

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-035
District Docket No. IX-2017-0020E

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In the Matter of :
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Alan N. Walkow :
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An Attorney at Law :
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Decision

Decided: August 18, 2022

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 District IX Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 5.5(a)(1)

(unauthorized practice of law while ineligible – three instances) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).¹

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

Respondent earned admission to the New Jersey bar in 2012 and to the New York bar in 2001. He has no disciplinary history in New Jersey. During the relevant timeframe, he maintained a law office in Oakhurst, New Jersey.

Between 2016 and 2020, the Court declared respondent administratively ineligible to practice law in New Jersey, on four separate occasions, for failing to comply with continuing legal education (CLE) requirements.

Effective October 5, 2020, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Effective August 26, 2021, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to file the Interest on Lawyers Trust Accounts (IOLTA) registration statement required by R. 1:28A-2(d).

Service of process was proper. On September 9, 2021, the DEC sent a copy of the amended formal ethics complaint, by certified and regular mail, to respondent's office address of record. Both the certified and regular mail were

¹ Due to respondent's failure to file an answer to the amended formal ethics complaint, and on notice to respondent, the DEC further amended the complaint to include the RPC 8.1(b) charge.

returned, marked unable to forward. The United States Postal Service provided a new address for respondent, in West Long Branch, New Jersey.

On September 16, 2021, the DEC sent a second copy of the amended formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified letter sent to respondent's home address was delivered and the certified mail return receipt was returned to the DEC on September 27, 2021. The certified mail return receipt was signed "Covid-19" with an illegible signature. The regular mail was not returned.

Later, on September 20, 2021, the DEC sent a third copy of the amended formal ethics complaint, by certified and regular mail, to respondent's West Long Branch address. The certified letter sent to that address was delivered and signed by "David Jacob," on September 22, 2021. The regular mail was not returned.

Finally, on October 20, 2021, after having received no reply from respondent, the DEC sent letters to respondent's West Long Branch and home addresses, by certified and regular mail, 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 regular mail was not returned.

The certified letter sent to respondent's West Long Branch address was delivered on October 22, 2021; the certified mail return receipt was signed by "Jacob." The certified letter sent to respondent's home address was delivered on November 17, 2021; the certified mail return receipt was signed "Covid-19" and "Permission."

Moreover, on January 21, 2022, Emeka Nkwuo, Esq., presenter for the DEC, spoke to respondent and impressed upon him the importance of filing an answer prior to January 25, 2022, noting that no further extensions would be granted.

Respondent nonetheless failed to file an answer to the complaint, and the time within which he was required to do so expired. Accordingly, on February 9, 2022, the DEC certified this matter to us as a default.

On April 4, 2022, the Office of Board Counsel (the OBC) published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on May 12, 2022. That notice also informed respondent that, unless he filed a motion to vacate the default by April 13, 2022, his failure to answer would be 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.

By way of its November 16, 2016 Order, the Court declared respondent ineligible to practice law in New Jersey for his failure to comply with his mandatory CLE requirements.² Throughout the fall of 2017, respondent remained noncompliant. Thus, on August 10, 2017, the Board on Continuing Legal Education sent a notice of continued administrative ineligibility to respondent's firm address of record. By way of its October 23, 2017 Order, effective October 30, 2017, the Court again declared respondent ineligible to practice law for failure to comply with his mandatory CLE requirements.³

Respondent was removed from the Court's 2017 ineligibility list on March 19, 2018, as memorialized in an April 25, 2018 Notice to the Bar.⁴

However, on June 17, 2018, the Board on Continuing Legal Education notified respondent that he was not compliant with his CLE obligations for the 2018 reporting period. Respondent failed to cure his ineligibility, and thus again

² Board on Continuing Legal Education, Order of Attorney Ineligibility for CLE Noncompliance (November 16, 2017) <https://www.njcourts.gov/notices/2016/n161206a.pdf?c=Oyf>.

³ Board on Continuing Legal Education, Order of Attorney Ineligibility for CLE Noncompliance (October 23, 2017) <https://www.njcourts.gov/notices/2017/n171101c.pdf?c=qQY>.

⁴ Board on Continuing Legal Education, Attorneys Reinstated from the CLE Ineligible List (April 25, 2018) <https://www.njcourts.gov/notices/2018/n180425a.pdf?c=who>.

was declared ineligible, effective November 5, 2018.⁵ Respondent was not reinstated from that Order until October 1, 2019.⁶

However, the Court's November 6, 2020 Order of Attorney Ineligibility for CLE Noncompliance listed respondent as ineligible to practice law for his failure to satisfy his mandatory CLE requirements for 2020, effective November 16, 2020.⁷ To date, the Court has not reinstated respondent.

In summary, respondent has been ineligible to practice law for three periods of time: (1) from November 21, 2016 through March 19, 2018; (2) from November 5, 2018 through October 1, 2019; and (3) from November 6, 2020 to present. All three of respondent's violations of RPC 5.5(a)(1) fell within the first period of ineligibility.

⁵ The list of ineligible attorneys appears among the Court's Notices to the Bar. Board on Continuing Legal Education, CLE Ineligible Sort by County for NJ – For Posting to Website, (November 5, 2018) <https://www.njcourts.gov/notices/2018/n181107a.pdf?c=Pk1> at 41. OBC staff separately obtained a copy of the October 31, 2018 Order of the attorneys ineligible effective November 5, 2018, a public Judiciary record which was not appended to the complaint, and of which we take judicial notice.

⁶ Notice to the Bar, Attorneys Reinstated from the CLE Ineligible List (October 1, 2019) <https://www.njcourts.gov/notices/2019/n191002a.pdf?c=Rtg>.

⁷ New Jersey Supreme Court, Order of Attorney Ineligibility for CLE Noncompliance (November 6, 2020) <https://www.njcourts.gov/notices/2020/n201117a.pdf?c=sSP>.

On May 30, 2017, the OAE received an anonymous letter, related to Steven Belson's grievance,⁸ accusing respondent of improperly retaining post-closing escrow funds, and alleging that respondent had engaged in the unauthorized practice of law while administratively ineligible. The OAE thereafter referred that matter to the DEC for investigation. Following that investigation, the DEC charged respondent with having violated RPC 5.5(a)(1) (three instances).

Specifically, in the first instance, on March 8, 2017, despite his ineligible status, respondent filed a motion for summary judgment in the United States District Court for the District of New Jersey on behalf of client Blue Bonnet Technology, LLC. Thus, the DEC charged that respondent had practiced while ineligible by filing the motion for summary judgment on March 8, 2017.

In the second instance, from May 25 through an August 4, 2017 closing, despite his ineligible status, respondent represented client Belson in connection with the purchase and sale of real property in Manalapan, New Jersey. In his response to that grievance, respondent detailed interactions with the seller on Belson's behalf, both personally and through his paralegal. Thus, the DEC

⁸ The original complaint redacted the name of this client without explanation. Client names are generally not considered personal identifiers pursuant to R. 1:38-1 through -13. Belson was the original grievant in Docket No. IX-2017-0020E.

charged that respondent had practiced while ineligible by representing Belson from May 25 through August 4, 2017.

In the third instance, respondent represented purchaser Dutreuil Marcellus in his purchase of property in Neptune, New Jersey, from seller Davy Schmidt, and further acted as the post-closing escrow agent for that transaction.⁹ The escrow agreement, dated October 31, 2017 and signed by Schmidt and Marcellus, stated:

The undersigned parties have requested that Walkow Law Office, buyer's attorney in the above-referenced transaction, hold in escrow an amount of Sixteen Thousand Dollars (\$16,000.00) (the "Funds") from the seller's proceeds of the property settlement. The Funds will be retained without interest in the Walkow Law Office's IOLTA account.

* * *

Regarding this agreement, buyer's attorney is solely acting in the capacity as an escrow agent. Accordingly so long as buyer's attorney acts in good faith, his liability will be limited to any fraudulent actions.

[CEX.G.]¹⁰

⁹ The date of the closing could not be definitively ascertained from the record, which was heavily redacted by the district.

¹⁰ "CEX" refers to the exhibits attached to the amended complaint.

On May 22, 2019, Schmidt filed a civil lawsuit against respondent, alleging that he had failed to release the escrowed funds at the conclusion of the real estate transaction. In his July 25, 2019 civil answer and counterclaim, respondent admitted that he first acted as the buyer's attorney in the real estate transaction and, thereafter, as the escrow agent, without compensation, by holding funds in his IOLTA account, until the release of the funds had been authorized by both parties.¹¹ Thus, the DEC charged that respondent had practiced while ineligible by representing the buyer and acting as the escrow agent at the time of the October 31, 2017 escrow agreement.¹²

Although he failed to file an answer to the formal ethics complaint, respondent previously had admitted to the investigator that he had practiced law while ineligible in New Jersey. Specifically, in his January 22, 2018 letter reply to the grievance, respondent acknowledged his ineligibility to practice law in

¹¹ As the escrow agent, respondent was required to hold the disputed escrow funds inviolate until both parties agreed to their release. Belson (the buyer) and Schmidt (the seller) disagreed regarding the release of funds, resulting in their delayed release.

¹² Presumably because he proceeded pro se, the DEC did not separately charge respondent with practicing while ineligible for his other filings in Davy Schmidt v. Dutreuil Marcellus and Alan N. Walkow, Monmouth County DC-005074-19. Particularly, on June 25, 2019 respondent filed an answer and counterclaim during his second period of ineligibility spanning November 5, 2018 to present. In his Attachment to Form A, respondent refers to himself as "I, Alan N. Walkow, Esq." However, he also commented "(Please note that I am before the Court representing myself only, and not the other defendant, Mr. Dutreuil Marcellus)." Form A itself has a handwritten "Pro Se" next to respondent's name in the space designated for "Filing Attorney Information or Pro Se Litigant." New Jersey eCourts also reflects that respondent filed an August 5, 2019 motion to vacate a default judgment. Schmidt settled with respondent for \$250 on November 18, 2019.

New Jersey and admitted that he had represented a client in a real estate transaction during the summer of 2017. However, respondent that, at that time, he had been unaware of his CLE ineligibility until he was questioned about his lack of good standing by the DEC investigator. Respondent subsequently made inquiries to the Board on Continuing Legal Education about his status and learned that his license was not in good standing and that he required additional CLE credits to bring his license into good standing.

Respondent represented to the investigator that he intended to complete the necessary CLE courses to bring his license into good standing; however, he failed to do so until October 1, 2019. Respondent further represented that, in response to having been made aware of his ineligibility, two other attorneys at his law office took responsibility for his caseload. He also claimed to have ceased further representation of clients in New Jersey pending his eligibility to practice of law.

We find that the facts recited in the formal ethics complaint support all the charged RPC violations by clear and convincing evidence. 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).

RPC 5.5(a) states, in relevant part, that a “lawyer shall not: (1) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction.” New Jersey attorneys may be deemed ineligible to practice the law if they fail to comply with the mandatory CLE requirements during their respective compliance periods. R. 1:42-1 and BCLE Reg. 402.

Respondent was administratively ineligible to practice law in New Jersey from November 21, 2016 through March 19, 2018. Yet, he admittedly practiced during that period of ineligibility. Specifically, respondent practiced law while ineligible (1) by filing a motion for summary judgment on behalf of client Blue Bonnet with the United States District Court for the District of New Jersey on March 8, 2017; (2) by representing Belson’s interests in the sale of property in Manalapan, New Jersey from May 25 through closing on August 4, 2017; and (3) by representing buyer Marcellus in his purchase of property in Neptune, New Jersey and acting as escrow agent pursuant to the October 31, 2017 post-closing escrow agreement related to that sale. All three of those acts constituted legal representation and occurred during respondent’s first period of ineligibility. Thus, respondent violated RPC 5.5(a)(1) on three distinct occasions.

Notably, respondent maintained that he had been unaware of his administrative ineligibility until approximately January 2018, when he was contacted by the DEC, and there is no indication in the record that he practiced

law in New Jersey while ineligible after having been so contacted by the DEC. Moreover, the ethics complaint did not allege that respondent had knowingly violated RPC 5.5(a)(1). Thus, we determine that respondent unknowingly violated the Rule.¹³

Further, respondent was obligated to file a verified answer to the formal ethics complaint, dated June 15, 2021, within 21 days. R. 1:20-4(e). Even after receiving two follow-up letters and a telephone call from the DEC, on January 21, 2022, respondent neither replied nor filed an answer to the complaint. Thus, respondent also violated RPC 8.1(b).

In sum, we find that respondent violated RPC 5.5(a)(1) (three instances) and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, when an attorney practices law while ineligible, but is unaware of that ineligibility, an admonition will be imposed. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (the 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) (the attorney

¹³ Knowledge is not a required element for a violation of RPC 5.5(a)(1). However, where a knowing violation of R. 5.5(a)(1) has been established, the Court has imposed a reprimand or a censure, depending upon the existence and nature of aggravating factors. See In re Fell, 219 N.J. 425 (2014); In re Moskowitz, 215 N.J. 636 (2013); In re D'Arienzo, 217 N.J. 151 (2014); In re Macchiaverna, 214 N.J. 517 (2013).

practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); 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 bar).

Similarly, admonitions typically are imposed for failure to cooperate with disciplinary authorities if the attorney has a limited or no ethics history. See, e.g., In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (attorney failed to respond to letters from the investigator in the underlying ethics investigation, in violation of RPC 8.1(b); attorney also violated RPC 1.4(b) (failing to communicate), RPC 1.5(c) (contingent fee; failing to set forth in writing the basis or rate of the attorney's fee – two instances), and RPC 1.16(d) (failing to protect the client's interests upon termination of the representation); 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, in violation of RPC 8.1(b)); In re Gleason, 220

N.J. 350 (2015) (attorney did not 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, in violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, in violation of RPC 1.4(b); prior reprimand); In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance, despite repeated assurances that he would do so, in violation of RPC 8.1(b); prior admonition).

In the instant matter, just like the attorneys in Goodman, Lloyd, and Kelly, there is no clear and convincing evidence that respondent was aware of his administrative ineligibility when he engaged in the unauthorized practice of law in New Jersey. Rather, the record demonstrates that respondent became aware of his ineligibility in January 2018, when he was informed by the DEC. Additionally, upon being made aware of his ineligibility by the DEC, respondent promptly reached out to the relevant Court offices to discuss the status of his license and ascertain what needed to be done to bring his license into compliance. He also arranged for other attorneys in his office to assume the representation of his New Jersey clients.

However, unlike the attorneys in Goodman, Lloyd, and Kelly, respondent also violated RPC 8.1(b) by failing to cooperate with the disciplinary authorities,

despite the DEC's efforts to secure his cooperation.

In our view, the baseline discipline for the totality of respondent's misconduct remains an admonition. 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 operates 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 limited mitigation, respondent has had an unblemished disciplinary record in his ten years at the bar.

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

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 Alan N. Walkow
Docket No. DRB 22-035

Decided: August 18, 2022

Disposition: Reprimand

<i>Members</i>	Reprimand
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Singer	X
Total:	9



Johanna Barba Jones
Chief Counsel