

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 20-002  
District Docket No. XIV-2017-0422E

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In the Matter of  
Lawrence A. Leven  
An Attorney at Law

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Decision

Argued: June 18, 2020

Decided: December 7, 2020

Eugene A. Racz appeared in 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 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> 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.

(failing to comply with recordkeeping requirements); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In his verified answer to the complaint, respondent admitted having violated those RPCs, with one minor caveat.

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

Respondent earned admission to the New Jersey bar in 1973. On December 4, 2018, the Court temporarily suspended respondent for failure to cooperate with the OAE in connection with this matter, and he remains suspended to date. In re Leven, 236 N.J. 92 (2018). At the relevant time, he maintained an office for the practice of law in West Caldwell, New Jersey.

On January 25 and April 26, 2010, the OAE performed a random audit of respondent's Attorney Trust Account (ATA) and Attorney Business Account (ABA) records. The OAE audit uncovered eighteen recordkeeping deficiencies. From March 2, 2016 through dates in 2017, the OAE performed a second random audit of respondent's ATA and ABA records. During the second audit, the OAE found twenty-one recordkeeping deficiencies, including multiple, repeat deficiencies that respondent should have resolved after the first random audit.

By letter dated August 14, 2017, the OAE directed respondent to produce his law firm's financial records maintained in accordance with R. 1:21-6, including monthly, three-way ATA reconciliations, client ledger cards, disbursements journals, and two specific client files. From August 29 to December 20, 2017, respondent failed to comply, despite the OAE's repeated efforts, made via correspondence, telephone, and in-person requests. At best, he provided incomplete records.

On February 1, 2018, the OAE petitioned the Court to temporarily suspend respondent from the practice of law. By letter dated March 1, 2018, respondent admitted to the Court that, since 2015, he had failed to maintain compliant financial records, because he had believed he was going to imminently retire. Additionally, he assured the Court that the OAE's petition had a "sobering effect" on him, and that he would submit the records to the OAE within two weeks. By letter dated April 24, 2018, the Court ordered respondent to provide the requested records by May 7, 2018. On May 8, 2018, the OAE informed the Court that respondent had failed to comply with its Order.

A few months later, on September 6, 2018, the OAE reported to the Deputy Clerk of the Court, with a copy to respondent, that the OAE still had not received the requested financial records from respondent. By letter and certification dated September 14, 2018, respondent represented to the Court that

he would provide the records to the OAE by October 1, 2018. On September 21, 2018, the Court ordered respondent to provide the records to the OAE within forty-five days. By letter dated October 12, 2018, the OAE directed respondent to provide the records in accordance with the Court's Order.

Although, on November 5, 2018, respondent provided some financial records, the OAE found them to be incomplete and inaccurate. Specifically, respondent's monthly, three-way ATA reconciliations for January 1, 2015 through November 5, 2018 were incomplete; an unidentified client ledger card had a negative balance of \$50,200.35; his monthly receipts and disbursements journals for January 1, 2015 through November 5, 2018 were incomplete; he had no ledger cards detailing attorney funds held for bank charges; and he continued to fail to deposit all legal fees in his ABA.

As stated in respondent's ethics history above, on December 4, 2018, the Court granted the OAE's motion to temporarily suspend respondent.

In his December 10, 2019 answer to the formal ethics complaint, respondent admitted the factual allegations and his violation of RPC 1.15(d), RPC 3.4(c), RPC 8.1(b), and RPC 8.4(d). However, he denied that he had commingled personal and client funds. Further, he claimed that he had provided to the OAE all the financial documents that he could locate.

In mitigation, respondent offered that he has no prior discipline; that he has a good reputation and character; that he readily admitted his wrongdoing; that he expressed contrition and remorse; that he attempted to cooperate with ethics authorities, but recognized that his cooperation was incomplete; that he did not cause injury to any client; that he did not knowingly misappropriate any client's money or property; that, if reinstated, he would work only for another attorney or law firm, and, thus, would not maintain his own ATA or ABA in the future; that the circumstances show little likelihood of a repeat offense; that, as a condition of reinstatement, he would continue to reconcile his ATA; and that, because he had been suspended since December 4, 2018, he had incurred substantial loss of income and damage to his reputation.

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

In respect of the RPC 1.15(d) charge, respondent failed to comply with multiple provisions of R. 1:21-6. Respondent admitted having committed twenty of the twenty-one recordkeeping deficiencies alleged in the complaint. Because the quantum of discipline would not change whether we find that he commingled personal and client funds in his ATA, we need not resolve that issue. In respect of the RPC 3.4(c) and RPC 8.4(d) charges, respondent disobeyed the Court's April 24 and May 7, 2018 Orders by failing to provide the OAE with the

requested financial records, despite repeatedly promising to do so. Finally, in respect of the RPC 8.1(b) charge, respondent failed to satisfactorily reply to the OAE's multiple demands for information.

In sum, we find that respondent violated RPC 1.15(d); RPC 3.4(c); RPC 8.1(b); and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Recordkeeping irregularities ordinarily are met with an admonition, as long as 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. See, e.g., In re Abdellah, 241 N.J. 98 (2020) (reprimand for attorney who should have been mindful of his recordkeeping obligations based on a "prior interaction" with the OAE in connection with his recordkeeping practices that had not led to an allegation of unethical conduct) and In re Conroy, 185 N.J. 277 (2015) (reprimand for attorney who had been the subject of a prior random audit during

which recordkeeping deficiencies had been revealed; we determined that the attorney should have been more mindful of his recordkeeping obligations).

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to

appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, 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)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).



A reprimand may result if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See, e.g., In re Picker, 218 N.J. 388 (2014) (reprimand; an OAE demand audit, prompted by a \$240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses; violation of RPC 1.15(a); in addition, the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit; violations of RPC 8.1(b); the attorney explained that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE because they were in storage at the time; although the attorney had a prior three-month suspension and was temporarily suspended at the time of the decision in this matter, we noted that the conduct underlying those matters was unrelated to the conduct at hand); In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

Here, respondent was on notice, from the first random audit, that he had recordkeeping deficiencies to address; yet, over a prolonged period of time, he

failed to take adequate corrective action. Indeed, as the second random audit demonstrated, his recordkeeping further regressed. Moreover, he failed to comply with the Court's Orders and the OAE's investigation, despite having been given multiple opportunities to do so, and his hollow representations to the Court. Based on applicable precedent, the discipline for the totality of respondent's misconduct is a censure. To craft the appropriate discipline in this case, however, we also consider both aggravating and mitigating factors.

In respect of mitigation, this is respondent's first discipline in nearly forty-seven years as a member of the bar; he admitted his wrongdoing; he expressed contrition and remorse; he has a good reputation and character; the circumstances show little likelihood of a repeat occurrence; and no client was injured. There is no aggravation for us to consider.

On balance, given respondent's numerous RPC violations and his failure to cooperate with the OAE, despite the looming temporary suspension, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. Moreover, as conditions, we require respondent to deposit with the Superior Court Trust Fund Unit, within thirty days of the date of the Court's disciplinary Order in this matter, the \$50,200.35 in unidentified ATA funds that the audit revealed; and, on

reinstatement from his temporary suspension, to provide the OAE with monthly reconciliations of his ATA, on a quarterly basis, for two years.

Vice-Chair Gallipoli and Member Petrou were 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: /s/ Ellen A. Brodsky  
Ellen A. Brodsky  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Lawrence A. Leven  
Docket No. DRB 20-002

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Argued: June 18, 2020

Decided: December 7, 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:	7	2	0

/s/ Ellen A. Brodsky

Ellen A. Brodsky  
Chief Counsel