Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-248
District Docket No. XIV-2019-0355E

In the Matter of	:
Albert L. Lancellotti	:
An Attorney at Law	:

Decision

Decided: June 10, 2021

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 (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.15(d) (failing to comply with recordkeeping requirements), RPC 5.5(a)(1) (practicing law while

ineligible), and RPC 8.1(b) (two instances) (failing to cooperate with disciplinary authorities).[1]

On January 21, 2021, respondent submitted a motion to vacate the default (MVD), which we denied on February 18, 2021. For the reasons set forth below, we now determine to impose a censure, with conditions.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1994. At the relevant times, he maintained an office for the practice of law in Newark, New Jersey.

Since November 17, 2014, respondent has been ineligible to practice law for failing to comply with mandatory continuing legal education requirements. Moreover, since July 22, 2019, respondent has been administratively ineligible to practice law in New Jersey for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund).

Effective January 15, 2020, respondent was temporarily suspended from the practice of law in connection with his misconduct in the instant matter. In re Lancellotti, 240 N.J. 260 (2020). He remains suspended on that basis.

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include a second RPC 8.1(b) charge.

Service of process was proper. On June 9, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address. The certified mail receipt was returned, reflecting a delivery date of June 26, 2020, with a slash in the signature line. The regular mail was not returned.

On July 10, 2020, the OAE sent a letter, by certified and regular mail, to respondent's home address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, 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 certified mail receipt was returned marked delivered, with an illegible signature. The regular mail was not returned.

In a July 20, 2020 letter to the OAE, respondent represented that he would submit an answer to the complaint "within the week."

As of September 11, 2020, 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.

As stated above, on January 21, 2021, respondent filed an MVD, with an accompanying certification. In order to successfully vacate a default, a respondent must meet a two-pronged test by offering both a reasonable explanation for the failure to answer the ethics complaint and asserting meritorious defenses to the underlying charges. Generally, if only one of the prongs is satisfied, the motion is denied.

As to the first prong, respondent admitted in his MVD that, "[v]iewed objectively, there is no reasonable explanation" for his failure to answer the complaint. Nonetheless, he explained that he moved from Wyckoff, New Jersey to Midland Park, New Jersey, and, at the time the ethics complaint was served, had been staying in New York City. In his July 20, 2020 letter to the OAE, respondent admitted that he received both the disciplinary complaint, on June 26, 2020, and the OAE's follow-up, "five day" letter, on July 17, 2020, and requested from the OAE a five-day extension to file an answer, or until July 25, 2020. Respondent contended that, because he was "effectively living in New York" while maintaining a New Jersey address, he relied on family members to accept and deliver mail for him. Although he did not recall the details surrounding the mailing of his answer to the ethics complaint in this

matter, respondent "presumed" that he had asked a family member to mail the answer, and that they did not do so.

Respondent requested that we, prior to "disregarding" his answer, consider that, at the time of the proceedings, he did not have a "steady" address, had no staff to assist him, and had prepared the answer and assumed it was mailed. Respondent requested that, if we did not accept the answer, we at least consider his proffered mitigation. Respondent further stated that, in an effort to address this matter "amicably," and to demonstrate his "ongoing cooperation," he "voluntarily chooses" to place himself on inactive status until his ethics matters are resolved to the satisfaction of the OAE.

Regarding the first prong of the test, respondent has concededly not offered a reasonable explanation for his failure to answer the ethics complaint. Respondent's move does not provide a sufficient reason for failing to file an answer to the ethics complaint. Our Court Rules require all attorneys to update their contact information on the Attorney Registration website within thirty days of a change. R. 1:20-1 (c); Notice to the Bar, "Mandatory Online Attorney Annual Registration Beginning in 2016" (May 1, 2015).

Respondent provided a United States Postal Service change of address form, signed January 19, 2021, as well as a January 18, 2021 e-mail confirming

that unidentified "[c]hanges" had been made to his registration information. We note that the form and e-mail are dated more than five months after the service of the ethics complaint, and only a few days prior to the filing of his MVD. Further, respondent failed to explain why he was unable to personally mail the answer, instead of relying on a family member to do so. Moreover, respondent admitted receipt of both the complaint and the OAE's "five-day" letter, requested an extension, and still failed to submit his answer.

Accordingly, we concluded that respondent's explanation for his failure to file an answer is not reasonable, and that he has not satisfied the first prong of the test.

Assuming, arguendo, that we had determined that respondent satisfied the first prong of the test, we would still have denied his MVD because he failed to offer meritorious defenses to all the charges in the complaint. In his proposed answer, respondent admitted that he failed to provide documents or to appear for the January 7, 2019 OAE audit; failed to provide documents or to appear for the October 8, 2019 re-scheduled audit; failed to provide the OAE with new attorney trust and business account information; and failed to respond to the OAE's petition for temporary suspension. As to the remaining

pertinent allegations of the complaint, respondent, without explanation, "neither admits nor denies" the allegations.

Respondent set forth mitigating factors in his proposed answer, and stated that he had been living with his sister and helping her care for their elderly mother and his disabled niece. Ultimately, in 2019, his mother died. Also, from 2013 through 2019, respondent had "barely" practiced law. His practice was dedicated solely to debtor representation in consumer bankruptcy cases and, in that time period, respondent had filed only six to seventeen bankruptcy petitions per year. Respondent acknowledged that, despite his small practice, he was not absolved of professional obligations, but asked that his case be viewed within the context of a solo practitioner balancing his practice and his family obligations. Respondent further noted that he completed a random audit in 2009 or 2010, and asked for dismissal of the complaint, or for a hearing on the charges and on mitigation. Respondent's presentation fell short of a meritorious defense that might have satisfied the second prong of the test for an MVD. Instead, respondent admitted the crux of the allegations – that he failed to appear for the OAE's audit and failed to provide documents to the OAE as required.

Accordingly, we determined to deny respondent's MVD and entered a letter decision to that effect on February 18, 2021.

Moving to our review of the underlying record, during the relevant timeframe, respondent maintained an attorney trust account (ATA) at Santander Bank, and two attorney business accounts (ABA1 and ABA2) at J.P. Morgan Chase Bank (Chase Bank). By the time the OAE filed the complaint, however, respondent had closed all those accounts and had failed to provide the OAE with his new ATA and ABA account information.

On October 17, 2018, the OAE notified respondent that his firm had been selected for a random audit, to take place at his office on November 7, 2018. Respondent failed to appear for the audit and failed to return the OAE's telephone calls. By letter dated December 17, 2018, the OAE rescheduled the audit for January 7, 2019, but respondent again failed to appear.

As a result of respondent's noncompliance, the OAE assigned the matter to a disciplinary auditor and issued subpoenas for respondent's ATA and ABA records. The records revealed that respondent had opened an ATA at Santander Bank on June 1, 2013 and had closed it on November 26, 2013; that respondent had opened an ATA at Chase Bank on June 1, 2013 and had closed it on

September 30, 2013; and that respondent had opened an ABA at Chase Bank on June 1, 2013 and had closed it on March 18, 2015.[2]

On August 27, 2019, the OAE scheduled a demand interview for September 24, 2019 and directed respondent to produce all financial records that he was required to maintain in accordance with R. 1:21-6. On the morning of the scheduled audit, respondent left a voicemail message asking the auditor for a postponement of the interview, claiming that he was unable to appear for the audit because he had not compiled the necessary financial records. Respondent then failed to answer the OAE's return telephone calls and failed to appear for the demand interview.

The OAE rescheduled the demand interview for October 8, 2019 and directed respondent to produce the required financial documents by October 3, 2019. Although his subsequent request to adjourn was denied, respondent

[2] The complaint contains inconsistencies regarding respondent's bank accounts which do not affect our conclusions but are noted here for completeness of the record. Particularly, the complaint lists respondent's three accounts as one ATA and two ABAs; however, the complaint also asserts that the accounts consisted of two ATAs and one ABA. Further, in a March 19, 2019 memo from the random compliance auditor, submitted in support of the petition for temporary suspension, only two accounts are listed: one ATA and one ABA. The OAE's disciplinary auditor served a subpoena on Santander Bank for one ATA, and on Chase Bank for one ABA. The bank records are not included in the record.

neither appeared for the audit nor provided any required documentation. He also failed to provide the OAE with his new ATA and ABA information.

Further, on August 15, 2016 and June 28, 2019, the OAE served on respondent, at his home and office addresses, notification of his administrative ineligibility to practice law. Despite his ineligibility, on February 8, 2019, respondent commenced a Chapter 13 bankruptcy matter on behalf of a client in the United States Bankruptcy Court, District of New Jersey.

On October 21, 2019, the OAE petitioned the Court to temporarily suspend respondent from the practice of law. Respondent failed to oppose the petition and the Court suspended respondent, effective January 15, 2020.

Based on the above facts, the complaint charged respondent with having violated RPC 1.15(d) by failing to comply with recordkeeping requirements; RPC 8.1(b) by both failing to cooperate in the disciplinary investigation and failing to file an answer to the complaint; and RPC 5.5(a)(1) by knowingly practicing law while ineligible.

We find that the facts recited in the complaint 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).

Specifically, respondent violated RPC 1.15(d) by failing to maintain his attorney financial records as R. 1:21-6 requires. Next, he violated RPC 5.5(a)(1) by engaging in the unauthorized practice of law when he represented a party in a bankruptcy proceeding, despite knowing that he was administratively ineligible to do so. Finally, he repeatedly violated RPC 8.1(b) by failing to comply with the OAE's demands that he produce his financial records; failing to appear at the random and demand audits; and failing to file an answer to the complaint.

In sum, we find that respondent violated RPC 1.15(d), RPC 5.5(a)(1), and RPC 8.1(b) (multiple instances). The sole issue left for our determination is the appropriate quantum of discipline.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) failed to maintain

trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) failed to properly designate the trust account; and (5) failed to maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6); and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his attorney trust account to cover overdrafts in his attorney business account, a demand audit uncovered several recordkeeping deficiencies: (1) errors in information recorded in client ledgers; (2) lack of fully descriptive client ledgers; (3) lack of running balances for individual clients on the clients' ledgers; (4) failure to promptly remove earned fees from the trust account; and (5) failure to perform monthly three-way reconciliation, in violation of RPC 1.15(d) and R. 1:21-6).

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g. In re Fell, 219 N.J. 425 (2014) (reprimand for attorney who was ineligible for five months, but represented a matrimonial client, despite awareness of his ineligibility; an aggravating factor was the attorney's prior reprimand; mitigating factors

included the attorney's ready admission of his conduct and the service he provided to his community); In re Moskowitz, 215 N.J. 636 (2013) (reprimand for attorney who was ineligible for more than seven months, but practiced law knowing that he was ineligible to do so); In re D'Arienzo, 217 N.J. 151 (2014) (censure imposed where the attorney's failure to ensure that payment was sent to the Fund was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand, also for practicing while ineligible); and In re Macchiaverna, 214 N.J. 517 (2013) (censure for attorney who knowingly practiced law while ineligible and committed recordkeeping violations; aggravating factors included the attorney's prior reprimand for recordkeeping violations that led to the negligent misappropriation of client funds and his failure to appear on the return date of the Court's order to show cause).

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 failed to 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)).

Considering the foregoing precedent, respondent's misconduct warrants at least a censure.

In crafting the appropriate discipline, we also consider aggravating and mitigating factors. Here, we weigh the default status of this matter as an aggravating factor. "[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). In mitigation, respondent has no prior discipline in over twenty-five years as a member of the New Jersey bar.

On balance, given respondent's unblemished disciplinary history, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Additionally, we require respondent to (1) immediately comply with all the OAE's pending recordkeeping and audit directives; and (2) complete, within ninety days of the date of the Court's disciplinary Order in this matter, two recordkeeping courses and a law office management course approved by the OAE.

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: _____
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Albert L. Lancellotti
Docket No. DRB 20-248

Decided: June 10, 2021

Disposition: Censure

Members	Censure
Clark	X
Gallipoli	X
Boyer	X
Hoberman	X
Joseph	X
Petrou	X
Rivera	X
Singer	X
Zmirich	X
Total:	9

Johanna Barba Jones
Chief Counsel