

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-191  
District Docket No. XIV-2016-0571E

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In the Matter of  
Nathaniel Martin Davis  
An Attorney at Law

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Decision

Argued: September 19, 2019

Decided: January 10, 2020

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 VB Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(a) (failure to safeguard client funds),

RPC 1.15(d) and R. 1:21-6 (recordkeeping), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to censure respondent.

Respondent was admitted to the New Jersey bar in 1996 and to the Pennsylvania bar in 1995. On September 11, 2007, in a reciprocal discipline matter, he received a reprimand, following a suspension of one year and one day imposed in Pennsylvania. Specifically, he had practiced law in Pennsylvania for three years, while ineligible to do so, and made misrepresentations to a court, opposing counsel, and the Pennsylvania Continuing Legal Education Board. In re Davis, 194 N.J. 555 (2007).

On February 10, 2012, respondent received a second reprimand for failing to turn over a client file to subsequent counsel, despite several oral, written, and in-person requests that he do so. In re Davis, 209 N.J. 90 (2012).

At all relevant times, respondent maintained a law office in Newark, New Jersey. He maintained an attorney trust account (ATA) and two attorney business accounts (ABA1 and ABA2) at Bank of America (BOA).

In January 2017, the Office of Attorney Ethics (OAE) initiated a demand audit of respondent's attorney books and records. In connection with the audit, the OAE sent respondent a January 20, 2017 letter requesting his appearance at

the OAE's offices, on February 16, 2017, and the production of specific financial records for the period January 1, 2011 through January 20, 2017.

On receipt of the OAE's January 20, 2017 letter, respondent retained an accountant, Calvin Hayes, to prepare the financial records required for the audit. In early February 2017, Hayes requested a forty-five-day extension to recreate accounting records lost in a 2016 computer crash. The OAE granted the extension, but shortly thereafter, respondent realized that Hayes was unfamiliar with OAE audits and reconciliations, and, thus, ended their professional relationship. Respondent then retained a bookkeeper, Mandy Lezcano, to prepare his attorney records for the OAE. Another attorney had recommended Lezcano because she had experience in handling OAE audits.

The OAE's review of Lezcano's 2015 reconciliations revealed technical inaccuracies, which the OAE set forth in an April 20, 2017 letter to respondent. The letter requested that respondent provide corrected three-way reconciliations and listed the following inaccuracies in the materials previously provided: (1) deposits had been listed as being in transit, although they already had cleared the bank; (2) checks had been listed as outstanding, although they had been cleared for payment; and (3) client ledger card balances were inaccurate.

On July 25, 2017, Lezcano submitted revised reconciliations. Because they, too, contained inaccuracies, the OAE set a deadline of August 4, 2017 for respondent to correct the deficiencies.

Within the ATA, respondent had created subaccounts for each of his clients. The ATA bank statement for July 2017 revealed inactive client balances, totaling \$181,022.27, in connection with 116 client matters. OAE Disciplinary Investigator Andrzej Surel explained that the OAE used ten months as the measure of inactivity in a subaccount before the OAE considered the account inactive, because that left some leeway after the six-month period of time within which checks must be negotiated. The oldest balances in respondent's ATA dated to July 9, 2002, almost fifteen years prior to the date of the demand audit.

In his answer and at the hearing, respondent admitted that "some" balances were inactive, but disagreed with both the OAE's calculation of \$181,022.27 in inactive client balances and finding of 116 inactive client matters. During the ethics hearing, however, respondent produced no evidence in support of his position that the OAE's calculations were inaccurate, or that any of the 116 subaccounts were active.

Respondent, thus, admitted that, by maintaining some inactive balances in the ATA, he violated the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6(d).

In respect of the charge that respondent had failed to safeguard client funds in the ATA, according to respondent's own ledger cards produced for the audit, as of July 31, 2017, he should have held \$277,369.15 in the ATA for 137 clients. Yet, on that date, the ATA held just \$276,020.84, a shortage of \$1,348.31. Of that amount, \$1,348.14 was attributable to accumulated bank charges in an "Admin" subaccount; a subaccount for client "Nunez H" was short by fourteen cents; and a three-cent credit for "Interest-Closed Escrowee" was responsible for the remainder. Respondent did not provide the OAE with a ledger card reflecting the negative balance for the bank charges. However, he testified that he was in the process of challenging those bank charges.

At a November 1, 2017 follow-up audit, the OAE informed respondent that he must correct the inactive and negative client balances. On January 3, 2018, the OAE directed respondent to produce a summary of inactive balances in the ATA.

By letter dated January 19, 2018, respondent informed the OAE that he had retained Nicholas Hall, CPA, to perform the accounting services required to fully comply with the OAE's outstanding requests. Thereafter, respondent and Hall requested several extensions of time, which were granted, ultimately requiring full compliance by April 20, 2018. According to Surel, as of June 15,

2018, the date that the formal ethics complaint was filed, respondent had (1) failed to complete three-way reconciliations; (2) left inactive client balances in the ATA; (3) failed to produce a client ledger card identifying the attorney funds for bank charges; and (4) maintained client ledger cards with a debit balance.

Respondent, thus, admitted that he further violated the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6. He also admitted in his second amended answer and at the ethics hearing that, in respect of the accruing bank charges to the ATA, he was guilty of “negligently failing to safeguard \$1,348.31 in client funds, in violation of RPC 1.15(a).”

The complaint further charged that respondent had failed to cooperate with disciplinary authorities by repeatedly providing inaccurate three-way reconciliations. Between January 20, 2017, when the OAE first requested documents from respondent, and February 15, 2019, the date of the ethics hearing, respondent had failed to produce an accurate set of three-way reconciliations, as the OAE requested. Respondent hired three individuals, Hayes, Lezcano, and Hall, to assist him with that task, but never produced those reconciliations. Respondent, thus, admitted in his answer and at the ethics hearing that he failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

Moreover, in his February 8, 2019 second amended answer, respondent had admitted nearly all of the facts alleged in the formal ethics complaint and conceded that he had violated the three RPCs charged.

Respondent offered mitigation for his conduct. First, he urged that he had made good faith efforts to comply with the recordkeeping requirements and to fully comply with the OAE's demands for information. He believed that the three professionals he retained were competent to complete the tasks for which they were retained, but admitted that they were not. In fact, respondent's third and final professional, Nicholas Hall, testified at the ethics hearing that, during his time in the matter, he was experiencing personal and health issues, which "bogged" him down. He commented that "maybe I should have bowed out, but I didn't want to leave him stranded because I was like the second accountant now that was working on this, and really the third person. I just wanted to help him out the best I could."

Second, in December 2016, respondent's wife was diagnosed with lung cancer. At the time, she also suffered from lupus. She did not reveal the extent of her illnesses to respondent, which resulted in marital discord. After an August 2017 surgery to remove part of her lung, her condition only worsened. In December 2018, lupus attacked her healthy lung. Their relationship suffered and, according to respondent, they "separated just for a while, and she talked

about divorce, and then her lung couldn't support [her] anymore, she wanted to die.”

It was not until a November 2018 hospitalization that respondent learned the full extent of his wife's condition. On December 26, 2018, she passed away. Thereafter, the couple's two daughters, aged 12 and 15, increasingly relied on respondent for emotional support.

During this same time period, respondent shared with his sister the care of their mother, who suffered from dementia.

Respondent's then counsel asserted, in further mitigation, that respondent had accepted responsibility for his recordkeeping obligations, had acknowledged his wrongdoing by admitting his unethical conduct, and had harmed no clients along the way. Counsel asked the hearing panel to consider that respondent “suffered considerable unnecessary stress and was unreasonably forced to incur significant expenses . . . defend[ing] himself . . . against false and unsubstantiated allegations,” contained in two ethics matters that, ultimately, were dismissed.<sup>1</sup>

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<sup>1</sup> Normally, pursuant to R. 1:20-9, dismissed ethics matters are confidential. In this case, however, we deem counsel's arguments concerning those matters to constitute knowing and voluntary waivers of such confidentiality.



In addition, counsel argued that the true number of inactive balances had not been established by clear and convincing evidence, and that it was prejudicial for the OAE to have characterized the total funds as a “very large amount” involving 116 clients. Counsel further argued that, because the complaint did not allege “negligent misappropriation . . . and the only ‘shortage’ is related to bank service charges . . . negligent or knowing misappropriation” should not be a factor considered to enhance the disciplinary sanction. He urged the panel to recommend a reprimand. Furthermore, he suggested that respondent resolve the inactive balances and place any remaining unidentified funds with the Superior Court Trust Fund Unit (SCTFU).

In turn, in an April 12, 2019 summation brief, the OAE cited reprimand cases in which attorneys have failed to cooperate with the OAE after recordkeeping deficiencies were found, and contended that respondent’s prior discipline warranted the imposition of greater discipline – a censure. In addition, the OAE requested that respondent be required to submit his attorney books and records to the OAE on a quarterly basis for two years, and to “clear up all outstanding balances within that time frame.”

The panel concluded that respondent violated all three RPCs charged in the complaint. Specifically, it found that respondent had failed to safeguard client funds, in violation of RPC 1.15(a), by incurring bank charges

that had caused the invasion of \$1,348.31 in client funds. Additionally, the panel noted that a subaccount for client "Nunez H" contained a negligible \$0.14 negative balance. The panel observed that, although the amount of funds was not substantial, respondent had taken no steps to cure the shortage.

The panel also found respondent guilty of recordkeeping violations, inasmuch as he failed to perform proper three-way reconciliations of the trust account.

Finally, the panel found that respondent failed to reply to the OAE's lawful demands for information, specifically (1) three-way reconciliations of the attorney trust account for at least six years, (2) a summary of inactive client subaccounts totaling \$181,022.27 in 116 matters, dating as far back as 2002, and (3) receipts and disbursements journals for the trust and business accounts, all in violation of RPC 8.1(b).

The panel considered respondent's mitigating factors, including his wife's illness and ultimate death from cancer; respondent's role as a single parent and shared responsibility for his mother's care; and his defense against two grievances, that were later dismissed, during the same time frame as these disciplinary proceedings. However, the DEC concluded that the aggravating factors outweighed the mitigation. Respondent had received reprimands in 2007 and 2012, albeit for dissimilar misconduct. Moreover, the DEC opined that he

lacked contrition and appeared “disengaged” during the ethics hearing. Finally, the DEC emphasized that, although respondent took responsibility for his actions, he also blamed the professionals he had retained for his own failure to complete the work required to satisfy the OAE’s reasonable demands for information.

The DEC recommended a censure, reasoning that “with two prior reprimands for unethical conduct, Respondent should have been extremely vigilant in complying with his ethical obligations. Instead, he went at least six years without performing the required reconciliations of his trust account which has led to his holding more than \$181,000 of his clients’ money.”

In addition, the panel recommended that respondent be required to submit to the OAE monthly three-way reconciliations of the trust account, on a quarterly basis, for two years. The panel also adopted the OAE’s suggestion that respondent resolve the inactive balances and place any remaining unidentified funds with the SCTFU.

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 admitted having failed to safeguard client funds, in violation of RPC 1.15(a). In fact, he caused the negligent misappropriation of \$1,348.31 of client funds when he permitted accrued bank charges to invade those funds, but was not charged with that specific misconduct, and, thus, we do not make that finding. In July 2017, he was required to hold intact \$277,369.15 in the ATA, but the account held just \$276,020.84. Respondent's failure to safeguard client funds, thus, violated RPC 1.15(a).

Additionally, respondent failed to perform monthly three-way reconciliations of his ATA, from 2011 through 2017; failed to maintain monthly ATA bank statements from 2011 through 2013; and, for 2011 and 2012, failed to maintain client ledgers or cash receipts and disbursements journals for the ATA and ABA. His lack of records made it difficult for the OAE and respondent's own accountants to reconcile his books and records. Respondent, thus, violated RPC 1.15(d) and R. 1:21-6.

Finally, in respect of the disciplinary proceedings, between the inception of the OAE audit, in January 2017, and the ethics hearing, in February 2019, respondent produced some documents, answered OAE questions, and attended a demand audit, a follow-up audit, and the ethics hearing. He retained three professionals to sort out his books and records, and ethics counsel, all of which denotes a high degree of cooperation. Yet, despite those efforts, he never

provided the OAE with a number of requested documents critical to the OAE's reconstruction of his books and records. Fortunately, the OAE was able to discern from subpoenaed bank records and respondent's use of ATA subaccounts that no failure to safeguard client funds, other than that caused by the bank charges, had occurred. Respondent was correct to admit that his cooperation had been less than complete, and in violation of RPC 8.1(b).

In sum, respondent violated RPC 1.15(a) (failure to safeguard client funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.1(b) (failure to cooperate with disciplinary authorities). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Recordkeeping violations, even if accompanied by commingling, ordinarily are met with an admonition. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following a trust account overdraft, a demand audit uncovered several violations of R. 1:21-6; we considered, in mitigation, the attorney's unblemished disciplinary history and his cooperation with ethics authorities); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney was guilty of violations of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered the attorney's forty-nine year unblemished ethics history and his ready admission of misconduct by consenting to discipline); and 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).

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 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)); and In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (attorney admittedly failed to cooperate with the district ethics committee's investigation into his handling of an expungement matter, a violation of RPC 8.1(b)).

Here, in aggravation, respondent has two prior reprimands, albeit for dissimilar misconduct. Also telling was respondent's failure, for two years, to fully comply with the OAE's requests for accurate financial records. Indeed, as of the date of the ethics hearing, respondent still had not satisfied the OAE's requests.

We decline, however, to adopt the DEC's finding that respondent was unrepentant for his actions in this matter. Rather, in his brief to us and again at oral argument, respondent explained that, during the ethics proceedings below, he had been in the midst of grieving the loss of his wife. He concededly

expressed his remorse “late in the game,” but maintained he had felt remorseful throughout the ethics proceedings.

In mitigation, contemporaneous with these proceedings, respondent suffered greatly in his personal life. He lost his wife and became the single parent of two children, all while assisting with his mother’s care and defending against ethics charges in two unrelated matters that, ultimately, were dismissed.

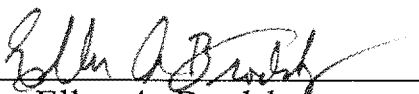
Had respondent produced the financial records that the OAE sought, we might have recommended yet a third reprimand for him. However, on balance, we determine that the aggravation outweighs the mitigation in this case, and, thus, a censure is necessary to protect the public and preserve confidence in the bar.

In addition, we require respondent to (1) furnish the OAE with monthly three-way reconciliations of the ATA, on a quarterly basis, for two years, and (2) within six months of the Court’s Order in this case, identify and return any inactive client balances in the ATA to the rightful owners, and deposit any remaining unidentified funds with the SCTFU.

Members Joseph and Singer voted for a reprimand. Member Boyer 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

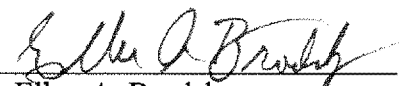
In the Matter of Nathaniel Martin Davis  
Docket No. DRB 19-191

Argued: September 19, 2019

Decided: January 10, 2020

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer				X
Hoberman	X			
Joseph		X		
Petrou	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	6	2	0	1

  
Ellen A. Brodsky  
Chief Counsel