Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-059
District Docket No. XIV-2018-0658E

In the Matter of

Michael A. Purvin

An Attorney at Law

Decision

Argued: September 17, 2020

Decided: February 3, 2021

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey waived appearance for oral argument 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 between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted having violated RPC 1.15(a) (multiple instances – failure to safeguard client funds and commingling), RPC 1.15(d) and R. 1:21-6 (numerous recordkeeping

deficiencies), and RPC 8.4(c) (multiple instances – conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1991 and to the District of Columbia bar in 1999. He maintains an office for the practice of law in West New York, New Jersey and has no prior discipline in New Jersey.

Respondent and the OAE entered into a disciplinary stipulation which sets forth the following facts in support of respondent's admitted ethics violations.

As the managing partner of Purvin & Purvin, LLC (the Firm), respondent was responsible for the Firm's attorney trust account (ATA) and attorney business account (ABA). On July 26, 2018, during a random audit of the Firm's ATA, ABA, and financial books and records, the OAE discovered the following deficiencies: client ledger cards are not fully descriptive (R. 1:21-6(c)(1)(B)); client ledger cards with debit balances (R. 1:21-6(d)); inactive balances were left in the ATA (R. 1:21-6(d)); attorney funds held in the ATA were in excess of the amount necessary for bank charges; old, outstanding checks were maintained in the ATA (R. 1:21-6(d)); attorney personal funds were commingled with client trust funds (RPC 1.15(a)); the designation of the ABA was improper (R. 1:21-6(a)(2)); the ATA receipts journal was not fully

descriptive (R. 1:21-6(c)(1)(A)); the ABA receipts journal was not fully descriptive (R. 1:21-6(c)(1)(A)); nominal, short-term and other eligible client funds were not placed in the ATA designated to produce interest for the IOLTA Fund (R. 1:28(A)); all check books, check stubs, bank statements, pre-numbered canceled checks and duplicate deposit slips for all ATAs and ABAs were not maintained for a period of seven years (R. 1:21-6(c)(1)); where the amount of the contingent fee is limited by the provisions of R. 1:21-7(c), the contingent fee arrangement was not in writing and signed by both the attorney and the client, with a signed duplicate given to the client upon the conclusion of the matter and upon the conclusion of the matter resulting in the a recovery, that attorney did not furnish the client with a signed closing statement (R. 1:21-7(g)); ATA and ABA checks were improperly imaged (R. 1:21-6(b)); electronic transfers were not made with proper authorization (R. l:21-6(c)(1)(A)); and the name and/or file number of the client whom the ATA disbursement is made on behalf of was not properly identified in the memo portion of the ATA check (R. 1:21-6(c)(G)).

Four of the deficiencies set forth above were also present in an earlier, April 2004 OAE random audit of the Firm. By letter dated August 17, 2018, the OAE directed respondent to confirm, within forty-five days, that he had corrected the above deficiencies. Along with an October 9, 2018 letter,

respondent produced recent reconciliation statements for the Firm's ATA and ABA; updated bank records; a certification in which he claimed to have resolved all deficiencies; and a copy of an executed trust account certification form.

In a November 15, 2018 telephone conversation, the OAE asked respondent to furnish proof that he had corrected all deficiencies, including a $10,000 debit balance in a case referred to in the stipulation as the O'Brien matter. In November 19 and 27, 2018 letters to the OAE, respondent admitted that he had misrepresented in his October 9, 2018 letter to the OAE that he had corrected the O'Brien debit balance. Respondent actually had deposited $10,000 in his ATA a month later, on November 19, 2018, to cure that deficit.[1]

The ledger card respondent produced on November 27, 2018 showed that $69,518.95 of personal funds remained commingled in the ATA, contrary to his October 9, 2018 representation. Likewise, a December 11, 2018 supplemental submission containing the Firm's schedule of client balances stated that $984.32 remained in the ATA for the payment of periodic bank charges. That statement contradicted respondent's October 9, 2018 representation that he had reduced that amount to the recommended maximum $250, an amount beyond which

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[1] The OAE was satisfied that the negative balance in the O'Brien matter did not result in the invasion of other client's funds, because larger sums of personal funds were commingled in the ATA.

commingling may be implicated. Thus, in his October 9, 2018 letter certification, respondent misrepresented to the OAE that he had corrected all recordkeeping deficiencies.

On May 30, 2017, in connection with the Han matter, respondent mistakenly deposited client funds in the Firm's ABA, instead of the ATA, constituting a failure to safeguard those client funds. Respondent did not discover the mistake until July 26, 2018, during the random audit. Respondent's error did not invade other client's funds, because adequate personal funds were commingled in the ATA at the time. In fact, as of February 22, 2016, respondent had commingled funds totaling $148,802.05, which was reduced to $69,518.95 by December 10, 2018.

As of February 11, 2020, the date of the disciplinary stipulation, respondent had corrected all recordkeeping deficiencies and the OAE found the Firm's records to be fully compliant with R. 1:21-6.

Respondent stipulated that he failed to safeguard client funds and commingled personal funds in the trust account, in violation of RPC 1.15(a). As to the recordkeeping violations, respondent admitted having violated RPC 1.15(d) and R. 1:21-6. Finally, by misrepresenting to the OAE the extent to

which he had corrected deficiencies found during the audit, respondent admitted having violated RPC 8.4(c).

The OAE cited three cases involving misrepresentation of information to disciplinary authorities, "which typically [yields] a reprimand." See In re Maziarz, 238 N.J. 476 (2019) (reprimand for attorney who lied to the OAE in a recordkeeping investigation; violations of RPC 1.15(a), RPC 1.15(d), RPC 8.1(b) and RPC 8.4(c) found); In re Sunberg, 156 N.J. 396 (1998) (attorney reprimanded for misrepresenting information to an OAE investigator in violation of RPC 8.1 (a), RPC 8.4(c), and RPC 1.2(a)); and In re Powell, 148 N.J. 393 (1997) (reprimand for attorney who misrepresented information to a district ethics committee investigator in violation of RPC 8.1 and 8.4(c); additional violations of RPC 1.1(a), RPC 1.3 and RPC 1.4 also found). The OAE asserted that admonitions are imposed for commingling and recordkeeping violations.

The OAE cited the following aggravating factors: respondent's failure to heed the OAE's 2004 warning about the importance of proper recordkeeping practices, including the "repeat deficiencies" discovered during the 2018 random audit; and respondent's misrepresentation to the OAE that all

commingled funds had been disbursed from the trust account and that he had reduced the amount in his trust account to $250 to cover bank charges.

In mitigation, the parties cited respondent's lack of prior discipline and his cooperation in entering into the disciplinary stipulation, which saved resources. Additionally, respondent provided a certification in which he described health problems that beset him between September 2018 and February 2019.

Specifically, after knee surgeries in 2014 and 2015, respondent became addicted to the prescription painkiller Oxycodone, which had been prescribed to him. The addiction became a "journey through Hell" that affected every aspect of his life. His addiction peaked between September 2018 and February 2019, "the very time I should have been taking the necessary steps to comply with the OAE audit requirements." During that time, respondent attempted to have his bookkeeper correct the recordkeeping deficiencies, noting that compliance "was my own responsibility. I was simply not in a position to handle it."

On February 8, 2019, respondent suffered a stroke and remained hospitalized for eleven days. Immediately upon his release, and without stopping at home, respondent flew to Grand Prairie, Texas, for a thirty-day, inpatient drug

rehabilitation program. Respondent successfully completed the program and, upon his return home, began psychotherapy treatment.

Once home, respondent reached out to Lawyers Concerned for Lawyers and began attending weekly meetings in Montclair and Fort Lee for lawyers with dependency issues. He continues to attend those meetings.

Respondent also attends weekly Narcotics Anonymous meetings in Hudson County, where he practices law, and in Bergen County, where he lives. Furthermore, respondent continues to meet weekly with his psychotherapist.

Finally, respondent stated, "I am blessed to have as part of my support system the tremendous support of my wife Ann LaCarrubba, Esq., my psychotherapist, Lawyers Concerned for Lawyers and Narcotics Anonymous to ensure that I will remain sober for the rest of my life."

Based on respondent's misconduct and the mitigating and aggravating factors, the OAE recommended a reprimand with two conditions: (1) respondent's attendance at a recordkeeping class approved by the OAE, within six months of the Court's Order; and (2) proof of fitness to practice, from a licensed medical provider, with a description of the progress of his physical and mental health treatment, within sixty days of the Court's Order.

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(a), RPC 1.15(d), and RPC 8.4(c).

As the managing partner of the Firm, respondent was responsible for the Firm's ATA and ABA. During a July 2018 random audit of the Firm's books and records, the OAE discovered sixteen recordkeeping deficiencies. Four of those deficiencies were new instances of similar deficiencies uncovered in a prior, 2004 random audit. Respondent's failure to comply with the recordkeeping Rules concededly violated RPC 1.15(d) and R. 1:21-6.

In May 2017, respondent mistakenly deposited client funds in the Han matter in his ABA instead of his ATA, which constituted a failure to safeguard client funds. Respondent did not discover that mistake until July 2018, during the random audit. Furthermore, in 2016, respondent commingled as much as $148,802.05 of personal funds in the ATA. Two years later, in December 2018, $69,518.95 of personal funds remained in the ATA. By February 11, 2020, the date of the stipulation, respondent had cured the commingling issue. For respondent's failure to safeguard funds and his commingling, he is guilty of having violated RPC 1.15(a).

In an October 9, 2018 certification letter to the OAE, respondent produced banking records and certified that he had taken all corrective measures required of him. In November 2018, the OAE requested proof of his corrective actions, including his replenishment of a $10,000 debit balance in the O'Brien matter. Respondent sent two letters in which he admitted that he had misrepresented to the OAE, via his October 9, 2018 letter, that he had corrected the O'Brien balance, which had not been accomplished until November 19, 2018. Because large sums remained commingled in the ATA, however, no other clients' funds were invaded as a result of that misconduct.

Respondent's October 9, 2018 letter also misrepresented that he had reduced the funds kept in the ATA to the nominal amount of $250, to cover bank fees, when, in truth, $984.32 remained in the trust account on that date. Respondent correctly stipulated that his misrepresentations to ethics authorities violated RPC 8.4(c).[2]

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

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[2] Although RPC 8.1(a) (false statement to a disciplinary authority) would have been a more specific charge, we find a violation of RPC 8.4(c) based on respondent's misrepresentations to the OAE.

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re Maziarz 238 N.J. 476 (2019) (on a disciplinary stipulation, reprimand for attorney who misrepresented to the OAE that he had corrected deficiencies uncovered during an OAE audit of his attorney trust and business accounts; the attorney failed to comply with the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6; negligently misappropriated client funds, in violation of RPC 1.15(a); and failed to cooperate with the ethics investigation (RPC 8.1(b)); in mitigation, the attorney had no prior discipline in forty-two years at the bar; he cooperated with ethics authorities by entering into the disciplinary stipulation, which saved valuable resources; and he faced medical challenges associated with his having suffered two strokes, which affected his ability to practice law); In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and

the client's lender by claiming that funds belonging to the lender, which had been deposited in the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c) found); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of

the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Ordinarily, an attorney's commingling of their personal funds with trust account funds will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67;

because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements); and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

In aggravation, respondent failed to comply with the recordkeeping Rules despite the OAE's 2004 random audit warning about the importance of proper recordkeeping practices. Although the parties cited, as an additional aggravating factor, respondent's misrepresentation to the OAE, that act formed the basis for the RPC 8.4(c) finding. To use it again as an aggravating factor would constitute improper double counting and, thus, we disregard that assertion.

In mitigation, respondent has no prior discipline in twenty-nine years at the bar. In addition, he cooperated with disciplinary authorities and stipulated to the facts and to his misconduct, which preserved disciplinary resources. Additionally, in 2014 to 2015, respondent became addicted to prescription

Oxycodone while recovering from two knee surgeries. His addiction was at its height from September 2018 to February 2019, when he should have been attending to the OAE's audit requirements.

After a February 2019 stroke, respondent completed a thirty-day, inpatient drug-rehabilitation program. He currently attends weekly psychotherapy treatment for addiction and attends weekly meetings with Lawyers Concerned for Lawyers and Narcotics Anonymous.

Like the attorney in Maziarz (reprimand), respondent misrepresented to the OAE the extent to which he had corrected recordkeeping deficiencies discovered during an audit of his attorney accounts. Respondent and Maziarz share similar mitigation. Maziarz had an otherwise unblemished legal career of forty-two years, against respondent's twenty-nine year, blemish-free career. Maziarz suffered two strokes, which affected his ability to practice law; respondent also suffered a stroke and had the additional affliction of a prescription opioid drug dependency, which he has made great strides to overcome.

Given the similarities to Maziarz, including the considerable mitigation presented, a reprimand is the appropriate sanction necessary to protect the public and preserve confidence in the bar.

In addition, we require respondent to (1) provide proof of his fitness to practice law, as attested by an OAE-approved medical professional, within sixty days of the Court's Order in this matter; and (2) attend a recordkeeping class approved by the OAE, within six months of the Court's Order in this matter.

Member Zmirich voted to impose a censure with the same conditions. Vice-Chair Gallipoli was recused. Members Joseph and Rivera 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: ____________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael A. Purvin
Docket No. DRB 20-059

Argued: September 17, 2020

Decided: February 3, 2021

Disposition: Reprimand

Members	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:	5	1	1	2

Johanna Barba Jones
Chief Counsel