



set forth in writing the basis or rate of the attorney's fee) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).<sup>1</sup>

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

Respondent earned admission to the New Jersey bar in 2013 and to the New York bar in 2002. At all relevant times he maintained a law practice in Keansburg, New Jersey.

On July 30, 2020, in connection with a motion for discipline by consent, respondent received a reprimand for his violations of RPC 1.15(a) (negligent misappropriation of client funds and commingling); RPC 1.15(b) (failure to promptly disburse funds to a client or third party); RPC 1.15(d) (failure to comply with the R. 1:21-6 recordkeeping provisions); RPC 7.1(a) (a lawyer shall not make false or misleading communications about the lawyer, the lawyer's services or any matter in which the lawyer has or seeks professional involvement); RPC 7.5(e) (false or misleading advertising); and RPC 8.1(b). In addition to the reprimand, the Court ordered respondent to practice under the supervision of a proctor and to provide monthly reconciliations of his attorney accounts to the Office of Attorney Ethics (the OAE), on a quarterly basis, until

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<sup>1</sup> Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to include the RPC 8.1(b) charge.

further Order of the Court, and to complete a course in trust and business accounting approved by the OAE. In re Osterbye, 243 N.J. 340 (2020).

Service of process was proper. On December 10, 2020, the DEC sent to respondent a copy of the formal ethics complaint, by certified and regular mail, to respondent's address of record. The USPS tracking system confirmed that the letter was delivered on December 14, 2020. The regular mail was not returned.

On February 10, 2021, the DEC sent a second letter to respondent's address of record, by certified and regular mail, informing him that, unless he filed a verified answer to the complaint within five days 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 letter was delivered on February 12, 2021, as recorded in the USPS tracking system. The regular mail was not returned.

As of April 14, 2021, respondent had not filed an answer to the formal ethics complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On May 24, 2021, the Office of Board Counsel published a disciplinary notice in the New Jersey Law Journal, stating that a formal ethics complaint had

been filed against respondent, that respondent had defaulted, and that we would review the matter on July 15, 2021. The notice informed respondent that he had until June 9, 2021 to file a motion to vacate the default (MVD). Respondent failed to file an MVD.

We now turn to the allegations of the complaint.

In 2018, respondent provided legal representation to the grievant, Lorraine L. Giannone, and her husband, Joseph. On behalf of the Giannones, respondent filed two small claims in the Superior Court of New Jersey, Ocean County, Special Civil Part.<sup>2</sup> The Giannones paid respondent for his legal services and the costs of the filing fees associated with the claims.

Respondent previously had not represented the Giannones, and he admitted to the DEC that he had not provided to them with a retainer agreement or other written communication setting forth the basis or rate of the fee that would be charged for his legal services, or explaining the terms or parameters of his representation, as RPC 1.5(b) requires.

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<sup>2</sup> Public New Jersey eCourts records reflect the full captions of the two small claims matters as Joseph and Lorraine Giannone v. John Tasco, Ocean County Docket No. OCN-SC-000087-19 (complaint filed January 10, 2019), and Joseph and Lorraine Giannone v. J and M Home Improvements, Ocean County Docket No. OCN-SC-000534-18 (complaint filed April 13, 2018).

We find that the facts recited in the formal ethics complaint support the charges of unethical conduct. Respondent's failure to file a verified 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. R. 1:20-4(f)(1).

Specifically, RPC 1.5(b) states that “[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.” Respondent admittedly failed to set forth, in writing, the basis or rate of his fee for the Giannones, in violation of RPC 1.5(b).

Moreover, after being served with the formal ethics complaint on December 14, 2020, as well as a follow-up letter on February 12, 2021, respondent neither replied to the DEC nor filed an answer to the complaint. Thus, respondent also violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.5(b) and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by

other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Reprimands have been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have committed other acts of misconduct, or have a disciplinary history. See, e.g., In re Yannon, 220 N.J. 581 (2015) (attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (attorney failed to set forth

in writing the basis or rate of the attorney's fee in a matrimonial matter; the attorney also failed to comply with the district ethics committee investigator's repeated requests for the file, a violation of RPC 8.1(b), and violated RPC 8.4(d) by entering into an agreement with the client to dismiss the ethics grievance against him, in exchange for a resolution of the fee arbitration between them); and In re Kardash, 210 N.J. 116 (2012) (in a default matter, the attorney failed to set forth in writing the basis or rate of the attorney's fee in a matrimonial case).

Censures also have been imposed. See In re Hyde, 231 N.J. 195 (2017) (in a default matter, the attorney charged an unreasonable fee, in violation of RPC 1.5(a), failed to set forth in writing the basis or rate of the fee, in violation of RPC 1.5(b), and failed to cooperate with an ethics investigation, in violation of RPC 8.1(b); we considered the attorney's prior disciplinary history, an admonition in 2008 and a censure in 2013, when we enhanced the discipline to a censure).

Just like the attorneys in Yannon, Gazdzinski, Kardash, and Hyde, respondent failed to set forth in writing the basis or rate of his fee, in violation of RPC 1.5(b). Like the attorney in Kardash, respondent defaulted, and like the attorney in Yannon, he has a disciplinary history. As in Hyde, respondent failed

to set forth in writing the basis or rate of his fee, defaulted when he failed to file an answer to the November 16, 2020 formal ethics complaint, and has a disciplinary history. However, the misconduct by the attorney in Hyde was demonstrably worse than that of respondent.

Standing alone, respondent's misconduct warrants a reprimand. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, we weigh the default status of this matter. “[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).

This matter also represents respondent's second disciplinary proceeding in four years. Specifically, respondent was the subject of disciplinary proceedings which began in August 2017 and resulted in the Court's 2020 Order imposing a reprimand, with conditions. In re Osterbye, 243 N.J. 340. He participated in those proceedings when he entered into a stipulation of discipline by consent. Considering the timeline of that matter, respondent had a heightened awareness of his obligations under the RPCs. Yet, he failed to file an answer in



this matter.

There is no mitigation to consider.


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

Chair Gallipoli voted to impose a censure.

The proctorship imposed in connection with the Court's July 30, 2020 Order remains in place and, thus, we do not impose additional conditions.

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:   
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Johanna Barba Jones  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Raymond Charles Osterbye  
Docket No. DRB 21-092

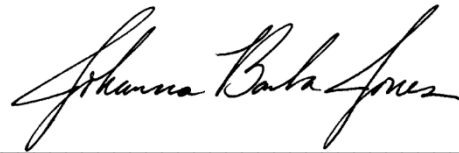
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Decided: September 27, 2021

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure
Gallipoli		X
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1



Johanna Barba Jones  
Chief Counsel