Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-026
District Docket No. XIV-2019-0393E

In the Matter of	:
Gareth David DeSantiago-Keene	:
An Attorney at Law	:

Decision

Argued: May 20, 2021

Decided: August 30, 2021

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Lawrence H. Kleiner appeared on behalf of respondent.

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

This matter previously was before us as a motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate), filed by the

Office of Attorney Ethics (the OAE), pursuant to R. 1:20-10(b)(1) (DRB 19-163). On July 25, 2019, we denied that motion, determining a censure to be insufficient discipline, and remanded the matter to the OAE for further proceedings.

On February 8, 2021, this matter was returned to us on a disciplinary stipulation between the OAE and respondent. Respondent stipulated to having violated RPC 1.15(d) (recordkeeping), RPC 5.5(a)(2) (assisting another in the unauthorized practice of law), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent earned admission to the New Jersey bar in 1980 and to the New York bar in 1984. He maintains a law practice in New Milford, Bergen County, New Jersey.

On January 12, 2018, in connection with a motion for discipline by consent, respondent was censured for failing to communicate with a client (RPC 1.4(b) and (c)); conflict of interest (RPC 1.7(a)); improperly terminating the representation (RPC 1.16(d)); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)); and engaging in conduct prejudicial to the administration of justice. In re DeSantiago-Keene, 231 N.J. 448 (2018).

Respondent and the OAE entered into a disciplinary stipulation, dated January 28, 2021, in which respondent admitted the following facts in support of his misconduct.

In 2015, Joanne Faber retained respondent to defend a foreclosure action filed against her by The Bank of New York. When respondent attempted to file a response to the foreclosure complaint, however, he learned that he was required to use eCourts, which recently had been launched. Because respondent was not "computer savvy," he accepted Faber's offer to create his eCourts account, which she completed on her personal computer. Faber advanced respondent's initial, required eCourts deposit using her personal funds, which resulted in her personal bank account being listed as respondent's eCourts business account.

Moreover, rather than use either of respondent's established e-mail addresses to create the eCourts account, Faber created a new e-mail account, which, thus, became associated with the account. Consequently, Faber was in "complete control" of respondent's eCourts account.

On July 30, 2015, Faber filed a pro se tax appeal against the Township of Toms River, in the New Jersey Tax Court. That appeal was unrelated to respondent's representation of Faber, and was scheduled for trial on April 5, 2016, but adjourned to June 1, 2016, at Faber's request. The June 1 trial date

was then adjourned to August 3, 2016, again at Faber's request. On August 3, counsel for Toms River was present in the Tax Court, ready to proceed with the trial, but Faber claimed to the court that she was too ill to appear.

Following a motion by Toms River to dismiss Faber's complaint for lack of prosecution, the Honorable Patrick DeAlmeida, P.J.T.C. scheduled an August 31, 2016 order to show cause and directed Faber to appear by telephone and to show cause why her complaint should not be dismissed; Faber also was permitted to submit a written argument along with proof of her illness. Faber failed to appear by telephone for the order to show cause and subsequently claimed that she never received notice.

On November 7, 2016, Judge DeAlmeida issued an order directing that the motion to dismiss would be heard December 7, 2016; that Faber could submit written argument along with proof of her illness; that, if the motion to dismiss were denied, the trial would immediately commence; and that all motions in limine were returnable December 2, 2016, at which time the parties were to produce exhibits and witness lists.

On November 15, 2016, Toms River filed a motion in limine to exclude any expert report or written appraisal Faber might proffer in support of her complaint; the next day, Faber requested respondent's assistance in the Tax Court matter. Despite an initial disagreement regarding the legal fee, respondent

agreed to represent Faber in the tax matter for no charge and directed Faber to consult with Ricardo Gonzalez, Esq., as the "backup attorney," while respondent was in Ukraine from November 30 through December 14, 2016.

On November 21, 2016, Faber sent an e-mail to respondent, stating "Gareth – I had [sic] filed the papers we talked about for the Tax Appeal – I have found a lawyer that can take over the case – I can forward the papers next week." Yet, on December 1, 2016, Faber filed a substitution of attorney in the tax matter, dated November 25, 2016, naming respondent as the substituting attorney. That same date, Faber filed a letter to Judge DeAlmeida, via eCourts, purportedly from respondent and written on his letterhead, stating, in relevant part

> I have just entered the above case and I am requesting that the calendared motion be carried for 45 days and the Trial Date be scheduled to allow my preparation for this case. I am traveling out of the country for several weeks in the month of December for an urgent family matter . . . . My client received an adjournment in the past due to a medical matter and I have seen the corresponding proof from a medical professional as to her medical situation.
>
> [S§B¶22;Ex.9.][1]

[1] "S" refers to the disciplinary stipulation, dated January 28, 2021. "Ex." refers to the exhibits to the stipulation.

Respondent did not review the letter prior to Faber filing it; had not reviewed any of Faber's medical records; and reviewed no records in connection with Faber's Tax Court matter.

As a result of Faber's letter, Judge DeAlmeida adjourned the motion to dismiss until January 20, 2017, with a new trial date to be set following the motion hearing. On January 12, 2017, Judge DeAlmeida's law clerk sent an e-mail to respondent, enclosing the court's motion calendar, which listed Faber's January 20th motion hearing at 9:30 a.m.; respondent simply forwarded the clerk's e-mail to Faber.

On January 13, 2017, without respondent's knowledge, Faber filed a letter brief, on respondent's letterhead, opposing the Toms River motion in limine. Respondent was leaving for another trip to Ukraine and failed to contact the Tax Court regarding his inability to appear at the January 20th motion hearing. Faber appeared for the January 20th hearing, informed Judge DeAlmeida that respondent was out of the country, and claimed that she expected another attorney to be present to represent her, which did not occur.

By order dated January 24, 2017, Judge DeAlmeida denied both the Toms River motion in limine and its request that Faber be sanctioned for her failure to appear on August 3, 2016. Moreover, Judge DeAlmeida issued a case management order, setting deadlines for submission of expert reports; trial

motions; exhibits and witness lists; further, the court scheduled the trial for April 5, 2017. Finally, Judge DeAlmeida scheduled a February 17, 2017 order to show cause to determine whether respondent should be sanctioned for his failure to appear on January 20, 2017. All three of the Tax Court's filed orders were transmitted to respondent via the e-mail account that Faber had linked to his eCourts account, rather than his e-mail addresses of record.

At 8:32 p.m. on February 16, 2017, the day before the scheduled order to show cause; respondent sent an e-mail to Faber, stating "please call me asap there is OTSC in tax appeal on for tomorrow asking for sanctions against me. Please call me no matter how late. Thank you." At 11:04 p.m., Faber replied, stating only "sub of attorney," and attaching a substitution of attorney reflecting respondent as outgoing and Faber, pro se, as incoming. Respondent failed to appear for the scheduled order to show cause.

Subsequently, respondent sent a letter to Judge DeAlmeida, enclosing the substitution of attorney Faber had prepared, claiming that he had missed the order to show cause due to "severe car trouble," and requesting that he not be sanctioned. The court replied that respondent was not permitted to simply withdraw when a trial date had been set and that he was required to file a formal motion to withdraw; the court also rescheduled respondent's sanctions hearing for March 3, 2017.

On February 26, 2017, respondent filed with the Tax Court a document entitled "Certification in Respectful Opposition to Sanctions" and a motion to be relieved as counsel in Faber's matter. On March 3, 2017, respondent appeared before Judge DeAlmeida for the sanctions hearing. On March 7, 2017, the Tax Court granted respondent's motion to be relieved as Faber's counsel.

Respondent further admitted to the OAE that he had failed to maintain his client files for either Faber's foreclosure matter or her tax appeal, as R. 1:21-6(c)(1)(a) requires.

Based on the foregoing facts, respondent admitted having violated RPC 1.15(d) by failing to comply with the recordkeeping Rules; RPC 5.5(a)(2) by allowing Faber to exercise complete control of his eCourts account, which enabled Faber to engage in the unauthorized practice of law in New Jersey; and RPC 8.4(d) by failing to advise the Tax Court that he would be out of the country on January 20, 2017, the date of the scheduled motion hearing.

The OAE and respondent stipulated that respondent's 2018 censure constituted an aggravating factor, emphasizing that, when respondent committed the misconduct in this matter, he was aware that he was under disciplinary scrutiny for his misconduct in a separate client matter, including regarding RPC 8.4(d). In mitigation, the parties noted that respondent's misconduct was not driven by pecuniary gain.

In its brief to us, the OAE cited applicable disciplinary precedent and urged us to impose a three-month suspension. Respondent did not submit a brief to us prior to oral argument in this matter.

At oral argument, the OAE reiterated its request that a three-month suspension be imposed. In turn, respondent acknowledged his misconduct and agreed that a three-month suspension was the proper quantum of discipline.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support respondent's admitted ethics violations.

Specifically, RPC 1.15(d) requires New Jersey attorneys to comply with the recordkeeping provisions of R. 1:21-6, including the maintenance of original client files. Respondent's failure to maintain the original client files in Faber's foreclosure and Tax Court matters violated R. 1:21-6 and, thus, RPC 1.15(d).

Next, RPC 5.5(a)(2) prohibits an attorney from assisting a nonlawyer in the unauthorized practice of law. Faber was not a lawyer licensed to practice law in New Jersey or any other forum. Yet, respondent permitted her to establish his eCourts account, which granted her complete control over it. Further, after he agreed to represent her in her Tax Court matter, he took no interest or role in the case. Respondent, thus, created an environment whereby Faber was able to illegally practice law by (1) filing the backdated substitution of attorney and

backdated letter to Judge DeAlmeida, both purportedly from respondent, and (2) filing a backdated letter brief, purportedly from respondent. It is unclear from the record how Faber gained access to respondent's letterhead.

RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice. Respondent learned, on January 12, 2017, that he had a court appearance in Faber's Tax Court matter eight days later. Yet, he failed to inform Judge DeAlmeida that he would be unable to appear. Instead, respondent simply forwarded the court's e-mail to Faber, who then submitted written opposition to the motion under respondent's name and attended the hearing in his place. Likewise, respondent learned, on February 16, 2017, that he had to appear in the Tax Court the next day on an order to show cause, yet he did not appear. Instead, he sent a letter claiming that he had experienced car trouble. Respondent's failure to attend two court appearances, or, alternatively, to contact Judge DeAlmeida to request an adjournment, wasted the court's time and opposing counsel's time, and violated RPC 8.4(d).

In sum, we find that respondent violated RPC 1.15(d), RPC 5.5(a)(2), and RPC 8.4(d). There remains for determination the appropriate quantum of discipline to impose on respondent for the above ethics infractions.

Respondent's most egregious misconduct was his enabling of Faber in her unauthorized practice of law. Many RPC 5.5(a)(2) cases involve attorneys who

assist disbarred lawyers in the continued practice of law, attorneys whose employees engaged in the practice of law, or attorneys who lent their names to organizations engaged in the unauthorized practice of law. See, e.g., In re Hancock, 221 N.J. 259 (2015) (attorney assisted a disbarred attorney in the unauthorized practice of law by permitting him to serve as a paralegal; in that position, the disbarred attorney prepared criminal motions, among other documents; he also violated RPC 1.5(b) (failure to use a written fee agreement) and RPC 8.4(c)); In re Krain, 216 N.J. 585 (2014) (attorney hired a paralegal with knowledge of and experience in immigration law; the paralegal interviewed clients, gave them advice, completed forms, compiled exhibits, and prepared and signed the attorney's name on retainer agreements, correspondence, and pleadings; violation of RPC 5.5(a)(2); the attorney also violated RPC 5.3(a)-(c) (failure to supervise a nonlawyer employee), RPC 7.3(d) (improper fee sharing), and RPC 8.4(c)); and In re Hecker, 205 N.J. 263 (2011) (attorney permitted a collection agency to use his name in its efforts to collect unpaid debts).

This case is different, however. Faber was not, and never has been, an attorney. Nor was she respondent's employee. Rather, Faber was respondent's client, who, due to respondent's recklessness, was able to engage in the practice of law.

In In re Chulak, 152 N.J. 443 (1998), the Court imposed a three-month suspension on an attorney who violated RPC 3.3(a) (lack of candor toward a tribunal), RPC 5.5(b) (now RPC 5.5(a)(2)) (assisting a nonlawyer in the unauthorized practice of law), and RPC 8.4(c). Specifically, the attorney represented his longtime friend, Paul Falcon, a defendant in a civil action. In the Matter of Michael J. Chulak, DRB 97-236 (November 18, 1997) (slip op. at 1-2). Although Falcon had attended law school, he was not an attorney. Id. at 2. Yet, Falcon prepared, signed, and filed a pleading under Chulak's signature in that matter. Ibid. When the motion was argued, the court learned that Falcon had prepared and filed the motion. Ibid. Chulak denied knowledge of Falcon's actions but had adopted the pleading. Ibid.

In addition, the court raised the issue of an attorney business account check that was used to pay a court fee in the Falcon matter. Ibid. The check, which had been signed by respondent, identified Falcon as "Paul Falcon, Esq.," and Chulak and Falcon were listed as joint account holders. Id. at. 2. At the hearing, Chulak denied knowing why Falcon's name was on the checks. Ibid. The court referred the matter to the OAE. Ibid.

We noted that, eventually, Chulak admitted that he knew about the checks, and, thus, his statement to the court was not true, violations of RPC 3.3(a) and

RPC 8.4(c). Id. at 5. By permitting Falcon's name to appear on the attorney business account checks, Chulak violated RPC 5.5(b). Ibid.

We also determined that Chulak violated RPC 3.3(a), RPC 5.5(b), and RPC 8.4(c) by adopting a pleading drafted by Falcon without Chulak's instruction or supervision. Id. at 5-6. In this respect, we noted that Chulak admitted that he had allowed Falcon to file the pleading and to sign Chulak's name. Id. at 6. In imposing a three-month suspension, we emphasized that Chulak had taken no steps to prevent Falcon's misconduct, despite being aware of it. Id. at 7.

In In re Inocencio, 231 N.J. 233 (2017), the Court imposed a censure on an attorney who violated RPC 1.15(d), RPC 5.5(a)(2), and RPC 8.4(c). In that case, the attorney had involved herself with Dennis Isaac, an operator of a business that provided "transitional mortgage refinancing" and conducted short sales. Id. at 3. He was not a licensed attorney, real estate agent, or title agent. Ibid. Over the course of a year, Inocencio was involved in ten to fifteen real estate transactions with Isaac. Id. at 3-4.

At the beginning of their relationship, Isaac opened a checking account for use as an escrow account for real estate transactions involving Inocencio. Id. at 4. Inocencio, however, was not a signatory. Ibid. The checks showed the account as follows:

[Ibid.]

When Inocencio realized what Isaac had done, she took no action to have the account closed. Id. at 5. Indeed, she listed the account as her attorney trust account on the annual attorney registration statements for 2013 and 2014. Id. at 7.

The disciplinary action against Inocencio arose from a real estate transaction involving Lindwood Wade. Id. at 2. Inocencio did not attend the closing, but she did review the closing documents, which included the HUD-1. Id. at 5. The HUD-1 identified her as the settlement agent, but she claimed that she did not see her name on the document when she reviewed it. Ibid. She testified that, if she had, she would have required Isaac to remove it. Ibid. The record contained no evidence that Isaac had ever disbursed funds improperly in any of the transactions that he and Inocencio had worked on together. Id. at 6.

Isaac also prepared and filed the deed in the Wade matter. Id. at 6. When he recorded the deed, he listed Inocencio as the attorney to whom the recorded copy should be returned. Id. at 6-7. Inocencio denied having prepared the deed, and she was not sure whether she had reviewed the deed prior to the closing. Id. at 6.

We determined that Inocencio had violated RPC 5.5(a)(2) by permitting Isaac to operate the escrow account, which "masqueraded" as her trust account, and also by her involvement in transactions in which Isaac had performed attorney tasks, including the preparation of the Wade deed. Ibid. We further determined that Inocencio violated RPC 1.15(d) by declaring Isaac's escrow account as her attorney trust account and by failing to obtain her own attorney trust and business accounts. Id. at 13. She also violated RPC 8.4(c) by listing Isaac's escrow account as her attorney trust account on her 2013 and 2014 attorney registration statements. Id. at 14. Finally, she did not take any steps to close the account once she learned of it. Id. at 15.

In imposing a censure, we noted that Inocencio's conduct was similar to that of the attorney in Chulak and that, at the time Chulak was decided, censure was not yet an available form of discipline. Id. at 21-23.

In this case, although an argument could be made that, based on Inocencio, a censure would be appropriate, respondent has a disciplinary record, in a 2018 matter, that included a violation of RPC 8.4(d). In that case, respondent withdrew a complaint after his client had moved out of his house; filed a motion to reinstate the complaint after the client agreed to meet him for coffee; but again withdrew the motion after she canceled the date. In the Matter of Gareth David DeSantiago-Keene, DRB 17-052 (July 28, 2017) (slip op. at 14).

The formal ethics complaint in the 2018 matter was filed on July 27, 2015. Id. at 2. The disciplinary hearing took place on March 4, 2016. The DEC hearing panel issued its recommendation on September 1, 2016. Clearly, by the time respondent agreed to represent Faber in this matter, in 2015, he was on notice that his conduct as an attorney was under scrutiny; yet, in Faber's tax matter, he abdicated all responsibility as an attorney and, once again, engaged in conduct prejudicial to the administration of justice. Thus, a three-month suspension is in order.

Respondent's violation of RPC 1.15(d) does not serve to increase the three-month suspension. Recordkeeping irregularities ordinarily are met with an admonition, as long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

On balance, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Boyer was absent.

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
Hon. Maurice J. Gallipoli (Ret.), Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gareth David DeSantiago-Keene
Docket No. DRB 21-026

Argued: May 20, 2021

Decided: August 30, 2021

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Absent
Gallipoli	X	
Singer	X	
Boyer		X
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel