

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-168
District Docket No. XIV-2018-0531E

In the Matter of :
Herbert F. Lawrence :
An Attorney at Law :
:

Decision

Argued: July 18, 2019

Decided: December 12, 2019

Johanna Barba Jones appeared on behalf of the Office of Attorney Ethics.

Robert Panzer 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 disciplinary stipulation filed by the Office of Attorney Ethics (OAE), in which respondent admitted having violated RPC 1.15(d) and R. 1:21-6 (failure to comply with recordkeeping requirements).

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

Respondent was admitted to the New Jersey bar in 1970. On August 19, 1985, he received a private reprimand for failing to act impartially while serving as the escrow agent for two clients engaged in a business venture. He withheld information, to their detriment, and to the benefit of other participants in the venture. In the Matter of Herbert F. Lawrence, DRB 85-005 (August 19, 1985).

On December 1, 2005, respondent was suspended for six months for engaging in numerous instances of fraud, misrepresentation, and conduct prejudicial to the administration of justice in his own bankruptcy and matrimonial proceedings, by concealing assets from his wife and from the courts. In re Lawrence, 185 N.J. 272 (2005). On November 1, 2006, he was reinstated to the practice of law. In re Lawrence, 188 N.J. 477 (2006).

On June 9, 2011, respondent received a censure for negligent misappropriation of client funds, failure to safeguard funds, and recordkeeping violations. The Order also required respondent, within ninety days, to deposit \$93,276.76 in unidentifiable attorney trust account (ATA) funds with the Superior Court Trust Fund Unit (SCTFU). In re Lawrence, 206 N.J. 190 (2011).

According to the April 29, 2019 stipulation of facts, at all relevant times herein, respondent practiced law as a sole practitioner at Herbert F. Lawrence,

P.A., in Elizabeth, New Jersey, and maintained both his ATA and attorney business account (ABA) at Santander Bank. In connection with the June 9, 2011 Order, respondent produced a receipt indicating that, on September 12, 2011, he had deposited funds of \$93,276.76 with the SCTFU.

Respondent stipulated that he failed to comply with the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6 inasmuch as he: (1) failed to prepare and maintain required three-way reconciliations of his ATA, in violation of R. 1:21-6(c)(1)(H); (2) held inactive trust ledger balances in his ATA for an extended period of time, in violation of R. 1:21-6(d); (3) did not maintain a separate ledger sheet totaling attorney funds held for bank charges, in violation of R. 1:21-6(c) and (d); (4) did not resolve outstanding ATA checks, in violation of R. 1:21-6(d); (5) failed to maintain proper client ledgers, in violation of R. 1:21-6(c)(1)(B); (6) maintained unidentified/unclaimed funds in his ATA for a period in excess of two years, in violation of R. 1:21-6(j); and (7) improperly designated his ABA, in violation of R. 1:21-6(a)(2).

In respect of respondent's inactive trust account ledger balances, he submitted a September 13, 2018 "Certification of Due Diligence," addressing his efforts to disburse unclaimed amounts totaling \$61.26 owed to NJ Pain

Management & Rehabilitation Center (NJ Pain). Respondent's research revealed that the entity no longer exists.

Respondent's certification also described his efforts to identify the owners of another \$5,694.48 in unidentified ATA funds using bank records from May 1, 2015 through September 13, 2018. Due to his deficient recordkeeping, however, respondent was unable to: (1) establish the date upon which he came into possession of these funds; (2) determine when he began to retain the funds; or (3) ascertain to whom the unidentified ATA funds belong.

The parties stipulated that no clear and convincing evidence existed that respondent deliberately accumulated the \$5,694.48, or that he sought to misappropriate the unidentified funds. Moreover, during the investigation, respondent received OAE training in respect of his recordkeeping obligations.

On September 18, 2018, respondent deposited \$5,755.74 with the SCTFU, representing the \$5,694.48 in unidentified funds plus the \$61.26 that could not be returned to NJ Pain. On February 26, 2019, OAE investigator Jasmin Razanica confirmed that the SCTFU had received respondent's \$5,755.74 deposit.

During the OAE's investigation, respondent was required to construct the three-way reconciliations necessary to comply with R. 1:21-6. Moreover, in

order to ensure that he achieved compliance with R. 1:21-6, respondent retained ethics counsel and an accountant.

Based on the above facts, respondent stipulated that he had violated RPC 1.15(d) and R. 1:21-6.

Citing respondent's prior discipline as an aggravating factor, with emphasis on his 2011 censure for similar misconduct, the OAE recommended a reprimand or a censure, with the condition that respondent be required to practice under the supervision of a proctor for an unspecified period of time.

In turn, respondent requested the imposition of a reprimand.

Respondent's brief to us noted that the OAE's investigation did not establish that respondent had sought to acquire or retain the unidentified funds, emphasizing that respondent promptly had deposited the funds with the SCTFU, as the OAE requested. Respondent asserted that attorneys found guilty of recordkeeping deficiencies have received reprimands, despite a history of discipline, and even where accompanied by negligent misappropriation, misconduct not alleged in the case at hand.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.15(d) and R. 1:21-6.

Respondent held \$5,755.74 of inactive funds in his trust account for a period in excess of two years. Of that amount, \$61.26 belonged to NJ Pain, which is no longer in existence, and the remainder represented unidentified funds. Respondent has certified his efforts to identify the owners of the funds, but, due to his extremely poor recordkeeping, he was unable to disburse any of them. Therefore, on September 18, 2018, he deposited all of those funds with the SCTFU.

Respondent stipulated to the seven recordkeeping deficiencies enumerated above, which violated RPC 1.15(d) and R. 1:21-6. 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 had been brought to his or her attention previously, or the

attorney has prior discipline for similar misconduct. See, e.g., In re Michals, 224 N.J. 457 (2015) (reprimand by consent; an OAE audit revealed that the attorney had issued trust account checks to himself or others for personal or business expenses; because, however, he maintained sufficient personal funds in his trust account, he did not invade client funds; following a prior admonition for negligent misappropriation of client funds and recordkeeping violations, the attorney had failed to resolve several improprieties) and In re Murray, 220 N.J. 47 (2014) (reprimand by consent; a random compliance audit by the OAE revealed that the attorney had not corrected some of the same recordkeeping violations for which he had been admonished one month earlier).

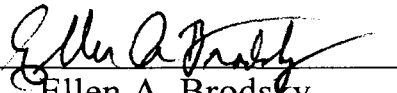
Moreover, in aggravation, respondent has a 1985 private reprimand, a 2005 six-month suspension, and a 2011 censure for negligent misappropriation of client funds, failure to safeguard funds, and recordkeeping violations – the most recent conduct virtually identical to his instant misconduct. The Supreme Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004). Respondent’s repeat offense demonstrates a failure to learn from past mistakes and, thus, beckons progressive discipline.

In mitigation, respondent fully cooperated with disciplinary authorities, and has stipulated to his misconduct. That mitigation, however, is tempered by his having once again accumulated unidentified funds in his ATA, as a consequence of virtually nonexistent recordkeeping. Nevertheless, respondent has received additional OAE training regarding his recordkeeping obligations, and has retained professionals to assist him with his future recordkeeping. We determine that, on balance, a reprimand adequately addresses respondent's misconduct.

Vice-Chair Gallipoli voted for a censure. Member Hoberman was recused. 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 Herbert F. Lawrence
Docket No. DRB 19-168

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Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman			X	
Joseph	X			
Petrou				X
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	1	1	1


Ellen A. Brodsky
Chief Counsel