Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 18-211 and 18-218
District Docket Nos. XIV-2017-0299E
and XIV-2015-0172E

In The Matters Of	:
Kendal Coleman	:
Attorney At Law	:

Decision

Argued: September 20, 2018 (DRB 18-218)

Decided: December 14, 2018

Reid Adler appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

The matter under DRB 18-218 was originally before us on a recommendation for an admonition filed by the District XI Ethics Committee (DEC). At our May 17, 2018 meeting, we determined to treat the admonition

as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4).

The matter under DRB 18-211 was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f).

We determine to impose a censure for respondent's misconduct in both matters.

Respondent was admitted to the New Jersey bar in 2000. He has no prior final discipline.

I. DRB 18-218 - The Admonition to Presentment Matter

A two-count complaint charged respondent with violations of RPC 1.15(a) (negligent misappropriation and failure to safeguard funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping), and RPC 8.1(b) (failure to cooperate with ethics authorities).

The Ibrahim Matter

In his April 20, 2017 answer, respondent admitted all of the facts alleged in the formal ethics complaint. However, he denied that his actions amounted to ethics violations.

Respondent admitted that, on February 20, 2014, client Abdussemed Ibrahim gave him a personal check, made payable to "Kendal Coleman, attorney trust," for $18,000, representing a down payment for the purchase of property in Newark, New Jersey, from Wuffen Costillo.

On March 3, 2014, respondent deposited the check into his TD Bank attorney trust account (ATA). In error, however, the bank recorded the deposit as $1,800, instead of $18,000.

Unaware of the bank's error, on March 21, 2014, respondent disbursed an ATA check, for $18,000, payable to seller Costillo, on account of the Newark transaction. The ATA check cleared the bank on March 24, 2014. The bank erroneously debited the account $18.00 instead of $18,000, likely because respondent penned "$18,000.00" on the primary line of the check, but wrote out the amount "Eighteen 00/100 Dollars" on the secondary line.

On April 1, 2014, respondent gave Costillo an ATA check for $17,982, in order to disburse the remaining portion of the deposit.

As of April 27, 2014, respondent held $73,366.37 in the ATA on account of the following matters: (1) Moises Construction ($7,500); (2) MLKDR Investment to Blueprint ($64,000); (3) Abdussemed Ibrahim ($1,782); and $84.37 in attorney funds for bank charges.

On April 28, 2014, the $17,982 check to Costillo posted to the ATA, decreasing the balance to $55,384.37, or $16,200 less than the amount required to be held on account of the three clients listed above.

Respondent was unaware of the bank errors occurring in the ATA until after the OAE's July 16, 2015 demand audit of his attorney books and records. Specifically, he did not know that his $17,982 disbursement to Costillo caused $16,200 of his clients' funds to be invaded.

Respondent's lack of awareness stemmed from his failure to prepare monthly three-way reconciliations of the ATA. He testified that he and his secretary later performed the three-way reconciliations in about January 2016, and only then discovered the true extent of the shortage. As a result, respondent carried the shortage in the ATA from March 4, 2014 until January 29, 2016, when TD Bank corrected its error.

The Spence Matter

On April 7, 2015, client Roland Spence gave respondent a certified check for $700 to deposit into the ATA on behalf of his matter. Respondent, however, failed to deposit that check. The next day, on April 8, 2015, respondent disbursed an ATA check for $700, to DWI Consultants, in Spence's behalf.

On April 13, 2015, the day before the $700 check to DWI Consultants was presented to respondent's bank, the balance in the ATA was only $459.37. On that day, however, respondent was required to hold the following amounts in the ATA in behalf of his clients:

Client Trust Ledger Balance	**Amount**
Moises/Viriato	$7,500.00
Unearned Fees/Moises	$4,000.00
Funds for Bank Charges	$79.37
Villacis/Five Start	$4,900.00
Heritage Arms Condo/Borbas	$180.00
Total	**$16,659.37**

[Ex.4A-Ex.4D.]

The $16,200 shortage from the Ibrahim matter remained. Therefore, when the $700 ATA check was presented, the account contained insufficient funds ($16,659.37 - $16,200 = $459.37 - $700 = -$240.63), thereby causing a brief invasion of other clients' funds held in the ATA. That shortage is evidenced by the TD Bank statement for the ATA for the month ending April 30, 2015, which shows a -$240.63 balance in the ATA on April 14, 2015. On April 15, 2015, TD Bank returned the check for insufficient funds and charged an overdraft fee of $35.00, leaving a balance of $424.37 in the account.

On April 17, 2015, respondent deposited Spence's $700 certified check into the ATA. On the same date, he disbursed an ATA check to DWI Consultants, for $715, representing the original amount due, plus $15.00 for a "bounced check" fee.

The OAE's demand audit also uncovered the following recordkeeping deficiencies: (1) no trust receipts or disbursements journals; (2) no individual ledger cards for clients; (3) no monthly three-way reconciliation with client ledgers, journals, and checkbook; and (4) no business receipts and disbursements journals. At the DEC hearing, respondent admitted the recordkeeping violations.

The Agreement in Lieu of Discipline

After respondent corrected the above recordkeeping deficiencies, he and the OAE entered into an agreement in lieu of discipline (ALD), on July 18, 2016, under which respondent agreed that he had violated RPC 1.15(a) and (d), as alleged in the complaint.

Respondent admitted, and the OAE confirmed, that, as of November 21, 2017, he had not attended either of the two courses that the ALD required.

In mitigation, respondent urged the DEC to consider the following:

> My staff had serious sciatic pain. My mother was ill. My uncle was dying, and my best friend had an aneurysm, and I had a lot of clients to deal with so I did not complete – time just flew by and I did not do it.
>
> [T48-14 to 17.][1]

When asked at the DEC hearing why he had not alerted ethics authorities that he would not meet the deadline, respondent stated that he had "too many other things going on," and he "didn't even think about it."

The hearing panel found respondent guilty of negligent misappropriation of MLKDR and Moises Construction funds ($16,115.63) when, on March 24, 2013, he disbursed the ATA check for $17,982 on behalf of the Ibrahim transaction. He also "negligently failed to safeguard client funds" when, on April 14, 2015, he disbursed the $700 ATA check to DWI Consultants, for client Spence. That check subsequently was returned by the bank for insufficient funds.

The DEC also found that respondent failed to maintain trust account receipts and disbursements journals, client ledger cards, or business receipts and disbursements journals, and failed to conduct monthly three-way reconciliations of the trust account, in violation of RPC 1.15(d) and R. 1:21-6.

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[1] "T" refers to the transcript of the November 21, 2017 DEC hearing.

The OAE argued that, by failing to comply with the terms of the ALD, respondent violated RPC 8.1(b). Although the OAE furnished disciplinary cases in support of that position, the DEC dismissed the RPC 8.1(b) charge for lack of clear and convincing evidence that respondent failed to reply to a lawful demand for information from a disciplinary authority.

The hearing panel minimized the value of respondent's urged mitigation, noting that, despite the difficulties he cited, respondent was able to maintain his personal injury, foreclosure, and criminal defense practice, continued to make court appearances, and resolved cases. Therefore, he "could have and should have made an effort" to attend the ALD-required courses.

Respondent argued before the panel that his actions did not violate the RPCs because the invasion of client funds "cannot be negligence." He argued that damages, a necessary element of negligence, are not present here, as no client was harmed. Therefore, his actions were not negligent. The panel dismissed that argument, stating, "[t]he very fact of invasion of trust funds . . . is the harm addressed by the rule, irrespective of whether or not the clients so invaded were aware or ever became aware of it," and faulted respondent for failing to recognize his wrongdoing.

In a brief to the DEC, respondent stated his intention to complete the ALD courses by the end of 2018.

The DEC recommended the imposition of an admonition, with the requirement that, by the end of 2018, he provide the OAE with proof of completion of the two ALD-required courses.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent's inattention to his attorney books and records, and, most notably, his failure to perform monthly reconciliations of his trust account, led to larger problems. In March 2014, he failed to notice that TD Bank had improperly entered an $18,000 ATA deposit as $1,800. That deposit was on account of client Ibrahim's purchase of real estate from Costillo. When respondent then disbursed an $18,000 ATA check to Costillo against the improperly credited deposit, TD Bank debited the account just $18.00. Respondent corrected that error by issuing another ATA check to Costillo for $17,982, which caused the March 4, 2014 negligent misappropriation of trust account funds belonging to three unrelated clients. That shortage remained unresolved in the ATA for almost two years, until January 29, 2016.

Additionally, in respect of the Spence matter, respondent neglected to deposit his client's $700 check into the ATA before unwittingly disbursing a $700 ATA check to DWI Consultants, which caused an overdraft (-$240.63)

and briefly invaded other clients' funds in the account. Again, respondent did not notice his error because he was not performing three-way reconciliations of the trust account. The next day, April 15, 2015, the bank dishonored the check for insufficient funds. By then, however, the damage was done. Respondent's actions constituted the negligent misappropriation of client funds, a violation of RPC 1.15(a).

In addition, respondent concededly failed to maintain trust account receipts and disbursements journals, client ledger cards, and business receipts and disbursements journals. As previously noted, he also failed to conduct monthly three-way reconciliations of the ATA. Respondent's failure to comply with recordkeeping obligations, imposed by R. 1:21-6, violated RPC 1.15(d).

The DEC correctly dismissed the RPC 8.1(b) charge for lack of clear and convincing evidence. In In Re Blaney, 233 N.J. 290 (2018), we addressed the issue as follows:

> RPC 8.1(b) prohibits an attorney from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." Violations of this Rule typically involve an attorney's failure to file a written reply to the grievance or to provide requested documents. See, e.g., In the Matter of Jaime Merrick Kaigh, DRB 16-282 (March 31, 2017) (slip op. at 5-6) (failure to submit a written reply to the grievance), and In the Matter of Peter A. Cook, DRB 16-243 (March 30, 2017) (slip op. at 19-21) (failure to produce requested documents).

> The breach of an agreement in lieu of discipline does not constitute a violation of RPC 8.1(b). Rather, under R. 1:20-3(i)(3)(A), the breach converts what had been considered minor unethical conduct to unethical conduct, which is then prosecuted either by the filing of a complaint or some other charging document. In other words, the underlying conduct that prompted the filing of the grievance, along with respondent's admissions in connection with the agreement in lieu of discipline, become the subject of a formal complaint – not the violation of the terms of the agreement in lieu of discipline. Thus, we dismiss the RPC 8.1(b) charge.
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> [In the Matter of Bryan Blaney, DRB 17-110 (September 15, 2017) (slip op. at 6).]

Here, too, the underlying conduct that prompted the filing of the grievance, as well as respondent's admissions in connection with the ALD, became the subject of a formal complaint. Thus, we determine to dismiss the RPC 8.1(b) charge.

In summary, respondent violated RPC 1.15(a), and RPC 1.15(d) and R. 1:21-6 (recordkeeping). The appropriate discipline for these violations will be discussed below.

II. DRB 18-211 – The Default Matter

Service of process was proper in this matter. On April 2, 2018, the OAE sent respondent a copy of the complaint by certified and regular mail to his office address at 340 Clifton Avenue, Suite 3, Clifton, New Jersey 07011.

The certified mail receipt was returned, having been signed on April 6, 2018 by "F. Guerrero." The regular mail was not returned.

On May 2, 2018, the OAE sent another letter to respondent at his office address, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

The certified mail return receipt was returned indicating delivery on May 4, 2018, having been signed by F. Guerrero. The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of June 11, 2018, respondent had not filed an answer. Thus, the OAE certified the matter to us for the imposition of discipline.

THE MOTION TO VACATE DEFAULT

On August 22, 2018, respondent filed a motion to vacate the default and supporting documentation. In order to vacate a default, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for the failure to answer the ethics complaint. Second, a

respondent must assert a meritorious defense to the underlying charges. For the following reasons, we determine to deny the motion.

In an August 22, 2018 certification in support of his motion to vacate the default, respondent addressed his failure to file an answer to the complaint, which was due, at the very latest, on May 7, 2018, some five days after the date of the OAE's final, "five-day" letter to him.

According to respondent, he shared office space with another attorney who ceased contributing to office expenses in March 2018. Thereafter, respondent paid all of the office expenses. Respondent does not explain how that circumstance may have affected his ability to file an answer.

In May 2018, respondent's mother became very ill, and required a surgery, initially scheduled for July 2018, but postponed due to complications. Respondent is unclear how that affected his ability to answer the complaint, which was due, at the latest, two months earlier, on May 7, 2018. To the extent that the illness may have occurred in the first week of May 2018, respondent should have contacted the OAE. He does not claim to have done so.

In June 2018, one of respondent's best friends became ill, and passed away on August 19, 2018, with funeral services on August 21, 2018. Not only is it unclear that respondent's time was devoted to caring for the friend, but these events also post-dated the May 7, 2018 deadline to file an answer.

Respondent urged that the ethics matter "was filed in April 2018 when Respondent was dealing with the aforementioned issues. The Respondent simply could not handle any personal stress and did not file an answer." Despite these alleged hardships, respondent "has been making sure he continue[d] representing clients to the best of his abilities."

Respondent's assertion that the above events caused him stress, and that he did not file an answer so as to avoid any more stress, falls short. Not only was that a choice, but the events respondent urged us to consider occurred after the deadline to file an answer. In addition, respondent was well enough to make sure that "he continue[d] representing clients to the best of his abilities." We conclude that he was well enough to answer the complaint.

Because respondent has not shown that the events he cited affected his ability to answer the complaint prior to the deadline to do so, he has failed prong one of the test.

In respect of prong two, respondent has provided a proposed answer that contains his affirmative defenses, as follows.

The complaint charged respondent with various RPC violations, discussed in more detail below, based on his status as a professional corporation and on his failure to comply with the filing requirements of both R. 1:21-1A(a)(3) and the Professional Service Corporation Act (PSCA),

N.J.S.A. 14A:17-15, as well as his failure to respond to certain inquiries from the Supreme Court Clerk's Office in respect of that status. Respondent admits that he received three letters from the Supreme Court Clerk (Clerk) seeking proof of malpractice insurance. Moreover, N.J.S.A. 14A:17-15 required respondent to file an annual report for 2009 with the New Jersey Secretary of State. He admittedly failed to reply to the Clerk's letters, to file proof of insurance, or to file the required report with the Secretary of State. Respondent further admits that the corporate status of "the Law Offices of Kendal Coleman, P.C." was "suspended/revoked" on February 16, 2009 for his failure to file annual reports.

Nevertheless, respondent denies the charge that he continued to use letterhead and social media reflecting his status as a professional corporation after that designation had been revoked. According to respondent, he stopped using the improper corporate designation prior to the filing of the ethics complaint. Moreover, he claims that the OAE never provided him with a deadline by which his attorney bank account designations needed to be changed. That explanation fails to address his use (or not) of the revoked corporate name from February 16, 2009, until June 2017, when he admittedly changed the corporate status to remove the "P.C." designation.

In connection with the charge that respondent failed to change the corporate designation on social media websites, such as Facebook, he claims that he did so by letter to those entities, and then sent a letter to the OAE to that effect, prior to the filing of the ethics complaint. Respondent provides neither dates for his notice to the websites nor a copy of any letters to them or to the OAE.

The complaint alleged that respondent failed to obtain malpractice insurance, a requirement for the time that he practiced law as a corporation. According to respondent, he attended a continuing legal education (CLE) seminar in 2010, at which the presenter stated that malpractice insurance was not required. Respondent's supposed reliance on a phantom CLE instructor for such important information is not a defense to a violation of the Rules governing attorneys.

In his proposed answer, respondent claims to have purchased malpractice insurance in 2017. By implication, then, he did not have malpractice insurance prior to 2017, including the time that he practiced law as a corporation.

Respondent does not deny that his law firm's corporate status was revoked in 2009, but without explanation, claims that he was unaware of that fact until 2017.

On August 24, 2018, the OAE filed a letter brief in opposition to respondent's motion to vacate default.

According to the OAE, respondent failed prong one of the default test, having never contacted the OAE to request an extension of time to file his answer – something that the OAE likely would have granted. The OAE also asserted that, if respondent had been well enough to serve clients, he should have been able to answer the complaint.

In respect of prong two, the OAE asserted that respondent's proposed answer fails to provide full and complete defenses, as required. In reply to several paragraphs of the complaint, respondent neither admitted nor denied the allegations. According to the OAE, "[o]bviously, Respondent knows whether he responded to the Clerk and his lack of candor is evident."

For respondent's failure to satisfy either prong of the test to vacate a default, we deny his motion to vacate the default.

The one-count complaint charged respondent with having violated RPC 5.5(a)(1) (unauthorized practice of law), RPC 7.1(a) (making a false communication about a lawyer or the lawyer's services), RPC 8.1(b) (failure to cooperate with ethics authorities), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent operated a law practice as "the Law Offices of Kendal Coleman, P.C.", a professional corporation, since July 21, 2004. Although R. 1:21-1A(a)(3) required him to maintain professional liability insurance while operating as a professional corporation, and within thirty days of filing its certification of insurance, file a copy of the certification with the Supreme Court Clerk, he failed to do so.

On July 15, 2016, an unrelated law firm requested a copy of respondent's certificate of professional liability insurance. By letters dated July 28, September 30, and November 7, 2016, the Clerk attempted to obtain the insurance certificate from respondent. Although respondent received those letters, he failed to reply.

On May 11, 2017, the Clerk referred respondent to the OAE for his failure to furnish the required certificate of insurance.

Additionally, as previously noted, the PSCA required respondent to file annual reports of the Law Offices of Kendal Coleman, P.C., with the Secretary of State. The complaint cited a New Jersey Business Gateway, Business Entity Information and Records Service Report (Report), dated March 28, 2018. The complaint alleged that the corporate status for the law firm was suspended on February 16, 2009, and, according to the Report, the corporate status was "Revoked for Failure to Pay [sic] Annual Reports," as of August 14, 2009. The

complaint further alleged that respondent was aware of the revocation when, in June 2017, he removed the "P.C." designation from his attorney letterhead.

As of the date of the filing of the ethics complaint, the status of the professional corporation remained revoked, yet respondent has continued to use the "Law Offices of Kendal Coleman, P.C." designation (1) on his website, www.kendalcoleman.net; (2) on the social networking website, Facebook; (3) on the professional networking website, LinkedIn; and (4) on his attorney trust and business accounts.

Thus, according to the complaint, respondent violated the following: RPC 5.5(a)(1), the PSCA, and R. 1:21-1A(a)(1), by his failure to file annual reports with the Secretary of State; RPC 5.5(a)(1) and R. 1:21-1A, by his failure to file a certificate of insurance with the Supreme Court Clerk; RPC 7.1(a) and RPC 8.4(c) by his knowing, continued use of the "P.C." designation on his attorney bank accounts and in advertising, when he was aware that his corporate status had been revoked; and RPC 8.1(b) for his failure to reply to the Clerk's notices in respect of the insurance certificate.

The facts recited in the complaint support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer 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).

Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

Beginning in 2004, respondent operated his law practice as a professional corporation, "The Law Offices of Kendal Coleman, P.C." Attorneys who practice law as a corporation are subject to R. 1:21-1A. Specifically, R. 1:21-1A(a)(2) states that professional corporations for the practice of law

> shall comply with and be subject to all rules governing the practice of law by attorneys and it shall do nothing which, if done by an individual attorney would violate the standards of professional conduct applicable to attorneys licensed to practice law in this State. Any violation of this rule by the professional corporation shall be grounds for the Supreme Court to terminate or suspend the professional corporation's right to practice law or otherwise to discipline it.

Under R. 1:21-1A(a)(3), a professional corporation must maintain professional liability insurance and, under subsection (b), within thirty days after filing its certificate of incorporation, "shall file with the Clerk of the Supreme Court a certificate of insurance." Respondent failed to do so in 2004. In 2016, another law firm sought a copy of the certificate from the Clerk. When no copy was found on file, the Clerk sent a series of letters prodding respondent to comply. Respondent, however, never replied.

Meanwhile, in February 2009, respondent's corporate status had been suspended for failure to file annual reports with the Secretary of State, and then revoked in August 2009. Respondent was aware of the revocation at least as of June 2017.

By failing to comply with the requirements of R. 1:21-1A, and by continuing to practice law as a P.C. after the revocation of the corporate status, respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a)(1).

After respondent lost his corporate status in August 2009, and as of March 29, 2018 (the date the OAE filed its formal complaint), he continued to advertise and to promote his law practice as "The Law Offices of Kendal Coleman, P.C.," on his law firm website, as well as on Facebook, LinkedIn, and on his attorney trust and business accounts. Those actions were misleading to clients, adversaries, courts, and the public, who could have been deceived that respondent's firm was a fully insured, professional organization with a valid certificate of incorporation, when it was not. Respondent's misrepresentations violated RPC 8.4(c) and RPC 7.1(a).

In respect of the RPC 8.1(b) charge, the two governmental entities involved here, the Office of the Clerk and the Secretary of State, are not disciplinary authorities. Moreover, respondent's failure to comply with the

Clerk's requests did not occur in the context of a disciplinary investigation. For that reason, we dismiss the charge that respondent violated RPC 8.1(b).

In summary, in DRB 18-218, the admonition to presentment matter, respondent negligently misappropriated client funds (RPC 1.15(a)) and violated the recordkeeping Rules (RPC 1.15(d) and R. 1:21-6). In DRB 18-211, the default matter, he violated RPC 5.5(a)(1), RPC 7.1(a), and RPC 8.4(c).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney engaged in the negligent misappropriation of client funds held in the trust account; violations of RPC 1.15(a), and RPC 1.15(d) and R. 1:21-6; significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career); In re Rihacek, 230 N.J. 458 (2017) (attorney found guilty of negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years); In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited into his trust account $8,000 for the pay-off of a second mortgage on a property that his two clients intended to purchase, he disbursed $3,500, representing legal fees that the clients owed him for prior

matters, leaving in his trust account $4,500 for the clients, in addition to $4,406.77 belonging to other clients; when the deal fell through, the attorney, who had forgotten about the $3,500 disbursement, issued an $8,000 refund to one of the clients, thereby invading the other clients' funds; a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected $3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); and In re Dias, 201 N.J. 8 (2010) (an overdisbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, the attorney was a single mother working on a per diem basis with little access to funds, and worked to replenish the trust account shortfall in installments).

The attorneys in Mitnick and Rihacek, above, each had no prior discipline in thirty-five-year careers – significant mitigation – yet, they both

received reprimands for virtually identical misconduct to that of respondent, who was admitted to the bar in 2000.

In aggravation, respondent permitted a large shortage to remain unresolved in the ATA for almost two years and seems to not understand that his negligent misappropriations are not analogous to negligence in tort – RPC 1.15(a) does not require harm to a party.

Additionally, although the DEC did not find a violation of RPC 8.1(b) based on respondent's failure to comply with the terms of the ALD, it appropriately rejected respondent's proposed mitigation (an inability to take the ALD-required courses due to various illnesses and deaths in his family and among his friends). Indeed, as noted by the DEC, respondent was able to maintain an active law practice during the alleged personal turmoil.

In conclusion, in DRB 18-218, the DEC recommended an admonition, but gave no rationale for that recommendation. Case law, however, calls for a reprimand, also recommended by the OAE. Under all of those circumstances, we find that a reprimand would be warranted for the misconduct in that matter.

In respect of respondent's default (DRB 18-211), his most serious misconduct involved misrepresentations about the status of his law practice as a professional corporation, perpetuated for years.

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed when the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her that her complaint had been dismissed, a violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 3.2 also found); In re Ruffolo, 220 N.J. 353 (2015) (attorney assured the client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that the expectation of a monetary award in the near future was false, in violation of RPC 8.4(c)); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found); In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.1(a)(1) and RPC 8.4(c)); and In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement from the employer for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation).

An attorney found guilty of a sole RPC 7.1(a) violation received an admonition. See In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008) (the attorney's law firm letterhead was required to indicate the jurisdictional limitations on those attorneys not licensed to practice in New Jersey; a partner was admitted to practice law in New York, but not New Jersey; the letterhead identified him as admitted to practice law in New York, but did not identify him as admitted to practice law only in New York; the use of misleading letterhead constituted a violation of RPC 7.1(a) and RPC 7.5(a)).

In addition, several uncertified attorneys improperly used the seal of the Board on Attorney Certification (BAC) on their attorney letterhead, in violation of RPC 7.1 and/or RPC 7.2. See, e.g. In re Hyderally, 208 N.J. 453 (2011) (attorney used the BAC seal unwittingly on his website; his cousin, a web designer, had placed the seal on most pages of the website; the attorney neither directed the cousin to take that action nor became aware of it, because he did not check the website for detail; the ethics complaint charged a sole violation of RPC 8.4(c), which was dismissed for lack of clear and convincing evidence that the attorney knew about or intended to use the seal); In re Heyburn, 216 N.J. 161 (2013) (censure for attorney on two certified records: the attorney violated RPC 7.1(a)(1), RPC 7.4(d) and R. 1:39-6, by improperly using the BAC seal on his attorney letterhead for several years after his

certification was revoked; the attorney also violated RPC 1.3 (lack of diligence), RPC 1.4(b) and (c) (failure to communicate with a client and to explain a matter to the extent reasonably necessary for the client to make informed decisions about the representation), RPC 1.15 (failure to safeguard property), RPC 8.1(b), and RPC 8.4(c); and In re Garces, 163 N.J. 503 (2000) and In re Grabler, 163 N.J. 505 (2000) (companion cases) (reprimands for two attorneys who placed an improper "yellow pages" advertisement using the BAC seal, which falsely portrayed them as certified criminal and certified civil attorneys).

Respondent is also guilty of having failed to carry professional liability insurance, in violation of R. 1:21-1A (a)(3). We have previously imposed an admonition for such misconduct. In In the Matter of Gerald F. Fitzpatrick, 99-046 (April 21, 1999), we determined that the attorney's lack of liability insurance was a violation of RPC 5.5(a). Fitzpatrick did not maintain professional liability insurance for a six-year period.

Although, here, the complaint did not state whether respondent failed to maintain professional liability coverage since originating the law firm in 2004, in his proposed answer in the default matter, respondent claims to have purchased malpractice insurance in 2017. It would be reasonable to conclude, therefore, that he did not have insurance prior to that purchase or, perhaps, that

it had lapsed. In any event, respondent failed for years to prove coverage, no less a violation of the Rule.

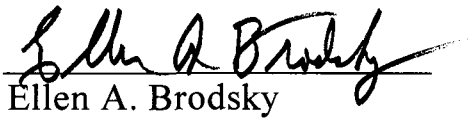
As seen above, a reprimand would be the appropriate sanction for respondent's misconduct in either DRB 18-218 or DRB 18-211. However, there is an aggravating factor – respondent's default in DRB 18-211. "A respondent's default or failure to cooperate with the investigative authorities operates as an 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).

For the additional element of the default, we determine to impose a censure for the totality of respondent's misconduct. Moreover, based on his deficient recordkeeping practices, we also require respondent to (1) attend the New Jersey State Bar Association Diversionary Continuing Legal Education Program, and file proof of attendance with the OAE; and (2) attend the New Jersey Institute for Continuing Legal Education New Jersey Trust and Business Accounting Program, or its equivalent, with proof of attendance to the OAE within ninety days. We further require respondent to provide the OAE with quarterly reconciliations of his attorney trust account for a period of two years.

Member Hoberman did not participate.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kendal Coleman
Docket Nos. DRB 18-211 and 18-218

Argued: September 20, 2018 (18-218)

Decided: December 14, 2018

Disposition: Censure

Members	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

Ellen A. Brodsky
Chief Counsel