Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-295
District Docket No. XIV-2018-0263E

In the Matter of	:
Stanley R. Sherer	:
An Attorney at Law	:

Corrected Decision

Argued: March 18, 2021

Decided: July 14, 2021

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

David Waldman appeared on behalf of Respondent.

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).[1] The Office of Attorney Ethics (the OAE) charged respondent with having violated RPC

[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.

1.15(a) (commingling; failure to safeguard client funds and the funds of third parties; and negligent misappropriation); RPC 1.15(b) (failure to deliver to the client or third person any funds the client or third person is entitled to receive); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In his amended verified answer, respondent admitted the allegations of the complaint and waived a mitigation hearing.

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

Respondent was admitted to the New Jersey bar in 1985 and to the Georgia bar in 1981. He has no disciplinary history.

Effective October 5, 2020, the Court declared him ineligible to practice law in New Jersey for his failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He remains ineligible to date.

On October 17, 2017, respondent was the subject of a random audit that revealed multiple recordkeeping violations in connection with his attorney trust and business accounts, including two violations of R. 1:21-6(d) (ledger cards with debit balances; no separate ledger card for bank charges); R. 1:21-6(c)(1)(B) (separate ledger cards not maintained for each client; R. 1:21-6(a)(2) (improper designation of attorney business account); four violations of R. 1:21-

6(c)(1)(A) (trusts receipts and disbursements journals not maintained; business receipts and disbursements journals not maintained); R. 1:21-6(c)(1)(A) (checks made payable to cash rather than named payee as required); R.1:21-1a(C) (corporate designation not used on bank accounts of a professional corporation); and two violations of R. 1:21-6(b) (ABA and ATA image-processed checks do not comply with relevant Court order).

The random audit also disclosed that, between October 4, 2016 and June 29, 2017, respondent disbursed amounts totaling $23,000 from his attorney trust account (ATA) to his attorney business account (ABA). Consequently, in a February 14, 2018 letter, the OAE auditor directed respondent to provide the following regarding client Marlene Lipiner: (1) a detailed explanation of the purpose of the Lipiner escrow; (2) the retainer agreement and HUD-1 settlement statement concerning her matter; and (3) proof that respondent was entitled to eight separate payments transferred from his ATA to his ABA between October 4, 2016 and May 25, 2017. The auditor also demanded that respondent provide an explanation for a $3,000 payment to his brother, Stephen Sherer.

During subsequent correspondence with the OAE during 2018, respondent was unable to provide proof that the eight disbursements were for legal fees. He did, however, claim that he and Lipiner "decided to set aside $75,000.00 for my

fees for the time I would spend" on her sale of a property in Manhattan. He further explained:

> I have spent a considerable amount of time on this matter in reviewing the paperwork and advising Mrs. Lipiner as to the matter including, depositions, as she is not familiar with the attorney representing her. He was retained by the purchaser of the real estate. As time went on, I would take disbursements from the amount based on my time on the matter. Mrs. Lipiner can confirm this.
>
> Mrs. Lipiner is retired and living at 7587 Cape Verde Lane, Lake Worth, Florida, 33467. She would prefer not to be contacted. If you need, I can supply you with all the documentation (i.e. Complaint, Answers, Interrogatories, Motions, etc). If you need to contact her, Please advise me first.
>
> [Ex.2 at 1-2.][2]

Respondent also explained the $3,000 payment to Stephen Sherer:

> I was representing Meryl Sherer (our sister) on the purchase of a piece of property. Stephen (our brother), had advanced Meryl $3,000.00 until her sale was complete. At the closing of her sale, she requested I send Stephen $3,000.00 to repay him.
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> [Id. at 2.]

In light of the 2017 random audit and respondent's resulting 2018 communications with the OAE, the audit findings were docketed for investigation. On May 8, 2018, the OAE directed respondent to provide a written

[2] "Ex." refers to an exhibit to the May 29, 2020 formal ethics complaint.

explanation for his recordkeeping deficiencies; three-way reconciliations from January 2016 to that date; documentary proof that each of his recordkeeping deficiencies had been corrected; and a copy of the Lipiner client file, ledger card, and contact information, including a working phone number.

On June 5, 2018, respondent disbursed $36,097.03 from his ATA to his ABA. After he negotiated that check, only $100 remained in his ATA.

Despite seeking and receiving a three-week extension, respondent's June 13, 2018 reply to the OAE was incomplete, and did not provide a full explanation for the Lipiner escrow, monthly three-way reconciliations, or documentary proof that he had cured the noted recordkeeping deficiencies.

In a June 19, 2018 letter, the OAE reiterated its need for proof that recordkeeping deficiencies had been corrected, and for particular enumerated documents concerning the Lipiner representation. The OAE also demanded respondent's ATA and ABA receipts and disbursements journals from January 2016 to that date, and all client ledger cards over that same period. Respondent's reply reiterated his entitlement to the Lipiner funds and asserted that the OAE already had "everything in [his] possession."

On July 12, 2018, the OAE notified respondent that multiple recordkeeping deficiencies had not been corrected and that his prior responses were incomplete. The OAE directed respondent to cure the deficiencies; provide

three-way reconciliations for January 1, 2016 to the present by July 25, 2018; and appear for an August 2, 2018 demand audit.

On July 26, 2018, respondent provided to the OAE certain documents and represented that he had retained a certified public accountant to assist him. Upon review of respondent's submission, the OAE determined that he still had not provided proof that he had corrected multiple deficiencies; an explanation of the October 4, 2016 $2,000 cash withdrawal from his ATA; copies of records in the Lipiner file that were relevant to explain his disbursements from the ATA to the ABA; and client ledger cards for the relevant period.

On August 2, 2018, respondent appeared for the demand audit. On August 7, 2018, the OAE transmitted a letter directing respondent to provide the previously requested records by August 21, 2018, and demanding three-way reconciliations going back to August 2011. Respondent's August 22, 2018 reply still failed to provide proof that the deficiencies had been corrected, or to explain the sums that the OAE had demanded he explain; the OAE notified him of this ongoing failure that same day. Respondent also enclosed a letter that he had obtained from Lipiner indicating that she paid him $10,000.

On September 6, 2018, the OAE notified respondent of the particular ongoing deficiencies in his production. In that letter, it demanded that respondent produce bank records for the "escrow monies" attributable to the

Lipiner matter and declined to accept any additional affidavits or certifications from her on his behalf.

In a September 12, 2018 letter, respondent advised the OAE that he had retained counsel, David Waldman, Esq., and requested a thirty-day extension to produce the records. The OAE acquiesced, later granted a second extension until October 15, 2018 at Waldman's request, and also scheduled a second demand audit, for October 18, 2018, in coordination with Waldman.

Respondent failed to submit the documents by the extended deadline of October 15, 2018, but appeared for the October 18, 2018 second demand audit. On November 2, 2018, Waldman related respondent's belief that he had already satisfied most of the OAE's document requests. On November 2, 2018, the OAE provided counsel with a list of all records which had been previously requested and never produced, directing their production by November 13, 2018.

In reply, counsel contacted OAE staff to communicate respondent's belief that he had already provided certain information. The OAE requested that Waldman identify with specificity the documents which respondent believed had been incorrectly enumerated as missing in the November 2, 2018 letter. On November 9, 2018, counsel provided a list of eleven categories of documents which respondent "believe[d] were already provided." On November 12, 2018,

counsel requested that the OAE return certain original documents belonging to respondent, which the OAE did.

Waldman submitted documents to the OAE on November 12, 2018, and January 16, January 30, February 7, and March 22, 2019. Deficiencies remained despite January 11, 2019 and February 6, 2019 explanatory letters from the OAE. Particularly, respondent still had not provided ATA three-way reconciliations for August 2011 and January 2013 through December 2015; ATA receipts and disbursements journals for the period August 2011 through December 2012; legible ATA receipts and disbursements journals for the period January 2013 through December 2015; legible, fully-descriptive client ledger cards for all clients for whom funds were held between August 2011 and December 2015; and ABA receipts journals for the period August 2011 through December 2015. The OAE followed up to request those omitted documents. Respondent was not able to comply with the OAE's requests for complete records.

As a result of the incompleteness of respondent's records, the OAE was not able to verify: (1) respondent's claim that the unknown balances in his accounts were received from Lipiner, or that they were properly disbursed to him as legal fees; (2) that the March 11, 2014 deposit of $1,000 for the sale of a Clifton, New Jersey property was due and owing to respondent; or (3) that

$4,985.07 of funds remaining in escrow in the Estate of Bertram matter, which he had released to himself on June 5, 2018, were owed to him as legal fees.

Respondent did not designate funds that he could not identify in the ATA as unclaimed or unidentifiable, and did not conduct a reasonable search to determine the beneficial owner of the unclaimed or unidentified funds before disbursing it to himself on June 5, 2018. The OAE further observed that, on September 5, 2015, respondent had deposited personal funds in his ATA, and subsequently issued an ATA check to pay a personal obligation owed to the Internal Revenue Service (IRS), which the IRS negotiated on September 25, 2015.

The OAE's review of the documents which respondent submitted in reply to the 2017 random audit and the 2018-2019 disciplinary investigation revealed the following fifteen recordkeeping deficiencies:

a. debit balances in ATA [R. 1:21-6(d)];
b. failure to maintain ledger card for bank charges [R. 1:21-6(d)];
c. inactive balances left in ATA for extended period [R. 1:21-6(d)];
d. failure to maintain individual ledger cards for each client [R. 1:21-6(c)(1)(B)];
e. ledger cards not fully descriptive [R. 1:21-6(c)(1)(B)];
f. personal funds deposited into ATA and used to pay personal obligation

[R. 1:21-6(c)(1)(B)];

g. improper designation on ABA [R. 1:21-6(a)(2)];

h. failure to maintain business account receipts and business account disbursements journals [R. 1:21-6(c)(1)(A)];

i. failure to maintain ATA three-way reconciliations [R. 1:21-6(c)(1)(H)];

j. failure to maintain fully descriptive ATA receipts and disbursements journals [R. 1:21-6(c)(1)(A)];

k. cash withdrawal from ATA [R. 1:21-6(c)(1)(A)];

l. failure to use corporate designation on bank accounts [R. 1:21-1A(c)];

m. failure to maintain ATA and ABA records for seven years [R. 1:21-6(c)(1)];

n. improper image processing of ABA and ATA checks [R. 1:21-6(b)]; and

o. failure to conduct a reasonable search to determine the beneficial owner of unidentifiable or unclaimed accumulated trust funds [R. 1:21-6(j)].

Because complete records were not forthcoming, the OAE undertook a reconstruction of respondent's financial records. The OAE determined that respondent had made errors when crediting deposits and disbursing funds in client matters; those errors went undetected as a result of his failure to conduct three-way reconciliations. The OAE's reconstruction showed that, as of June 5, 2018, respondent should have been holding amounts totaling $36,097.03. Those

funds comprised trust funds in twenty-eight client matters, attorney funds, and also included certain unidentified balances. Respondent also made math errors in favor of the clients in an additional fifteen matters.

The OAE presented detailed proofs of negligent misappropriation for ten real estate matters in which respondent was obligated to hold funds, in trust, as of his June 5, 2018 disbursement to himself. Particularly, on that date, respondent invaded funds which he was obligated to hold, inviolate, as follows:

TABLE A		
Client	**Amount**	**To Whom Owed**
Yates	$283.25	Yates
David Sherer	$300.00	David Sherer
Gasparini	$100.00	Gasparini
Haimowitz	$80.00	Haimowitz
Julia Tonzola	$50.00	Julia Tonzola
Murigu	$32.77	Murigu
Vokshoorzadeh	$4.45	Vokshoorzadeh
Brian Hinds	$3.08	Brian Hinds
Argenal	$2.14	Argenal
Gerald & Debra Klufas	$882.91	Allstate
Markus & Catherine Green[3]	$1,628.09	Ewing Township Tax Collector
TOTAL	**$3,366.69**	

Respondent had not disbursed those sums as of the date of the OAE's complaint. In the course of its investigation, the OAE concluded that these

[3] A discrepancy exists between the table of all monies owed presented in paragraph 71 of the complaint, which indicates that the Greens were owed $1,627.89, and the narrative description of the Green misappropriation, which indicates that the Greens were owed $1,628.09.

misappropriations were the result of respondent's "errors when crediting deposits and disbursing funds," and that his failure to discover them resulted from his failure to conduct three-way reconciliations from 2011 through 2015. Notably, those errors occurred both in respondent's favor and in favor of the clients. The OAE, thus, concluded that the misappropriations had been negligent rather than knowing.

Respondent submitted a September 10, 2020 answer which was non-conforming. Thereafter, respondent submitted his October 13, 2020 verified answer in which he admitted all paragraphs of the complaint and waived a hearing on mitigation.

At oral argument before us, the OAE recommended the imposition of a reprimand. Respondent's counsel indicated that respondent was no longer practicing law and had relocated to Florida.[4] He explained that respondent did not earlier reimburse parties to whom he owed funds because of his health and because he knew that he would stop practicing. However, he indicated respondent's willingness to repay the sums which he had admitted owing in his answer.

[4] Although respondent's counsel indicated to us that his client had resigned from the bar, the Court's Central Attorney Management System (CAMS) reflects that he has been administratively ineligible, consistent with the ethics history reviewed above. We further note that respondent's relocation is not reflected in Court records.

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. In particular, the record contains clear and convincing evidence that respondent violated three theories of RPC 1.15(a) (commingling; negligent misappropriation; and failure to safeguard funds of clients and third parties); RPC 1.15(b); RPC 1.15(d) and R. 1:21-6; and RPC 8.1(b).

Specifically, respondent violated his duty to cooperate with the OAE's investigation by repeatedly failing to fully comply with its requests for production of records, in violation of RPC 8.1(b). Respondent admitted that, in the two years between May 8, 2018 through the filing of the complaint on May 29, 2020, he failed to reply completely to the OAE's proper demands for information, despite multiple extensions. As documented in the complaint and exhibits, the OAE's active efforts to bring about respondent's compliance with its demands spanned more than eight months and caused the OAE to issue a minimum of seven letters seeking respondent's complete explanations of his records. Ultimately, the OAE was forced to reconstruct respondent's financial records from subpoenaed bank records and public records, and even then could not fully determine the impact of respondent's misconduct upon client funds. Respondent's admitted failure to comply with the OAE's demand audit requirements and failure to properly recreate his ATA records constituted a

violation of RPC 8.1(b). See In the Matter of Dwight Hugh Simon Day, DRB 18-337 (April 8, 2019) (slip. op. at 16); In re Day, 239 N.J. 21 (2019).

Respondent also violated RPC 1.15(a) under three different theories: commingling, negligent misappropriation, and failure to safeguard the funds of clients and third parties. First, as respondent admitted, he commingled his personal funds with client funds when, on September 5, 2015, he deposited $8,747 of personal funds in his ATA, and thereafter wrote a check to the IRS which was negotiated by the payee on September 24, 2015. Second, as respondent admitted, he negligently misappropriated funds belonging to clients Yates; David Sherer; Gasparini; Haimowitz; Tonzola; Murigu; Vokshoorzadeh; Hinds; Argenal; Klufas; and Green, by issuing ATA check 9042, in the amount of $36,097.03, to himself on June 5, 2018, thereby over-disbursing $3,366.69 which he was required to hold, inviolate, for clients and third parties. Respondent admitted that those same facts established that he violated RPC 1.15(a) by failing to safeguard funds that he was holding for clients Yates; David Sherer; Haimowitz; Tonzola; Murigu; Vokshoorzadeh; Hinds; and Argenal, as well as third parties Allstate and the Ewing Township Tax Collector. In this same way, respondent violated RPC 1.15(b) by failing to promptly deliver the above-identified amounts to the entitled parties in connection with the real estate transactions that were the subject of his representation.

Finally, respondent violated the recordkeeping requirements of R. 1:21-6 and RPC 1.15(d). The initial random audit revealed fifteen violations of R. 1:21-6, all of which were ultimately charged as part of this complaint. At of the time of the complaint, respondent still had not provided three-way ATA reconciliations for the periods of August 2011 and January 2013 through December 2015; ATA receipts and disbursements journals for the period August 2011 through December 2012; legible ATA receipts and disbursements journals for the period January 2013 through December 2015; legible and fully-descriptive client ledger cards for all clients whose funds were held during the period August 2011 to December 2015; and ABA receipts journals for the period August 2011 through December 2015. There is no indication in the record that respondent achieved compliance following the filing of the complaint.

In sum, respondent admitted, and we find, that he violated RPC 1.15(a) (three instances); RPC 1.15(b); RPC 1.15(d) and R. 1:21-6; and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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 re Oliver, 209 N.J. 4 (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)).

Generally, a reprimand is the appropriate discipline for recordkeeping violations that cause the negligent misappropriation of, and constitute failure to safeguard, client funds. See, e.g., In re Osterbye, 243 N.J. 340 (2020) (respondent's poor recordkeeping practices caused a negligent invasion of, and constituted failure to safeguard, funds owed to clients and others as a result of real estate transactions; his inability to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b)); In re Mitnick, 231 N.J. 133 (2017) (attorney reprimanded for violations of RPC 1.15(a) and (d); as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; the attorney had an

unblemished disciplinary record in a thirty-five-year legal career); In re Rihacek, 230 N.J. 458 (2017) (attorney reprimanded for negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years); and In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited in his trust account $8,000 for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed $3,500, representing legal fees that the clients owed him for prior matters, leaving in his trust account $4,500 for the clients, in addition to $4,406.77 belonging to other clients; when the real estate transaction was canceled, the attorney, who had forgotten about the $3,500 disbursement, issued an $8,000 refund to one of the clients, thereby invading the other clients' funds; a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected $3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered various recordkeeping deficiencies, a violation of RPC 1.15(d)).

Here, respondent also commingled personal and escrow funds in his attorney trust account. Ordinarily, such misconduct 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) (an 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).

Here, respondent received repeated extensions and accommodations in order to get his accounting in order. Yet, he failed to take adequate corrective action and did not reimburse the parties impacted by his negligent misappropriation even after admitting to the underlying offense. Based on applicable precedent, the appropriate discipline for the totality of respondent's misconduct is a reprimand. 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 thirty-six years as a member of the bar; he admitted his wrongdoing; and he is no longer practicing law.

In aggravation, the clients and other parties involved in the eleven identified real estate transactions were harmed.

On balance, we determine that the aggravating and mitigating factors are in equipoise and, thus, a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Moreover, as conditions, we require respondent to reimburse each of the eleven entities identified as the victims of negligent misappropriation in Table A, within sixty days of the date of the Court's disciplinary Order in this matter. In the event that respondent is not able to locate one or more of those parties, those sums should be deposited with the Superior Court Trust Fund Unit within sixty days of the date of the Court's disciplinary Order in this matter.

Members Joseph and Zmirich voted to impose a censure with the same conditions.

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
VOTING RECORD

In the Matter of Stanley R. Sherer
Docket No. DRB 20-295

Argued: March 18, 2021

Decided: July 14, 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:	7	2	0	0

Johanna Barba Jones
Chief Counsel