

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-086
District Docket Nos.XIV-2013-0577E
& XIV-2014-0316E

IN THE MATTER OF
DAN A. DRUZ
AN ATTORNEY AT LAW

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Decision

Argued: May 18, 2017

Decided: September 6, 2017

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

John McGill, III 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 IX Ethics Committee (DEC). The complaint charged respondent with two counts of violating RPC 1.15(d) and R. 1:21-6 (recordkeeping). For the reasons stated below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1981.

Respondent received an admonition in 2011 for recordkeeping violations, discovered during a random audit of his attorney books and records. In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011).

On November 14, 2013, respondent received a reprimand for recordkeeping violations similar to those for which he had received an admonition in 2011. The Court's Order also required respondent to submit to the Office of Attorney Ethics (OAE) monthly reconciliations of his attorney accounts on a quarterly basis for a period of two years. In re Druz, 216 N.J. 163 (2013).

Most recently, on August 22, 2017, the Court entered an Order declaring respondent ineligible to practice based on his failure to pay the annual registration fee to the Lawyers' Fund for Client Protection.

* * *

At the outset of the first day of hearings before the DEC, through counsel, respondent admitted the allegations of the complaint and declared that he would testify on his own behalf concerning mitigation and the acceptance of his responsibility. The facts of the complaint are as follows:

According to respondent's Attorney Registration, he maintained the following accounts in connection with his law practice:

- Wells Fargo Bank - Attorney Trust Account No. xxxxxxxx8224;
- Wells Fargo Bank - Attorney Business Account No. xxxxxxxx1975;
- Bank of America- Attorney Trust Account No. xxxxxxxx3897 (closed 10/01/13);
- Bank of America - Attorney Business Account No. xxxxxxxx3884 (closed 05/17/13);
- PNC Bank - Attorney Trust Account No. xxxxxxxx6327; and
- PNC Bank - Attorney Business Account No. xxxxxxxx5033

COUNT ONE

On October 23, 2013, PNC Bank notified the OAE of a \$293.25 overdraft in respondent's attorney trust account (ATA) #6327, which had occurred on August 7, 2012, about fourteen months earlier. PNC's notification did not explain the reason for the reporting delay. The OAE directed respondent to provide an explanation and supporting documents for the overdraft. Over time, respondent eventually provided a number of incomplete documents and/or explanations for the overdraft.

On July 17, 2014, the OAE requested that respondent provide ATA records, including client ledger cards, for any other attorney trust account he maintained from July 1, 2012, to the date of the request. In his August 14, 2014 reply, respondent provided additional ATA statements for the period from June 30,

2013 to July 31, 2014. He did not keep client ledger cards in the normal course of his business.

On September 29, 2014, the OAE requested that respondent identify all funds he maintained in his PNC Bank ATA #6327 from July 1, 2012, to the date of the request. Although respondent provided several bank statements and client ledger cards, he failed to identify all funds he maintained in that ATA for the requested period. The OAE also requested that respondent provide retainer agreements, or any other evidence verifying that a \$19,000 transfer made from his ATA, to his new Bank of America ATA #3897, belonged to him.

In a December 1, 2014 letter to the OAE, respondent admitted that he had not retained the fee agreements associated with these deposits. The OAE also had asked respondent for an explanation for the transfer of the \$19,000 to his Bank of America ATA, instead of to his attorney business account (ABA), if those funds represented his fees. In reply, respondent explained that he believed the funds should be deposited into the trust account.

Finally, the OAE requested an explanation for respondent's online transfers from his ATA to his ABA. Previously, on April 20, 2013, he had signed a stipulation in a prior disciplinary matter in which he acknowledged that it was a violation of the

recordkeeping rules to make electronic online transfers without proper authorization and written documentation. Yet, respondent continued to make online transfers to and from his ATA. He failed to provide an adequate explanation for the transfers.

COUNT TWO

Based on respondent's unethical conduct detailed in the April 20, 2013 stipulation, the Supreme Court, on November 14, 2013, issued an Order reprimanding him and requiring him to submit, to the OAE, monthly reconciliations of his attorney trust accounts, on a quarterly basis, for a period of two years, and until the further Order of the Court. On November 19, 2013, the OAE sent a letter to respondent, reminding him that his first quarterly reconciliation, covering the period from November 1, 2013 to January 31, 2014, should be submitted by February 20, 2014. On February 12, April 10, and April 17, 2014, respondent submitted incomplete reconciliations to the OAE. The OAE's review of the records respondent submitted revealed numerous deficiencies.

Hence, by letter dated September 29, 2014, the OAE directed respondent to reply to specific deficiencies in his required quarterly submissions. The OAE's review of respondent's records,

for the period of November 1, 2013 to January 31, 2014, revealed deficiencies as described below.

- Respondent failed to provide the required check images with his three-way reconciliations. On August 15, 2014, more than seven months after respondent sent his required quarterly submission, he faxed to the OAE a copy of his ATA check images for the period from August 19, 2013 to August 4, 2014.
- Respondent failed to provide all client ledger cards. His ATA bank statements from November 1, 2013 to January 31, 2014, and the records he provided, revealed that at least eighty-four transactions had not been recorded on the client ledger cards that he submitted to the OAE on April 11, 2014. In addition, he did not retain his trust account records, including all required client ledger cards, for seven years, as required by R. 1:21-6.
- Respondent failed to maintain a client ledger card for his own bank fees. Wire transfer fees were charged against his trust account and did not appear on any client ledger cards. Specifically, on December 4, 2013, a check was presented against insufficient funds and the account was charged a \$12 returned check fee. That fee does not appear on any of the client ledger cards. Bank fees, including a returned check fee, should have been charged against a specific client or respondent's own client ledger card.
- The client ledger card for, Dennis Riordan, showed activity that was not listed in chronological order. Client ledger cards must be prepared contemporaneously, which respondent failed to do.
- Respondent issued numerous trust account checks payable to "cash," in violation of R. 1:21-6. On December 17, 2013, he improperly made a cash withdrawal of \$200 from his ATA.
- Respondent disbursed fees to himself prior to depositing corresponding funds into his ATA. Specifically, on December 9, 2013, respondent's client

ledger card for Newport Coast Securities had a balance of \$0. On December 30, 2013, however, respondent removed a \$100 fee charged to this client, which impacted other clients' funds.¹ Subsequently, on December 31, 2013, a deposit of \$1,000 was made.

- Respondent's client ledger balance did not reconcile to the total amount of funds listed on his client ledger cards. Respondent was required to identify all funds maintained in his ATA from November 1, 2013 to the present time, create client ledger cards for all clients/funds, and prepare required monthly three-way reconciliations. The OAE's review of his records revealed that he failed to meet these requirements.
- The three-way reconciliations that respondent provided to the OAE did not show outstanding checks. Specifically, on November 29, 2013, respondent issued ATA check #1030, which posted to his bank on December 2, 2013. Because the check was issued during the November reconciliation period, but posted during the December reconciliation period, it should have been reflected as an outstanding check on the November reconciliation. Respondent failed to designate that check as such.
- ATA checks were not used correctly. Between November 1, 2013 and January 31, 2014, respondent issued checks bearing the same check number, but the checks bore different issuance dates and amounts paid. This violated R. 1:21-6(c)(1)(G), which requires that all ATA checks must be pre-numbered.
- Respondent commingled personal funds in his trust account. The OAE requested that respondent provide proof that he did not maintain more than \$250 of his personal funds, or earned legal fees, in his trust account, from November 1, 2013 to January 31, 2014. He

¹ Respondent was not charged with negligent or knowing misappropriation.

could not provide a precise statement of the amount of these funds maintained in his ATA.

- Respondent continually failed to make client identifications on his disbursed ATA checks, in violation of R. 1:21-6(c)(G); used an ATM debit card linked to his ATA to make payments/purchases on November 25, 2013, December 10, 2013, and March 10, 2014, in violation of R. 1:21-6(c)2; and failed to deposit all earned legal fees in his ABA, in violation of R. 1:21-6(a)2.

* * *

As stated, respondent stipulated to the aforementioned facts alleged in the complaint, admitted his wrongdoing, and testified in mitigation. Initially, respondent explained that his family has been ravaged by drug addiction, resulting in severe emotional and financial pressures. He has since been diagnosed with depression and is currently under medical care. Respondent then explained his family's history of addiction.

In 1999, respondent divorced his wife because of her drug and alcohol addiction. They had three children, the youngest of which at the time of the divorce was nine months old. Respondent became the sole caregiver for his children subsequent to his divorce.

When respondent's daughter was twenty years old, she became addicted to cocaine. Respondent was able to afford to send her to several rehabilitation programs, which, eventually, were successful. She has been sober for over ten years. Then in 2006,

respondent's older son developed a drug problem. After several rehabilitation attempts between 2012 and 2014, he, too, has since remained sober. Sadly, in 2014, respondent's younger son became addicted to drugs and alcohol. Presumably, his struggle continues. Three weeks prior to the first day of hearings before the DEC, respondent's younger son was released from prison. In further mitigation, respondent explained that he has performed pro bono work, since 2012, in municipal courts in Monmouth County, on behalf of children with drug issues.

Respondent explained that, at the time of his children's struggles, he was unaware that there were recordkeeping rules. He followed one rule, that is, "protect the client's funds at all costs." Nonetheless, after having been disciplined twice for violating the recordkeeping rules, he finally became aware of the recordkeeping requirements, but could not afford to hire someone to help him meet those obligations. He tried to comply with recordkeeping rules, but did not "understand how the bookkeeping works." Respondent acknowledged that he received his undergraduate degree from Yale University, and was a successful financial advisor prior to attending Rutgers-Newark Law School at night.

Making matters worse, respondent explained, at some point, his computer crashed and he lost a lot of documentation, which

made it difficult to comply with the OAE's requests. Moreover, in 2015, he moved his home and law offices. A client of his assisted with the move, but lost seventy five to ninety percent of his records. Respondent, however, acknowledged responsibility for his misconduct.

The remainder of respondent's testimony centered on grievances he alleges against the OAE. Although the hearing panel informed respondent that it would neither hear testimony about, nor make a determination of, whether respondent had a cognizable ethics grievance, he continued to make "spurious" and "false" accusations against the OAE, and drew "nonsensical" legal conclusions that he believed served as affirmative defenses. For example, despite admitting that he alone was responsible for his recordkeeping shortcomings, respondent alleged that PNC, his trust depository, was somehow the "agent" of the OAE and, as such, attempted to shift the blame to the OAE for PNC's delay in its trust overdraft notification – for the sole purpose of "punishing" him.

In his brief to us, and by way of affirmative defenses, respondent explained that, on October 23, 2013, two days before our decision granting the motion for discipline by consent that resulted in respondent's reprimand for recordkeeping violations, and more than a year after the overdraft occurred, PNC Bank

notified the OAE of an August 7, 2012 overdraft from his ATA. PNC Bank never explained the reason for the delay in notification and the OAE never requested an explanation. Nonetheless, respondent argues that PNC's delinquent notification resulted from no fault of his own.

Respondent contends that, when PNC Bank finally notified the OAE of the overdraft, the OAE, in turn, should have informed us, prior to our transmitting our decision on October 25, 2013. Therefore, respondent argues, had PNC notified the OAE of the overdraft, in August 2012, as it was required to do, the recordkeeping violations found as a result of the OAE's investigation of the overdraft would have, necessarily, been included in that matter, which was the subject of our October 25, 2013 decision. Instead, the OAE filed a separate complaint.

Therefore, respondent argues that, under the circumstances, any and all recordkeeping violations alleged in the complaint, which occurred prior to our October 25, 2013 decision, "are cumulative and similar to those which were the subject of the prior Discipline by Consent, having occurred during the same time period. Moreover, respondent submits that those recordkeeping violations would not have resulted in increased discipline, had they been included in the prior Discipline by Consent."

In both his closing statement at the hearing and his brief to us, respondent's counsel explained that the purpose of the hearing was to offer "mitigation and circumstances that allowed [respondent] to continue to make recordkeeping violations after having been put on notice two times prior from prior discipline of the recordkeeping violations."

In further mitigation, respondent maintains, he cooperated with the disciplinary process and fully participated at all stages of the proceedings; admitted the material allegations in the complaint and accepted responsibility for his unethical conduct, and expressed contrition and remorse for that conduct. Respondent further asserted that, because he has taken steps to bring his recordkeeping into compliance by hiring a certified public accountant to assist him, the public is protected going forward.

Finally, in his brief to us, respondent objects to the credibility findings contained in the DEC decision, discussed below. He further argues that the DEC exceeded its jurisdiction by offering its own credibility findings in respect of the potential grievance respondent has against the OAE. Rather he maintains, we have the exclusive right to consider such credibility findings and, therefore, the DEC's determinations are improper and should not be considered.

All of that notwithstanding, in closing, respondent accepts the DEC's recommendations and agrees that he should receive a censure for his admitted conduct.

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.15(d) and R. 1:21-6, noting that respondent had admitted the various deficiencies of his recordkeeping, and his non-compliance with the requirements imposed on him by the Court's Order, dated November 14, 2013.

Although the DEC acknowledged respondent's proffered mitigation - his family's significant chemical dependency issues; his pro bono legal services in various municipal courts; and his retention of an accountant to assist him with his books, it observed that respondent presented no evidence to support these assertions.

In respect of credibility determinations, the DEC found respondent to be completely lacking in veracity. On numerous occasions, the presenter showed respondent documents that respondent prepared. Yet, respondent denied knowledge, or professed to lack recollection, of those documents. The DEC found that respondent's testimony ignored facts and amounted to various attempts to avoid responsibility for his own actions and described respondent's testimony as "self-serving at best and dishonest at worst."

Further, the DEC noted, respondent's testimony was essentially "a diatribe attacking the OAE and the presenter himself." He spent the majority of his testimony blaming everyone but himself for the issues contained in the complaint, and spent a considerable amount of time pursuing his belief that he has a valid ethics complaint against the presenter. Although the DEC acknowledged that it is not called upon to resolve the issue of respondent's allegations, it expressed the opinion that respondent's claims were unfounded and represented an attempt at obstruction. "Ultimately, respondent wasted time making allegations that were both spurious and, which he, as a licensed attorney, should know to be false."

The DEC noted that respondent was subject to discipline on two prior occasions for essentially the same recordkeeping infractions, that he remains non-compliant with his recordkeeping obligations, and that he continues to fail to comply with the previously imposed requirements of the Court. Therefore, the DEC determined that respondent should receive a censure. Additionally, the DEC recommended that respondent be required to submit proof of fitness to continue to practice.

* * *

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.

The record supports the DEC's findings that respondent violated RPC 1.15(d) and R. 1:21-6. Respondent has admitted the violations alleged in the complaint. The only remaining issues are consideration of mitigating and aggravating factors, and the appropriate quantum of discipline for respondent's misconduct.

The detail of respondent's ethics history is noteworthy. By letter dated August 17, 2009, the OAE notified respondent of the following deficiencies:

- a) Trust account being used to account for funds unrelated to the legal practice;
- b) Funds received for professional services not deposited into the business account;
- c) Attorney personal funds commingled with trust funds;
- d) Deposit slips lack sufficient detail to identify each item of deposit;
- e) All checkbooks, check stubs, bank statements, pre-numbered canceled checks and duplicate deposit slips for all trust and business accounts not maintained for a period of seven years; and
- f) Attorney business account not maintained.

On September 30, 2009, respondent sent a letter to the OAE representing that he had corrected these deficiencies.

Subsequently, as noted previously, in March 2011, respondent received an admonition for the aforementioned violations. In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011).

Thereafter, in December 2011, respondent issued a check to us in the amount of \$164.12, from a custodial account held for his son. Considering the issuance of the check suspicious, the OAE docketed the matter. In a July 2012 interview, the OAE requested respondent's records from June 2011 through July 2012. Although he failed to provide all of the requested documents, based on those that he did provide, the OAE found the following deficiencies:

- a) An ATA receipts journal was not maintained;
- b) An ATA disbursements journal was not maintained;
- c) Individual ledger cards for clients were inaccurate and incomplete;
- d) Inaccurate and incomplete monthly ATA three-way trust bank reconciliations were prepared;
- e) Running ATA checkbook balances were not maintained;
- f) Personal funds were commingled in the ATA;
- g) ATA checks were cashed instead of deposited into his ABA;
- h) Client references were not indicated on ATA checks;
- i) ATA deposit tickets were missing;

- j) Client references were not indicated on ATA deposit tickets;
- k) An ABA receipts journal was not maintained;
- l) An ABA disbursements journal was not maintained;
- m) All earned legal fees were not deposited to the ABA;
- n) Running ABA checkbook balances were not maintained; and
- o) Electronic online transfers from the ATA were made without proper authorization and written documentation

In the Matter of Dan A. Druz, DRB 13-149 (October 25, 2013).

In the matter now before us, the OAE identified, and respondent admitted, the following deficiencies in his records for the period from November 1, 2013 to January 31, 2014:

- a) Respondent failed to provide required check images with the three-way reconciliations;
- b) Respondent did not provide all client ledger cards;
- c) There were 84 transactions that were not found on his client ledger cards;
- d) Respondent did not maintain a client ledger card for himself for bank fees;
- e) Respondent wrote checks from his ATA to "cash;"
- f) Respondent made a cash withdrawal from his ATA for \$200;

- g) Wire transfer fees were charged against the balance in the trust account, and they do not appear on any client ledger cards;
- h) Respondent did not maintain his client ledger card and charge fees to his client ledger card;
- i) A bounced check fee was charged against the balance of his trust account and it does not appear on the provided client ledger cards;
- j) A client ledger card for client Dennis Riordan showed activity that was not in chronological order;
- k) Fee disbursements were made to respondent prior to the funds being deposited into his trust account;
- l) Client ledger balances do not reconcile to the schedule of client balances on his three-way reconciliations;
- m) Respondent failed to account for outstanding checks;
- n) Respondent issued more than one check bearing the exact same check number, but had different issuance dates and amounts paid;
- o) Respondent comingled personal funds in his trust account;
- p) Respondent did not make client identifications on his disbursed trust account checks;
- q) Respondent used an ATM debit card linked to his trust account to make payments and purchases on three different dates; and
- r) Respondent did not deposit all earned legal fees to his business account.

The above detail highlights the fact that, despite having been disciplined twice before, respondent is now before us a third time, for many of the same recordkeeping violations.

Moreover, the above detail also undermines respondent's defense. Specifically, despite admitting conduct alleged in the complaint, agreeing with the conclusions of the DEC, and acknowledging that a censure is appropriate, respondent also argues that he should receive no further discipline because charges related to his ATA overdraft should have been included in his consent to a reprimand in 2013. Had it been included, respondent posits, the discipline in that matter would have remained the same. Therefore, he maintains that, in the instant matter, no further discipline is warranted.

Respondent's argument fails. The reprimand respondent received was based on recordkeeping deficiencies uncovered during an investigation of the period from June 2011 through July 2012. The overdraft underlying count one of the instant matter occurred in August of 2012, outside of that period. Hence, the sixteen-month delay in notice to the OAE regarding the overdraft has no relevance.

Respondent should have adapted his practice to bring his recordkeeping in compliance after his 2009 admonition. He

did not and, instead, continued the same prohibited practices. As a result, he was reprimanded in 2013 for his recordkeeping infractions. Respondent had a second opportunity to correct his recordkeeping practices during the investigation of the reprimand matter. Again, he did not and, again continued the same prohibited practices. The result was an overdraft in his ATA. Respondent's ethics history, which is based entirely on his recordkeeping practices, renders his conduct in this case troubling. He continues to fail to appreciate his responsibilities and has not been motivated to bring his practices into compliance, even after the Court entered an Order requiring him to do so.

We now turn to the appropriate discipline for respondent's misconduct. An admonition is the usual form of discipline for recordkeeping violations. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after the attorney's business account was closed, due to an overdrawn balance, he deposited a \$200 check, representing the payment of a fee, into his trust account, which had a \$1 balance; due to insufficient funds in the client's checking account, when respondent withdrew funds against the \$200 deposit, he overdrew the trust account; a demand audit uncovered several violations of R. 1:21-6, including the attorney's failure to maintain trust or business

receipts or disbursements journals, or client ledger cards, contrary to RPC 1.15(d); we considered his unblemished disciplinary history and his cooperation with ethics authorities by admitting his conduct) and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances; failed to promptly remove earned fees from the trust account; and failed to perform monthly three-way reconciliations; violations of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline).

Although respondent previously received an admonition and a reprimand for the same violations present here, he continued to engage in the very same conduct. Therefore, in accordance with the provisions of progressive discipline, we consider a censure as the starting point in assessing the appropriate quantum of discipline for respondent's misconduct.

In further aggravation, the record is replete with examples of respondent's obstinacy. He has cast specious aspersions on the OAE, generally, and Assistant Ethics

Counsel Timothy McNamara, personally, all in an attempt to feign accountability for his misconduct, while at the same time avoiding responsibility and showing barely a modicum of remorse. In fact, respondent's behavior at the hearing before the DEC was so bizarre that it caused the DEC to recommend that respondent be required to submit proof of his fitness to practice law.

In mitigation, respondent explained the severe dependency issues that his former wife, and then each of his three children, have experienced. The pressures, financial or otherwise, surely placed an immense burden on him. These circumstances do not excuse his violations here, or in his prior disciplinary matters; rather, they serve as mitigation, providing insight into his priorities at different times over the years. Although respondent testified that he has been diagnosed with depression and is under the care of a doctor, because he has offered no evidence in this respect, we, like the DEC, accord it little weight.

Respondent's behavior during the investigation and at the hearing below might justify further enhancement of the appropriate discipline; however, the dependency issues of respondent's children serve as further mitigation. Thus, for

these reasons, we determine to impose a censure. Should respondent again find himself before us for additional recordkeeping violations, however, that mitigation likely will not save him from enhanced discipline.


We further determine to require respondent to include, in his CLE selections, courses in legal ethics, attorney trust accounting, and law office management. In addition, for a period of two years, respondent shall submit to the OAE, on a quarterly basis, and in a timely fashion, monthly reconciliations of his accounts and records. Finally, within sixty days of the Court's Order herein, respondent shall submit to the OAE proof of fitness to practice.

Vice-Chair Baugh and Members Rivera and Zmirich 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 Dan A. Druz
Docket No. DRB 17-086

Argued: May 18, 2017

Decided: September 6, 2017

Disposition: Censure

Members	Censure	Recused	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera			X
Singer	X		
Zmirich			X
Total:	6		3


Ellen A. Brodsky
Chief Counsel