Abramson

An Attorney at Law

Decision

Decided: December 6, 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 having violated RPC 1.15(a) (commingling); RPC 1.15(b) (failing to promptly deliver client funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping); RPC 5.5(a)(1) (practicing law while ineligible); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Respondent was admitted to the New Jersey bar in 2007. She has no prior discipline.

Service of process was proper. On February 27, 2019, the OAE sent a copy of the formal ethics complaint, by regular mail and certified mail, to respondent's office address of record. On April 8, 2019, the United States Postal Service returned the certified mail to the OAE, unclaimed, after attempting delivery on three occasions. The regular mail was not returned.

On April 4, 2019, the OAE sent a letter to respondent, by certified and regular mail, at the office address, informing her that, unless she 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). The same letter was sent to respondent's home address, via United Parcel Service (UPS). The UPS mailing was delivered on April 5, 2019. The OAE received a certified mail receipt bearing a delivery date of April 9, 2019, signed by respondent. The regular mail was not returned.

As of April 24, 2019, respondent had not filed an answer to the complaint, and the time within which she 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.

During the relevant time frame, respondent maintained a law practice at her residence in Lebanon, New Jersey. She also used an Oldwick, New Jersey post office box for her practice. In respect of banking, respondent maintained, at Provident Bank, an attorney trust account (Provident ATA) and an attorney business account (Provident ABA). She maintained a second attorney trust account at PNC Bank (PNC ATA).

By letter dated October 24, 2014, the OAE notified respondent that she had been selected for a random audit, and requested that she provide certain records within thirty days. Respondent failed to reply. Accordingly, on August 6, 2015, the OAE sent a follow-up letter stating that, if the previously requested documents were not forthcoming within ten days of respondent's receipt of the letter, a field visit would be scheduled.

Having received no reply over the next fourteen months, by letter dated October 30, 2017, the OAE demanded respondent's attorney records from October 2016 through October 2017, to be provided within ten days. Respondent failed to reply.

By letter dated January 18, 2018, the OAE informed respondent that, unless she produced the previously requested documents within ten days, she would be scheduled to appear at the OAE offices for a full compliance audit.

On January 25, 2018, OAE staff sent respondent an e-mail requesting her current address. The next day, respondent confirmed that the post office box address was "sufficient," without need to use her physical address. Despite that contact, the OAE received no reply to its January 18, 2018 correspondence.

By e-mail of February 12, 2018, OAE staff again contacted respondent about her receipt of the OAE's letters sent to her post office box. Respondent replied that she had not received them and asked whether the letters had been sent via United States Postal Service or Federal Express. On February 23, 2018, OAE staff sent respondent another e-mail attaching the OAE's four previous letters and again requiring the requested records within ten days. The OAE warned respondent that, if she failed to provide those documents, a demand audit would be scheduled at its offices. Once again, respondent failed to reply.

By letter dated March 14, 2018, the OAE scheduled an April 6, 2018 demand audit. On April 3, 2018, OAE staff sent an e-mail to respondent, seeking to confirm that she had received the letter scheduling the demand audit for April 6, 2018. Respondent failed to reply to that e-mail.

On April 4, 2018, OAE staff cautioned respondent, via e-mail, that if she failed to appear on April 6, 2018, the OAE might file a motion for her temporary suspension from the practice of law. Respondent failed to appear for the April 6, 2018 demand audit.

By letter dated May 21, 2018, the OAE furnished respondent with its prior letters and communications to her, and demanded that she submit the previously requested records. The OAE also informed respondent of her alleged practice of law while ineligible, noting attorney trust account activity while she was on the Interest on Lawyers Trust Accounts (IOLTA) list of ineligible attorneys for 2016 and 2017. Respondent's explanation and records were due by June 8, 2018.

In a June 13, 2018 letter to the OAE, respondent claimed to have replied to the audit request, in 2014, by correspondence that she sent by regular mail. She characterized, as an error on her part, her failure to send the letter by certified mail. Respondent offered to provide the writing to the OAE, but did not include it with her June 13, 2018 materials. Rather, she provided copies of her bank account statements, ledgers, journals, and an IOLTA form. In respect of the April 6, 2018 audit date, she claimed to have been living in Florida almost full time, handling her father's estate and assisting her ailing mother, and denied having received the OAE's notice until after the audit date had passed.

In October and November 2018, the OAE subpoenaed respondent's PNC Bank and Provident Bank financial records, and reviewed them against the information provided in respondent's reply. The OAE discovered that, although "respondent did not have much trust account activity during the audit period,"

she had an inactive balance that remained in the PNC ATA until June 2018. She appeared to have commingled personal funds in the PNC ATA. Respondent also was alleged to have used the Provident ATA during her period of ineligibility, all of which is discussed below.

By letter dated December 3, 2018, delivered via UPS on December 4, 2018, the OAE notified respondent of a demand audit scheduled at the OAE offices for December 14, 2018. Respondent attended the audit.

Prior to the audit, respondent had been required to produce monthly three-way reconciliation reports for the PNC ATA, from November 2016 to November 2018, as well as a yearly journal of deposits and disbursements. At the audit, she admitted never having prepared three-way reconciliations. Therefore, in aid of that task, the OAE furnished respondent with a copy of its Random Audit Unit outline containing a sample three-way reconciliation report and a yearly journal of deposits/disbursements tracked by month.

The OAE sent respondent a December 14, 2018 follow-up letter, requesting that she re-create the reconciliations and provide them by January 4, 2019. Respondent failed to reply.

On January 16, 2019, the OAE sent a letter to respondent, delivered by UPS, with a final deadline of January 25, 2019 to submit the previously requested records. The letter warned respondent that, if she failed to comply,

the OAE would complete its investigation without any further input from her, and would treat her noncompliance as a failure to cooperate with disciplinary authorities. Respondent failed to reply, establishing her attendance at the December 14, 2018 audit as her final contact with the OAE.

According to count one of the formal ethics complaint, respondent failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

By Supreme Court Orders effective October 21, 2016 and October 20, 2017, respondent was declared ineligible to practice law for failure to register with IOLTA.

Respondent told the OAE that she had been unaware of her ineligibility. Once the OAE alerted her to the ineligibility, respondent took corrective measures, faxing her 2018 registration form to IOLTA on June 4, 2018. By Notice to the Bar, dated July 9, 2018, respondent's name was removed from the 2017 list of ineligible attorneys.

In September 2017, however, during her period of ineligibility, respondent had used the Provident ATA to deposit and disburse funds on behalf of a real estate matter for clients Pablo and Zoraida Velez.

According to count two of the complaint, respondent's use of the Provident ATA during her period of IOLTA ineligibility constituted practicing law while ineligible, a violation of RPC 5.5(a)(1).

As previously stated, during the December 14, 2018 audit, respondent admitted having failed to conduct three-way reconciliations of her attorney trust accounts. As a result, she was unaware, until June 2018, that, after an August 2015 real estate closing, a $19,000 balance for the sale of property by client Nicole Zuccheri remained in the PNC ATA.

According to respondent's ledger card for the transaction, prior to August 2015, the PNC ATA balance was $1,788.95, representing respondent's own funds deposited in the account to keep it open. On August 6, 2015, respondent deposited a $19,000 check related to the transaction into the PNC ATA. On August 28, 2015, respondent received a wire transfer of $181,113.53, increasing the amount in her trust account to $200,113.53 for the Zuccheri matter.

The $200,113.53 sum failed to reflect an additional $10,000 held in the PNC ATA on account of another unspecified client matter, such that the actual balance was $211,902.48: $210,113.53 for the Zuccheri matter and $1,788.95 of respondent's own funds.

On September 1, 2015, respondent made the following disbursements on account of the Zuccheri matter:

Wire out	$35,915.76	
Wire fee	$75.00	
Check 1090[1]	$144,897.77	Proceeds to Nicole Zuccheri
Check 1091	$225.00	Use/Occupancy to Charles & Rona Kole
Check 1093	$19,000.00	Excess Deposit to Nichole [sic] Zuccheri

[C¶59.][2]

Respondent's ledger noted a balance of $1,788.95 after disbursements. However, the OAE review of respondent's subpoenaed bank statements revealed an October 2015 balance that was $5 greater than the amount shown on respondent's ledger.

The $20,793.95 balance ($19,000 + $1,788.95 + $5) in the PNC ATA remained intact until May 2016, when activity in the trust account occurred in an unspecified matter that was beyond the scope of the audit period. In June 2016, after the disbursements in that matter cleared the trust account, the actual balance in the PNC ATA was $22,041.95. Zuccheri's $19,000 remained intact

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[1] Although respondent assigned numbers 1090, 1091 and 1093 to these checks for her ledger, the actual drafts were not prenumbered.

[2] "C" refers to the February 26, 2019 formal ethics complaint.

until June 2018, when respondent realized that her client had never negotiated the September 1, 2015 excess deposit check for $19,000. Respondent issued a replacement check, which Zuccheri negotiated on June 12, 2018, leaving a balance thereafter of $3,041.95. After respondent made a $3,000 cash withdrawal to herself on July 5, 2018, the balance fell to $41.95.

When the OAE questioned respondent about the $3,041.95 remaining in the PNC ATA beyond the $19,000 required for the Zuccheri deposit, respondent replied that the excess funds were her own, which she maintained to prevent the bank from closing the account. Respondent was unable to tell the OAE the amount of the bank's minimum balance required to maintain a trust account. The OAE informed respondent that it recommended that attorneys leave no more than $250 of personal funds in an attorney trust account in payment of unforeseen bank charges.

Count two of the complaint charged respondent with commingling (RPC 1.15(a)), failing to promptly deliver client funds (RPC 1.15(b)), and recordkeeping violations (RPC 1.15(d) and R. 1:21-6(c)(1)(A) (disbursements from a trust account shall be made only by financial institution transfers or by check, not by cash), R. 1:21-6(c)(1)(G) (failure to maintain canceled prenumbered checks for the trust account), and R. 1:21-6(c)(1)(H) (failure to prepare three-way, monthly reconciliations of the trust account)).

We find that the facts recited in the complaint support most 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 that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

Effective October 21, 2016 and October 20, 2017, respondent was declared ineligible to practice law for failure to register with IOLTA. Her name was not removed from the IOLTA list of ineligible attorneys until July 9, 2018.

On September 5 and 12, 2017, while ineligible to practice law, respondent deposited funds in her Provident ATA in respect of a real estate transaction for her clients, Pablo and Zoraida Velez. In connection with the settlement of that matter, respondent disbursed funds from her trust account.

Respondent claimed to the OAE that she had been unaware of her ineligibility at the time. To her credit, once informed of her ineligibility, respondent took immediate action, after which her name was removed from the IOLTA list of ineligible attorneys. Nevertheless, respondent's use of the Provident ATA during her period of IOLTA ineligibility constituted practicing law while ineligible, in violation of RPC 5.5(a).

Moreover, several recordkeeping deficiencies came to light during the OAE's December 2018 demand audit of respondent's financial records. In the Zuccheri matter, after respondent made September 2015 disbursements totaling $200,113.53, her PNC ATA ledger balance failed to reflect an additional $10,000 held in the PNC ATA related to an unspecified client matter, and showed another $5 less than the actual balance held in the account. Had respondent reviewed her bank statements and reconciled her attorney accounts, such discrepancies would have become immediately apparent.

Further, three of respondent's disbursements in the Zuccheri matter were made with checks bearing no check number, as evidenced by copies that the OAE obtained from the bank. Rather, respondent had assigned check numbers to them for her client ledger. R. 1:21-6(c)(1)(G) requires that attorneys use prenumbered trust account checks.

On July 5, 2018, respondent made a $3,000 cash withdrawal from the PNC ATA, leaving a $41.95 balance. Although the complaint did not allege that those funds did not belong to respondent, R. 1:21-6(c)(1)(A) prohibits cash withdrawals from an attorney trust account.

According to the complaint, respondent's recordkeeping deficiencies resulted from her failure to review her trust account bank statements and to

prepare monthly three-way reconciliations of her trust accounts, the latter required by R. 1:21-6(c)(1)(H).

For respondent's use of trust account checks bearing no pre-printed check number, the $3,000 cash transaction, and failure to perform three-way reconciliations of her trust accounts, she is guilty of having violated RPC 1.15(d) and R. 1:21-6 in numerous respects.

In respect of commingling, for almost three years (August 6, 2015 to July 5, 2018), respondent left between $1,788.95 and $3,041.95 of her own funds in the PNC ATA, purportedly to avoid an account closure by the bank. Those amounts, however, were far in excess of the funds reasonably necessary for the payment of unforeseen bank charges. The OAE recommends that attorneys leave no more than $250 of personal funds in the trust account for that purpose.

By leaving excessive personal funds in the trust account for extensive periods of time, respondent is guilty of commingling, in violation of RPC 1.15(a).

Among respondent's September 1, 2015 disbursements for the Zuccheri matter was a $19,000 trust account check to Zuccheri for an excess deposit. However, Zuccheri never negotiated that check. Three years later, during the OAE investigation, respondent realized her error and, in June 2018, issued a replacement check, which Zuccheri negotiated on June 12, 2018.

As a result of respondent's failure to review her trust account bank statements and to reconcile the PNC ATA, she failed to notice that Zuccheri's funds had remained in trust for almost three years. However, we do not find that she failed to disburse those funds promptly, given her September 1, 2015 trust account check to Zuccheri for the excess deposit, which she failed to negotiate. Therefore, we dismiss the RPC 1.15(b) charge.

Finally, in respect of the failure to cooperate charge, from October 2014 to May 2018, respondent ignored the OAE's numerous written requests for information about her attorney books and records. Although respondent contacted the OAE once, in February 2018, in reply to an e-mail from OAE staff, it was not until May 21, 2018 that she provided an initial explanation for her actions and some documentation.

Thereafter, respondent appeared at a December 14, 2018 demand audit, and provided the OAE with additional explanations and records. Importantly, she did not provide three-way reconciliations of her trust accounts. Upon the conclusion of that day's audit, the OAE sent respondent a December 14, 2018 letter requiring additional information, including the preparation of three-way reconciliations. Respondent never replied to the OAE. For her failure to provide required information to disciplinary authorities, on numerous occasions, respondent is guilty of having violated RPC 8.1(b).

In sum, respondent violated RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, RPC 5.5(a), and RPC 8.1(b). We determine to dismiss the charge that respondent violated RPC 1.15(b). The sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Admonitions have been imposed on attorneys who engage in commingling and recordkeeping violations, in the absence of negligent misappropriation. 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).

Practicing law while ineligible is generally met with an admonition if, as here, the attorney is unaware of the ineligibility. An admonition may be sufficient even if the attorney displays other, non-serious conduct. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, a violation of RPC 5.5(a); the attorney also violated RPC 1.5(b) when he agreed to draft a will, living will and power of attorney, and to process a disability claim, for a new client but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which resulted in the client's filing the claim, a violation of RPC 1.3 and RPC

1.4(b); finally, the attorney failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation; that he agreed to return the entire $2,500 fee to help compensate the client for lost retroactive benefits; and that he had an otherwise unblemished record in his forty years at the bar) and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; the record contained no indication that the attorney was aware of his ineligibility and he had no history of discipline since his 2000 admission to the New Jersey bar).

Finally, admonitions also are imposed for failure to cooperate with disciplinary authorities, even when accompanied by other non-serious ethics infractions where, as in the present case, the attorney has no prior discipline. 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) and 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)).

None of respondent's violations, viewed alone, were of a serious nature. Without more, they might warrant only an admonition, particularly in light of her unblemished ethics history since her 2007 admission to the bar.

Yet, two aggravating factors must be considered in order for us to craft the appropriate quantum of discipline. First, as a result of respondent's poor recordkeeping, Zuccheri was deprived of $19,000 for almost three years. Second, we note the default nature of these proceedings. "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) (citations omitted).

For the totality of respondent's misconduct in this, her first brush with disciplinary authorities, we determine that a reprimand is warranted. Vice-Chair Gallipoli, and Members Singer and Zmirich voted for a censure.

Member Petrou 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 Loretta D. Abramson
Docket No. DRB 19-161

Decided: December 6, 2019

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou				X
Rivera	X			
Singer		X		
Zmirich		X		
Total:	5	3	0	1

Ellen A. Brodsky
Chief Counsel