

involvement); RPC 7.1(a)(3)¹ (making false or misleading communications by comparing the lawyer's service with other lawyers' services); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).²

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 2012 and to the New York bar in 2001. He previously maintained a practice of law in Oakhurst, New Jersey.

On March 7, 2023, the Court reprimanded respondent for his violation of RPC 5.5(a)(1) (engaging in the unauthorized practice of law while ineligible) and RPC 8.1(b). In re Walkow, __ N.J. __ (2023), 2023 N.J. LEXIS 264. In that matter, respondent represented three clients despite being ineligible to practice law due to his failure to comply with continuing legal education requirements. In the Matter of Alan N. Walkow, DRB 22-035 (August 18, 2022) at 7-8. We found that respondent unknowingly practiced law while ineligible. Additionally, respondent failed to file an answer to the formal ethics complaint and allowed

¹ At one point in the complaint, the OAE referenced RPC 7.3(a) instead of RPC 7.1(a)(3). However, the reference to RPC 7.3(a) was clearly a typographical error, as the allegations in the complaint demonstrate that the OAE intended to charge RPC 7.1(a)(3), and the OAE mentioned RPC 7.1(a)(3) earlier in the complaint.

² Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to respondent, the OAE amended the complaint to include the second RPC 8.1(b) charge.

the matter to proceed as a default. Id. at 12.

Service of process was proper. On December 7, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office and home addresses of record. The certified mail sent to respondent's office address was returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED/ UNABLE TO FORWARD." The regular mail sent to respondent's office address was not returned. Both the certified mail and the regular mail sent to respondent's home address were returned marked "ATTEMPTED – NOT KNOWN/ UNABLE TO FORWARD."

On January 5, 2023, the OAE sent a letter, by regular mail, to the same office and home addresses, informing respondent 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 charge a willful violation of RPC 8.1(b). The OAE also sent an electronic copy of this second letter to respondent's e-mail address of record, and to another e-mail address respondent previously had provided. The regular mail sent to respondent's office address was not returned to the OAE. The regular mail sent to respondent's home address was returned to the OAE marked "NOT DELIVERABLE AS ADDRESSED/ UNABLE TO FORWARD." The

electronic mail sent to respondent's e-mail address of record was received by a law firm who disavowed any association with respondent. The electronic mail sent to the alternate e-mail address provided by respondent was delivered, as reflected by a delivery notification received by the OAE. The notification stated that delivery was "complete," but that "no delivery notification was sent by the destination server."

On January 17, 2023, the OAE published a disciplinary notice in both The Daily Record and the Asbury Park Press. The notice stated 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 of the allegations of the complaint; and that the matter would be certified directly to us for the imposition of discipline. On February 13, 2023, the OAE published an identical disciplinary notice in the New Jersey Law Journal.³

As of March 7, 2023, 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.

³ Given the discrepancy in the two publication dates that directed respondent to file an answer within twenty-one days, we view the disciplinary notices in the light most favorable to respondent and find that he had until March 6, 2022 to file an answer to the ethics complaint in order to avoid a default in this matter.

On March 24, 2023, Acting Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, informing him that the matter was scheduled before us on May 24, 2023, and that any motion to vacate must be filed by April 17, 2023. The certified mail was returned to the Office of Board Counsel (the OBC) marked "RETURN TO SENDER/ NO SUCH STREET/ UNABLE TO FORWARD." The regular mail was not returned to the OBC.⁴

Moreover, on April 3, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on May 24, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by April 17, 2023, his failure to answer would be deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate.

We now turn to the allegations of the complaint.

On June 16, 2020, the Committee on Attorney Advertising (CAA) sent a letter to respondent at his office address, directing him to "cease and desist" using his law firm website, which the CAA maintained contained false or misleading communications regarding respondent's legal services. The CAA

⁴ 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).

raised four issues in particular.

First, “[p]ursuant to Joint Committee on Attorney Advertising Opinion 41/ Advisory Committee on Professional Ethics Opinion 718 (April 5, 2010), each lawyer office that is not staffed during business hours by a member of [respondent’s] firm must” be identified on the website as “meeting location – by appointment only.” The “website list[ed] eight office locations (without addresses),” and if any such location was not staffed during regular business hours, respondent was obligated to identify that location as “meeting location – by appointment only” on his website.

Second, although the website “d[id not contain the names of any lawyers or support staff,” its “home page display[ed] a photograph of two men and two women The men [were], presumably, [respondent] and Warren Walkow.” However, “Warren Walkow [was] deceased,” and “it [was] not clear what role the women ha[d] in the firm.” The photograph was misleading because it “impli[ed] that there may be four lawyers actively practicing in the firm” when, in reality, respondent was the only practitioner.

Third, the website “refer[ed] to ‘attorneys,’” which was inaccurate because respondent was a solo practitioner.

Lastly, the website improperly “stat[ed] that [respondent’s] firm offer[ed] the ‘lowest fees in the State.’” This statement was improper because it was a

comparison of “[respondent’s] services with other lawyers’ services.”

The CAA stated, in conclusion, that it would “forego formal action against” respondent if he submitted a certification, within thirty days, acknowledging that he would comply with advertising guidelines in the future and providing a link to his revised website.

The CAA enclosed a three-page printout of respondent’s website, dated October 24, 2019.

On the first page of the printout, the words “REAL ESTATE LAW SERVICES ONLY \$495.00 FROM CONTRACT TO CLOSE” appeared in large font. Beneath these words was a picture showing two women and two men standing in front of a wall, with the two women in the center and the two men on either side. All four people were smiling, and a textbox stating “FREE CONSULTATION” partially covered the bodies of the man and woman on the right side. No information on the page identified anyone in the picture. To the right of the picture was respondent’s law firm name along with empty fields for visitors to leave questions and contact information.

The second page of the printout contained text, in large font, stating, “With 8 Locations in New Jersey It’s Easy to Meet for Your Free Consultation.” Underneath the text were eight rectangular boxes, each of which showed a location’s “office” telephone number, as well as its zip code and city.

The third page of the printout displayed, in its upper left corner, an advertisement box, which reiterated that “REAL ESTATE LAW SERVICES” were available for \$495.00, “FROM CONTRACT TO CLOSE.” The words “LOWEST FEES IN THE STATE” appeared in smaller font in the lower half of the box. On the bottom of the box were the words “Our Attorneys Also Specialize in Complex Commercial and Investment Real Estate Transactions,” which were printed in small font. Approximately two inches beneath the box was a straight line running across the page. Under this line were the words “© 2019 Walkow Law Office” printed in very small font. Respondent’s firm name did not otherwise appear on the third page.

Respondent failed to reply to the CAA’s June 16, 2020 letter. Consequently, on January 22, 2021, the CAA sent another letter to respondent’s office address of record, by certified and regular mail, with an additional copy by electronic mail, stating that the CAA would a formal complaint against respondent unless he submitted a certification of compliance within thirty days. The CAA received the certified mail return receipt; the regular mail was not returned; and the electronic mail, which had been sent to respondent’s e-mail address of record, “did not bounce back.”

On February 12, 2020, respondent called the CAA, stating that “his office had been shut down for a year;” that “he ha[d] been out of the country;” and that

he had “just received via email a scanned version of the January 2021 letter but he never received the June letter.” Respondent further stated that he was no longer practicing law and provided the CAA with an alternate e-mail address by which to contact him. The CAA:

told [respondent], during this telephone conversation, that he did not update his attorney registration to show that his office was shut down or that he was no longer practicing, and that he should update his attorney registration, shut down the firm website, and provide a certification to the Committee that the firm is closed, and he is no longer practicing law.

[CEx4p2.]⁵

Following the telephone conversation, the CAA sent the June 16, 2020 and January 22, 2021 letters to respondent’s alternate e-mail address.

On March 8, 2021, the CAA sent respondent another e-mail, to his e-mail address of record, requesting that he provide an update on his effort to comply with the CAA’s directives. Respondent, however, failed to reply. Thus, on March 31, 2021, the CAA sent another e-mail to respondent’s e-mail address of record, stating that it would initiate disciplinary proceedings, unless it received a certification from respondent “shortly.”

⁵ “CEX” refers to exhibits attached to the November 30, 2022 complaint.

On May 26 and August 2, 2021, the CAA reviewed the Central Attorney Management System and discovered that respondent continued to list his law office address, telephone number, and e-mail address, despite previously indicating that he had closed his practice. Also on August 2, 2021, the CAA visited respondent's website address and discovered that the website no longer referenced respondent, and that it had come to be associated with another law firm. That same date, the CAA referred respondent's matter to the OAE.

In its referral letter to the OAE, the CAA stated that it had reviewed respondent's website in October 2019 and had advised respondent of its concerns regarding the website's advertising content in its June 16, 2020 letter. The CAA then repeated the content of the June 16, 2020 letter and recounted its interactions with respondent, his failure to change his attorney registration status, and the fact that his website had come to be associated with a different firm. The CAA did not attempt to verify whether the eight locations previously listed on respondent's website were regularly staffed, nor did it conclude that these locations were not regularly staffed. Rather, it stated simply that it had asked respondent to add the phrase "meeting location – by appointment only" in the event that any location was not staffed during business hours.

On September 30, 2021, the OAE sent a letter to respondent, enclosing the CAA's referral and requesting that he provide a written reply by October 13,

2021. The OAE warned that it “m[ight] have to assume that the facts as stated in the referral [were] true” if respondent failed to reply. The OAE sent its letter to respondent’s home and office addresses, by certified and regular mail, and to his alternate e-mail address. On October 12, 2021, the certified letter sent to respondent’s office address was returned to the OAE, with a notation indicating that forwarding time had expired, and that respondent’s new address was a location in West Long Branch, New Jersey. On October 27, 2021, “[t]he regular mail was [also] returned” to the OAE. The record is unclear, however, regarding whether the regular mail had been sent to respondent’s office or to his home. The complaint does not disclose the status of the remaining mailings.

On October 22, 2021, the OAE sent a letter to the West Long Branch address, by certified and regular mail, enclosing the CAA’s referral and requesting that respondent contact the OAE by October 29, 2021. On October 29, 2021, the certified mail receipt was returned to the OAE bearing an illegible signature⁶ and indicating delivery to the West Long Branch address on October 27, 2029.

⁶ The recipient clearly signed the first name as “Crissy,” but it is not clear if the last name was “Viscu” or “Visco.”

“In or around December 2021,” respondent left a voice message for the OAE, indicating that “he moved to Long Branch and then to his current address⁷ and was not getting his mail as a result.” He also stated that he had not practiced law “since before the Covid-19 pandemic.” On or about December 15, 2021, the OAE left a voicemail message for respondent, “advising that the OAE needed a response to the referral and would be scheduling a demand interview via letter” On December 15, 2021, the OAE sent a letter to respondent’s alternate e-mail address, directing that he appear for a virtual demand interview on December 28, 2021 and provide a written reply to the CAA’s referral prior to the interview.

On December 27, 2021, the OAE sent another letter to respondent’s alternate e-mail address, stating that the interview scheduled for the following day had to be postponed because respondent had failed to submit a written reply to the CAA’s referral. The OAE required respondent to submit his reply by January 3, 2022. Also on or around December 27, 2021, respondent “called the OAE and again advised the he had not been practicing [law] since before the Covid-19 pandemic.”

On April 26, 2022, the OAE sent a letter to the West Long Branch address, by certified and regular mail, and via respondent’s alternate e-mail address,

⁷ The complaint provides no details on the “current address.”

directing respondent to submit his written reply to the CAA's referral by May 10, 2022 and warning that his failure to cooperate could result in a charged violation of RPC 8.1(b). Although the certified mail "was returned to the OAE unsigned," neither the regular mail nor the electronic mail were returned as undeliverable.

On June 2, 2022, the OAE sent another letter to the West Long Branch address, by certified and regular mail, and via respondent's alternate e-mail address, stating that respondent had failed to answer previous letters and demanding that respondent attend a virtual demand interview on June 30, 2022. Both the certified mail and the regular mail were returned to the OAE marked "UNABLE TO FORWARD." However, the electronic mail was not returned.

On June 30, 2022, following respondent's failure to appear for the demand interview, the OAE called respondent and left a voicemail message. The OAE also called a number previously listed as respondent's business telephone number⁸ "wherein an individual named 'Don' answered and did not know [r]espondent's current whereabouts." Respondent did not return either of the OAE's telephone calls.

⁸ The record indicates that this telephone number "previously [had] been listed as [respondent's] business phone number."

On July 7, 2022, the OAE sent a letter, by regular and certified mail, to the West Long Branch address, three home addresses that the OAE had discovered via “an investigative search,” and via alternate e-mail address, stating that respondent had failed to answer prior correspondence and raising concern that respondent was holding client funds in his trust account. The OAE threatened to seek respondent’s “immediate temporary suspension” if it did not hear from respondent by July 21, 2022.

Though not mentioned in the letter, on September 17, 2021 and April 20, 2022, the OAE had issued subpoenas to respondent’s bank, seeking his attorney trust account (ATA) and business account records. The records produced by the bank indicated that respondent’s ATA balance was \$39,127 on May 31, 2021, and \$11,803 on April 30, 2022. The complaint shed no light on whether those funds represented client funds or earned legal fees, and the OAE was unable to ascertain the purpose of any withdrawal(s) that respondent may have made between May 31, 2021 and April 30, 2022.

The certified mail sent to the West Long Branch address was returned to the OAE marked “RETURN TO SENDER/ UNABLE TO FORWARD.” The regular mail sent to the West Long Branch address also was returned. Of the mailings sent to the three home addresses discovered by the OAE, one was returned with the notation “FORWARD TIME EXP RTN TO SENDER” and a

reference to one of the other two addresses. “Neither of the other two home-addressed” mailings were returned.⁹ The OAE received one certified mail receipt, with an ineligible signature, indicating delivery on July 7, 2022 at the address referenced by the returned letter. The electronic mail sent to respondent’s alternate e-mail address was not returned as undeliverable. Respondent failed to reply to any of the OAE’s correspondence.

On November 30, 2022, the OAE filed a formal ethics complaint against respondent, alleging violations of RPC 7.1(a); RPC 7.1(a)(3); and RPC 8.1(b). With respect to RPC 7.1(a), the OAE stated that respondent’s law firm website “listed eight locations without addresses,” and that “[t]hese locations implied they were regularly staffed” during business hours. Additionally, even though respondent “was the only attorney” at his firm, the website referenced “attorneys” and displayed a photograph of four people, without mentioning “the names of any lawyers or support staff.” “By virtue of the foregoing,” the OAE concluded that respondent violated RPC 7.1(a) “in that [r]espondent’s website contained false or misleading communications regarding his services by listing eight locations which were not fully staffed or available to clients; including a

⁹ The complaint was unclear on this point. If the OAE sent a certified mail and a regular mail to each of the three addresses, there should have been six mailings, and the reference to “neither of the other two” mailings is incongruous. It is possible that the returned letter was a regular mail, and by “neither of the other two mailings,” the OAE meant “neither of the other two regular mails.”

photograph of unidentified individuals; and listing attorneys of the firm when [r]espondent was the only attorney in the firm.”

With respect to RPC 7.1(a)(3), the OAE alleged that respondent improperly compared his services with those of other lawyers by claiming to “offer the lowest fees in the State.”

With respect to RPC 8.1(b), the OAE alleged that respondent “knowingly failed to respond to lawful demands from disciplinary authorities when he failed to respond to the OAE’s requests for his response to the referral.”

We find that the facts recited in the complaint support all but two of the allegations that respondent committed 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. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

RPC 7.1(a) prohibits a lawyer from making false or misleading communications about the lawyer, the lawyer’s services, or any matter in which the lawyer has or seeks a professional involvement. Pursuant to the Rule, a communication is false or misleading if it “contains a material misrepresentation

of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.”

Here, respondent violated RPC 7.1(a) by using a website that referenced “attorneys” (emphasis added), even though he was a solo practitioner. However, we find that neither the picture displayed on the website, nor the reference to “8 locations,” constituted a violation of RPC 7.1(a).

The OAE stated that respondent displayed “a photograph of unidentified individuals.” However, in our view, the use of photographs with unidentified individuals is not, by itself, false or misleading. The mere fact that the photograph on respondent’s website depicted four unknown individuals does not suggest those individuals were attorneys. Indeed, the website neither expressly claimed nor implied that the individuals depicted in the photograph were attorneys.

Regarding the fact that respondent listed eight locations on his website, the CAA asserted that the listing was deceptive because it was contrary to Committee on Professional Ethics Joint Opinion 718/ Committee on Attorney Advertising Joint Opinion 41, 200 N.J.L.J. 51 (April 5, 2010) (the Joint

Opinion). By operation of R. 1:19-6¹⁰ and R. 1:19A-3(c),¹¹ the Joint Opinion is binding precedent in ethics proceedings. In the first part of the Joint Opinion, the Advisory Committee on Professional Ethics (the ACPE) distinguished between a bona fide office and a virtual office. A bona fide office was defined as follows by former Rule 1:21-1(a), which, prior to an amendment in in 2013, required New Jersey attorneys to maintain a bona fide office (Michels, New Jersey Attorney Ethics, § 4:5 at 33 (2023)):

[A] bona fide office is a place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney’s behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time.

¹⁰ This Rule states: “Published opinions of the [Advisory] [C]ommittee [on Professional Ethics] shall be binding upon the Ethics Committee in their disposition of all matters.”

¹¹ This Rule states, in relevant part:

An opinion disapproving an advertisement or other related communication shall, until and unless revised . . . or reconsidered, be binding upon the inquirer and anyone with actual or constructive knowledge thereof so that such use of a disapproved advertisement or other related communication shall be per se unethical conduct. When the Advertising Committee believes it to be in the best interest of the bar or the public, it may publish its opinion in the New Jersey Law Journal and New Jersey Lawyer. Published opinions shall constitute constructive notice to, and shall be binding on, all members of the bar and in connection with any ethics proceedings, unless revised . . . or reconsidered.

By contrast, the ACPE defined a virtual office as:

a type of time-share arrangement whereby one leases the right to reserve space in an office building on an hourly or daily basis. Accordingly, an attorney's use of a "virtual office" is by appointment only. The office building ordinarily has a receptionist with a list of all lessees who directs visitors to the appropriate room at the appointed time. Depending on the terms of the lease, the receptionist may also receive and forward mail addressed to lessees or receive and forward telephone calls to lessees.

[The Joint Opinion.]

The ACPE concluded that a virtual office did not satisfy the bona fide office requirement because:

. . . the attorney generally is not present during normal business hours but will only be present when he or she has reserved the space. Moreover, the receptionist at a "virtual office" does not qualify as a "responsible person acting on the attorney's behalf" who can "answer questions posed by the courts, clients or adversaries."

[The Joint Opinion.]

In the second part of the Joint Opinion, the CAA provided guidelines on "Listing of Offices on Letterhead, Websites, or Other Advertisements." In relevant part, the CAA stated:

An attorney must have at least one bona fide office but may also list satellite office locations on letterhead, websites, and other advertisements

. . . .

An attorney who has a bona fide office may also have a satellite office that is a “virtual office.” . . .

A “virtual office” location is not a place where a client can meet with the attorney unannounced. An attorney is not routinely found at a “virtual office” location and would need to make arrangements to reserve the space. Accordingly, while “virtual office” locations may be listed on attorney or law firm letterhead, websites, or other advertisements, the communication must state that the location is “by appointment only.”

[The Joint Opinion.]

As can be seen in the above, bona fide offices, satellite offices, and virtual offices are three distinct concepts. A bona fide office must be staffed by “the attorney or a responsible person acting on the attorney’s behalf . . . during normal business hours.” Former R. 1:21-1(a). If an office is not a bona fide office, then it is a satellite office. Joint Opinion (“An attorney must have at least one bona fide office but **may also list satellite office** location.” (emphasis added)). However, not every satellite office is a virtual office. Id. (“An attorney who has a bona fide office may also have **a satellite office that is a “virtual office.”** (emphasis added)). Both the ACPE and the CAA defined a virtual office as a place where the attorney would have to reserve a space before an appointment. Id. Thus, a satellite office does not qualify as a virtual office without this feature.

Only virtual offices are subject to the requirement that they be listed with the phrase “by appointment only.” The CAA did not announce that requirement for all satellite offices. By distinguishing between satellite offices and virtual offices, the CAA made clear that the requirement applies to the latter, but not necessarily the former. Thus, respondent’s advertisement only ran afoul of the Joint Opinion if the “8 locations” referred to virtual offices.

Here, the record does not clearly and convincingly prove that the “8 locations” were virtual offices. The fact that respondent did not list these locations’ addresses may suggest that they were unstaffed and not ready for visitors without notice. However, the OAE did not allege that respondent would have had to make a reservation in order to use any of the locations. Thus, we do not find that the “8 locations” were virtual offices or subject to the requirement that they be listed with the phrase “by appointment only.” We conclude that, in the absence of any evidence demonstrating that respondent’s firm did not, in fact, have eight locations, the reference to “8 locations” was not, without more, false or misleading.

With respect to the charge that respondent violated RPC 7.1(a)(3), that RPC states that an advertisement is false or misleading if it:

compares the lawyer’s services with other lawyers’ services, unless (i) the name of the comparing organization is stated, (ii) the basis for the comparison can be substantiated, and (iii) the communication

includes the following disclaimer in a readily discernible manner: ‘No aspect of this advertisement has been approved by the Supreme Court of New Jersey.’”

Here, respondent compared his services to other lawyer’s services by claiming to provide “LOWEST FEES IN THE STATE.” Assuming that the words “© 2019 Walkow Law Office” adequately disclosed the name of the “comparing organization,” it is difficult to see how respondent could have substantiated his claim. He could not have known the rates of all lawyers in the State. Additionally, respondent did not include the disclaimer regarding the fact that his advertisement had not been approved by the Court. Thus, respondent violated RPC 7.1(a)(3).

Lastly, RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this RPC twice – first, by failing to participate in any way in the OAE’s investigation of the CAA’s referral, and again by failing to answer the complaint.

In sum, we find that respondent violated RPC 7.1(a) (one instance); RPC 7.1(a)(3); and RPC 8.1(b) (two instances). We dismiss the additional two allegations that respondent violated RPC 7.1(a) for lack of clear and convincing evidence. The sole issue left for our determination is the appropriate quantum of discipline for respondent’s misconduct.

Admonitions and reprimands have been imposed on attorneys who, in their quest to solicit clients, made false or misleading communications in their general advertising campaigns. See In re Verrastro, 242 N.J. 144 (2020) (admonition for the attorney who sent solicitation letters to the former clients of a suspended attorney for the purpose of assuming their legal representation; the attorney’s solicitation letters falsely claimed that he had “extensive experience as a litigator and trial lawyer in both criminal and civil matters[;]” in fact, the attorney had not yet been involved in a single criminal trial at the time he had disseminated the letters; the attorney refused to admit his wrongdoing or demonstrate any remorse; no prior discipline), and In re Fritz, 253 N.J. 373 (2023) (reprimand for the attorney who committed numerous advertising violations; in a solicitation letter, the attorney claimed that his firm was “Bergen County Legal Center,” failed to include the word “ADVERTISEMENT” on the envelope, claimed that traffic offenses could affect an offender’s “freedom,” and listed his law firm’s address as the location of a UPS store; after the CAA directed the attorney to stop using the solicitation letter, the attorney issued another letter that contained further violations, including a false claim that members of his firm were “personal injury expert trial lawyers[;]” violations of RPC 7.1(a); RPC 7.1(b) (using an advertisement or other related communication known to have been disapproved by the CAA); RPC 7.3(b)(5)(i) and (iv)

(engaging in improper, unsolicited, direct contact with a prospective client); RPC 7.4(a) (misrepresenting that the lawyer has been recognized or certified as a specialist in a particular field of law); and RPC 7.5(e) (using an impermissible firm name or letterhead)).

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

Here, respondent's advertising misconduct was significantly less severe than that of the reprimanded attorney in Fritz. Fritz committed numerous ethics infractions spanning multiple advertisement letters, despite having been warned by the CAA that his conduct violated the RPCs governing attorney advertising.

In contrast, respondent's website included only two improper references – “attorneys” in the plural and the claim that respondent offered the lowest fees in the state. Of these two references, the former appeared in a relatively inconspicuous location. Thus, in our view, respondent's violations of RPC 7.1(a) and RPC 7.1(a)(3) were less serious than Fritz's conduct and merit no more than an admonition. Likewise, given respondent's non-serious ethics history, an admonition is the appropriate quantum of discipline for his failure to cooperate with disciplinary authorities.

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

There is no mitigation to consider.

In aggravation, respondent allowed this matter to proceed as a default. “[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). It should be noted that respondent also defaulted in the matter in which the Court recently reprimanded him. Thus, having experienced the disciplinary processes underpinning that matter, respondent had a heightened awareness of his obligation to cooperate with disciplinary authorities. See In re Brunson, 253 N.J. 327 (2023); In re

Witherspoon, __ N.J. __ (2023), 2023 N.J. LEXIS 392.¹² However, the principle of progressive discipline is not applicable, because the Court did not enter its order in respondent’s prior matter until March 7, 2023 – more than three months after the OAE filed its complaint underlying this matter. In the Matter of William M. Witherspoon, DRB 22-022, at 12 (stating that the principle of progressive discipline was not applicable because the attorney “had no prior final discipline at the time of the instant misconduct” and the Court did not enter its order in the attorney’s prior disciplinary matter until “one month after the OAE had filed its complaint in this matter.”).

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

Member Boyer was absent.

¹² In In the Matter of William M. Witherspoon, DRB 22-022 (July 25, 2022) at 13, we recommended the imposition of a censure. The Court disagreed and imposed 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: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alan N. Walkow
Docket No. DRB 23-062

Decided: August 15, 2023

Disposition: Reprimand

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

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel