

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 14-356  
District Docket No. XIV-2010-0528

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IN THE MATTER OF  
JOHN C. SPADORA  
AN ATTORNEY AT LAW

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Decision

Argued: March 19, 2015

Decided: December 10, 2015

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Robert J. Pompliano 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 recommendation for a censure, filed by the District VI Ethics Committee (DEC), based on respondent's violations of RPC 1.15(a) (commingling personal and client funds in the trust account), RPC 1.15(d) and R. 1:21-6

(failure to comply with recordkeeping requirements),<sup>1</sup> and RPC 8.1(b) (failure to cooperate with disciplinary authorities). We determined to impose a censure and certain conditions on respondent, as described below, for his egregious recordkeeping infractions and his outrageous failure to cooperate with disciplinary authorities, spanning at least six years.

Respondent was admitted to the New Jersey bar in 1970. At the relevant times, he maintained a law office in Union City. He has no disciplinary history.

On September 9, 2008, the Random Audit Compliance Program of the Office of Attorney Ethics (OAE) notified respondent that a random audit of his attorney records would take place at his office on September 29, 2008. When OAE Senior Compliance Auditor Karen J. Hagerman appeared at respondent's office on that date, he was not there, and no records were made available for her to review. Respondent's secretary, who knew nothing of the audit, told Hagerman that he was in court. Consequently, the audit was rescheduled to October 29, 2008.

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<sup>1</sup> R. 1:21-6 is subsumed within RPC 1.15(d) because that RPC is based on violations of R. 1:21-6.

According to Hagerman, respondent requested a postponement of the October 2008 audit to the following month because he had medical issues, was not working full-time, and had had seven secretaries in the past two years. Although respondent stated that an attorney friend was helping him, presumably with the task of gathering his records, and that he had recently begun to work with an accountant, he was "embarrassed" to turn over the records in his possession at that time.

The random audit finally took place on November 24, 2008. The audit disclosed several deficiencies, which were memorialized in a December 22, 2008 letter to respondent from the Random Audit Compliance Program's Chief, Robert J. Prihoda, as follows:

1. Client ledger cards were found with debit balances (R. 1:21-6(D));
2. A separate ledger sheet was not maintained detailing attorney funds held for bank charges (R. 1:21-6(D));
3. Inactive trust ledger balances remained in the attorney trust account for an extended period of time (R. 1:21-6(D));
4. A separate ledger sheet was not maintained for each trust client (R. 1:21-6(C)(I)(B));
5. A running cash balance was not kept in the attorney trust account checkbook (R. 1:21-6(C)(I)(G));

6. Old outstanding attorney trust account checks were required to be resolved (R. 1:21-6(D));
7. A schedule of clients' ledger account balances was not prepared and reconciled monthly to the attorney trust account bank statement (R. 1:21-6(C)(I)(H));
8. The attorney trust account bank reconciliation, as of September 30, 2008, which was prepared by the auditor, showed total trust funds on deposit in excess of total trust obligations by \$747,901.28 (R. 1:21-6(D));
9. Funds received for professional services were not deposited into the attorney business account (R. 1:21-6(A)(2)); and
10. Respondent had provided financial assistance or had advanced funds other than for court costs and expenses of litigation, contrary to RPC 1.8(E).

[Ex.P6.]

Prihoda's letter reminded respondent that a June 1989 random audit had uncovered the same deficiencies identified in paragraphs 1, 3, 4, 5, and 7 of the December 2008 letter. Although respondent acknowledged the prior random audit, he testified that he had been a member of a partnership at the time and that that audit involved a different trust account.

The December 22, 2008 letter informed respondent that Hagerman would return to his office, on March 3, 2009, to review the following:

1. All Trust and Business records presented at the first audit visitation on November 24, 2008.
2. Monthly reconciliations for all funds held in your Attorney Trust Account for each month end for September through December 2004, for the years 2005, 2006, 2007 and 2008, and for the month end for January 2009. These reconciliations shall include a copy of the pertinent bank statements, identification of all outstanding checks and/or deposits in transit, and a list of names and amounts held for clients at the end of each month.
3. Client ledger sheets for all clients for whom funds were held at the end of each of the above months for your Attorney Trust Account.
4. Receipts and disbursements journals for the years 2004, 2005, 2006, 2007, 2008 and January 2009 for your Attorney Trust Account.
5. All Attorney Business Account records, including but not limited to bank statements, receipts journal, disbursements journal, image-processed checks, and deposit slip copies from September 2004 through January 2009.

[Ex.P6.]

With respect to these enumerated deficiencies, at the November 2008 audit, respondent explained that he had left some earned legal fees in the trust account "for a rainy day." He produced trust account bank statements from 2002 through 2005, which Hagerman quickly reviewed, noting that the lowest balance

during the period was just over \$324,000, in April 2004. She, thus, realized that a simple review of the bank statements would not identify the source of the excess funds in the trust account.

At respondent's request, the continuation of the random audit, scheduled for March 3, 2009, was rescheduled to April 29, 2009. The day before, April 28, 2009, respondent faxed to the OAE trust account reconciliations for the period September 2006 to September 2008, which had been prepared by his certified public accountant, Michael Choi.

At the April 29, 2009 audit, Hagerman asked respondent whether he had matched the client balances, reflected on the reconciliations, with the client ledger cards. Respondent replied that he did not have enough time to do that. Hagerman explained what happened next:

[S]o we started going through and he, Mr. Spadora was pulling ledger cards where he could find a file, if it was in his office, and we were confirming -- because Mr. Choi produced listings of balances. He did not produce client ledger cards, so we're looking at a listing that tells me a client has [sic] \$2,000 balance but we have no idea what transactions got to that \$2,000 balance, so we were trying to match up balances with ledger cards that were in the office. In addition, as we were looking through these -- I believe these were the ledger cards that did not mathematically add up, Mr. Choi was doing the reconciliations

on an Excel spreadsheet, and if you understand Excel, as you enter in a client in a row, if the client zeros [sic] out eventually Mr. Choi would hide that row, so that when he prints out this listing it's not an exuberant [sic] number of pages.

Well, when you hide it and then print it out, it's not adding up correctly. Excel has to -- if you're hiding certain columns simply just to make the printing less, it doesn't always work. We didn't realize that at the time, until Mr. Spadora brought it back to Mr. Choi when we requested that those be redone, since they didn't mathematically add up. At that point in time we were down to approximately \$300,000 of an overage and Mr. Spadora explained to me that he believed 165,000 of that was from at least 10 years prior and it was a large matter that had settled and he never took his fee out. That is where I started to separate the unidentified overage, leaving 165 as a claimed legal fee, and then there's another figure of \$160,000-and-change as an unknown overage.

[1T40-17 to 1T42-1.]<sup>2</sup>

Respondent agreed that, by May 28, 2009, he would submit the following additional information and documentation pertaining to his attorney trust account:

- 1) Review and correct the monthly Attorney Trust Account reconciliations prepared by your outside accountant. At a minimum, new reconciliations should be submitted

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<sup>2</sup> "1T" refers to the transcript of the August 28, 2012 hearing before the DEC.

for March, April, May, June, July, August, and September 2008, since these did not mathematically equal.

- 2) Provide monthly reconciliation [sic] of the Attorney Trust Account from October 2008 to present.
- 3) Correct the listing of client balances based upon our review of your manual client ledger cards as compared to the client balances listed on the reconciliations (i.e. the negative \$25,000.00 for Moonila is off set by the outstanding check #5160 in the amount of \$25,000.00 that was voided and reissued.)
- 4) Obtain from the bank copies of the deposit slips and items as noted on the "Notes" listing left with you on April 29, 2009 to assist in identifying all the funds in the Attorney Trust Account.
- 5) Explain what will be done with the \$160,945.44 of unidentified funds as shown on the September 1, 2006 listing of client balances. (Note: This amount is over and above the \$165,000.00 of earned fees you have identified remaining in the Attorney Trust Account.)
- 6) Provide copies of the Attorney Trust Account bank statements associated with the reconciliations you are sending as noted above.

[1T42-1T45;Ex.P8.]

On May 21, 2009, respondent provided the OAE with trust account bank statements from January 2006 through November 2007. Eventually, he provided trust account statements from February 1, 2003 through December 31, 2010.



On June 15, 2009, respondent requested an extension until June 24 for his accountant to complete an unspecified task. In his letter, respondent enclosed copies of trust account check numbers 4677, 5136, and 5137, as well as deposit slips for February 4, March 12, May 28, and June 20, 2008, which the OAE had requested in order to identify to whom certain funds belonged.

On June 24, 2009, respondent faxed to the OAE copies of Choi's three-way reconciliations and client balances from October 1 through April 30, 2009.<sup>3</sup> The following day, Hagerman asked respondent for the corresponding bank statements.

On July 8, 2009, Choi faxed to the OAE corrected reconciliations of the trust account for September 2006 through April 2009. The last two items on Choi's reconciliation for September 2006 reflected the \$165,000 legal fee and \$160,945.44 for "[u]nknown client." Respondent did not provide documentation to support his claimed \$165,000 fee.

In a November 18, 2009 letter, following a review of Choi's corrected reconciliations of the trust account from September 4,

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<sup>3</sup> Hagerman did not identify the year of the October three-way reconciliation and Exhibit P-14 also did not provide that detail.

2006 through April 2009, Hagerman informed respondent that the OAE disagreed with Choi's calculation of the total legal fee in the trust account, as of April 30, 2009. Moreover, the OAE criticized Choi's inclusion of trust account deposits with no documentation identifying to whom the funds belonged.

Specifically, as of April 30, 2009, Choi's reconciliation had increased the amount of legal fees remaining in the trust account to \$360,000 by removing \$197,286, from what he now identified as \$212,688.47 in unknown client funds, and adding it to the legal fee, without any documentation supporting that movement of funds. Thus, the OAE's November 18, 2009 letter requested the following:

- 1) Review the enclosed OAE Listing of client balances as of April 2009, including but not limited to identifying a source or client matter for each unidentified deposit or cleared check listed, and confirming all negative and positive balances listed.
- 2) Provide a monthly reconciliation of the Attorney Trust Account from April 2009 to present, including copies of the corresponding bank statements.
- 3) Explain what will be done with the \$160,945.44 of unidentified funds as shown on the initial September 1, 2006 listing of client balances as well as the OAE's April 2009 listing of client balances. (Note: This amount is over and above the \$165,000.00 of earned fees you have identified [sic] remaining in the

Attorney Trust Account and discussed in #4 below.)

- 4) Provide copies of any documentation supporting your claim of \$165,000.00 of earned fees in the Attorney Trust Account.

[Ex.P16.]<sup>4</sup>

Enclosed with the letter was a listing, prepared by the OAE, of positive and negative client balances as of April 30, 2009. Hagerman explained that the listing contained all items that Choi had applied to the legal fee. For each of these items, respondent was to "contact the bank, find out whose [money] it was," so the amount could be applied to "the appropriate client," by January 11, 2010. He did not.

Hagerman called respondent on January 11, 2010, seeking the information requested in the November 2009 letter. Although he represented that he would produce that information by February 4, 2010, he failed to do that as well. When Hagerman called respondent on that date, he told her that he was "struggling with the accountant and trying to work on it." Four days later, the OAE subpoenaed the bank for the trust account bank statements from February 1, 2003 through January 2010, and other

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<sup>4</sup> The figures referenced in this letter are those of the OAE, not respondent's accountant.

specific items, for the purpose of trying to identify the more recent deposits and checks.

On February 17, 2010, respondent faxed a letter to the OAE, stating that he expected to fax "the requested information that I have" on February 19, 2010. It was not until February 22, 2010 that the OAE received, from Choi, the April 2009 trust account bank statement, which, Hagerman testified, fell short of all that had been requested.

On March 4, 2010, Hagerman faxed a note to respondent and Choi, renewing her request for them to provide the information identified in the November 18, 2009 letter, by the next day. Thereafter, the OAE and respondent exchanged correspondence; nevertheless, as of July 12, 2010, respondent still had not complied with the terms of the November 18, 2009 letter. Thus, on July 12, 2010, the OAE scheduled a demand audit for August 5, 2010. Because respondent had a conflicting pre-scheduled vacation, the audit was rescheduled to August 10, 2010.

Respondent did not appear at the OAE's office on the date of the audit but, instead, produced documents, such as trust account bank statements and copies of two trust account checks and deposit slips. Hagerman described these as "nothing worthwhile," given the OAE's specific questions. For example, respondent could not explain the reduction of his legal fee from

\$165,000 to what was now \$125,000, as shown below, claiming that Choi had produced the numbers. Respondent could only provide Hagerman with a handwritten list of clients and their trust account balances, with no explanation as to how he had arrived at those figures.

Hagerman traced Choi's reduction of the outstanding legal fee, from \$165,000 to \$125,000, by three trust account checks issued to respondent in the amounts of \$15,000, \$10,000 and \$15,000. Respondent neither documented nor explained this \$40,000 reduction in his outstanding legal fee.

Hagerman had no idea whether the \$165,000 fee was for one client matter or several client matters. Respondent had never given her any client names.

Respondent admitted that he had withdrawn funds from the trust account. He claimed that, although he had not reviewed Choi's records, he was able to determine his entitlement to the fees that he had removed, based on the ledgers. When asked how he would know that his records were accurate in the absence of reconciliations, respondent stated that Choi would tell him if he were "incorrect" because he "checks the check stubs and the statements."

Respondent stated that he had prepared the ledger card for the Ronald Sinno matter and given it to the OAE. According to

the ledger, respondent had received a \$252,324 check from an insurance company; \$83,121 was disbursed to the client; and \$52,324 was disbursed to Liberty Mutual. Thereafter, respondent disbursed \$40,000 to himself in three payments. The \$252,324 deposit and all disbursements reflected on the ledger were undated, and respondent could not remember whether he had recorded the disbursements on the ledger contemporaneously. Thus, he had no idea when he had received or disbursed the funds. He had no records to substantiate the deposit, stating that "it's not something I've searched for." He claimed that, if he had bank statements or ledgers, he "think[s]" he provided them to the OAE. He explained that, despite the absence of records, he knew what was available for distribution because he knew what the case had settled for, and he would "certainly" have a record of that in the file. Copies of checks showed that he had issued trust account check no. 5466 to himself, in the amount of \$10,000, on May 12, 2010.

Respondent testified that, because Sinno was a negligence case, his fee would have been "a third," that is, about \$84,000. Although the ledger card reflected only \$40,000 in distributions to respondent, when asked if, since August 2012, he had taken additional funds in that matter, he stated "I think I have,

yeah," but he did not know the amount. He explained that, based on the Sinno ledger, he would have taken additional funds.

When asked if he had taken \$17,000 from the trust account on July 9, 2012, respondent answered: "I don't have anything here. I mean, if you have a record and the record says that, you know, I wouldn't disagree." Respondent was shown trust account check no. 5786, in the amount of \$17,500, and verified that he had written the check, which bore his signature and "Sinno" on the memo line. He did not know whether he had taken a total of \$115,000 in that matter.<sup>5</sup> Given that \$115,000 was more than the \$84,000 to which he claimed entitlement, respondent stated that he would have to "check [his] records to see if [he had] made a mistake."

Respondent testified, "I didn't know that I wasn't permitted to withdrawal [sic] attorney's fees on files, and I needed that in order to keep going." Nevertheless, he asserted that the money that he had withdrawn "definitely" represented earned legal fees.

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<sup>5</sup> The reference to \$115,000 may have been a mistake, as  $\$84,000 + \$10,000 + \$17,500 = \$111,500$ .

On November 18, 2010, Lee A. Gronikowski, OAE Deputy Ethics Counsel at that time, informed respondent, by letter, that the matter had been elevated from a random audit case to a disciplinary case "due to your persistent inability to account to us for the funds in your attorney trust account." The letter also notified respondent that an interview was scheduled for December 16, 2010, at which time he was to be prepared to address the following issues:

1. Why you have not reviewed the OAE's listing of the open client trust balances to confirm or to correct the balance in your attorney trust account as of April 2009.
2. Why you have not provided monthly reconciliations of your trust account to the OAE covering the period from April 2009 to the present.
3. Explain what you intend to do with [sic] unidentified overage of approximately \$16[5],945.44 in your attorney trust account.
4. At the interview you must provide copies of all documentation to support your claim that the approximately \$165,945.44 in alleged fees in your attorney trust account are, in fact, your fees. Lack of such proof will be completely unacceptable. You may be required by this office to deposit all unidentifiable trust funds with the Clerk of the Superior Court's Trust Fund.



5. Any other issues raised during the interview that relate to the overall handling of your attorney trust and business accounts maintained under R. 1:21-6, those of which that [sic] are the subject of the original random audit conducted by OAE Random Compliance Auditor Karen J. Hagerman.

[Ex.P24.]

The interview did not go forward, as scheduled. Armed with a note from his doctor, respondent sought and was granted an adjournment to February 4, 2011, due to a pre-scheduled surgery. The interview proceeded on February 4, 2011, with respondent "and a colleague," but, without Choi, who "was not ready." Respondent brought to the interview a listing of client balances in the trust account and outstanding checks for July through December 2010.

After the February 4, 2011 meeting, Gronikowski sent a letter, of the same date, directing respondent to produce, by April 1, 2011, the following items:

1. Trust account bank statements, deposit slip copies, and cancelled checks for: July, August, September, October, November, and December 2010;
2. Trust account bank statements, deposit slip copies, and cancelled checks for 2010;
3. All relevant client ledger cards;

4. A listing of clients and amounts which purportedly total \$40,000.00 removed from "John Spadora Legal Fee" balance on Accountant's listing; along with copies of the checks (if not included in no. 1 above) disbursing the \$40,000.00;
5. A copy of the deposit slip and deposited item correcting the O. Riveria negative client balance of \$12,620.94;
6. Documentation supporting the transfer of \$10,900.00 from "Unknown Client" to "Breys/Terry"; and
7. Documentation supporting Mr. Spadora's determination that client "Scholz" should not have a \$1,000.00 negative balance.

[Ex.P28.]

For the Riveria matter, respondent eventually produced documentation showing that the shortfall had occurred in March 2008 and that it was corrected in February 2011. He was not able to explain the \$10,900 adjustment for the Breys-Terry matter, stating that he would have to "ask the accountant." Respondent, who declared himself "not good at accounting," testified that he did not recall having had conversations with Choi about his work with the records.

Hagerman confirmed that, as of the date of the February 4, 2011 letter, respondent still had not resolved the issues of the unidentified client balance and the leftover legal fees, which had been referenced in the November 2009 letter. Indeed, as of

the date of her testimony, August 28, 2012, those issues still had not been resolved.

Although the OAE had planned to file a petition for respondent's temporary suspension, on May 25, 2011, it did not do so because, on May 23, respondent provided extensive, but not all requested, documentation to the OAE. At that point, Hagerman undertook to reconstruct respondent's trust account through December 31, 2010. As a result, Hagerman detected \$130,328.62 in unidentified client funds. This exercise generated an August 4, 2011 letter from Gronikowski to respondent, which attached a memo prepared by Hagerman detailing the additional information required from respondent in order "to bring your records up to par and to account for the funds in your account."

On August 17, 2011, in reply to Gronikowski's letter, respondent represented that he would open a new trust account, meet with his accountant, and forward an updated ledger to the OAE as soon as the accountant had prepared it. Although Hagerman testified that she had never seen any proof that respondent had opened a new trust account, respondent testified that he had. He claimed that the "bulk" of the monies still held in the former trust account were mostly his, although some belonged to clients, which, he claimed, Choi had enumerated. That enumeration, however, was "not in the package that's there." He

denied misappropriating any client funds and asserted that no client had ever made a claim for outstanding payments owed by respondent.

Respondent did not challenge the presenter's claim that, as of August 2012, he had not opened the new trust account, despite the representation in his August 17, 2011 letter to Gronikowski that he would do so. He could add nothing more than a belief that the new trust account had been opened within the past year.

The next communication from respondent was a letter, dated November 8, 2011, thanking Hagerman for her "recent reminder" and stating that he expected to have "additional documentation" to her by November 19, 2011. In a November 18, 2011 letter, respondent assured Hagerman that his accountant would have "the documents ready for me to send on November 28" and requested an extension until that time. Respondent faxed the "updated documentation" (trust account reconciliations and a listing of client balances from February 2010 to January 2011) to the OAE on November 28, 2011. The ethics complaint was filed on December 9, 2011.

On the conclusion of Hagerman's August 2012 testimony, the matter was adjourned, and respondent was given until November 9, 2012 to provide the outstanding documentation. No documents were

supplied, and the matter was carried "a number" of times for different reasons, including respondent's medical issues.

On March 26, 2014, the DEC panel chair informed all parties that, because previous deadlines had not been met, the DEC would not permit the introduction of any additional documentation. When the hearing resumed, on April 2, 2014, more than a year-and-a-half after the August 28, 2012 hearing, respondent's counsel asked the DEC to receive "some testimony" from respondent and to then adjourn the matter to permit him to properly complete the client ledger sheets, which he had been working on with his accountant since the first hearing date in August 2012. The OAE objected to this request, informing the panel that, after the August 2012 hearing, respondent had dipped into the leftover legal fees, to which he had never established entitlement since the audit began in 2008. The DEC denied respondent's request.

For his part, respondent testified that he had been a sole practitioner, in the general practice of law, for the past fifteen to twenty years. He then proceeded to detail his medical history, from 2005 to the present.

In 2005, respondent had a "cardiac procedure," followed by a stroke. In 2013, he had another "cardiac procedure." In 2014, he underwent knee replacement surgery. As a result of his health

issues, respondent testified that he does not have the stamina that he did "years ago" and, consequently, he is not able "to put the time in that I would put in years ago."

Respondent's lack of stamina adversely affected his cash flow, as his business "ha[d] not been good, including this year." In order to save money, respondent did not employ an accountant, on a regular basis, to maintain his trust account.

When respondent received the notice of the random audit, he tried to "put [his] records together," as they were "not in a very organized condition." "It took a while to do that," he stated. He also worked with an accountant, presumably Choi, who "did do some things," but then "switched to another system." According to respondent, it had been "a slow process" trying to get "the paperwork" to the accountant so that he could complete his tasks.

In the three-year period preceding his testimony, respondent's secretary worked only five hours a day and her duties did not include recordkeeping tasks. With the exception of some assistance from a retired attorney friend, respondent had no help in complying with the OAE's requests.

Respondent claimed that, as of the date of the April 2, 2014 hearing, the process of complying with the OAE's demands was "pretty close to completion," but he had not yet turned them

over to the OAE. They were with his accountant, but respondent then "had my problems come up,"<sup>6</sup> and, as a result, he could not provide the accountant with additional information that he required.

When asked how much time he would require to present an accounting to the OAE identifying which trust account funds belonged to him and which belonged to his clients, respondent answered:

Well, I think the accountant has that, just subject to things that I have given him recently. But, like I said, it's -- there's nothing in that package to indicate that.

But I know -- but I know he has delineated that, that he has the files with the clients' moneys and with the files with my fees.

[2T29-2 to 8.]<sup>7</sup>

Respondent admitted that, as late as the August 2012 hearing in this matter, he still had not fully complied with the OAE's various requests for information. He also conceded that, because he had left legal fees in multiple client matters in the

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<sup>6</sup> Respondent described his problems as "health problems in November and then in January."

<sup>7</sup> "2T" refers to the transcript of the April 2, 2014 hearing before the DEC.

trust account, he should have prioritized the task of identifying those fees so that they could be removed from the trust account. He denied that he was under immediate instruction to turn over all unidentified funds to the Clerk of the Superior Court of New Jersey Trust Fund (Trust Fund), although he conceded that, at some point, Hagerman did tell him that he should do so. Moreover, he believed that, if he could identify his legal fees, he would not have to turn over those funds.

Respondent also acknowledged that he still had not provided the OAE with any documentation supporting the claim that he had identified the funds. He attributed the delay in producing the required documents, between the two hearing dates of August 2012 and April 2014, to the "very unorganized" state of his records and his "medical issues," which kept him from working a full day. Still, even then, it was not his understanding that he was required to turn the monies over to the Trust Fund.

When asked whether he was reconciling the new trust account, respondent simply stated that he had been sending all the statements to the accountant and that "[w]hatever the accountant is supposed to do, he's doing." Respondent had not seen any reconciliations for the new trust account. He explained:



I haven't seen what he prepared. I get my statements and I mark down the cases and then I have my secretary email those to him and then he prepares whatever it is he's preparing. He hasn't sent it to me.

[2T38-8 to 12.]

Respondent "ha[d]n't really read" the records prepared by Choi with respect to the former trust account, explaining "I leave that up to him to do . . . what has to be done."

As of the date of the formal ethics complaint, that is, December 9, 2011, the OAE alleged that respondent still had not addressed the open client balances, the negative client balances, and the retention in his trust account of \$165,945.44 in earned legal fees. Thus, in addition to seeking discipline for respondent's misconduct, the OAE also seeks an order directing respondent to transfer the \$165,945.44 in unidentified legal fees to the Trust Fund.

In its hearing panel report, the DEC found that, throughout the audit period, respondent's records were "grossly incomplete and clearly not in compliance with R. 1:21-6 and RPC 1.15." Further, "[o]n several occasions, respondent was given the opportunity to either correct or clarify some of the glaring, and quite frankly, disturbing inadequacies of his trust account and ledger cards," but he never corrected any of the deficiencies identified by the OAE. Indeed, the OAE had given

respondent "more than enough opportunities and instructions as to what needed to be done" so that the audit could be completed and "the problems presented by [respondent]'s porous record keeping [could] be rectified." Respondent, however, failed to comply with the OAE's requests.

After finding that respondent had committed all the violations with which he was charged, the DEC recommended the imposition of a censure. In so doing, the DEC noted that respondent's violations were uncovered by a random audit, rather than a client's complaint, and that the evidence did not establish that any client "ha[d] been defrauded by the respondents [sic] horrific record keeping and trust account deficiencies."

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 violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b). He left legal fees in the trust account, instead of removing them and placing them in the business account. He has never complied with the OAE's requests that he prove entitlement to the claimed legal fees that have been left in the trust account, be it the \$165,000 calculated by the OAE or the

\$125,000 calculated by Choi. He has failed to resolve the open client balances, as well as the negative client balances.

With respect to RPC 8.1(b), for six years, and counting, respondent has failed to comply with the OAE's numerous requests for multiple items, despite repeated extensions of deadlines and adjournments of audits, interviews, and even the hearing in this matter. Although respondent portrayed himself as the victim of poor health and employee turnover, the testimony demonstrated that he made no effort to comply with the OAE's requests, unless he was prodded and cajoled, and then made an insincere effort. With respect to the legal fees remaining in the trust account, he never made any real effort to prove entitlement to the funds. Further, even though his claim to the monies was an issue of which he was well aware, he withdrew \$40,000, during the pendency of these charges, claiming that he did not know that he was prohibited from doing so. His conduct demonstrates a failure to cooperate at best, recalcitrance at worst.

There remains for determination the appropriate measure of discipline for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

Commingling, along with other recordkeeping irregularities, ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See,

e.g., In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified); In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an OAE audit revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct); In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (commingling and recordkeeping violations); and In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline). In In re Colby, 193 N.J. 484 (2008), however, a reprimand was imposed on an attorney whose recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, but he had been reprimanded previously for the same violations, as well as negligent misappropriation.

Generally, failure to cooperate with an ethics investigation results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (failure to cooperate with an ethics committee's attempts to obtain information about

the attorney's representation of a client; remaining charges were dismissed). A reprimand may result, however, if the attorney fails to provide the OAE with requested documentation in a matter involving recordkeeping improprieties uncovered during an audit. See, e.g., In re Picker, 218 N.J. 388 (2014) (an OAE demand audit, prompted by a \$240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses, though no trust funds were in the account at the time, a violation of RPC 1.15(a); in addition, the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit, violations of RPC 8.1(b); although the attorney had a prior three-month suspension and was temporarily suspended at the time of the decision in this matter, we noted that the conduct underlying those matters was unrelated to the conduct at hand) and In re Macias, 121 N.J. 243 (1990) (the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Here, it is an understatement to describe respondent's recordkeeping practices as egregious and his attitude as

cavalier. He has demonstrated a stunning disregard of his duty to comply with the recordkeeping requirements of R. 1:21-6. Moreover, his decision to continue, nearly six years after the OAE had scheduled the September 2008 random audit, to keep his head buried in the sand and to "leave [it] up to [his accountant] to do . . . what has to be done," is alarming. An attorney's recordkeeping responsibilities are non-delegable. See In re Barker, 115 N.J. 30, 36 (1989) ("An attorney cannot avoid this responsibility by claiming reliance on his or her staff.").

In In re Kim, 222 N.J. 3 (2015), the Court imposed a six-month suspension on an attorney who, like respondent, had committed a number of recordkeeping violations "that were so horrendous as to be reckless" and had "placed his clients' funds at great risk." In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 63-64). Further, like respondent, Kim had an accounting system that was "non-existent." Id. at 64. Such "extreme recklessness in handling client and escrow funds for so many years," slip op. at 65, led the Court to suspend Kim for six months.

Although the outrageous nature of respondent's recordkeeping violations and his lackadaisical attitude throughout the six-year period that the OAE sought his

cooperation lends itself to a suspension, in our view, respondent's unblemished disciplinary record, of forty-five years, militates against such action. Instead, we chose to censure him and to impose the conditions identified below so that the public will be protected.

First, respondent must comply with all of the OAE's outstanding requests for information within ninety days. Second, a forensic accountant, approved by the OAE, must be appointed, at respondent's expense, to review respondent's financial records and to calculate the amount that is owed to respondent, his clients, and third parties. Third, respondent must turn over to the Trust Fund, immediately, all monies designated by him and the forensic accountant as unidentifiable, unclaimed, or held for missing owners. Fourth, respondent must produce monthly three-way reconciliations to the OAE, on a quarterly basis, for those two years and until further order of the Court.


Finally, we must be assured that, even after the forensic accountant reconstructs respondent's records to identify monies attributable to respondent, to his clients and/or to third parties, respondent himself complies with the recordkeeping requirements of R. 1:21-6 and his obligations under RPC 1.15. Thus, for a period of two years, and until further order of the Court, respondent must practice under the supervision of an

attorney, approved by the OAE, who will monitor respondent's recordkeeping practices to ensure that he complies with the requirements of R. 1:21-6 and his obligations pursuant to RPC 1.15, and who will file reports with the OAE on a schedule to be determined by the Director.

Member Gallipoli recused himself.

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:   
Eileen A. Brodsky  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of John C. Spadora  
Docket No. DRB 14-356

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Argued: February 19, 2015

Decided: December 10, 2015

Disposition: Censure

| <i>Members</i> | Disbar | Suspension | Censure | Dismiss | Disqualified | Did not participate |
|----------------|--------|------------|---------|---------|--------------|---------------------|
| Frost          |        |            | X       |         |              |                     |
| Baugh          |        |            | X       |         |              |                     |
| Clark          |        |            | X       |         |              |                     |
| Gallipoli      |        |            |         |         | X            |                     |
| Hoberman       |        |            | X       |         |              |                     |
| Rivera         |        |            | X       |         |              |                     |
| Singer         |        |            | X       |         |              |                     |
| Zmirich        |        |            | X       |         |              |                     |
| Total:         |        |            | 7       |         | 1            |                     |

  
Ellen A. Brodsky  
Chief Counsel