

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-022
District Docket No. XIV-2018-0129E

In the Matter of
Stanley E. Marcus
An Attorney at Law

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Decision

Argued: June 17, 2021

Decided: August 19, 2021

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a censure filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(a) (negligent misappropriation); RPC 1.15(d) (failure to maintain financial records required by R. 1:21-6); RPC 5.3(a)

(failure to supervise nonlawyer staff); RPC 5.3(b) (failure of a lawyer having direct supervisory authority over a nonlawyer employee to make reasonable efforts to ensure that the conduct of the employee is compatible with the professional obligations of the lawyer); and RPC 5.3(c)(3) (lawyer shall be responsible for conduct of a nonlawyer employee that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer under certain circumstances).

For the reasons set forth below, we determine to impose a three-month suspension, with conditions.

Respondent earned admission to the New Jersey bar in 1970. He maintains a law office in Newark, New Jersey. Respondent has a significant disciplinary history.

On December 2, 1991, the Court reprimanded respondent for his violation of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (now (b)) (failure to communicate with a client); RPC 1.5(b) (failure to communicate in writing the basis or rate of the fee); and RPC 1.5(c) (improper contingent fee) in six separate matters. In re Marcus, 126 N.J. 304 (1991). The Court also ordered respondent to practice under the supervision of a proctor. The Court terminated the proctorship in 1994. In re Marcus, 135 N.J. 471 (1994).

On June 14, 1995, the Court reprimanded respondent for negligent misappropriation and recordkeeping deficiencies, in violation of RPC 1.15(a) and (d) and R. 1:21-6. In re Marcus, 140 N.J. 518 (1995). In that matter, in connection with a random audit, the OAE determined that respondent failed to keep descriptive ledger cards; to maintain quarterly trust reconciliations; to deposit all legal fees into his business account; and to maintain a running balance on his trust account checkbook. Respondent's deficient recordkeeping caused him to negligently misappropriate between \$16,445.52 and \$24,891.14 in client funds.

On September 12, 2011, the Court reprimanded respondent for his violation of RPC 1.3 and RPC 1.4(b). In re Marcus, 208 N.J. 178 (2011).

Most recently, on April 26, 2013, the Court censured respondent for his violation of RPC 5.4(a) (improper fee sharing with nonlawyers) and RPC 7.3(d) (compensating or giving anything of value to a person to recommend or secure the lawyer's employment by a client). In re Marcus, 213 N.J. 493 (2013). In that matter, respondent gave employees free legal services and charged reduced fees to members of his staff's families. Additionally, respondent gave employees who referred clients to his firm fifteen percent of the firm's fee, in cash, if the referred case was successfully resolved. The referral payments to the employees were drawn from respondent's personal income from the firm. Respondent

stopped his practice voluntarily after he was advised by one of his attorney staff members that it might violate the RPCs.

Turning to the instant matter, on July 24, 2015, the OAE conducted a random audit of respondent's attorney trust account (ATA) and attorney business account (ABA). The audit identified transactions involving respondent's ABA in which the payees listed on respondent's Quicken software records differed from the actual payees on the cancelled checks.

The audit further revealed that, unbeknownst to respondent, his bookkeeper, Taresita Laboy, had issued checks drawn on respondent's ABA to herself and to her family members. To accomplish this, after Laboy issued herself a check, she entered different payees in the Quicken software to conceal her theft. Respondent's outside accountant at the time did not detect Laboy's theft. Respondent also did not notice the different payees because he failed to review his canceled ABA checks and neither he nor his accountant performed three-way reconciliations of his attorney accounts. When confronted, Laboy admitted that she had misappropriated \$223,208.16 from respondent's ABA.¹

In addition to Laboy's misappropriation, the OAE audit revealed multiple recordkeeping deficiencies: failure to maintain monthly three-way

¹ There is no information in the record regarding when Laboy's scheme commenced. Respondent speculated that Laboy had been writing herself and her family members checks from his ABA for at least two years.

reconciliations; respondent's trust ledger and ABA disbursements journals were not fully descriptive; improper images of canceled ABA checks; trust receipts journal was not maintained; old outstanding checks were not resolved; and debit balances existed in his ATA. By letter dated August 16, 2015, the OAE notified respondent of the aforementioned deficiencies and informed him that the audit would continue at a later date.

On November 25, 2015, when the audit continued, respondent provided the OAE with proof that he had corrected the identified recordkeeping deficiencies. However, in preparing for the continuation of the OAE's audit, respondent's accountant determined that, from January 2014 through September 2015, respondent's ATA had been out of trust by \$22,721.78, which impacted the funds of twenty-five clients. Neither the accountant nor the OAE were able to determine the cause of the shortage in respondent's ATA. On November 25, 2015, respondent deposited \$22,721.78 in his ATA to correct the identified shortage.

In his verified answer, respondent admitted that he was deficient in his recordkeeping and that he had negligently misappropriated \$22,721.78 from his ATA. Nevertheless, respondent claimed that his RPC violations "substantially" resulted from the failure of the accountants he had hired to both reconcile his accounts and to detect Laboy's theft. Respondent claimed that Laboy's

embezzlement from his ABA neither impacted client funds nor the legal services he provided to his clients.

Respondent also argued that the more than \$22,000 he negligently misappropriated from his ATA was “de minimis in light of the millions of dollars in transactions which utilized this account during the period in question, and no doubt resulted from human error,” including by the accountants he hired to monitor and reconcile his accounts, over whom he claimed he had no control or supervision.

Respondent emphasized that his accountant, whom he relied on at all times, failed to detect Laboy’s theft; to inform respondent that he was not performing monthly reconciliations on respondent’s behalf; and to inform respondent that discrepancies existed between the ABA disbursements journal and the image-processed checks. Respondent explained that, because Laboy’s theft occurred over an extended period, he did not notice a decrease in his personal income, which would have raised his suspicions. Therefore, in his view, he had no reason to suspect that Laboy was stealing from him and had no reason to check the work of the accountants he had hired to manage his books.

Although respondent acknowledged that Laboy’s theft and his recordkeeping deficiencies violated the Rules of Professional Conduct, he maintained that the responsibility for the failure to discover the violations fell

squarely on his accountants, and not him. Respondent further argued that the misconduct underlying his prior reprimand for negligent misappropriation and recordkeeping violations occurred in 1989 to 1990 and that the remoteness of that misconduct should not be a factor in imposing discipline in this matter.

Nevertheless, respondent conceded that the OAE had counseled him regarding his recordkeeping responsibilities in connection with his first random audit. Notwithstanding the OAE's guidance, respondent stated that he never looked at his bank statements following his 1995 reprimand. Additionally, despite confirming that he knew his responsibility to keep his records in conformity with R. 1:21-6 is a nondelegable duty, respondent testified that he did not verify with his accountant that the recordkeeping Rules were being followed and further asserted that he had no authority to oversee his accountant's activities. Respondent conceded that, had he examined his books, he would have discovered that his accountant was not completing the required monthly three-way reconciliations, and he would have seen the checks Laboy had written to herself and to her family members.

Following the 2015 audit, respondent explained that he now reviews profit and loss statements that are sent to him weekly by his bookkeeper to make sure that nothing looks out of the ordinary. Respondent also testified that he stresses to his accountants the importance of reconciling his ATA and ABA checks.

Furthermore, respondent testified that, after he learned that Laboy had stolen over \$223,000 from his ABA, he did not terminate her employment; to the contrary, she still worked for him. Respondent explained that Laboy had been his employee for twenty-five years and was dealing with significant health issues. Therefore, respondent believed that Laboy's theft was for self-preservation and not greed. Respondent also testified that, had he terminated Laboy's employment, she would not have been able to pay him back. Respondent offered that another reason he did not terminate Laboy's employment was because she was able to communicate with his Spanish-speaking clients, which was valuable to his law practice. Respondent stated that Laboy's duties in the office no longer included handling checks and mainly consisted of monitoring and organizing files and assisting him in calculating balances for bills when his clients seek medical treatment or if there is a lien on a settlement.

At the ethics hearing, respondent's current accountant testified that he took over as respondent's accountant in approximately January 2019, four years after the OAE's random audit commenced. He testified that he complies with R. 1:21-6. However, upon taking over as respondent's accountant, he did not review what happened with respondent's books to determine how Laboy was able to steal more than \$223,000 or how respondent fell out of trust by

\$22,721.78, because he thought those issues had been resolved. The accountant testified that, in his opinion, had an accountant conducted a three-way reconciliation of respondent's books, the accountant would have been able to determine that respondent was out of trust.

The OAE argued that a censure was the appropriate quantum of discipline for respondent's misconduct emphasizing, in aggravation, his disciplinary history.

In turn, respondent argued that a reprimand was the appropriate quantum of discipline for his admitted misconduct, maintaining that none of respondent's prior discipline involved questions of his personal integrity or honesty and his prior discipline for negligent misappropriation and recordkeeping deficiencies was thirty years ago. Due to the remoteness of respondent's 1991 and 1995 reprimands, respondent argued they "offer no support for the 'he should have learned' rationale, as the basis for invoking the past imposition of discipline to justify enhancing a sanction."

Respondent further asserted that, to impose discipline greater than a reprimand would result in the unreasonable imposition of a duty upon him to personally check each deposit in and payment out of his ATA and would require him to personally examine each canceled check drawn on his ABA.

The DEC accepted respondent's admissions that he violated RPC 1.15(a); RPC 1.15(d); RPC 5.3(a); RPC 5.3(b); and RPC 5.3(c)(3). Therefore, in its analysis, the DEC focused on the appropriate quantum of discipline to be imposed on respondent for his misconduct. The DEC did not accord any weight to the accountant's testimony, since he was not respondent's accountant at the time the OAE random audit occurred.

The DEC considered, in mitigation, respondent's admission of wrongdoing; the absence of any injury to a client; respondent's cooperation with the OAE; and his replenishment of the ATA shortage.

In aggravation, the DEC considered respondent's significant ethics history – specifically, his prior reprimand for negligent misappropriation and recordkeeping deficiencies. The DEC found respondent's prior misconduct to be “strikingly similar” to respondent's present misconduct. The DEC rejected respondent's argument that his 1995 reprimand was too remote in time to be an aggravating factor, noting that respondent had been disciplined four times in the interim. The DEC concluded that respondent's disciplinary history was troubling and evidenced a historic pattern of misconduct which warranted an enhanced sanction.

Furthermore, the DEC panel was troubled by respondent's testimony during the hearing, which demonstrated that he still did not appreciate his R. 1:21-6 obligations.

Consequently, the DEC determined that, although typically a reprimand would be the appropriate quantum of discipline for respondent's misconduct, a censure was warranted due to respondent's ethics history.

During oral argument before us, the OAE maintained that a censure was the appropriate quantum of discipline due to respondent's extensive disciplinary history. Respondent waived his appearance before us.

Respondent's admitted ethics violations are clearly and convincingly supported by the facts set forth in the record. As a consequence of the OAE's random audit, respondent admitted that he had committed multiple recordkeeping infractions, in violation of RPC 1.15(d) and R. 1:21-6. Those violations, combined with respondent's stubborn refusal to abide by R. 1:21-6, despite previously having been disciplined for the same misconduct, created the environment wherein Laboy was able to steal \$223,208.16 from respondent's ABA, undetected, over an extended period. Additionally, because neither respondent nor his accountant conducted three-way reconciliations of his ATA, respondent negligently misappropriated \$22,721.78 in client funds. Respondent, thus, also violated RPC 1.15(a) and RPC 5.3(a), (b), and (c)(3).

The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230 N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

Respondent, however, also violated RPC 5.3(a), (b), and (c)(3). Attorneys who fail to supervise their nonlawyer staff and have no serious prior discipline typically receive an admonition or a reprimand, depending on the presence of other ethics infractions or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of the attorney's abdication of his recordkeeping obligations, his nonlawyer assistant was able to steal more than \$149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of

\$55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career) and In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, \$14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline).

In a strikingly similar case, we imposed a reprimand on an attorney for his violations of RPC 1.15(a); RPC 1.15(d) and R. 1:21-6; and RPC 5.3(a) and (b). In the Matter of Howard J. Batt, DRB 18-212 (October 2, 2018); In re Batt, 236 N.J. 7 (2018). In that case, Batt employed a file clerk and a paralegal. From 2005 through 2015, Batt improperly delegated to his paralegal the task of reconciling his ABA and ATA. However, she systematically failed to perform the reconciliations in accordance with R. 1:21-6. From 2009 through 2014, the attorney failed to even review his ABA and ATA statements.

In September 2013, after the file clerk's employment with the firm ended, she and the paralegal engaged in a criminal scheme and ultimately stole more than \$49,000 in ATA funds, in addition to significant ABA funds. The scheme

was discovered when the paralegal attempted to cash her payroll check and it was dishonored.

Batt filed criminal charges against his former file clerk, alleging that she had stolen ABA funds from September 2013 through October 2014. The file clerk denied having stolen ATA funds and Batt failed to verify that claim. Ultimately, an ATA check issued by Batt was dishonored due to insufficient funds. A subsequent forensic analysis revealed that \$49,949.03 in ATA funds were transferred to the ABA without Batt's knowledge or authorization and were disbursed via fraudulent ABA checks, as a part of his employees' criminal scheme.

In mitigation, we found that Batt had no prior discipline in thirty-eight years at the bar; had replenished his account; took corrective actions through forensic accounting and reconstruction of his ATA; and accepted responsibility for his misconduct.

Therefore, based on New Jersey disciplinary precedent, a reprimand is the baseline sanction required for respondent's misconduct. However, in crafting the appropriate discipline in this matter, we also consider aggravating and mitigating factors.

Here, despite previously having been disciplined for recordkeeping violations and negligent misappropriation, respondent has steadfastly clung to

his belief that he has no responsibility to supervise his accountant's work. Indeed, although he acknowledged that his responsibilities under R. 1:21-6 are nondelegable, respondent repeatedly asserted that he had no authority to oversee the work of his accountant. As a result of wholly delegating his recordkeeping responsibilities to his accountant, respondent failed to recognize that his accountant was not performing required monthly three-way reconciliations. Consequently, respondent failed to recognize that he had a \$22,721.78 shortfall in his ATA, representing a negligent misappropriation of twenty-five clients' funds. He also failed to detect Laboy's massive and prolonged theft.

Furthermore, respondent's argument that his 1995 reprimand for recordkeeping deficiencies and negligent misappropriation is too remote in time for us to consider misses the mark and ignores that respondent has been disciplined four other times in the interim, most recently in 2013. Indeed, in imposing a censure upon respondent in 2013, we found that, based upon his significant disciplinary history, respondent should have been more fully acquainted with the RPCs and more attuned to his responsibilities as a member of the New Jersey bar. The passage of time since his last brush with the disciplinary system has not absolved respondent of his requirement to comport himself in accordance with the Rules of Professional Conduct. Yet, respondent

would have us believe that his fifth time before us should be treated as if it were the first in a long history at the bar.

We reject respondent's arguments. Not only have we repeatedly found respondent's ethics history to be an aggravating factor, but the Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See, In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Even worse, despite being disciplined twice for recordkeeping violations, respondent still has not accepted responsibility for his misconduct, and instead has attributed his recordkeeping violations and trust account shortage to the "highly qualified" accountants he hired to maintain his books. Additionally, respondent's testimony at the ethics hearing demonstrated that he still has not fully grasped his recordkeeping responsibilities under R. 1:21-6.

Moreover, despite respondent's knowledge of Laboy's theft of \$223,208.16 in business account funds, he continued her employment at his law firm. This decision is troubling and reminiscent of a similar case we recently considered. See In re Gonzalez, 241 N.J. 526 (2020) (three-month suspension for attorney who committed multiple ethics violations, including recordkeeping violations, negligent misappropriation, and failure to supervise nonlawyer staff;

the attorney employed his wife as his secretary and paralegal; the wife forged the attorney's signature on attorney ATA checks, fabricated ATA deposit slips; prepared false ATA ledger sheets, and hid important information from respondent; even after the attorney learned of his wife's improper conduct, the attorney maintained her employment at the firm and claimed he was "transitioning" her out of his law office; in imposing a three-month suspension, the Court ordered the attorney to provide the OAE with proof he had terminated the wife's employment at the firm).

In mitigation, respondent admitted his wrongdoing, replenished his ATA shortfall, and there is no evidence of injury to any client.

Therefore, we determine that a censure is insufficient to protect the public from respondent's refusal to comport his conduct with the Rules. We are very troubled that an attorney who was previously disciplined for recordkeeping violations and who has been the subject of the OAE's random audit program (which also functions as a recordkeeping teaching tool) twice would maintain at the ethics hearing that it was the responsibility of his accountants – and not himself – to maintain his books in accordance with R. 1:21-6. Additionally, Laboy's theft was not an aberrant occurrence but, rather, was an extended scheme. Yet, respondent remained oblivious to her defalcation of ABA funds, which theft could have been ATA funds, given respondent's laissez-faire

attitude toward his responsibilities for compliance with the recordkeeping Rules. Finally, this is respondent's fifth time before us. Anything less than a term of suspension would render the concept of progressive discipline meaningless.

Thus, considering the totality of respondent's misconduct, and after balancing the instant ethics violations with his significant disciplinary history, including a prior reprimand for the same misconduct, we determine that a three-month suspension with the added conditions of successful completion of a continuing legal education course in trust and business accounting, along with submission of quarterly reconciliations to the OAE for two years, is the appropriate quantum of discipline for respondent's misconduct.

We caution respondent that, should Laboy's continued employment at his law firm result in additional theft or RPC violations, any corresponding discipline may be subject to enhancement due to respondent's demonstrated failure to learn from his past mistakes.

Chair Gallipoli, Vice-Chair Singer, and Member Boyer voted for a censure with the same conditions.

Member Campelo voted for a six-month suspension with the same conditions.

Member Rivera was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stanley E. Marcus
Docket No. DRB 21-022

Argued: June 17, 2021

Decided: August 19, 2021

Disposition: Three-Month Suspension with Conditions

<i>Members</i>	Three-Month Suspension with Conditions	Six-Month Suspension with Conditions	Censure	Absent
Gallipoli			X	
Singer			X	
Boyer			X	
Campelo		X		
Hoberman	X			
Joseph	X			
Petrou	X			
Menaker	X			
Rivera				X
Total:	4	1	3	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel