Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-052
District Docket Nos. XIV-2020-0344E,
XIV-2021-0008E, and XIV-2021-0068E

In the Matter of	:
Stephen Robert Jones	:
An Attorney at Law	:

Decision

Argued: May 24, 2023

Decided: August 14, 2023

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

Robert Ramsey appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of

R. 1:21-6) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) in two respects: one, violating R. 1:20-20(a) and (b)(2) (employing an attorney who is under suspension from the practice of law; while suspended from the practice of law, occupying, sharing or using office space in which an attorney practices law); and two, violating R. 1:20-20(b)(5) (using an attorney bank account more than thirty days after the date of an Order of suspension).

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2006 and previously maintained an office for the practice of law in Pitman, New Jersey. In 2018, he moved to Florida. During the relevant period, from March 2020 until September 2021, he was suspended from the practice of law (as more fully described below). Following his reinstatement, he maintained a practice of law in Rotonda West, Florida.

Respondent has a prior one-year, retroactive suspension, which went into effect on March 16, 2020. Specifically, on that date, the Court temporarily suspended respondent from the practice of law, on consent, pursuant to In re Schaffer, 140 N.J. 148 (1995). In re Jones, 241 N.J. 352 (2020). Subsequently, on March 9, 2021, the Court imposed a one-year disciplinary suspension,

retroactive to the date of the Order of temporary suspension, based on his misconduct in two consolidated matters. In re Jones, 245 N.J. 379 (2021).

In the first matter, respondent was found to have violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), based on his entry, in Florida, of the equivalent of a plea of nolo contendere to felony possession of cocaine. In the Matters of Stephen Robert Jones, DRB 20-035 and 20-067 (January 29, 2021) at 10, 13.

In the second matter, respondent was found to have violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) and (c) (failing to communicate with a client); RPC 1.16(d) (failing to protect a client's interests upon termination of representation); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(g) (engaging, in a professional capacity, in conduct involving discrimination) in the course of representing two clients in a civil matter. Id. at 3, 11, 14. During the representation, respondent failed to: review an already outstanding discovery motion; respond to discovery requests; review a motion to dismiss; file a motion to vacate the resulting order of dismissal; and explain to the clients that, in order to reinstate the matter, they needed to produce documents previously requested by the opposing party. Id. at 11-12. After the clients terminated his representation, he failed to inform them,

their new counsel, or the court when he subsequently received notice of a motion to dismiss. Ibid. Moreover, he sent lewd text and Facebook messages to one of the clients. Ibid. Finally, he failed to provide documents requested by disciplinary investigators. Ibid.

In March 2021, respondent submitted a petition for reinstatement, in which he represented that he had worked for a Florida law firm while suspended. Following our review of the petition, we determined that, in so doing, he had violated R. 1:20-20. In the Matter of Stephen Robert Jones, DRB 21-051 (August 2, 2021) at 4. We recommended that the Court grant his petition for reinstatement, with the condition that his reinstatement not be effective until September 15, 2021, six months from the date he had voluntarily resigned from the Florida law firm. Ibid. (citing R. 1:20-20(c)).

The Court agreed. By Order dated September 10, 2021, the Court reinstated respondent's license to practice law, effective September 15, 2021. In re Jones, 248 N.J. 225 (2021).

We now turn to the facts of this matter.

On March 6, 2023, respondent and the OAE entered into a disciplinary stipulation, which set forth the factual bases for respondent's admitted ethics violations. The information therein had come to light during three underlying investigations. One investigation related to respondent's work for a law firm

during his term of suspension (Docket No. XIV-2021-0068E). The other two matters, which the March 2023 stipulation addressed in tandem, related to respondent's withdrawal, during his term of suspension, of personal funds that he maintained in his attorney trust account (ATA) and accessed by means of an automated teller machine (ATM) (Docket Nos. XIV-2020-0344E and XIV-2021-0008E).

First, we address respondent's conduct in connection with the Florida law firm. From July 20 through September 20, 2020, he worked for John Musca, Esq., and the Musca Law Firm, PA (Musca Law), based in Naples, Florida, as an independent contractor scouting leasing opportunities for the firm. On September 21, 2020, respondent began full-time employment with Musca Law as a "call center phone intake employee," gathering information regarding potential clients and their matters. Starting in October 2020, after attending training onsite at Musca Law, he worked remotely due to the COVID pandemic. According to respondent, before or during his initial employment as an independent contractor, "Mr. Musca was informed that my license to practice law was suspended[.]"

By letter dated October 16, 2020, sent via certified and regular mail, the OAE informed respondent's counsel that respondent had not filed his R. 1:20-20 affidavit of compliance following his March 2020 suspension,

notwithstanding the express inclusion, in the Court's suspension Order, that he comply with that Rule. The OAE requested a reply by October 30, 2020.

On October 27, 2020, respondent's counsel received the OAE's letter, and he informed respondent about it the next day. Subsequently, respondent sent the OAE his R. 1:20-20 affidavit by October 30, 2020. His affidavit did not include any information regarding his employment by Musca Law.

On March 2, 2021, respondent filed his petition for reinstatement. Therein, he provided information about his employment by Musca Law. In addition, he certified that "I have not, during the period of suspension, engaged in the practice of law in any jurisdiction."

On March 16, 2021, the OAE sent respondent a letter, via e-mail, stating that it was opening an investigation based on the statements, included in his petition, that he had been employed by a law firm while suspended. On that same date, upon receiving the OAE's correspondence, respondent resigned from his position at Musca Law.

On March 20, 2021, respondent wrote to the OAE, providing further information about his work for Musca Law and admitting that, by working for the firm, he had violated R. 1:20-20(b)(1) and (2). He acknowledged that he had not understood the limitations imposed by R. 1:20-20 and expressed regret for failing to study that Rule. However, he attributed his ignorance of the Rule

primarily to the circumstances of receiving the OAE's request for his R. 1:20-20 affidavit (which he allegedly had not known he needed to submit) on October 28, 2020, with an "unfair" requirement to respond within two days.

Next, we address respondent's conduct in connection with his ATA during the period of his suspension. At the relevant times, respondent maintained the following attorney trust accounts at Wells Fargo Bank: (1) an ATA ending in 7513, opened in April 2018 and closed on March 25, 2021 (ATA1), and (2) an ATA ending in 9668, opened on October 2, 2021 (ATA2).

On September 9, 2020, and again on January 11, 2021, the OAE received notices from Wells Fargo Bank that respondent had overdrawn his ATA1. The OAE's subsequent investigation revealed that, between August 2020 and January 2021, respondent had made four cash withdrawals, totaling $500, from his ATA1 using an ATM. However, the OAE determined that respondent maintained only personal funds, not client funds, in his ATA1 during this period.

In March 2021, respondent closed his ATA1. In September 2021, following his reinstatement to the practice of law, he opened his ATA2, for which he did not have ATM access. As of March 2023, respondent's books and records complied with R. 1:21-6.

Based on the above facts, the OAE and respondent stipulated that respondent violated the following Court Rules and Rules of Professional Conduct:

- RPC 8.4(d), R. 1:20-20(a), and R. 1:20-20(b)(2), in that Respondent was employed by a law firm during the period of his suspension;
- RPC 1.15(d) and R. 1:21-6(c)(2), in that Respondent made prohibited ATM withdrawals from his attorney trust account; and
- RPC 8.4(d) and R. 1:20-20(b)(5) by engaging in prohibited trust account transactions during a period of suspension.

However, the OAE asserted that respondent's work for Musca Law did not constitute the practice of law while suspended, in violation of RPC 5.5(a)(1). Moreover, because respondent had maintained only personal funds in his ATA1 when he made the prohibited withdrawals, the OAE concluded that his misuse of this account did not result in either commingling or the misappropriation of client funds, in violation of RPC 1.15(a).

The OAE recommended the imposition of a reprimand or censure. Although no disciplinary precedent is precisely on point, it analogized the instant matter to cases in which attorneys have failed to file the R. 1:20-20 affidavit and, further, noted that the threshold quantum of discipline for that misconduct is a reprimand. The OAE also observed that recordkeeping

violations typically are met with admonitions, when (as here) they do not result in negligent misappropriation.

In aggravation, the OAE noted respondent's prior one-year suspension. In mitigation, the OAE asserted that respondent was "contrite, readily admitted to his wrongdoing, and has entered this disciplinary stipulation;" "cooperated with ethics authorities;" and undertook "[s]ubsequent remedial measures" in that, "[u]pon being made aware of the impropriety of having an ATM card for his ATA1, [he] closed ATA1 and opened ATA2," and he "also promptly resigned from Musca Law after being informed of the impropriety of his employment while suspended."

At oral argument and in his submission to us, respondent, through his counsel, argued that we should weigh, in mitigation, the six-month delay in his reinstatement to the practice of law as a result of his employment at Musca Law. Characterizing this delay as a de facto form of discipline for his R. 1:20-20 violations, he urged the imposition of a reprimand rather than a censure.

In response to questions regarding the applicability of progressive discipline, respondent argued than an enhancement in the quantum of discipline was not warranted because his misconduct reflected "ignorance" and "negligence," rather than failure to learn from previous encounters with the disciplinary system. In addition, he pointed out that the misconduct at issue here

was unconnected to the misconduct that resulted in his 2021 suspension. He reiterated that, at the time he worked for Musca Law, he erroneously believed that this employment did not violate R. 1:20-20 because he was neither working in New Jersey nor engaged in the practice of law; now, however, he acknowledged, in his counsel's words, that he should not have been "associated with a law firm in any capacity anywhere in the United States" while suspended.

In turn, during oral argument before us, the OAE reiterated the points set forth in the stipulation. The OAE urged the imposition of a reprimand, censure, or such other discipline as we deemed appropriate.

Following a review of the record, we determine that the stipulated facts in this matter clearly and convincingly support some, but not all of, the charged violations of the Court Rules and Rules of Professional Conduct.

Specifically, respondent failed to comply with the R. 1:20-20 requirements governing suspended attorneys in two respects: by occupying, sharing, or using office space in which an attorney practices law, in violation of R. 1:20-20(b)(2); and by failing to cease the use of his ATA1, in violation of R. 1:20-20(b)(5).

Respondent's full-time employment by Musca Law, during which he answered phone calls from prospective clients for the firm, amply supports his admitted violation of R. 1:20-20(b)(2). That Rule requires that a suspended

attorney "shall not occupy, share or use office space in which an attorney practices law." Here, respondent concededly attended training at Musca Law's facility and, thereafter, worked as a call-center employee, albeit remotely due to the COVID pandemic. His onsite training undoubtedly breached the Rule, and the happenstance of being permitted to perform his tasks remotely, in the midst of a pandemic, did not render him any less a part of Musca Law's office space within the meaning of the Rule. He worked solely for and on behalf of Musca Law, an entity necessarily comprised of attorneys who practice law; Musca Law authorized his remote work arrangement; he fielded calls placed directly to Musca Law; and the purpose of his job was to interact with prospective clients, gathering information about their potential legal matters and providing this information to Musca Law. For callers, the association between respondent and Musca Law remained obvious, regardless of the fact that he answered calls remotely.

Respondent's claimed ignorance of Rule 1:20-20 is no excuse. See In re Berkowitz, 136 N.J. 134, 147 (1994) ("Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct."); In re Goldstein, 116 N.J. 1, 5 (1989) ("ignorance of ethics rules and case law does not diminish responsibility for an ethics violation"). Nor can his ignorance be attributed to

his belated receipt of the OAE's October 2020 request for his affidavit, two days before the OAE required his response. By then, five months had passed since the affidavit was due, thirty days after the Court's March 2020 Order of temporary suspension. Moreover, there is no evidence that he sought an extension of time, in October 2020, to read and understand the Rule before certifying that he was complying with it. Thereafter, he continued working for Musca Law for five months, until March 2021, all the while failing to study the Rule, seek guidance from the OAE, or otherwise attempt to ensure that he was, in fact, compliant with the Rules governing suspended attorneys.

However, in our view, respondent's initial work in scouting potential locations for Musca Law did not violate R. 1:20-20(b)(2). The record contains no evidence that this work entailed respondent's occupancy or other use of space associated with the practice of law by the firm's attorneys. See In re Stoldt, 37 N.J. 364, 366 (1962) (finding, in the context of a determination on the attorney's petition for reinstatement, that the attorney had not violated the prohibitions on activities by suspended attorneys by working for his attorney-son as an abstractor, making four or five title searches and providing the information to his son without expressing any opinions on questions of title, without entering his son's office, and having "removed all evidence that he was an active member

of the profession, or in any way associated with his son at that address or elsewhere.").

Additionally, we determine to dismiss the charge that respondent violated R. 1:20-20(a). That Rule provides that

> [n]o attorney or other entity authorized to practice law in the State of New Jersey shall, in connection with the practice of law, employ, permit or authorize to perform services for the attorney or other entity, or share or use office space with, another who . . . is under suspension from the practice of law in this or any other jurisdiction.

Here, respondent's employing attorney and entity were, respectively, John Musca, Esq., and Musca Law: a Florida attorney and law firm. Neither Musca nor his firm was authorized to practice law in New Jersey. Thus, R. 1:20-20(a) does not apply.

Respondent's accessing of funds in his ATA while suspended is a per se violation of R. 1:20-20(b)(5). That Rule provides, in relevant part, that except for the purposes of timely disbursing trust monies, a suspended attorney "shall . . . cease to use any bank accounts or checks on which the attorney's name appears as a lawyer or attorney-at-law or in connection with the words 'law office'." Here, between August 2020 and January 2021, respondent made multiple withdrawals from his ATA1, designated "STEPHEN R JONES, DBA

STEPHEN R JONES ESQUIRE, ATTORNEY TRUST ACCOUNT." Thus, his use of this account contravened R. 1:20-20(b)(5).

Additionally, respondent's use of an ATM to access his ATA1 was a per se violation of R. 1:21-6(c)(2), which states that "ATM or cash withdrawals from all attorney trust accounts are prohibited." Accordingly, he violated RPC 1.15(d). However, the OAE investigation revealed that there were no client funds in his ATA1 at the time; thus, respondent's misuse of the account did not constitute commingling, nor could it have resulted in misappropriation.

Although respondent clearly violated R. 1:20-20(b)(2) and (5), a closer question arises in weighing whether these violations prejudiced the administration of justice, contrary to RPC 8.4(d). Pursuant to R. 1:20-20(c), failure to file the R. 1:20-20 affidavit constitutes a violation of RPC 8.4(d), as well as RPC 8.1(b). We find that in the instant matter, the RPC 8.4(d) charge is amply supported by the clear parallels between respondent's misconduct and the conduct addressed in precedent involving attorneys' failure to submit the R. 1:20-20 affidavit. Respondent's failure to timely file his affidavit; his certification that he was compliant with R. 1:20-20 when he admittedly had not even endeavored to understand that Rule; and his corresponding failure to adhere to the Rule, in combination, scuttled the Court's administration of R. 1:20-20(b)'s prophylactic provisions, which are intended to protect the public.

Analogously, in assessing whether an attorney who partially complied with requests for information in a disciplinary matter had violated RPC 8.1(b), we previously held that partial cooperation is "no less disruptive and frustrating than a complete failure to cooperate[,]" in that it "forces the investigator to proceed in a piecemeal and disjointed fashion." In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48, so ordered, 225 N.J. 611 (2016). In similar vein, here, respondent's ongoing failure to adhere to the R. 1:20-20 requirements, while simultaneously certifying to the OAE that he was doing so, was as wasteful of the Court's disciplinary resources as an attorney's failure to submit an R.1:20-20 affidavit, and equally violative of RPC 8.4(d).

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

We most often have addressed violations of R. 1:20-20(b)(1) through (14) either in the context of reinstatement petitions or in disciplinary matters that, unlike the instant matter, included charges of failing to file the R. 1:20-20 affidavit or committing other, serious misconduct. Thus, no disciplinary precedent is precisely on point.

Absent direct precedent, for purposes of determining the appropriate quantum of discipline, we find that respondent's violation of RPC 8.4(d) based

on failure to comply with R. 1:20-20(b)(2) and (5) is analogous to cases in which attorneys have failed to file a R. 1:20-20 affidavit. The minimum sanction for failure to file this affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004). However, the discipline imposed may differ if the record demonstrates mitigating or aggravating circumstances. Ibid.

Recordkeeping violations ordinarily are met with an admonition, if the misconduct does not negatively impact or invade a client's funds. See In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018), and In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015).

Accordingly, respondent's RPC 8.4(d) violation, standing alone, warrants a reprimand. In addition, respondent committed a recordkeeping violation; however, that limited infraction – consisting solely of using an ATM to access a trust account that held no client funds – does not warrant increasing the quantum of discipline beyond a reprimand.

In crafting the appropriate discipline, we also consider aggravating and mitigating circumstances.

The OAE urged that we should weigh respondent's underlying suspension in aggravation. However, in our view, because that suspension was an element of the misconduct, it cannot also constitute an aggravating factor; additionally, the Court had not issued its final decision imposing the retroactive suspension

at the time respondent engaged in his misconduct in this matter (but for his final days at Musca Law).[1] Nevertheless, in aggravation, respondent should have had a heightened awareness of the importance of complying with the Court Rules and Rules of Professional Conduct, given that throughout the time he engaged in the misconduct at issue here, he was involved in disciplinary proceedings.[2]

In mitigation, respondent was contrite and readily admitted his wrongdoing. Moreover, he entered into the disciplinary stipulation, thereby conserving disciplinary resources. Finally, he resigned his position at Musca Law upon learning of the impropriety of that employment, and he also closed his ATA1 account.

However, we decline to weigh the six-month delay in respondent's reinstatement as an additional mitigating factor. Contrary to his argument, this delay did not constitute de facto discipline for the violations at issue here. To the contrary, an attorney's reinstatement following an Order of suspension

[1] The Court issued its decision, imposing the one-year, retroactive suspension, on March 11, 2021. Respondent worked as a full-time employee of Musca Law from September 2020 until March 16, 2021. Thus, the Order of final suspension (as opposed to temporary suspension) coincided with five days of his employment.

[2] When respondent began working for Musca Law, the OAE's February 2020 motion for final discipline in DRB 20-067 was pending before us; in July 2020, we heard arguments in that matter, as well as in DRB 20-035, brought before us on a recommendation for discipline filed by the District IV Ethics Committee (DEC); and in January 2021, we issued our decision in the consolidated matters.

necessarily stems from and is governed by the suspension Order, which in turn results from proceedings that addressed prior misconduct. R. 1:20-15A(a)(3); R. 1:20-20(c); R. 1:20-21(a), (b). A delay in reinstatement, precipitated by failure to comply with the terms of a suspension, is an extension or furtherance of those initial proceedings; it is not, as respondent contended, a "form of discipline" for later misconduct. If an attorney allegedly violates RPC 8.1(b), RPC 8.4(d), or both by failing to comply with R. 1:20-20 while suspended, then separate disciplinary proceedings must be initiated to address those alleged violations of the Rules of Professional Conduct.[3]

On balance, the aggravating and mitigating factors are in equipoise, and a reprimand remains the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli voted for a censure.

Member Joseph voted for an admonition.

Member Boyer was absent.

[3] Although we reject respondent's argument on legal grounds, we further note that, as of September 10, 2021 – the date of the Court's Order that simultaneously imposed the six-month delay and reinstated respondent to the practice of law, effective September 15, 2021 – only five days remained out of the six-month-delay period. In re Jones, 248 N.J. 225 (2021).

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stephen Robert Jones
Docket No. DRB 23-052

Argued: May 24, 2023

Decided: August 14, 2023

Disposition: Reprimand

Members	Reprimand	Admonition	Censure	Absent
Gallipoli			X	
Boyer				X
Campelo	X			
Hoberman	X			
Joseph		X		
Menaker	X			
Petrou	X			
Rivera	X			
Rodriguez	X			
Total:	6	1	1	1

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