

and commingling) and RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6).

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

Respondent was admitted to the New Jersey bar in 2005 and to the New York bar in 2009. He has no disciplinary history in New Jersey. At the relevant times, he maintained an office for the practice of law in Lakewood, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated March 8, 2021, which sets forth the following facts in support of respondent's admitted ethics violations.

Respondent maintained two Santander Bank accounts in connection with his law practice: an attorney business account (ABA) and an attorney trust account (ATA). On July 21, 2018, the OAE conducted a random audit of respondent's books and records and discovered the following deficiencies: clients' trust ledger sheets were not fully descriptive; clients' ledger cards had debit balances; inactive client trust ledger balances remained in the ATA for an extended period of time; separate ledger sheets were not maintained for each trust client; ATA funds on deposit were in excess of total trust obligations; funds received for professional services were not deposited in the ABA; attorney personal funds were commingled with client funds in the ATA; improper

designations of ABA and ATA; ABA receipts and disbursement journals were not maintained; schedule of client ledger accounts was not prepared and reconciled monthly to the ATA bank statements; ATA receipts and disbursements journals were not fully descriptive; ATA checks were made payable to cash; ATA checks were out of sequence; the law firm was not designated as an LLC on bank accounts; ABA account was frequently overdrawn; and ATA and ABA deposit slips were not maintained for seven years.

Because respondent was unable to correct the deficiencies following the random audit, the OAE docketed the matter as an ethics investigation. During the investigation, respondent admitted to the OAE that he had an improper practice of depositing and maintaining retainers received from clients in his ATA.

Respondent produced a client ledger card titled, “Retainers-Unnamed Corrected,” which showed a starting negative ATA balance (\$16,984.52) on June 15, 2016.

As of December 31, 2017, based on respondent’s client ledgers, he should have been holding \$408,922.33 in his ATA on behalf of twelve clients; however, his available ATA balance was only \$343,257.54 – a shortage of \$65,664.79.

The OAE determined that one reason for the shortage was that, from April through December 2017, respondent had accounted for a transfer of \$30,882.62 from his ATA, for which he had erroneously identified a corresponding deposit on his client ledger for a client, Broide. Respondent stipulated that he had improperly relied on Broide's statement that Broide had wired the corresponding funds to respondent. Because respondent was out of the country in April 2017, he did not check the balance of his ATA before withdrawing funds from April through December 2017. Thus, respondent withdrew funds from his ATA to pay for personal expenses, based on his belief that he held sufficient legal fees from Broide in his ATA.

Respondent admitted that he later discovered that he had withdrawn the funds from his ATA at a time when he had not yet received the legal fee retainers from Broide and, thus, had negligently invaded the trust funds of twelve clients. On January 23 and February 28, 2018, Broide remitted legal fees to respondent in the amounts of \$15,000 and \$93,000, respectively, which corrected the shortage in respondent's ATA.

Respondent was responsible for creating additional ATA shortages. For example, on March 31, 2017, in connection with a real estate matter, respondent failed to document a wire charge of \$35 on the client ledger for his client, Smith,

which caused him to over disburse funds, by \$35, when he disbursed his final wire of funds to close the sale. In April 2019, respondent deposited \$35 from his ABA in his ATA to cover the shortage. In the intervening period, between March 2017 and April 2019, respondent had a shortage of \$35 in client trust funds in his ATA.

Additionally, respondent improperly withdrew legal fees from his ATA in nine client matters, in the mistaken belief that he had deposited corresponding retainers in his ATA, resulting in his invasion of other clients' funds.

According to reconstructed records, by December 31, 2017, the portion of the balance in respondent's ATA identified as "Retainer-Office" was (\$28,753). Respondent was unable to identify the exact source of the shortage but maintained that it was caused by failing to track or remember where he had deposited retainers for his legal fees. On April 1, 2019, respondent rectified the shortage by transferring \$11,235.90 from his ABA to his ATA. By December 31, 2019, respondent's accountant had adequately reconstructed his records, and properly described all funds and shortages in respondent's ATA.

The OAE concluded that respondent "negligently misappropriated \$65,664.79 related to the Broide, the Pipo Smith[,] and other client matters[,] in

violation of RPC 1.15(a).” The OAE offered no argument that respondent had knowingly misappropriated the funds.¹

In addition to the negligent misappropriation charge, the OAE determined that, as of February 28, 2018, respondent had commingled personal funds, in various amounts, in his ATA. Following Broide’s February 28, 2018 deposit, respondent “had \$41,765 of funds owed to him as legal fees in the ATA in excess of the funds he was holding for other clients.” This commingling was not corrected until December 31, 2019, when respondent’s accountant was able to properly allocate funds via the newly-constructed ATA records.

Thus, the OAE further concluded that respondent violated RPC 1.15(a) by commingling personal funds with client funds in his ATA.

Respondent admitted that he was focused on client matters and generating business and had failed to properly maintain his financial books and records. The OAE confirmed that, at the time of the stipulation, respondent’s records were compliant with R. 1:21-6, and all identified recordkeeping deficiencies had been corrected.

¹ During oral argument, the presenter confirmed that the OAE investigation had not produced evidence of knowing misappropriation.

Respondent, thus, admitted having violated RPC 1.15(a) (two instances) and RPC 1.15(d). The OAE recommended a reprimand as the proper quantum of discipline for respondent's misconduct. The OAE cited, in mitigation, respondent's lack of disciplinary history and his willingness to enter into the stipulation. In aggravation, the OAE remarked that respondent was notified of the recordkeeping concerns after the random audit in July 2018, yet, failed to remediate and correct his records until December 2019, when his accountant reconstructed them.

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) (two instances) and RPC 1.15(d).

Specifically, respondent's practice of maintaining legal fees received from clients in his ATA, withdrawing funds from his ATA for personal expenses, and withdrawing funds from his ATA prior to corresponding funds being deposited in the ATA resulted in improper commingling and his repeated invasion of client funds, two violations of RPC 1.15(a).

Additionally, respondent violated RPC 1.15(d) by failing to comply with numerous recordkeeping provisions of R. 1:21-6. Respondent's failure to keep accurate and necessary financial records for his law practice and his lack of

attention to his recordkeeping practices was so egregious that an accountant was needed to bring respondent's financial records into compliance with the Rules. He, thus, violated RPC 1.15(d) and R. 1:21-6.

In sum, we find that respondent violated RPC 1.15(a) (two instances) and RPC 1.15(d).

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 more than \$40,000 in 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 thirty-five years at the bar); 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); and In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited \$8,000 in his trust account for the payoff of a second mortgage on a property that his clients intended to purchase, he disbursed \$3,500, representing legal fees that they 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 deal fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to 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 the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered various recordkeeping deficiencies, violations of RPC 1.15(d)).

Standing alone, commingling ordinarily 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 had a recordkeeping system, albeit, a deficient one. Respondent's prolonged failure to account for his clients' funds is concerning. Funds were unidentified and unattributable to clients, and respondent failed to keep proper records.

At oral argument, respondent's counsel requested that we consider imposing a diversion for respondent's misconduct, based on the fact that respondent had no malicious intent; took corrective action; had no disciplinary history; and, as a solo practitioner, had relied on a bookkeeper, to his detriment.

In our view, considering respondent's misconduct in the aggregate, discipline between a reprimand to a censure is warranted. In crafting the appropriate discipline, however, we also consider mitigating and aggravating factors.

In mitigation, respondent has no disciplinary history in over sixteen years as a member of the bar and made efforts to improve his recordkeeping practices with the help of an accountant. Further, nothing in the record suggests that respondent's misconduct caused financial harm to any clients. Respondent managed to rectify the shortcomings in his accounts with the help of the

accountant, and the OAE noted respondent's current compliance with the recordkeeping provisions of R. 1:21-6.

In aggravation, as the OAE emphasized, respondent failed to remediate his recordkeeping deficiencies after the random audit, despite opportunity to do so.

On balance, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct. In addition, we require respondent to (1) complete two recordkeeping courses pre-approved by the OAE, with proof of completion to be submitted to the OAE within ninety days of the Court's disciplinary Order in this matter, and (2) submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for two years.

Chair Gallipoli voted to impose a censure, with the same conditions.

Member Menaker voted to remand this matter to the Director of the OAE for renewed consideration of diversion, pursuant to R. 1:20-3(i)(2)(B).

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: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David C. Steinmetz
Docket No. DRB 21-062

Argued: September 23, 2021

Decided: October 29, 2021

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Diversion
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker			X
Petrou	X		
Rivera	X		
Total:	7	1	1



Johanna Barba Jones
Chief Counsel