

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-151  
District Docket No. XIV-2018-0310E

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In the Matter of  
Andrew Frank Garruto  
An Attorney at Law

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Decision

Argued: July 18, 2019

Decided: December 6, 2019

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey 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 pursuant to R. 1:20-6(c)(1).<sup>1</sup> The Office of Attorney Ethics (OAE) charged respondent with having violated RPC 1.15(d)

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<sup>1</sup> This rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

and R. 1:21-6 (recordkeeping). Respondent admitted the allegations of the complaint.

For the reasons stated below, we determine to impose an admonition.

Respondent was admitted to the New Jersey bar in 1991. He has no prior discipline. During the relevant time, respondent's law practice, Garruto & Calabria, LLC, was located in Nutley, New Jersey.

In 2009, respondent was the subject of an OAE random audit that disclosed the following recordkeeping deficiencies:

- a. No running checkbook balance. [R. 1:21-6(c)(1)(G)];
- b. Inactive balances left in trust account. [R. 1:21-6(d)];
- c. Trust funds on deposit exceed obligations. [R. 1:21-6(d)];
- d. Old outstanding checks need to be resolved. [R. 1:21-6(d)];
- e. No monthly three-way reconciliations. [R. 1:21-6(c)(1)(H)];
- f. Trust receipts journal not fully descriptive. [R. 1:21-6(c)(1)(A)];
- g. Trust disbursements journal not fully descriptive. [R. 1:21-6(c)(1)(A)];
- h. Improper imaged processed checks - Business Account. [R. 1:21-6(b)]; and
- i. Improper imaged processed checks - Trust Account. [R. 1:21-6(b)].

[C¶4;Exs.1-2.]<sup>2</sup>

In light of the 2009 random audit and respondent's resulting 2012 communications with the OAE, respondent was aware of his recordkeeping responsibilities when, on February 7, 2018, the OAE conducted a second random audit.

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<sup>2</sup> C refers to the March 29, 2018 formal ethics complaint.

During the 2018 random audit, the following recordkeeping violations were identified in connection with respondent's attorney trust and business accounts:

- a. Client ledger cards with debit balances [R.1:21-6(d)];
- b. No ledger card identifying attorney funds for bank charges [R. 1:21-6(d)];
- c. Inactive balances left in trust account [R. 1:21-6(d)];
- d. No individual ledger card for each client [R. 1:21-6(c)(1)(B)];
- e. Attorney funds for bank charges exceed \$250 [RPC 1.15(a)];
- f. Old outstanding checks need to be resolved [R. 1:21-6(d)];
- g. Funds received for professional services are not deposited into the business account [R. 1:21-6(a)(2)];
- h. Business account designation improper; must indicate Attorney Business Account, Attorney Professional Account, or Attorney Office Account on bank statements, checks and deposit slips [R. 1:21-6(a)(2)]; and
- i. No monthly trust account reconciliation with client ledgers, journals & checkbook [R. 1:21-6(c)(1)(H)].

[C¶9;Ex.3.]

The complaint alleged, without specificity, that several of the 2018 deficiencies were the same as those found in 2009.

After respondent appeared at the OAE offices for an August 10, 2018 demand audit, he corrected all the above deficiencies. As of January 2019, respondent was in full compliance with R. 1:21-6.

Respondent admitted in his verified answer that he violated RPC 1.15(d) and R. 1:21-6.

In respect of mitigation, respondent's answer stated that, in an effort to prevent future violations, he retained Steven Meglio, C.P.A., to perform monthly reconciliations of his attorney trust and business accounts, including three-way reconciliations of the trust account ledger, journals, and checking account. Respondent expressed a willingness to provide those reconciliations to the OAE going forward, if required to do so.

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct.

A 2009 random audit revealed nine recordkeeping deficiencies for which respondent was not disciplined. A 2018 random audit also revealed nine recordkeeping violations. The recordkeeping infractions common to both random audits are: (a) inactive balances left in trust account [R. 1:21-6(d)]; (b) old outstanding checks need to be resolved [R. 1:21-6(d)]; and (c) no monthly trust account reconciliation with client ledgers, journals, and checkbook [R. 1:21-6(c)(1)(H)]. The OAE is satisfied that respondent has cured his recordkeeping shortcomings.

In sum, respondent violated RPC 1.15(d). The only remaining issue is the appropriate quantum of discipline to be imposed 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,

e.g. In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that previously had been brought to his or her attention. In In re Wianecki, 232 N.J. 454 (2018), a reprimand was imposed on an attorney who had engaged in recordkeeping violations identified during a demand audit. Those violations did not result in the negligent misappropriation of trust account funds. In the Matter of Robert A. Wianecki, Jr., DRB 17-381 (February 21, 2018) (slip op. at 1-2). A June 2012 random audit identified several recordkeeping deficiencies, including the electronic transfer of funds without proper authorization and the use of improperly designated business account checks. In November 2012, Wianecki certified that those and other deficiencies had been corrected. Id. at 2. In May 2016, after receiving overdraft notices from Wianecki's bank, the OAE conducted a demand audit of his trust account. Contrary to statements contained in his certification to the OAE, Wianecki had continued to make electronic transfers without proper authorization and to use the improperly designated business account checks, two of the same deficiencies found in the June 2012 audit. In imposing a reprimand, we noted that, although

Wianecki had not been disciplined for his 2012 recordkeeping deficiencies, thereafter, he “should have been more guarded in the handling of his attorney accounts” and “should have recognized the importance of being mindful of the recordkeeping requirements.” Id. at 3, quoting In re Conroy, 185 N.J. 277 (2005).

Here, respondent admitted that some deficiencies found during the 2018 random audit were the same as those found in 2009. In mitigation, respondent has no prior discipline in twenty-seven years at the bar, and promptly admitted his misconduct. Although respondent should have been more mindful of his recordkeeping duties, we determine that enhanced discipline, beyond an admonition, is unwarranted.

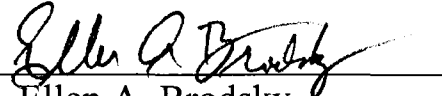
On balance, we, thus, determine that an admonition is the appropriate sanction for respondent’s misconduct, with the condition that he be required to provide the OAE with monthly reconciliations, on a quarterly basis, for a period of two years.

Vice-Chair Gallipoli voted for a reprimand.

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 Andrew Frank Garruto  
Docket No. DRB 19-151

Argued: July 18, 2019

Decided: December 6, 2019

Disposition: Admonition

<i>Members</i>	Admonition	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou				X
Rivera	X			
Singer	X			
Zmirich	X			
Total:	7	1	0	1

  
Ellen A. Brodsky  
Chief Counsel