

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-144  
District Docket No. XIV-2017-0641E

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In the Matter of  
Howard A. Miller  
An Attorney at Law

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Decision

Decided: November 27, 2019

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

This matter was before us on a certification of the record, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.15(d) (recordkeeping) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).<sup>1</sup>

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<sup>1</sup> Due to respondent's failure to file an answer to the formal ethics complaint, the complaint was amended to include the RPC 8.1(b) charge.

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

Respondent earned admission to the New Jersey bar in 1987. During the relevant time frame, he maintained a law practice in Hackensack, New Jersey. He has no disciplinary history.

Service of process was proper. On January 16, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent at his office address of record. The OAE received a certified mail receipt bearing a delivery date of January 22, 2019 and an illegible signature; the regular mail was not returned.

On March 7, 2019, the OAE sent a letter to respondent, by certified and regular mail, at his office address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The OAE received a certified mail receipt bearing a delivery date of March 11, 2019 and an illegible signature; the regular mail was not returned.

As of April 8, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified the matter to us as a default.

We now turn to the allegations of the complaint.

On November 17, 2017, respondent reported to the OAE an overdraft of his attorney trust account with TD Bank (ATA), caused by his negotiation of a \$200 ATA check, payable to himself. That same date, TD Bank also reported the overdraft to the OAE. By letter dated December 21, 2017, the OAE directed respondent to produce certain financial records, including monthly three-way ATA reconciliations, no later than January 15, 2018.

On January 19, 2018, the OAE received a letter from respondent, purportedly dated January 1, 2018, enclosing copies of ledger cards and cash receipts and disbursements journals, but not the required monthly three-way ATA reconciliations. Accordingly, on February 8, 2018, the OAE wrote to respondent, again directing him to produce the required monthly three-way ATA reconciliations; explanations for negative ATA balances; and information regarding a specific client ledger card. On February 23, 2018, the OAE received respondent's reply, which failed to satisfy the requirements of the OAE's February 8, 2018 letter.

Despite additional efforts by the OAE, spanning from March 8 through August 2, 2018, including correspondence and telephone conversations among respondent, his accountant, and OAE Disciplinary Auditor Harry Rodriguez, respondent failed to provide the three-way reconciliations of his ATA required by the OAE.

Moreover, a review of respondent's ATA bank statements from March 2017 through March 2018, which the OAE subpoenaed, revealed negative ATA balances in May, June, July, and September 2017. The OAE's review of respondent's financial records also revealed that respondent failed to deposit all earned legal fees in his attorney business account (ABA), in violation of R. 1:21-6(a)(2), and made improper electronic transfers, in violation of R. 1:21-6(c)(1)(A).

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, the OAE's review of respondent's ATA records revealed that he failed to conduct monthly ATA three-way reconciliations, resulting in multiple, negative ATA balances. Moreover, respondent failed to deposit all

earned legal fees in his ABA, and made improper electronic transfers, in violation of R. 1:21-6. From March 8 through August 2, 2018, a period of almost five months, the OAE attempted to audit respondent's ATA, to no avail. Instead, respondent repeatedly failed to produce information and three-way reconciliations of his ATA, as the OAE required. Respondent's conduct, thus, violated RPC 1.15(d) and RPC 8.1(b).

In addition, although respondent was served with the complaint, he failed to file a verified answer to the complaint, a second violation of RPC 8.1(b).

In sum, respondent violated RPC 1.15(d) and RPC 8.1(b). The sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Admonitions have been imposed on attorneys who commit recordkeeping violations, even where commingling occurs. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (attorney commingled personal funds in his attorney trust account and committed recordkeeping violations) and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (attorney commingled personal funds in his attorney trust account, and routinely used the account for business and personal transactions; numerous recordkeeping deficiencies also found).

Likewise, admonitions are typically imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. 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 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)).

Greater discipline results if the failure to cooperate is with the OAE or other aggravating circumstances are present. See, e.g., In re Del Tufo, 210 N.J. 183 (2012) (reprimand where the OAE uncovered recordkeeping improprieties in a trust account and requested additional documentation, which the attorney failed to provide); In re Wood, 175 N.J. 586 (2003) (reprimand for attorney who

failed to cooperate with disciplinary authorities; prior admonition for similar conduct); and In re DeBosh, 174 N.J. 336 (2002) (reprimand for failure to cooperate with disciplinary authorities; prior three-month suspension).

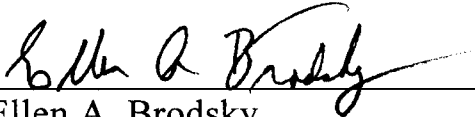
Here, the default status of this matter must also be considered as an aggravating factor. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

In crafting the appropriate quantum of discipline in this case, we considered, in mitigation, respondent’s unblemished history in more than thirty years at the bar. On balance, although a censure could be justified, we determine that a reprimand is sufficient discipline to protect the public and to preserve confidence in the bar.

Member Petrou 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  
Bruce W. Clark, Chair

By:   
Ellen A. Brodsky  
Chief Counsel




SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Howard A. Miller  
Docket No. DRB 19-144

Decided: November 27, 2019

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:	8	0	1

  
Ellen A. Brodsky  
Chief Counsel