

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-258  
District Docket No. XIV-2018-0294E

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In the Matter of  
James A. Key, Jr.  
An Attorney at Law

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Decision

Decided: February 20, 2020

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) (failure to comply with the recordkeeping provisions of R. 1:21-6) 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 OAE amended the complaint to include the RPC 8.1(b) charge.

On September 20, 2019, respondent submitted a motion to vacate the default, admitting all the charges against him, and asking us to consider certain mitigating factors in determining the appropriate measure of discipline. The OAE did not object to respondent's motion.

For the reasons set forth below, we determine to deny respondent's motion to vacate the default and to impose a reprimand for his violation of RPC 1.15(d) and RPC 8.1(b), with a condition.

Respondent was admitted to the New Jersey bar in 1974. Presently, he maintains an office for the practice of law in Piscataway, New Jersey.

In February 1996, and again in November 1996, respondent received an admonition for lack of diligence (RPC 1.3) and failure to communicate with the client (RPC 1.4(a) and (b)). In the Matter of James A. Key, Jr., DRB 95-418 (February 20, 1996); In the Matter of James A. Key, Jr., DRB 96-357 (November 25, 1996).

In 2007, respondent received a reprimand for recordkeeping violations and negligent misappropriation of client funds (RPC 1.15(a)). In re Key, 189 N.J. 302 (2007). In 2014, he received a censure for recordkeeping violations, asserting a frivolous claim (RPC 3.1), and failing to supervise non lawyer employees (RPC 5.3). In re Key, 220 N.J. 31 (2014).

Service of process was proper. On April 1, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address, located at 200 Centennial Avenue, Suite 200, Piscataway (the Centennial Avenue address). On April 10, 2019, "Lupe" signed for the certified letter. The regular mail was not returned.

On May 2, 2019, the OAE sent a "five-day" letter to respondent, by certified and regular mail, at the Centennial Avenue address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, 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 amended to charge a willful violation of RPC 8.1(b). On May 13, 2019, the certified mail was signed by Lu Ann Bailey, an agent of respondent. The regular mail was not returned.

On May 28, 2019, the OAE sent another copy of the formal ethics complaint, by certified and regular mail, to respondent at a different office address, located at 371 Hoes Lane, Suite 200, Piscataway (the Hoes Lane address). The Hoes Lane address was the current address listed on respondent's annual attorney registration. On June 3, 2019, the certified mail was signed by "Diana M." The regular mail was not returned.

On June 24, 2019, the OAE sent another letter, similar to the May 2, 2019 letter, to respondent, by certified and regular mail, at the Hoes Lane address. According to the United States Postal Service tracking system, the certified letter was delivered on June 27, 2019. The letter sent by regular mail was not returned.

As of July 11, 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 this matter as a default.

We now turn to the allegations of the complaint.

On November 28, 2017, the OAE conducted a random audit of respondent's attorney books and records. The audit revealed the following recordkeeping violations:

- a. A running cash balance is not kept in the trust account checkbook. [R. 1:21-6(c)(1)(G)];
- b. A separate ledger sheet is not maintained for each trust client [R. 1:21-6(c)(1)(B)];
- c. The trust account bank reconciliation prepared showed total trust funds on deposit were in excess of the total trust obligations [R. 1:21-6(d)];
- d. Improper designation on the Attorney Business Account [R. 1:21-6(a)(2)];
- e. Improper designation on the Attorney Trust Account [R. 1:21-

6(a)(2)];

- f. The trust receipts journal is not maintained [R. 1:21-6(c)(1)(A)];
- g. No monthly trust bank reconciliation with the client ledger, journal, and checkbook [R. 1:21-6(c)(1)(H)];
- h. Trust account check images not maintained for seven years [R. 1:21-6(c)(1)]; and
- i. Improper imaged processed attorney business account checks [R. 1:21-6(b)].

On July 13, 2018, the OAE performed a demand audit. As of October 2018, respondent had corrected all the above listed deficiencies.<sup>2</sup>

According to the complaint, respondent had been aware of his recordkeeping obligations due to prior contact with the OAE in 2006 and 2007 arising from a 2004 random audit. The 2004 audit revealed these deficiencies:

- a. A schedule of clients' ledger accounts was not prepared and reconciled monthly to the trust account bank statement [R.1:21-6(c)(1)(H)[sic];
- b. A trust account receipts book was not maintained [R.1:21-6(c)(1)(A)];
- c. A running cash balance was not kept in the attorney trust account checkbook [R.1:21-6(c)(1)(G)];
- d. Clients' ledger sheets were not fully descriptive [R.1:21-6(c)(1)(B)];

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<sup>2</sup> Although respondent had corrected each deficiency identified by the 2017 audit, by October 2018, five months later, on March 29, 2019, the OAE filed the complaint in this matter.

- e. Inactive balances remained in the attorney trust account for extended periods of time [R.1:21-6(d)];
- f. Trust account deposit slips were not maintained with accounting records for a period of seven years [R.1:21-6(c)(1)];
- g. A business account receipts book was not maintained [R.1:21-6(c)(1)(A)];
- h. A business account disbursements book was not maintained [R.1:21-6(c)(1)(A)]; and
- i. Business account deposit slips were not maintained with the accounting records for a period of seven years [R.1:21-6(c)(1)].

Based on the above allegations, the complaint charged respondent with having violated RPC 1.15(d).

As stated previously, respondent filed a motion to vacate the default. To succeed, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. In this matter, respondent did not assert a meritorious defense to the charges. Rather, he admitted the violations. Therefore, we determined to deny the motion to vacate the default. However, in light of respondent's admission to the charges, we considered the following compelling facts offered in mitigation.

In 2003, respondent, as the only remaining sibling, undertook the sole responsibility of caring for his elderly mother, who later developed dementia, in 2011. Her condition deteriorated and, as of 2011, she required full-time care, which respondent arranged for her. Respondent also bore the financial burden, which he attempted to reduce by caring for her himself on weekends, until she passed away in November 2017. In March 2017, respondent's wife developed pancreatic cancer. On weekends from March to November 2017, respondent's stepdaughter cared for his wife while respondent attended to his mother. Respondent became his wife's primary caregiver from the time his mother passed away in 2017 to June 2018 when his wife passed away. In November 2018, respondent was diagnosed with a serious undisclosed medical condition, which caused physical strain and an emotional toll. Respondent has since downsized and relocated his office and residence, leading to his feeling an "unwitting state of disarray and malaise." He is receiving counseling, has retained an accountant to address the deficits and maintain the business and trust accounts, and has requested help from family and friends.

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is

deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

RPC 1.15(d) requires an attorney to comply with the recordkeeping provisions of R. 1:21-6. Respondent violated RPC 1.15(d), by failing to keep a running cash balance in the trust account checkbook (R. 1:21-6(c)(1)(G)); failing to maintain a separate ledger sheet for each trust client (R. 1:21-6(c)(1)(B)); having trust funds on deposit in excess of the total trust obligations (R. 1:21-6(d)); maintaining an improper designation on the attorney business account (R. 1:21-6(a)(2)); having an improper designation on the attorney trust account (R. 1:21-6(a)(2)); failing to maintain the trust receipts journal (R. 1:21-6(c)(1)(A)); failing to keep a monthly trust bank reconciliation with the client ledger, journal, and checkbook (R. 1:21-6(c)(1)(H)); failing to maintain the trust account check images for seven years (R. 1:21-6(c)(1)); and retaining improperly imaged processed attorney business account checks (R. 1:21-6(b)).

Thus, the admitted allegations of the formal ethics complaint clearly and convincingly establish that respondent violated RPC 1.15(d). In addition, respondent violated RPC 8.1(b) by failing to file an answer to the formal ethics complaint. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.



An admonition is the usual form of discipline for recordkeeping violations, as long as negligent misappropriation did not result. 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); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (attorney did not maintain trust or business receipts or disbursements journals, or client ledger cards; did not properly designate his attorney trust account; made disbursements from the trust account against uncollected funds; withdrew cash from the trust account; and did not maintain an attorney business account); and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in 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; violations of R. 1:21-6 and RPC 1.15(d)). Therefore, standing alone, an admonition would be appropriate for respondent's violation of RPC 1.15(d).

Respondent has a disciplinary history, however, which includes a 2007 reprimand for recordkeeping violations and negligent misappropriation of client

funds, and a 2014 censure for, among other infractions, recordkeeping violations that mirror those in this case, such as failing to reconcile the trust account and failing to properly maintain client ledger sheets. Thus, the admonition should be enhanced to a reprimand. See, e.g., In re Michals, 224 N.J. 457 (2015) (attorney committed multiple recordkeeping violations; prior admonition for some of the same infractions, in addition to negligent misappropriation and commingling personal and client funds); In re Murray, 220 N.J. 47 (2014) (one month after the attorney had received an admonition for negligent misappropriation and recordkeeping violations, a random compliance audit uncovered his failure to correct some of those recordkeeping violations); and In re Colby, 193 N.J. 484 (2008) (attorney committed numerous recordkeeping violations; prior reprimand for some of the same recordkeeping infractions and negligent misappropriation).

In aggravation, however, we must consider the default status of this matter. “[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). Therefore, the reprimand would ordinarily be enhanced to a censure.


We determine, however, that respondent has presented additional significant mitigating factors to justify the imposition of a reprimand. Respondent's family health issues, including the caring for and subsequent death of both his mother and his wife, were occurring through June 2018. Respondent received this complaint while still dealing with the consequences of those events, and the diagnosis of his own serious medical condition in November 2018. Moreover, respondent has corrected all the recordkeeping discrepancies identified by the audit, and has taken documented steps to remediate his personal and professional issues, including retaining an accountant and receiving counseling.

We note that, in the disciplinary Orders issued in 2007 and 2014, in addition to the reprimand imposed on respondent, the Court required respondent to complete a course in trust accounting, and in law office management, respectively. In light of respondent's repetitive struggles with recordkeeping, we determine to require respondent to complete two recordkeeping courses approved by the OAE within ninety days of the date of the Court's Order imposing discipline.

Member Joseph was recused.

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:   
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Ellen A. Brodsky  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of James A. Key, Jr.  
Docket No. DRB 19-258


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Decided: February 20, 2020

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	1	0

  
Ellen A. Brodsky  
Chief Counsel