

(failing to comply with recordkeeping requirements) and RPC 8.1(b) (failing to cooperate with disciplinary authorities). In his amended answer to the complaint, respondent admitted having committed the charged ethics violations.

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

Respondent earned admission to the New Jersey bar in 1987. He maintains a law practice in Hackensack, New Jersey.

On April 8, 2020, the Court issued a reprimand to respondent, in a default matter, for his violations of RPC 1.15(d) and RPC 8.1(b). In re Miller, 241 N.J. 548 (2020).

During the relevant timeframe, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at Wells Fargo. On August 26, 2013, Wells Fargo reported to the OAE that, six days earlier, respondent had overdrawn his ATA. The OAE directed respondent to provide an explanation for the overdraft and, finding his initial explanation insufficient, scheduled a demand audit.

During the November 19, 2013 audit, the OAE discovered a number of recordkeeping violations, including that respondent failed to conduct monthly, three-way ATA reconciliations; failed to maintain cash receipt journals for his ATA and ABA; failed to maintain cash disbursements journals for his ATA and ABA; failed to maintain client ledgers for every client whose funds were held

in his ATA; failed to maintain check registers with sufficient detail; failed to deposit all earned fees in his ABA; improperly permitted non-trust funds to be deposited in his ATA; and improperly withdrew cash from his ATA.

By letter dated September 27, 2016, the OAE directed respondent to produce current, three-way ATA reconciliations, as well as other financial documents, by October 5, 2016. Although respondent produced various records, he failed to provide the required three-way reconciliations.

By letter dated November 1, 2016, the OAE again requested that respondent provide, by November 15, 2016, current reconciliations and other records. Respondent's accountant, James D. Weinfeldt, asked the OAE for an extension.

A demand interview was then scheduled for December 6, 2016. On December 5, 2016, Weinfeldt informed the OAE that he had received documents from respondent and requested a further extension. The OAE granted the request and imposed a new deadline of December 23, 2016.

On December 22, 2016, respondent contacted the OAE and, after demanding to speak to the First Assistant Ethics Counsel, ultimately agreed to mail to the OAE copies of all financial records that he had provided to Weinfeldt. Based on his representation, the OAE granted respondent yet another extension, until December 30, 2016, to provide the documents. Respondent

failed to meet the deadline.

On January 2, 2017, respondent provided the OAE with descriptions of the status of three client matters but failed to produce all the financial documentation requested in the OAE's September 27, 2016 letter.

On March 17, 2017, the OAE and respondent entered into an agreement in lieu of discipline (ALD) in which respondent admitted having violated RPC 1.15(d). The ALD required respondent to satisfy certain conditions within six months, including: (1) attending the New Jersey State Bar Association (NJSBA) Diversionary Continuing Legal Education Program, and prepaying the costs for the program; (2) attending the New Jersey Institute for Continuing Legal Education course titled, "New Jersey Trust and Business Accounting," or an equivalent program by the OAE, and prepaying costs for the program; and (3) certifying that, during the diversionary period, he corrected his recordkeeping violations.

On March 20, 2017, the OAE scheduled respondent for the Trust and Business Accounting class offered on June 7, 2017. Respondent failed to attend the class and, on the day of the class, sent a letter to the OAE claiming that he had inadvertently missed it.

On June 7, 2017, the OAE rescheduled the respondent for the same class, offered on September 20, 2017. Respondent failed to register for the class. On

September 6, 2017, the OAE cautioned respondent that the September 20, 2017 class would be the last class offered to him to fulfill the ALD requirements.

Meanwhile, on June 21, 2017, the NJSBA, Ethics Diversionary Program, sent respondent a letter notifying him of the next NJSBA Diversionary Continuing Legal Education Program, which would take place on October 18, 2017. Respondent failed to attend that program.

On November 27, 2017, the OAE directed respondent to provide a written explanation, by December 8, 2017, for his failure to attend the NJSBA program, and to provide proof that he had corrected the recordkeeping violations outlined in the ALD. Respondent provided neither the requested explanation nor the requested proof.

On December 12, 2017, the OAE notified respondent that it had withdrawn the ALD due to his failure to comply with its requirements.

In reply, respondent provided to the OAE another copy of the documents enclosed in his December 5, 2017 letter. By letter dated December 21, 2017, the OAE offered respondent another opportunity, to provide, by January 15, 2018, monthly three-way ATA reconciliations, cash receipts and disbursements journals, and client ledger cards for those clients whose funds were maintained in his ATA from March 1, 2017 forward.

On January 1, 2018, respondent provided the cash receipts and disbursements journals and the client ledger cards but failed to produce the monthly ATA three-way reconciliations.

Based on the foregoing facts, the complaint charged respondent with recordkeeping infractions, in violation of RPC 1.15(d), and failure to cooperate with the OAE, in violation RPC 8.1(b). On February 7, 2020, respondent filed an amended answer to the complaint, admitting both charges.

On October 15, 2020, the OAE submitted a letter brief to us, recommending that respondent be reprimanded, observing that the misconduct in this case occurred prior to the misconduct in the default matter, for which respondent previously was reprimanded. In re Miller, 241 N.J. 548 (2020). The OAE explained that the later sequencing of the case was attributable to respondent: respondent initially had requested a hearing, had medical issues which delayed the hearing, and then decided not to contest the charges. Respondent did not submit a brief for our consideration.

The record contains clear and convincing evidence that respondent violated RPC 1.15(d) and RPC 8.1(b).

Regarding the RPC 1.15(d) charge, following the ATA overdraft and demand audit, the OAE repeatedly directed respondent to provide financial documentation to demonstrate his compliance with the recordkeeping Rules.

Despite the OAE's dogged efforts, which included an offered ALD, respondent squandered every opportunity to rectify his recordkeeping in a manner that would have avoided the filing of an ethics complaint and the imposition of discipline. Respondent, thus, violated RPC 1.15(d).

As to the RPC 8.1(b) charge, respondent repeatedly failed to comply with the OAE's demands for financial documents, failed to meet deadlines, and inexplicably failed to complete the requirements of the ALD. Respondent's avoidable misconduct prejudiced the resources and time of disciplinary authorities. Respondent, thus, violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images) and In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) did not maintain trust or

business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6).

Likewise, admonitions typically are imposed for failure to cooperate with disciplinary authorities if, as here, the attorney does not have an ethics history to be considered in aggravation. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

As the OAE explained in its October 15, 2020 letter, the misconduct in the instant matter took place prior to the misconduct in the April 2020 default matter. Thus, it cannot be said that respondent failed to learn from his past mistakes; the concept of progressive discipline does not apply. Based on the case law cited above, we determine to impose a reprimand for respondent's violation of RPC 1.15(d) and RPC 8.1(b).

Additionally, we also require respondent to (1) immediately cooperate with the OAE regarding all pending recordkeeping directives; and (2) complete, within ninety days of the date of the Court's disciplinary Order in this matter, two recordkeeping courses and a law office management course approved by the OAE.

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
Bruce W. Clark, Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Howard Alan Miller
Docket No. DRB 20-189

Decided: May 20, 2021

Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0



Johanna Barba Jones
Chief Counsel