

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-151
District Docket No. XIV-2020-0352E

In the Matter of
Kevin Clark Cromer
An Attorney at Law

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Decision

Decided: December 13, 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)(2). The formal ethics complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent earned admission to the New Jersey bar in 2006 and has no disciplinary history in New Jersey.¹ At all relevant times, he was employed as in-house counsel for a private company located in Atlanta, Georgia.

Effective July 20, 2021, the Court temporarily suspended respondent for his failure to cooperate with the investigation underlying this matter. In re Cromer, 247 N.J. 419 (2021).

Service of process was proper. On April 30, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known address of record, a Post Office box located in Atlanta, Georgia.² Both the certified and regular mail were returned to the OAE marked "vacant unable to forward."

¹ The Court's database indicates that respondent was admitted to the Florida bar in 2008, and the OAE's complaint alleged that, as of the date of the complaint (April 19, 2021), respondent was ineligible to practice law in Florida. In response to the Office of Board Counsel's inquiry, the Florida Bar clarified that respondent was not a member of the Florida bar but was certified as an Authorized House Counsel in that jurisdiction from July 7, 2008 through October 1, 2012. His status as Authorized House Counsel was terminated for reasons unrelated to discipline.

² Respondent updated his New Jersey annual attorney registration on January 6, 2021, at which time he changed his home and office addresses from North Carolina to a Post Office box address in Atlanta, Georgia. Respondent also updated his status to "retired." New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c).

On April 30, 2021, in accordance with R. 1:20-7(h), the OAE also sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known home address. Respondent's last known home address, which was different than the Post Office address respondent listed on his annual registration, was obtained through the OAE's investigative efforts. The certified letter sent to respondent's home address was not returned to the OAE, and United States Postal Service (USPS) tracking indicated "awaiting delivery scan – May 9, 2021." The regular mail sent to respondent's home address was returned to the OAE.

On June 1, 2021, the OAE published a disciplinary notice in the Daily Report, the official newspaper published in Atlanta, Georgia, stating that a formal ethics complaint had been filed against respondent; that he had twenty-one days to file an answer; that his failure to do so would be deemed an admission to the complaint; and that the matter would be certified directly to us.

As of June 29, 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.

On August 30, 2021, Chief Counsel to the Board sent a letter to respondent's home address by certified, regular, and electronic mail, informing him that the matter was scheduled before us on October 21, 2021, and that any

motion to vacate must be filed by September 23, 2021. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server. Neither letter was returned to the Office of Board Counsel (the OBC).

Moreover, on August 30, 2021, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on October 21, 2021. The notice informed respondent that, unless he filed a successful motion to vacate the default by September 23, 2021, his failure to answer would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

The facts underlying this matter are as follows. On June 25, 2017, Michael Tuttle, the grievant, filed an ethics grievance stating that respondent, in his capacity as General Counsel for Clyde Bergemann Power Group America, Inc., a private company located in Atlanta, Georgia, improperly engaged five individuals as independent contractors, purportedly to provide legal services for the company when, in fact, the engagement was a means to improperly facilitate payments to these individuals for work they were either unqualified to complete or failed to complete. On February 4, 2018, the District VC Ethics Committee (the DEC) docketed the matter for investigation and, on February 7, 2020, issued

a formal ethics complaint against respondent.

Respondent failed to file an answer to the complaint and, on July 5, 2020, the matter was certified to us as a default, pursuant to R. 1:20-4(f)(2). On September 18, 2020, however, the OAE requested that the matter be returned to the OAE for further investigation. That same date, we granted the request and administratively dismissed the matter, without prejudice.

On September 29, 2020, in furtherance of its continued investigation, the OAE sent a letter to respondent via certified, regular, and electronic mail, requesting that he submit a supplemental written response to the grievance by October 15, 2020. The OAE sent the letter to respondent's then registered e-mail addresses and an address in North Carolina. The September 29, 2020 e-mails to respondent were confirmed delivered. Although the certified mail was returned to the OAE, on November 4, 2020, as unclaimed, the regular mail was not returned.

On November 5, 2020, the OAE sent another letter to respondent via certified, regular, and electronic mail, informing him that, if a response was not received by November 19, 2020, the OAE would complete its report. On November 18, 2020, respondent replied to the OAE's November 5 e-mail, advising that he "rarely use[d] [that] email address;" that he had moved from Georgia to North Carolina, and was again back in Georgia; and that "this is the

first I'm seeing this email." Although respondent provided the OAE with some responsive documents, he did not provide the OAE with his current contact information. Thus, on November 25, 2020, the OAE sent a letter to respondent, via the same e-mail address from which respondent replied on November 18, 2020, directing him to provide his current contact information, including his home address, business address, phone number, and e-mail address. The OAE's November 25, 2020 e-mail was returned with a message stating "[r]ecipient's in-box is FULL, your email could not be delivered." On the same date, the OAE identified another e-mail address for respondent and forwarded the November 25, 2020 correspondence. This e-mail was not returned as undeliverable. Respondent failed to respond to the OAE's November 25, 2020 e-mail.

Next, on December 3, 2020, the OAE sent a letter to respondent via certified and regular mail to an address located in Georgia. The OAE identified this address based upon documents produced by respondent and attached to his November 18, 2020 e-mail. The USPS tracking reflected an "Alert" status as of December 18, 2020, a status that remained unchanged as of April 17, 2021 when the complaint was filed. The regular mail was not returned. Respondent failed to reply to the December 3, 2020 letter as directed.

On January 13, 2021, the OAE learned that respondent updated his New Jersey attorney registration information listing a new address with a Post Office

box in Atlanta, Georgia. Respondent also updated his eligibility status to “retired,” as of January 6, 2021. As part of his registration, respondent also provided an updated e-mail address. Accordingly, on January 20, 2021, the OAE sent another letter to respondent, via certified, regular, and electronic mail, to the addresses he provided in his January 2021 attorney registration update. The USPS tracking for the certified letter indicated “in transit” as of March 7, 2021, and neither the regular mail nor e-mail were returned as undeliverable. Respondent failed to reply to the OAE’s January 20, 2021 letter.

On February 11, 2021, the OAE filed a petition for emergent relief for the immediate suspension of respondent from the practice of law. The petition was sent to respondent’s registered e-mail address, and via certified and regular mail to respondent’s home and office addresses. The letter sent via certified mail was confirmed as delivered on February 22, 2021 and the regular mail to this home was not returned. The certified mail to his business address was returned to the OAE on March 5, 2021 for “insufficient address,” and the regular mail to his business address was returned and marked “return to sender, vacant, unable to forward.” The OAE also called respondent at his registered telephone number. The telephone was answered by an individual named Ryan James, who stated he recently obtained the telephone number but had received several calls for respondent and had taken messages for him. James told the OAE that if

respondent called the telephone number, which he previously had done, James would relay the message. Respondent failed to reply to the OAE's petition for emergent relief. On July 20, 2021, the Court granted the OAE's petition and temporarily suspended respondent for his failure to respond to the Court's May 5, 2021 Order directing that respondent answer all investigative requests within thirty days.

We find that the facts recited in the complaint support the allegation that respondent violated RPC 8.1(b). 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. R. 1:20-4(f)(1). Specifically, respondent violated RPC 8.1(b) by failing to reply to the OAE's September 29, 2020 written request for information. Although he provided a partial response, on November 18, 2020, to the OAE's October 15, 2020 request for information, respondent subsequently failed to reply to the OAE's November 25, 2020, December 3, 2020, and January 20, 2021 inquiries.

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

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) (the 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) (the 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) (the 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)).

In crafting the appropriate discipline, we also must consider aggravating and mitigating circumstances. In mitigation, aside from the temporary suspension imposed for his non-cooperation in the underlying ethics investigation, respondent has no disciplinary history in his fifteen years at the bar. In re Convery, 166 N.J. 298, 308 (2001).

In aggravation, however, we consider 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). In light of respondent’s default, the enhanced sanction of a reprimand is warranted.

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

Members Campelo and Rivera voted to impose a three-month suspension.

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 Kevin Clark Cromer

Docket No. DRB 21-151

Decided: December 13, 2021

Disposition: Reprimand

<i>Members</i>	Reprimand	Three-month suspension
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera		X
Total:	7	2



Johanna Barba Jones
Chief Counsel