

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-052
District Docket No. XIV-2019-0644E

In the Matter of
Andrew Giles Freda
An Attorney at Law

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Decision

Decided: September 24, 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 having violated RPC 1.15(d) (failing to comply with the recordkeeping Rules); RPC 5.5(a)(1) (practicing law while

ineligible); RPC 7.5(e) (using an impermissible firm name or letterhead); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).¹

For the reasons set forth below, we impose a censure.

Respondent earned admission to the New Jersey bar in 1990 and has no prior discipline. At the relevant times, he maintained law offices in Saddle Brook and Oradell, New Jersey.

Effective August 28, 2017, the Court declared respondent ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF). Respondent thereafter satisfied his annual obligation and was reinstated as memorialized in a November 30, 2017 Notice to the Bar. Effective June 4, 2018, respondent was again declared ineligible to practice law for failure to pay the annual assessment to the CPF. Moreover, effective October 30, 2017, the Court declared respondent ineligible to practice law for failure to comply with mandatory continuing legal education requirements. He remains ineligible, on both bases, to date.

Service of process was proper. On December 16, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to

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.

respondent's office address of record, in Oradell, New Jersey. The certified mail was left with an individual at the address and the regular mail was not returned.

On January 25, 2021, the OAE sent a letter to respondent, by certified mail, regular mail, and e-mail, at the Oradell address and respondent's e-mail address of record, 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 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 certified mail was left with an individual at the address and the regular mail was not returned.

As of March 8, 2021, 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.

During the relevant timeframe, respondent maintained law offices in both Saddle Brook and Oradell. Respondent received mail at his office in Oradell, which served as his law office address of record with the Court. He maintained an attorney trust account (ATA), which was closed on February 15, 2014, and an attorney business account (ABA), which was closed on October 29, 2019, both at TD Bank.

By letter dated November 14, 2018, the OAE notified respondent that he had been selected for a random audit to occur on December 6, 2018, at his office location in Saddle Brook, New Jersey.

On December 24, 2018, respondent provided to the OAE certain financial records for his ATA and ABA. In a cover letter, respondent explained that he had closed his law office approximately one year earlier. Respondent also claimed that he had not held client funds in his ATA for many years and declined any representation that would require his holding of client funds. Respondent stated he could certify that he had made no deposits or disbursements from his ATA for at least five years. Respondent requested that the OAE send letters to an alternate address (presumably, his home address of record) instead of the Saddle Brook office address.

After reviewing the financial records respondent provided, the OAE determined that they evidenced recordkeeping deficiencies that required corrective action to conform with R. 1:21-6, including: respondent's failure to maintain a separate ledger sheet detailing attorney funds held for bank charges, a violation of R. 1:21-6(d); improper ATA and ABA designations, a violation of R. 1:21-6(a)(2); failure to maintain a business receipts or disbursement journal, a violation of R. 1:21-6(1)(A); failure to use a limited liability company

designation on the bank account, a violation of R. 1:21-1B(c); failure to maintain all required financial records for seven years, a violation of R. 1:21-6(c)(1); and improper use of identifying language for his law firm's name, a violation of RPC 7.5(e).

On April 26, 2019, the OAE sent respondent a letter outlining the aforementioned deficiencies and requesting that he provide proof, within forty-five days, that he corrected them. The OAE also directed respondent to provide an explanation why – based on the ABA records he had provided – it appeared that he had been practicing law, despite being administratively ineligible to do so. Respondent failed to reply within the forty-five days.

By letter dated June 25, 2019, the OAE advised respondent that he had failed to reply to its April 26, 2019, letter and gave him an additional ten days to provide his reply. Respondent again failed to reply to the OAE.

On September 30, 2019, the OAE sent a letter to respondent, by certified and regular mail, at his office address of record. The letter demanded that respondent provide the previously requested records and explanation no later than October 11, 2019. Both letters sent by regular mail were returned as “unclaimed.” The certified letters were returned as “sender not at this address” and “unclaimed.”

Thereafter, by letter dated October 25, 2019, the OAE advised respondent that he had failed to reply to its previous letters and requested a reply within ten days. The OAE sent the letter via certified and regular mail, to the same office address it had previously used. This time, however, the regular mail was not returned to the OAE, although the certified mail was again returned as “unclaimed.”

Due to respondent’s failure to cooperate with the random audit, the OAE docketed the matter for a disciplinary investigation. By letter dated January 2, 2020, the OAE notified respondent of this development and renewed its demand for records and an explanation of his practice of law while ineligible. By a second letter of the same date, the OAE informed respondent that he had been scheduled for a demand audit on January 23, 2020. The OAE sent both letters to respondent’s office address. The certified mailed was returned as “unclaimed” and “unclaimed, unable to forward,” but the regular mail was not returned.

Additionally, on four separate dates in January 2020, an OAE disciplinary auditor called respondent at several phone numbers, but respondent did not answer. Although the auditor left several voicemail messages requesting that respondent contact the OAE, respondent did not return the calls.

On January 17, 2020, the OAE sent an e-mail to respondent and requested contact information to schedule respondent for a telephonic demand interview on January 23, 2020. Respondent neither replied to the e-mail nor appeared for the demand interview.

On February 19, 2020, two OAE personnel attempted to make contact with respondent at his office address. The personnel were unsuccessful but left a letter for respondent in his mailbox.

During a visit to respondent's secondary law office address in Saddle Brook, New Jersey, the OAE learned that the address was a flex-space style business where individuals could set up meetings with clients or prospective clients, rather than a law office that respondent owned or leased. The receptionist at the business told the auditor that respondent had not scheduled any meetings for a long time and that she had not recently seen him.

Ultimately, on March 27, 2020, respondent was personally served with an OAE subpoena at his office in Oradell. On March 30, 2020, in response to the subpoena, respondent contacted the OAE by telephone. Thereafter, on April 1, 2020, the OAE conducted a recorded telephone interview of respondent.

During the interview, respondent denied having received any of the OAE's correspondence requesting additional information and documents.

Respondent claimed that he no longer had a law office and had not been practicing law for approximately two years. Respondent further informed the OAE that, when the random audit occurred, he had already closed his Saddle Brook, New Jersey law office and was exclusively working out of Oradell. Respondent confirmed that he received mail daily at his Oradell address, but again denied having received any of the OAE's correspondence, except for a letter from the random auditor over a year earlier. Respondent also denied receiving the letter the auditor left in his mailbox on February 19, 2020, maintaining that any of the five members of his household could have retrieved the mail. Respondent, however, conceded that the household members likely would give him any mail addressed to him. Respondent acknowledged that he was aware that he was administratively ineligible to practice law and had received notices to that effect.

Regarding his ATA and ABA, respondent stated that TD Bank closed his ATA due to inactivity and that he closed his ABA when he closed his law practice, a couple of years earlier. Respondent agreed to cooperate with the OAE's investigation going forward.

The next day, the OAE sent an e-mail to respondent, demanding proof that he had corrected the recordkeeping deficiencies noted in the April 26, 2019,

random audit letter. In his reply, respondent admitted that he had failed to maintain a separate ledger sheet detailing attorney funds held for bank charges and admitted that he failed to maintain an ABA receipts and disbursements journal, claiming that he was not aware that they were required. Respondent explained that he had corrected the remainder of the deficiencies inasmuch as they were now moot, because he no longer was practicing law. Respondent expressed that he believed he had provided all the documentation requested by the OAE.

Regarding the OAE's inquiries regarding his unauthorized practice of law, respondent said he believed it "was probably not the case." However, respondent elaborated that he was unaware that of his ineligibility until months after the Court's August 22, 2017 Order declaring him ineligible to practice law, which respondent referred to as a "notice." Nevertheless, respondent expressed that, prior to his ineligibility, it had been some time since he had any active client matters.

On April 21, 2020, the OAE sent an e-mail to respondent and informed him he was still deficient in providing the documents it had requested, specifically, information regarding whether respondent had requested to waive the continuing legal education penalties he had accrued so that he was no longer

active and whether he had changed his law firm name to comply with RPC 7.5(e). Respondent did not reply to the e-mail so the OAE again sent an e-mail to respondent to request a reply by June 2, 2020.

On June 19, 2020, respondent called the OAE auditor and claimed he had never received the follow-up e-mails the OAE sent. Respondent further stated he was in the hospital. Respondent and the OAE agreed to speak via telephone on June 22, 2020, around 12:30 p.m. However, respondent did not answer when the OAE called at the agreed-upon time and has not contacted the OAE since June 19, 2020.

On June 30, 2020, the OAE sent an e-mail to respondent to request that he submit the outstanding documents to the OAE no later than July 3, 2020. The OAE followed up with a telephone call on July 17, 2020. However, respondent did not answer the call.

The OAE's review of respondent's ABA bank statements, from August 28, 2017 through October 29, 2019, revealed that he was practicing law while ineligible. Specifically, respondent deposited in his ABA: a check dated October 11, 2017 with "legal services" on the memo line; a check dated December 12, 2017, with "buy/sell agreement" on the memo line; a check dated May 18, 2018, with "legal services" on the memo line; and a check dated October 18, 2018,

with “operating agreement” on the memo line. Respondent also deposited in his ABA three checks, dated June 7, June 18, and August 15, 2018, with nothing indicated on the memo line, all of which the OAE asserted demonstrated that respondent was practicing law while ineligible.

We find that the facts recited in the complaint support all the charges of unethical conduct. Respondent’s failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1). Specifically, respondent violated RPC 1.15(d) by failing to maintain attorney financial records, as R. 1:21-6 requires. Respondent failed to maintain an ATA or ABA; failed to prepare monthly bank reconciliations of his ATA; had improper designations on his ATA and ABA bank statements; failed to maintain a separate ledger sheet to detail attorney funds held for bank charges in his ATA; and failed to designate his limited liability company title on his bank statements.

Respondent violated RPC 5.5(a)(1) by knowingly engaging in the unauthorized practice of law when he acted as counsel in seven matters, despite being aware that the Court previously had declared him administratively ineligible to practice law.

Additionally, respondent violated RPC 7.5(e) by identifying his law firm as the “Freda Law Group, L.L.C.,” despite his status as a solo practitioner.

Finally, respondent repeatedly violated RPC 8.1(b) by failing to comply with the OAE’s demands for the production of financial records; failing to promptly provide an explanation regarding his unauthorized practice of law; failing to appear at the demand audit; 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); RPC 7.5(e); and RPC 8.1(b) (two instances). The sole issue left for determination is the appropriate quantum of discipline for respondent’s misconduct.

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, properly conduct monthly trust account three-way reconciliations, and maintain 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).

Similarly, when an attorney practices law while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge

of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the CPF, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, 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).

However, 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, was aware of his ineligibility, but, nevertheless, represented a matrimonial client; an aggravating factor was the attorney's prior reprimand; mitigating factors included the attorney's ready admission of his misconduct 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 CPF 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)).

Finally, the use of false or misleading communications about the lawyer, usually found in the form of misleading attorney letterhead, ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as “of counsel,” despite his having had no professional relationship with them, a violation of RPC 7.1(a); attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; we noted other improprieties); and In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (attorney continued to use firm letterhead that contained the name of an attorney no longer associated with the firm, a violation of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971); no prior discipline); but see In re Osterbye, 243 N.J. 340 (2020) (reprimand for an attorney who failed to cooperate with the OAE’s investigation into his alleged misconduct; attorney admitted to more than twenty separate recordkeeping deficiencies, a violation of RPC 1.15(d) and R. 1:21-6; the attorney’s recordkeeping deficiencies resulted in a negligent misappropriation of client funds in four matters; the attorney

signed a written fee agreement as “on behalf of Legal Service Center LLC,” even though he was not affiliated or associated with a public, quasi-public, or charitable organization, a violation of RPC 7.5(e)).

Pursuant to New Jersey disciplinary precedent, at least a reprimand is warranted for respondent’s knowing practice of law while ineligible to do so. In crafting the appropriate discipline, we also consider aggravating and mitigating factors, as well as the number and variety of respondent’s RPC violations.

In aggravation, the default status of this matter must be considered. “[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 nearly thirty years as a member of the New Jersey bar.

Although respondent’s unblemished disciplinary history should be accorded significant weight, the totality of his misconduct, as exacerbated by his default in this matter, operate to place the aggravating and mitigating factors in equipoise. We thus determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose a reprimand.

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, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrew Giles Freda
Docket No. DRB 21-052

Decided: September 24, 2021

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Absent
Gallipoli	X		
Singer	X		
Boyer			X
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1



Johanna Barba Jones
Chief Counsel