

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 20-317  
District Docket No. XIV-2019-0236E

---

In the Matter of  
Kendal Coleman  
An Attorney at Law

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Decision

Decided: July 28, 2021

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 (the 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 recordkeeping requirements); RPC 1.5(a) (unreasonable fee); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).<sup>1</sup>

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

Respondent was admitted to the New Jersey bar in 2000. At the relevant times, he maintained an office for the practice of law in Clifton, New Jersey.

On July 25, 2019, the Court censured respondent in two consolidated matters, one of which also proceeded as a default, for violating RPC 1.15(a) (negligent misappropriation and failure to safeguard funds); RPC 1.15(d); RPC 5.5(a)(1) (unauthorized practice of law); RPC 7.1(a) (false or misleading communications about a lawyer or the lawyer's services); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Court also required respondent to (1) attend the New Jersey State Bar Association Diversionary Continuing Legal Education (CLE) Program and file proof of attendance with the OAE; and (2) attend the New Jersey Institute for CLE New Jersey Trust and Business Accounting Program, or its equivalent, with proof of attendance to the OAE within ninety days. Further, the Court required

---

<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.

respondent to provide the OAE with quarterly reconciliations of his attorney trust account (ATA) for a period of two years. In re Coleman, 245 N.J. 264 (2019).

Service of process was proper. On April 29, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail receipt was not returned, but was marked "awaiting delivery scan" in the United States Postal Service (USPS) tracking system from May 13, 2020 through the date of the certification. The regular mail was not returned.

On June 5, 2020, the OAE sent a letter, by certified and regular mail, to respondent's office 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 deemed amended to charge a willful violation of RPC 8.1(b). The certified mail receipt was not returned. USPS tracking indicated that the letter has been "awaiting delivery scan" since June 14, 2020. The regular mail was not returned.

On September 11, 2020, the OAE sent yet another copy of the formal ethics complaint, by UPS, to respondent's office address. The UPS receipt indicated that the letter was delivered on September 15, 2020.

On October 9, 2020, the OAE sent a letter, by UPS, to respondent's office 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 deemed amended to charge a willful violation of RPC 8.1(b). The UPS receipt indicated that the letter was delivered on October 12, 2020.

On November 2, 2020, the OAE sent an e-mail to respondent advising him that they had not received a response to the complaint and that the matter would proceed as a default.<sup>2</sup>

---

<sup>2</sup> New Jersey attorneys have an obligation to maintain current e-mail addresses with the Court. New Jersey Supreme Court, Notice and Order, "Attorneys Required to Maintain a Current Email Address with the Courts for Billing and Registration Purposes – Relaxation of Court Rules 1:20 and 1:21" (March 28, 2017); New Jersey Supreme Court, Order, "Attorneys to Provide and Maintain a Valid E-Mail Address" (July 18, 2017) (requiring attorneys to "maintain a valid email address at all times, informing the Court of any changes to that email address throughout the course of the year using a form or process determined by the Administrative Director of the Courts, with those attorney email addresses to be used by the Court for the limited purpose of court business, such as annual registration and billing").

As of November 4, 2020, 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 to us as a default.

We now turn to the allegations of the complaint.

Respondent maintained three bank accounts in connection with his law practice: an ATA at TD Bank, an attorney business account (ABA) at TD Bank, and a second ABA at Chase Bank. On April 22, 2019, TD Bank advised the OAE of a \$31.61 overdraft in respondent's ATA. By letter dated July 22, 2019, the OAE directed respondent to appear at its office, on August 13, 2019, for a demand audit of his records, for the audit period of January 1 through August 13, 2019. Respondent appeared for the audit, which revealed multiple recordkeeping deficiencies.

Particularly, in 2013, in five personal injury client matters, respondent improperly calculated his fee based on the gross amount of settlement proceeds, as opposed to the net amount, as R. 1:21-7(d) requires.

Specifically, in the Goshen Campbell matter, respondent calculated his fee on a gross settlement award of \$10,000, rather than the net settlement of \$9,467.28. Similarly, in the Lonnie Mickens matter, respondent calculated his fee on a gross settlement award of \$15,000, rather than the net settlement of

\$14,255.52. In the Hikmat Ramadan matter, respondent calculated his fee on a gross settlement award of \$23,000, rather than the net settlement of \$22,700. In the Dinnelle Matthew matter, respondent calculated his fee on a gross settlement award of \$15,000, rather than the net settlement of \$14,200. Finally, in the Sharon Blackwood matter, respondent calculated his fee on a gross settlement award of \$15,000, rather than the net settlement of \$14,110.28.

In addition to respondent's miscalculation of contingent fees, the audit revealed respondent's failure to maintain trust account receipts and disbursements journals, in violation of R. 1:21-6(c)(1)(A); failure to maintain individual client ledger cards, in violation of R. 1:21-6(c)(1)(B); failure to complete monthly three-way reconciliations, in violation of R. 1:21-6(c)(1)(H); and failure to maintain business account receipts and disbursements journals, in violation of R. 1:21-6(c)(1)(A).

Based on the above facts, the complaint charged respondent with having violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6; RPC 1.5(a) by charging unreasonable fees; and RPC 8.1(b) by failing to file an answer to the complaint.

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. See R. 1:20-4(f)(1).

Specifically, the record supports the allegations that respondent violated RPC 1.15(d), RPC 1.5(a), and RPC 8.1(b). Respondent failed to comply with numerous recordkeeping provisions of R. 1:21-6. Specifically, he failed to maintain trust account receipts and disbursements journals; failed to maintain individual client ledger cards; failed to complete monthly three-way reconciliations; and failed to maintain business account receipts and disbursements journals. He, thus, violated RPC 1.15(d).

Further, in the multiple client matters detailed above, respondent improperly calculated his contingent fees based on the gross settlement proceeds instead of the net settlement proceeds. Respondent's miscalculation of his attorney fees constituted a per se violation of RPC 1.5(a), which prohibits an attorney from charging an unreasonable fee. See, e.g., In re Weston-Rivera, 194 N.J. 511 (2008) (admonition for attorney who negligently took a contingent fee greater than that to which she was entitled; the excess fee occurred as a result of her failure to calculate the fee in compliance with R. 1:21-7(d)); the attorney also violated RPC 1.15(a) and RPC 1.15(d)), and In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997) (admonition for attorney who, with his client's

consent, received \$500 in excess of the contingent fee permitted by the Court Rules).

Had respondent “dishonestly” miscalculated his fee, his conduct may have been found to have been intentional, and subject to a claim of knowing misappropriation. See In re Noonan, 102 N.J. 157, 159-160 (1986) (stating that, under Wilson, knowing misappropriation of client funds “is the mere act of taking your client’s money knowing that you have no authority to do so”). Nonetheless, as Weston-Rivera and Ellenport demonstrate, an attorney violates RPC 1.5(a) through the improper calculation of a legal fee, even when that miscalculation is a simple mistake or a technical violation of the Court Rules.

Here, nothing in the record suggests dishonesty. We note that respondent openly reflected the improper calculation on each settlement sheet. That transparency supports our conclusion that respondent’s miscalculation was the result of his mistaken use of an incorrect method to calculate his fee. Thus, the charge that respondent violated RPC 1.5(a) is proper and supported by clear and convincing evidence.

Finally, respondent violated RPC 8.1(b) by failing to file an answer to the ethics complaint.

In sum, we find that respondent violated RPC 1.15(d), RPC 1.5(a), and



RPC 8.1(b). The sole issue left for determination is the appropriate quantum of discipline.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' 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); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) failed to maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) failed to properly designate the trust account; and (5) failed to maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his IOLTA account to cover overdrafts in his attorney business account, a demand audit uncovered several recordkeeping deficiencies: (1) errors in information recorded in client ledgers; (2) lack of fully descriptive client ledgers; (3) lack of

running balances for individual clients on the clients' ledgers; (4) failure to promptly remove earned fees from the trust account; and (5) failure to perform monthly three-way reconciliation, in violation of RPC 1.15(d) and R. 1:21-6); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (for a period of six years, the attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified, in violation of RPC 1.15(d) and R. 1:21-6; the attorney was required to place all remaining unidentified funds in trust with the Superior Court).

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 (2005) (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).

As set forth above, admonitions are imposed for an attorney's collection

of excess fees via the mistaken, improper calculation of contingent fees. See In re Weston-Rivera, 194 N.J. 511 (2008), and In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, we have typically imposed a reprimand. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and

failure to surrender the client's file to a new attorney).

Here, applicable disciplinary precedent for respondent's misconduct warrants at least a reprimand. In crafting the appropriate discipline, we also consider aggravating and mitigating factors.

We note that respondent was previously censured for conduct occurring in 2014, including recordkeeping violations. The recordkeeping misconduct underlying the instant case occurred in 2013. Moreover, there is no indication that any recordkeeping violations occurred in connection with the 2019 audit period, from which we infer that respondent has improved his recordkeeping practices. Therefore, we determine that the principle of progressive discipline does not apply.


However, in aggravation, we weigh 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). As noted, this is respondent's second default matter.

By contrast, there are no mitigating factors to consider.

Therefore, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

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 Kendal Coleman  
Docket No. DRB 20-317

---

---

Decided: July 28, 2021

Disposition: Censure

<i>Members</i>	Censure
Clark	X
Gallipoli	X
Boyer	X
Hoberman	X
Joseph	X
Petrou	X
Rivera	X
Singer	X
Zmirich	X
Total:	9



Johanna Barba Jones  
Chief Counsel