Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-223 and DRB 19-273
District Docket Nos. XIV-2017-0421E
and XIV-2015-0223E

In the Matters of

Joel S. Ziegler

An Attorney at Law

Decision

Argued: October 17, 2019 (DRB 19-223)

Argued: November 21, 2019 (DRB 19-273)

Decided: January 29, 2020

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics (DRB 19-223). Steven J. Zweig appeared on behalf of the Office of Attorney Ethics (DRB 19-273).

Respondent waived appearance for oral argument.

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

These matters have been consolidated for the purpose of issuing a single form of discipline. DRB 19-223 was before us pursuant to R. 1:20-6(c)(1).[1] The Office of Attorney Ethics (OAE) charged respondent with having violated RPC 1.5(b) (failure to set forth in writing the basis or rate of the attorney's fee) and RPC 5.5(a)(1) (unauthorized practice of law). Respondent admitted the allegations of the complaint.

DRB 19-273 was before us on a recommendation for a censure filed by the District I Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.15(a) (commingling and failure to safeguard client funds); RPC 1.15(b) (failure to promptly deliver funds to a third party); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons detailed below, we determine to impose a three-month suspension for the combined misconduct in these matters.

Respondent earned admission to the New Jersey bar in 1966. During the relevant timeframe, he maintained a solo practice of law in Maplewood, New Jersey.

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[1] That 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 to be heard in aggravation.

On June 2, 2009, respondent was reprimanded for failure to treat with courtesy and consideration all persons involved in the legal process and conduct prejudicial to the administration of justice. In re Ziegler, 199 N.J. 123 (2009). Specifically, he wrote a letter to his adversary in a domestic relations matter and accused the adversary's client of being "an unmitigated liar." Then, following a court hearing, he approached the adversary's client and exclaimed that, because of her lies, he would "cut [her] up into bits and pieces, put [her in] a box and send [her] back to India and [her] parents won't recognize [her]." Respondent also threatened to file ethics charges against the adversary solely to intimidate the adversary and the client.

Respondent was declared ineligible to practice law, effective November 17, 2014, for failing to comply with mandatory Continuing Legal Education (CLE) requirements for 2013. In 2015, respondent attained the age of seventy-five. Consistent with CLE regulations, at age seventy-five, respondent was relieved of future CLE requirements. However, he failed to provide proof that he had completed the required CLE course credits that had accrued prior to the date of his exemption. To date, respondent has not provided that proof and remains ineligible.

DRB 19-223 (District Docket No. XIV-2017-0421E)

Respondent was not authorized to practice law in New Jersey when he prepared a power of attorney (POA) for Inge Prevost, the ninety-three-year-old mother of the grievant, John Prevost. On June 1, 2016, John had obtained his mother's durable POA and thereafter managed her monthly income and expenses. He also arranged for the direct deposit of her social security, brokerage account, and annuity payments. On an undisclosed date, friends of Inge consulted respondent about Inge's situation. She lived alone in a condominium and had expressed concern that her children might forcibly remove her from her home to live with them, when she sought to live independently.

Respondent told ethics investigators that Inge did not recall having signed a 2016 POA in John's favor, and that she asked respondent to revoke John's POA and to draft a new one. Therefore, by letter dated August 2, 2016, respondent informed John and his sister, Jean Prevost Bowman, that Inge had retained him to ensure the continuation of her independent living arrangement.

In the spring of 2017, John took Inge for a visit to Minnesota, where he lived. Shortly thereafter, on June 20, 2017, respondent and Inge entered into a written fee agreement, the scope of which was limited to the revocation of John's POA and the preparation and execution of a new POA. On that same

date, respondent and Inge executed, and respondent notarized, a new POA naming respondent as her agent. The fee agreement did not encompass the legal services that respondent had performed, from August 2016 through May 24, 2017, in respect of Inge's wish to remain in an independent living arrangement. Respondent also admitted that, at the time he performed those legal services, he was ineligible to practice law.

On October 12, 2018, the OAE sent respondent a letter requesting either disclosure of all matters in which he had practiced while ineligible or an acknowledgement that he actively practiced law during the ineligibility period. On November 2, 2018, a second OAE letter requested a reply in respect of whether respondent had practiced law while ineligible, and if so, whether he was aware of the ineligibility at the time. The letter further requested that respondent produce, by November 12, 2018, either a detailed list of matters in which he practiced while ineligible, or a detailed denial.

In a December 23, 2018 letter, respondent claimed that he had believed he had complied with his CLE requirements by completing courses in 2015, but had failed to submit the necessary proof of completion. Respondent's letter further related his dire financial circumstances, as well as the serious medical difficulties that both he and his wife had experienced, ultimately leading to his wife's death, in February 2017. Respondent conceded that he never submitted

the CLE proofs necessary to restore his eligibility.

In respect of annual notices regarding his CLE obligations, which informed respondent that he was ineligible from 2014 to the present, he told the OAE, during a January 29, 2019 interview, that he did not specifically recall having had an awareness of his ineligibility, but "must have" received those notices and "must have" been aware of the ineligibility when he represented Inge. Moreover, respondent admitted that he "did practice law until 9-17 when [he] moved to Ventnor, NJ."

Respondent admitted having violated RPC 5.5(a)(1) by practicing law from November 17, 2014 through September 2017, while aware that he was ineligible to do so. In addition, he admitted that the scope of his June 20, 2017 fee agreement did not include the August 2016 to May 24, 2017 representation involving Inge's independent living situation.

In his answer to the complaint, respondent urged the following mitigation: he possessed "almost an unblemished record" in more than fifty-three years at the bar; his wife had a stroke in 2016 and died in early 2017; and his home had been foreclosed on, forcing him to vacate, in September 2017. Respondent asserted that, having been devastated by those events, he attended grief therapy and counselling, and continues to take medication. In addition, he is under active treatment for serious health issues. Finally, in September 2017,

at age seventy-seven, he needed to start anew "in a strange place" and can no longer work due to failing health. Respondent offered to set forth "a litany of the service and works that [he has] been involved with since 1966," the year of his bar admission.

DRB 19-273 (District Docket No. XIV-2015-0223E)

During the relevant timeframe, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at Wells Fargo Bank. Respondent represented Pierre Alphe and his company for more than a decade. Alphe was the managing member of Trinity Realty and Investment, LLC (Trinity), which had been formed in 2009 to acquire, rehabilitate, and sell real estate. On March 28, 2009, respondent had served as a witness to Alphe's signature, as managing member, on Trinity's operating agreement. Respondent also represented Trinity in multiple real estate transactions.

In 2011, Alphe hired Chris Messina, a consultant, to secure investors for Trinity. Messina introduced the grievant, John Brutofsky, to Alphe, and, on July 5, 2011, the two entered into a joint venture agreement (JV-1 Agreement), whereby Brutofsky funded $140,000 for the purchase and rehabilitation of a Roselle, New Jersey property.

In return for his capital contribution, Brutofsky expected to be admitted as a member of Trinity, and to be repaid his $140,000 plus one-half of the net proceeds of the sale of the property. Respondent witnessed Alphe's signatures to the JV-1 Agreement, which set forth respondent's law office address as Trinity's address. Respondent maintained that Trinity was not actually operated from his law office, but received mail via its own post office box.

Alphe requested that respondent deposit Brutofsky's $140,000 capital contribution in his ATA, and respondent agreed to do so. Accordingly, Brutofsky wrote a check payable to respondent, with the Roselle property address included in the check's memo line. According to Brutofsky, he wrote the property address on the check so that respondent would know the purpose for the funds, but conceded that he neither spoke to respondent nor provided respondent with specific directives regarding the use of the funds.

On July 5, 2011, respondent deposited Brutofsky's funds into his ATA; the deposit slip for that transaction contained the handwritten note "Alphe Loan." Respondent conceded that, pursuant to the written terms of the JV-1 Agreement, Brutofsky's $140,000 was "earmarked" solely for the purchase and renovation of the Roselle property, yet, also claimed a belief that Alphe could use the funds as he saw fit. According to Brutofsky, the agreement that

respondent hold his investment funds in trust was material to his joint venture with Alphe.

On October 10, 2011, Alphe and Brutofsky entered into a second joint venture agreement (JV-2 Agreement), whereby Brutofsky agreed to fund an additional $100,000 for the purchase and rehabilitation of an Irvington, New Jersey property. In return for his capital contribution, Brutofsky expected to be repaid his $100,000 plus one-half of the net proceeds of the sale of the property. Again, respondent witnessed Alphe's signatures to the JV-2 Agreement, and respondent's law office address was set forth in the agreement as Trinity's address.

On October 18, 2011, Brutofsky wrote an $80,000 check – not $100,000, as set forth in the JV-2 Agreement – payable to respondent, with the Irvington property address included in the check's memo line. On October 19, 2011, respondent deposited Brutofsky's funds into his ATA, for a total of $220,000 of Brutofsky's funds.

In 2011, respondent began issuing checks, against Brutofsky's funds, as Alphe directed. Alphe wrote some of the checks, which respondent signed without question. Respondent admitted that, between October 24, 2011 and March 31, 2012, he signed approximately forty checks drawn on his ATA, against Brutofsky's funds, as Alphe directed. Respondent neither sought

Brutofsky's permission to disburse his funds, nor informed Brutofsky that his funds were being repeatedly disbursed for purposes other than the Roselle and Irvington properties. Moreover, he made no effort to confirm whether the funds were disbursed only in respect of the two properties.

On March 27, 2012, respondent wrote a $40,000 ATA check, payable to Brutofsky, which respondent claimed was the balance of the $220,000 in funds that Brutofsky had supplied in connection with his business dealings with Alphe. Alphe, however, characterized the $40,000 payment to Brutofsky as a lump-sum interest payment. The memo line on that check stated "[p]artial payment re: joint venture." To respondent's knowledge, Alphe never repaid the remaining $180,000 to Brutofsky.

Alphe never purchased the properties in Roselle or Irvington, even though many of the ATA checks drawn on Brutofsky's funds referenced those properties in the check's memo line.

The OAE's review of respondent's ATA and ABA records revealed that respondent prepared client ledger cards, but failed to conduct three-way reconciliations or to maintain receipts and disbursements journals. Moreover, during a November 30, 2015 demand audit, respondent admitted that he purposely left earned legal fees in his trust account, in part to avoid

enforcement of a judgment for a debt he owed. Respondent failed to withdraw those earned fees from his ATA until the OAE directed him to do so.

In defense of the charges against him, respondent denied having prepared or closely reviewed either of the joint venture agreements and claimed that Alphe had led him to believe him that the funds that Brutofsky advanced were loans. Respondent asserted that, once he deposited Brutofsky's checks in his ATA, they became Alphe's and Trinity's funds, that he had no obligations vis-à-vis Brutofsky, and that he did not need Brutofsky's permission to disburse those funds as Alphe directed. Respondent denied knowledge of the contents of Trinity's operating agreement, or whether Brutofsky had any ownership interest in Trinity. He testified that he never discussed with Alphe whether Brutofsky's funds should be deposited in a Trinity-specific bank account, or whether a formal escrow account should have been used.

In further defense of the charges against him, respondent claimed that Alphe had made interest payments to Brutofsky, evidencing the loan structure of their arrangement. Respondent maintained that he neither performed legal work nor was paid for holding and disbursing Brutofsky's funds, except for minor legal fees paid in respect of his work on real estate transactions

associated with the joint venture agreements. He did not know whether Trinity had its own business bank account.

Respondent justified depositing the funds in his ATA, reasoning that, had he deposited the funds in his ABA, they might be viewed as income he had received. He asserted that he was never informed that Brutofsky had become a member of Trinity, as represented in both joint venture agreements, and, thus, arguably had become his client. He, thus, maintained that he had no attorney-client relationship with Brutofsky.

Respondent was adamant that no one had informed him that Brutofsky's funds could be disbursed only in connection with the properties referenced in the joint venture agreements. He argued that he had followed the instructions of his client, Alphe, in good faith, as to how he wished to disburse the funds, serving "merely [as] a conduit between Alphe and Brutofsky."

Brutofsky, an electrical contractor, testified that Messina, the consultant, had prepared the joint venture agreements. He further maintained that he and Alphe had no written agreements, other than the joint venture agreements, and that the funds that he had advanced were not loans to be used as Alphe saw fit, but, rather, were earmarked for the purchase and renovation of the specific properties, as set forth in the joint venture agreements. Brutofsky conceded that he had never reviewed Trinity's operating agreement. He testified that he

did not know why Alphe had written him checks, drawn on respondent's ATA, referencing interest payments for July through September 2011, but admitted that he had negotiated those ATA checks. Moreover, he asserted that, at one point, in connection with settlement discussions, Alphe had sent him a "bogus" $180,000 mortgage document for a North Brunswick property. He denied having consented to Alphe's or respondent's use of his funds for any purpose other than as specified in the joint venture agreements and claimed that Alphe still owed him $177,900. Brutofsky conceded, however, that he had neither contacted respondent nor directed him to refrain from disbursing Brutofsky's invested funds for any purpose other than the acquisition of the two properties.

In 2012, Brutofsky began demanding that respondent and Alphe return his funds. At some point, Alphe proposed reimbursing Brutofsky at the rate of $5,000 per month, but that settlement was never consummated. The source of Brutofsky's investment capital was a line of credit he obtained in 2011, on his primary residence, for which he was required to make monthly interest payments. Brutofsky testified that Alphe had requested that they use respondent's services in connection with the joint venture agreements, because respondent was "like a father" to Alphe.

Messina testified that he drafted the joint venture agreements, that both respondent and Alphe were expressly aware that Brutofsky's funds could be

used only in furtherance of the agreements, and that Alphe had suggested that respondent hold the funds, so that he could show potential lenders proof of funds for purchasing the two properties. Messina, thus, viewed respondent's role as that of the attorney for Trinity – which now included both Alphe and Brutofsky – and as the escrow holder in respect of the joint venture funds. He testified that he and respondent had specifically discussed respondent's role. Respondent denied Messina's assertion that he and Messina had discussed any limitations on the disbursement of the funds.

Messina unequivocally denied that Brutofsky had provided the funds to Alphe as loans. In his view, the discussion of a mortgage from Alphe in favor of Brutofsky surfaced in 2013, in respect of settlement negotiations between the parties, well after it was discovered that Alphe had spent the funds on projects unrelated to the joint ventures. Messina was paid $16,000 for his consulting work in respect of the joint venture agreements and was to be paid additional fees from any profits derived from the ultimate sale of the properties.

In turn, Alphe denied having told respondent that Brutofsky's funds could be used only as set forth in the joint venture agreements. Alphe asserted that Brutofsky's funds were a loan, that Alphe could use the funds to pursue properties not mentioned in the joint venture agreements, and that, as of the

date of the ethics hearing, he was still obligated to repay Brutofsky. Even when confronted with the express language of the joint venture agreements, Alphe disputed that Brutofsky's funds were restricted to the Roselle and Irvington properties, claiming that the agreement between the parties had been verbally modified. Alphe stated that, after the joint venture plans had failed, he attempted, during settlement negotiations, to provide Brutofsky security via a mortgage on property that Alphe owned in Hillside, New Jersey. Messina had prepared the mortgage and Alphe had signed it.

During the ethics hearing, respondent admitted having violated RPC 1.15(a) (commingling) and RPC 1.15(d) (recordkeeping). Specifically, respondent admitted that he had left in his ATA for more than two years $3,000 of a $53,000 referral fee paid to him in connection with a matter involving his client, McLoughlin, despite respondent's entitlement to that fee upon receipt. In another client matter, Grant, respondent received a $175,000 settlement in September 2011, yet he did not remove the entirety of his one-third fee, in excess of $55,000, from his ATA, in order to hide that income from a judgment creditor.

In respect of mitigation, respondent asserted that he was no longer practicing law, had no plans to resume the practice of law, and had moved to Margate to live with his daughter. He stressed his decades of community

service through the Lions Club and the Knights of Columbus. Finally, he described to the DEC his serious health issues. Respondent conceded, however, that those health issues had not affected his decision-making.

The DEC found clear and convincing evidence that respondent violated all the charged ethics violations – RPC 1.15(a); RPC 1.15(b); RPC 1.15(d); and RPC 8.4(c). Specifically, in respect of the failure to safeguard allegation, the DEC determined that respondent had served as attorney for Trinity when he deposited Brutofsky's funds in his ATA, and, thus, Brutofsky's funds became client funds by virtue of Brutofsky's status, pursuant to the joint venture agreements, as a newly-added member of Trinity.

In support of that determination, the DEC found that respondent knew or should have known the following:

1. The memo line on Brutofsky's $140,000 check specifically referenced the Roselle property;

2. The joint venture agreements, wherein respondent witnessed Alphe's signature, state that Brutofsky's funds were specifically "earmarked" for the purchase of the Roselle and Irvington properties;

3. On March 27, 2012, respondent refunded $40,000 to Brutofsky, via an ATA check, whereon he noted that it was a "partial payment re: joint venture;"

4. Messina testified that respondent was aware that Brutofsky's funds specifically were allocated to the two properties, based on conversations they had and the language of the joint venture agreements; and

5. After Alphe was asked whether he ever informed respondent that Brutofsky's funds were to be used only for the properties, he testified: "Yes,

according to the [joint venture agreements] which Mr. Ziegler saw. Yes. According to the paper, yes, because he saw it. It's obvious we all knew the money, according to the paper, the money was there for that . . ."

The DEC determined that, despite respondent's knowledge of these facts, he allowed Brutofsky's funds to be disbursed for purposes other than those set forth in the joint venture agreements, in violation of those agreements and Trinity's operating agreement, which required a majority vote of the members to expend company capital, and without Brutofsky's authorization. Based on those facts, the DEC found that respondent failed to safeguard client funds, in violation of RPC 1.15(a).

Next, the DEC found that Brutofsky had properly requested, in 2012, that respondent return his investment funds to him, and that respondent had failed to do so, and thus, violated RPC 1.15(b). The DEC further determined that respondent stipulated that he had committed recordkeeping violations, and, thus, violated RPC 1.15(d).

Additionally, the DEC found that, in respect of the McLoughlin and Grant client matters, respondent had knowingly failed to disburse earned attorney's fees from his ATA until the OAE directed him to do so, and, thus was guilty of commingling, in further violation of RPC 1.15(a).

Finally, the DEC found that, by his own admission, respondent's intent in respect of his commingling violations was to foil a creditor's attempts to

enforce a $2,000 judgment against him. Accordingly, the DEC determined that his conduct was dishonest, and, thus, in violation of RPC 8.4(c). In aggravation, the DEC cited respondent's prior discipline, and recommended the imposition of a censure.

In its October 11, 2019 brief to us, the OAE endorsed the findings of the DEC, but requested the imposition of a three-month suspension for respondent's misconduct, emphasizing the dishonest motive for respondent's commingling – to defeat a judgment creditor's interest in his income. Respondent made no formal submission to us, but expressed his disagreement with the DEC's findings and recommended quantum of discipline.

* * *

Following our review of DRB 19-223, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. Respondent violated RPC 1.5(b) and RPC 5.5(a)(1), as follows.

Respondent was declared ineligible to practice law on November 17, 2014 for failure to comply with CLE requirements. In 2015, he reached the age of seventy-five, which relieved him of future CLE obligations, but he never came into CLE compliance after the 2014 ineligibility, and, thus, remained ineligible to practice thereafter.

In August 2016, respondent agreed to represent Inge, a ninety-three-year-old client who sought to remain in her own home, independent of her two children, whom she feared might try to uproot her to live elsewhere with one of them. Toward that end, respondent sent an August 2, 2016 letter to them requesting that they honor Inge's wish to remain independent of them. Respondent admitted that he did not set forth in writing the basis or rate of his fee before undertaking that representation, a violation of RPC 1.5(b).

On June 20, 2017, after John took Inge to Minnesota for a visit, respondent prepared a written fee agreement for the second aspect of the legal representation – the revocation of John's 2016 POA in favor of a new POA that named respondent as Inge's agent. The complaint did not allege that respondent engaged in unethical conduct in respect of Inge's POA. However, he had remained ineligible to practice law from November 17, 2014 to September 2017, when he ceased practicing law. Both aspects of respondent's representation of Inge fell within his ineligibility period, for which he is guilty of a violation of RPC 5.5(a)(1).

Finally, although he had no specific recollection of having reviewed ineligibility notices regarding his CLE obligations, respondent admitted that, having received those notices, he was at least constructively aware of his CLE ineligibility.

We turn next to DRB 19-273, which, in our view, constitutes respondent's more serious misconduct in these matters. 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. We agree with the DEC's determination that respondent violated RPC 1.15(a), RPC 1.15(d), and RPC 8.4(c). We disagree, however, with the DEC's additional finding that respondent had knowledge of the limitations placed on the disbursement of Brutofsky's funds, as set forth in the joint venture agreements, and, thus, dismiss the RPC 1.15(a) and (b) allegations. Simply put, the record is bereft of evidence that respondent was fully engaged and aware of the structure of the business arrangements among Alphe, Brutofsky, and Messina, or had conducted the due diligence necessary to have the mens rea required for us to conclude that he violated RPC 1.15(a) and RPC 1.15(b) in respect of Brutofsky's funds.

Specifically, in both his verified answer and during the ethics hearing, respondent admitted having violated RPC 1.15(d). Respondent conceded that he failed to conduct three-way reconciliations and failed to maintain receipts and disbursements journals. Moreover, as the OAE's demand audit of his financial records revealed, and as respondent admitted, he purposely left

earned legal fees in his trust account, in part to avoid the enforcement of a judgment for a debt he owed.

Respondent acknowledged that, in the McLoughlin client matter, he knowingly left $3,000 of a $53,000 referral fee paid to him in his trust account from May 12, 2011 until November 2013, despite his entitlement to that fee upon receipt. Moreover, in the Grant client matter, respondent received a $175,000 settlement in September 2011; yet, he failed to remove the entirety of his legal from his ATA. He admitted that his motive as to the Grant fee was to conceal that income from a judgment creditor. His efforts to circumvent that creditor were dishonest and violated both RPC 1.15(a) (commingling) and RPC 8.4(c).

In respect of the RPC 1.15(a) (failure to safeguard) and RPC 1.15(b) allegations, however, there is insufficient evidence for us to conclude that respondent failed to properly safeguard Brutofsky's funds or failed to promptly return Brutofsky's funds to him. The evidence in the record does not support a finding that respondent had a duty to Brutofsky, recognized under disciplinary precedent, in respect of the investment funds. To the contrary, we determine that the record contains insufficient evidence that respondent represented Brutofsky; served as an escrow agent under the joint venture agreements; or had accepted a fiduciary role in respect of Brutofsky – all roles recognized

under New Jersey precedent which would expose respondent to violations of RPC 1.15(a) and (b), as charged. See Moshe Meisels v. Fox Rothschild LLP, ___ N.J. ___, 2020 N.J. LEXIS 4 (2020) (holding that, absent proof of the existence of a fiduciary relationship or limiting instructions, an attorney/law firm cannot be found to have committed misconduct for following a client's instructions as to the disbursement of third-party funds held in an attorney trust account).

That said, respondent's wholesale reliance on the representations of his client, Alphe, whereby he proceeded to disburse the majority of Brutofsky's funds, was reckless. As counsel to Alphe and Trinity, prior to depositing Brutofsky's funds in his ATA, respondent should have conducted diligence in respect of the joint venture arrangement between the parties and determined the parameters for the release of Brutofsky's funds. Instead, respondent allowed his ATA to be used as Trinity's business account, without guardrails or oversight. Although respondent's use of his ATA was inadvisable, the facts of this case do not rise to the level of an ethics infraction in this regard.

Further, there is no clear and convincing evidence that respondent knew the terms of the joint venture agreements or had discussed the limitations placed on Brutofsky's funds with any of the relevant parties. Brutofsky admitted that the only step he had taken to protect his funds in respect of

respondent's ATA was to write the respective property addresses on the memo lines of his checks to respondent. Indeed, in light of these facts, the OAE properly determined not to charge respondent with violating the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of client or escrow funds) for his role in Alphe's disbursement of Brutofsky's funds. Moreover, the OAE failed to meet its burden of proof that respondent's conduct constituted failure to safeguard Brutofsky's funds, or failure to promptly return his funds, despite his demand.

In sum, in DRB 19-223, respondent is guilty of having violated RPC 1.5(b) and RPC 5.5(a)(1). In DRB 19-273, respondent is guilty of having violated RPC 1.15(a) (commingling), RPC 1.15(d), and RPC 8.4(c). We determine, however, to dismiss the allegations that respondent further violated RPC 1.15(a) and (b). The sole issue left for us to determine is the appropriate discipline for respondent's misconduct.

Conduct involving the failure to set forth, in writing, the basis or rate of a fee, as RPC 1.5 requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Jean Watson E. Francois, DRB 18-042 (April 24, 2018) (after being retained to defend a municipal traffic summons and receiving $200 for the representation, the attorney failed to set forth in writing the basis or rate of the legal fee, a

violation of RPC 1.5(b); lack of diligence (RPC 1.3) and failure to communicate with the client (RPC 1.4(b)) also found); In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney drafted documents and processed a disability claim for a new client without setting forth the basis or rate of the fee in writing; the attorney also practiced law, albeit while unaware that he was administratively ineligible to do so for failure to submit required IOLTA forms, a violation of RPC 5.5(a); thereafter, the attorney lacked diligence, failed to communicate with the client, and failed to reply to the ethics investigator's three requests for information, violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b), respectively; in mitigation, the attorney entered into a disciplinary stipulation, returned the entire $2,500 fee, and had an otherwise unblemished record in forty years at the bar); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also failed to communicate with the client, a violation of RPC 1.4(b); in addition, the attorney caused his client's complaint to be withdrawn, based on a statement from the client's prior lawyer that the client no longer wished to pursue the claim, a violation of RPC 1.2(a); we considered, in mitigation, the attorney's otherwise unblemished twenty-seven-year career at the bar and several letters attesting to his good moral character).

An admonition also is the usual form of discipline for recordkeeping violations that do not result in the negligent misappropriation of trust account funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images) and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information on 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).

Where commingling and recordkeeping violations were intentionally committed to circumvent creditors, however, stronger discipline has been imposed. See, e.g., In re Weber, 205 N.J. 467 (2011) (attorney with an unblemished career of nearly forty years censured for circumventing an Internal Revenue Service (IRS) levy on his attorney business account by intentionally allowing the business account to lie dormant and using his trust account for both business and trust matters, violations of RPC 1.15(a) and RPC 8.4(c); attorney also committed multiple recordkeeping violations); In re Al-Misri, 197 N.J. 503 (2009) (censure imposed on attorney who intentionally placed personal funds in his trust account to prevent a creditor from seizing the

monies; attorney also committed recordkeeping violations, grossly neglected a client's real estate matter and, in two separate real estate matters, practiced law while ineligible as a result of his failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection; although aggravating factors included the attorney's two prior admonitions and his failure to abide by several warnings from the OAE over the years about using his trust account for his personal obligations, mitigating factors included his admission to the misconduct, the lack of harm to his clients, his sobriety for twenty years, and his devotion of many years to helping other drug- and alcohol-dependent individuals through Alcoholics Anonymous, Narcotics Anonymous, and a lawyers assistance program; nevertheless, we emphasized that, were it not for his dedication to helping others recover from their addictions, he would have received a three-month suspension); and In re Olitsky, 149 N.J. 27 (1997) (prior to censure becoming a recognized form of discipline, three-month suspension imposed on attorney who intentionally commingled client funds, business funds, and personal funds for the purpose of circumventing an IRS levy; he also committed recordkeeping violations and failed to safeguard client funds; prior private reprimand and admonition).

A reprimand is usually imposed for practicing law while ineligible, where the attorney is aware of the ineligibility and practices law nevertheless.

See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so) and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney practiced law while ineligible, was aware of her ineligibility, and had previously been admonished for violating the same RPC).

Pursuant to the guidance provided in Weber, Al-Misri, and Olitsky, a censure is the minimum sanction appropriate for respondent's commingling designed to circumvent his creditor. To craft the appropriate discipline in this case, however, we consider both aggravating and mitigating factors. In aggravation, respondent committed additional misconduct, and has previously been reprimanded for significant, but dissimilar conduct.

In respect of mitigation, respondent asserts that he has ceased the practice of law, with no plans to resume. He engaged in community service throughout his legal career. He also suffers from serious health issues, but conceded, during the ethics hearing underlying DRB 19-273, that his health did not affect his decision-making in respect of his admitted disciplinary transgressions in that matter.

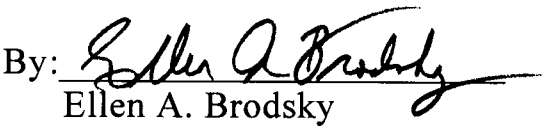
On balance, the aggravation in this case outweighs the mitigation, in light of the diverse nature of respondent's infractions and the absence of a direct link between respondent's health issues and the most serious misconduct currently under scrutiny. Respondent's commingling was purposefully

designed to defeat his creditor, for his pecuniary advantage. His additional misconduct and prior discipline beckons enhancement of the censure imposed in Weber, Al-Misri, and Olitsky. Accordingly, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Member Zmirich voted to impose a six-month suspension. Member Petrou voted to impose a two-year suspension.

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 Matters of Joel S. Ziegler
Docket Nos. DRB 19-223 and 19-273

Argued: October 17 and November 21, 2019

Decided: January 29, 2020

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Six-Month Suspension	Two-Year Suspension	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	1	0	0

Ellen A. Brodsky
Chief Counsel