

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-405
District Docket No. XIV-2018-0598E

In the Matter of
Donald Roscoe Brown
An Attorney at Law

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Decision

Decided: August 6, 2020

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(d) (recordkeeping) and RPC 8.1(b) (failure 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 1984 and has no prior discipline. During the relevant time frame, he maintained a law practice in

Trenton, New Jersey. On November 5, 2018 and July 22, 2019, the Court entered Orders declaring respondent ineligible to practice, based on his failure to comply with New Jersey continuing legal education requirements and his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, respectively.

Service of process was proper. On July 10, 2019, the OAE sent copies of the formal ethics complaint, by certified and regular mail, to respondent's home and billing addresses of record. The regular mail sent to respondent's home address was returned marked "return to sender, unclaimed, unable to forward;" the regular mail sent to respondent's billing address was not returned; and the certified mail sent to respondent's home and billing addresses was returned marked "return to sender, unable to forward."

On July 12, 2019, a member of the OAE's staff called respondent. Although he answered the telephone, after the OAE staff member told him that a disciplinary complaint had been filed against him, respondent refused to speak any further, and the OAE staff member eventually terminated the call.

On July 17 and August 12, 2019, disciplinary notices were published in the Times of Trenton and the New Jersey Law Journal, respectively, stating that a formal ethics complaint had been filed against respondent. Those notices informed respondent that, unless he filed an answer to the complaint within

twenty-one days of the date of publication of the notices, his failure to answer would be deemed an admission of the allegations of the complaint.

On August 9, 2019, the OAE sent letters to respondent, by regular mail, to his office and home addresses, 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). The regular mail sent to respondent's home address was returned marked "return to sender, unable to forward," but the regular mail sent to respondent's billing address was not returned.

As of October 25, 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.

During the relevant time frame, respondent claimed to maintain his attorney trust account (ATA) and attorney business account (ABA) at Hopewell Valley Community Bank. In March 2018, respondent was selected for a random audit of his ATA and ABA. Accordingly, on March 15 and 18, 2018, the OAE wrote to respondent at his home address of record, notifying him that the random audit would be conducted; both letters were returned to the OAE. The OAE then

left two voicemail messages regarding the audit at respondent's telephone number of record; respondent failed to return the OAE's calls. On July 19, 2018, the OAE hand-delivered to respondent's home address a letter regarding the audit. Four days later, during a July 23, 2018 telephone conversation with the OAE, respondent admitted that he had received the OAE's hand-delivered letter, and further admitted that he had not been maintaining an ATA or ABA at Hopewell Valley Community Bank or any other banking institution.

During a subsequent, October 30, 2018 telephone conversation with the OAE, respondent represented that he had suffered a stroke, and claimed that he was not capable of participating in the audit. On December 4, 2018 and January 4, 2019, the OAE sent letters to respondent, requesting medical documentation regarding his alleged disability, but respondent failed to reply. During a February 1, 2019 telephone conversation with the OAE, respondent represented that, due to his stroke, he was no longer working for the City of Trenton or in any capacity, and agreed that he should be transferred to disability-inactive status.

From February 2019 through April 2019, the OAE made numerous efforts to conduct an audit and to assist respondent in being transferred to disability-inactive status, including multiple visits to suspected places of residence for respondent. Despite the OAE's efforts and additional conversations between the

parties, respondent failed to produce financial records, failed to appear for multiple scheduled audits, and refused to provide medical records or to sign a HIPAA release. Moreover, he refused to provide the OAE with his current home address.

Based on the above facts, the formal ethics complaint charged respondent with having violated RPC 1.15(d) and RPC 8.1(b).

We find that the facts recited in the complaint clearly and convincingly support 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).

In March 2018, respondent was selected for a random audit of his ATA and ABA. Despite numerous OAE directives that respondent produce financial records and appear for a demand audit, efforts that spanned from March 2018 through April 2019, respondent failed to cooperate. Because he engaged in direct communications with the OAE, there is no doubt that he was aware of the OAE's investigation and requests for financial records. Alarming, respondent admitted to the OAE that he had not maintained an ATA or ABA, as R. 1:21-6(a)(1) and (2) require.

Moreover, following respondent's representations that he had suffered a stroke, could not participate in the audit, had ceased practicing law, and agreed

that a transfer to disability-inactive status was appropriate, he refused to cooperate with the OAE in respect of providing medical records, a HIPAA release, or a current address.

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Typically, recordkeeping violations that do not cause the misappropriation of trust account funds result in the imposition of an admonition. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following a trust account overdraft, a demand audit uncovered several violations of R. 1:21-6 and RPC 1.15(d); we considered, in mitigation, the attorney's unblemished disciplinary history and his cooperation with ethics authorities); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney was guilty of violations of R. 1:21-6 and RPC 1.15(d); we considered, in mitigation, the attorney's forty-nine year unblemished ethics history and his ready admission of misconduct by consenting to discipline); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified; no prior discipline).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g.,

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)).

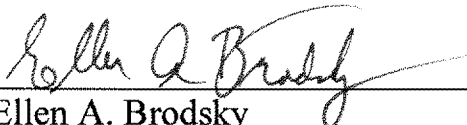
To craft the appropriate discipline, however, we must also consider aggravating and mitigating factors. In aggravation, respondent defaulted in this matter, despite the OAE's prolonged efforts to garner his cooperation. "A respondent's default or failure to cooperate with the investigative authorities 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) (citations omitted).

The only mitigation for us to consider is respondent's unblemished disciplinary record since his 1984 admission to the bar. Although his thirty-plus years of reputable practice deserve due consideration, we determine that the default status of this matter, and the serious nature of respondent's recordkeeping deficiencies, warrant the enhancement of the sanction in this case to a reprimand.

Vice-Chair Gallipoli and Members Joseph and 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

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Docket No. DRB 19-405

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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:	6	0	3


Ellen A. Brodsky
Chief Counsel