

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 21-065  
District Docket No. XIV-2018-0644E

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In the Matter of :  
David Ryan Nussey :  
An Attorney at Law :  
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Decision

Argued: September 23, 2021

Decided: November 8, 2021

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 (the OAE) and respondent, pursuant to R. 1:20-15(f).

Respondent stipulated to having violated RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey and Pennsylvania bars in 1999. At all relevant times, he was a partner at the Law Offices of Klineburger and Nussey in Haddonfield, New Jersey.

In June 2020, respondent received a reprimand for his violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to comply with a client's reasonable requests for information), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Nussey, 242 N.J. 153 (2020).

In the instant matter, the OAE and respondent entered into a disciplinary stipulation, dated March 18, 2021, which sets forth the following facts in support of respondent's admitted misconduct.

On behalf of the Law Offices of Klineburger and Nussey, respondent maintained an attorney trust account (the ATA) and an attorney business account

(the ABA) at TD Bank. Respondent alone was responsible for the financial and recordkeeping duties of the firm.

In early 2016, and unrelated to the instant investigation, the OAE performed a random audit of respondent's financial books and records, which revealed the following deficiencies: 1) his client trust ledgers were not fully descriptive; 2) the total trust funds on deposit exceeded the total trust obligations; 3) his ATA and ABA were not properly designated; and 4) client ledgers were not properly prepared and reconciled monthly to his ATA statements. On May 5, 2016, respondent sent correspondence to the OAE wherein he represented that he had corrected the deficiencies and that his ATA was being reconciled monthly.

More than two years later, on August 29, 2018, TD Bank notified the OAE that Klineburger's ATA had been overdrawn by \$3,552.55 the previous day. On September 13, 2018, the OAE directed Klineburger to provide a documented explanation for the August 28, 2018 overdraft.

On September 26, 2018, respondent replied to the OAE, acknowledged that he was responsible for the firm's financial and recordkeeping responsibilities, and explained the August 28, 2018 overdraft. Specifically, respondent stated that, on June 6, 2018, \$34,000 was deposited in the ATA on behalf of his client, Theresa Auerbach; Auerbach's expenses were to be paid

from the \$34,000 deposit; and, consistent with that arrangement, on July 26, 2018, a \$4,000 legal fee was transferred to the ABA. Respondent explained that, when the remaining balance of Auerbach's fees became due, he erroneously issued a check for \$11,000, not \$7,000, having failed to account for the prior \$4,000 distribution. Respondent stated that he was contacted by the bank immediately before the Auerbach check cleared, on August 29, 2018, and that the bank informed him that there would be no overdraft.

As a result of respondent's explanation, on October 4, 2018, the OAE directed respondent to produce his monthly three-way ATA reconciliations for June, July, and August 2018. More than one month later, on November 9, 2018, having received no reply from respondent, the OAE again directed him to produce the documentation. Respondent failed to comply for a second time. Consequently, the OAE scheduled a demand audit for February 21, 2019. On February 15, 2019, respondent requested a thirty-day extension to retain counsel for the demand audit, which the OAE granted, rescheduling the audit for March 7, 2019.

On March 7, 2019, the OAE performed a demand audit of respondent's financial records and provided respondent with its manual entitled "Outline of Recordkeeping Requirements under RPC 1.15 and R. 1:21-6." The demand audit revealed that respondent had failed to correct all the deficiencies from the 2016

random audit, despite his representation to the contrary. On the same date, the OAE directed respondent to provide: 1) a detailed explanation for the August 28, 2018 overdraft; 2) complete and accurate monthly three-way reconciliations for January through February 2019, including receipts and disbursement journals, copies of client ledger cards, and bank statements with canceled checks; 3) client ledger cards for all clients whose funds were held in trust in 2018; and 4) proof that his ATA and ABA accounts were properly designated.

On March 29, 2019, respondent replied that he had corrected his ATA and ABA designations, but he failed to provide accurate monthly three-way reconciliations, client ledgers for all clients whose funds were held in trust in 2018, and documentation to explain the August 28, 2018 overdraft.

On April 4, 2019, the OAE again directed respondent to correct the deficiencies and to provide a documented explanation for the August 28, 2018 overdraft. The OAE also provided respondent with a second copy of its recordkeeping manual.

On May 4, 2019, respondent provided the documentation requested by the OAE. Regarding the August 28, 2018 overdraft, respondent provided Auerbach's client ledger and replied that:

In July of 2018, [my firm] received two checks on [Auerbach's] settlement, totaling \$34,268.66. [The firm] wrote Ms. Auerbach a check for \$22,267.92. Two checks were written against our fee to transfer, one of

\$4,000.00 and one of \$11,000.00. However, it was an oversight [that the firm] only transferred \$4,000.00 in July, versus the entire fee. The next month the fee was written out, but [the firm] did not account for the \$4,000.00 already paid.

[Stipulation Exhibit 13.]

The OAE reviewed the documentation submitted by respondent and determined that he had performed the required monthly three-way reconciliations and that his client ledger cards were fully descriptive. However, the documents revealed several bank transactions that lacked corresponding entries on client ledger cards and, similarly, several client ledger cards that lacked corresponding bank transactions. Therefore, on May 9, 2019, the OAE directed respondent to provide a corresponding explanation to seven different inquiries revealed by his documentation, including a detailed explanation for why the OAE was unable to identify his ATA check No. 2520, issued on August 17, 2018 for \$1,200, or his ATA check No. 2521, issued on August 21, 2018 for \$800, on any client ledger cards, when it appeared that both checks were issued to Nancy Belli. Respondent's corresponding reply was incomplete, inaccurate, and untimely. Therefore, the OAE scheduled a second demand audit for June 7, 2019. On June 6, 2019, respondent requested an adjournment of the second demand audit, which the OAE granted.

On June 11, 2019, the OAE performed a second demand audit. Consistent with his May 4, 2019 statement, respondent reiterated that the August 28, 2018 overdraft occurred because he forgot that he “already disbursed \$4,000.00 as earned legal fees to himself” from Auerbach’s funds, when the second check for legal fees was issued for \$11,000, rather than \$7,000 (\$11,000-\$4,000).

The second demand audit further revealed that the August 28, 2018 overdraft of \$3,552.55 resulted in the invasion of funds that respondent was required to safeguard for Belli. Respondent corrected the invasion of Belli’s funds the next day, via two deposits totaling \$5,500.

Additionally, at the second demand audit, respondent again failed to provide correct and accurate documentation as previously requested by the OAE on three separate occasions; March 7, April 4, and May 9, 2019. The OAE provided respondent with yet another opportunity to comply and requested the documentation by June 18, 2019. Respondent again failed to comply.

The OAE performed a third demand audit on June 25, 2019, at which it explained to respondent each deficiency that needed to be corrected to satisfy his recordkeeping requirements. Respondent both confirmed that he understood what was required of him and agreed to provide the requested documents at a fourth demand audit.

On July 25, 2019, the OAE performed a fourth demand audit, at which respondent provided most of the requested documentation. However, respondent failed to correct the client ledgers in the Auerbach, Belli, and Barger matters, and failed to correct his ATA ledger. Respondent agreed to make the final corrections by the end of the day. After a review of the documentation provided by respondent at the fourth demand audit, the OAE identified additional errors and discrepancies, and it informed respondent of its findings. On July 31, 2019, respondent provided additional documentation, which included an updated client ledger card for Belli, and corrected the August 2018 discrepancies.

In the course of its investigation, the OAE identified the following recordkeeping deficiencies, in violation of RPC 1.15(d) (failure to comply the recordkeeping requirements of R. 1:21-6): 1) failure to prepare monthly three-way reconciliations; 2) failure to maintain receipts and disbursement journals; 3) failure to maintain accurate and detailed client ledger cards for all clients; 4) improper designation on his ATA checks; 5) improper designation on his ABA checks; 6) failure to include client references on his ATA checks; 7) failure to include client references on his ATA deposit; 8) online transfers between his ATA and ABA; and 9) commingled personal funds in his ATA, in violation of RPC 1.15(a).



In the March 18, 2021 stipulation, respondent admitted to having violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The OAE requested that respondent be disciplined by way of a reprimand or a censure. Respondent appeared at oral argument, and accepted responsibility for his conduct, as detailed below.

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(d), including by his 1) failure to prepare monthly three-way reconciliations; 2) failure to maintain receipts and disbursement journals; 3) failure to maintain accurate and detailed client ledger cards for all clients; 4) improper designation on his ATA checks; 5) improper designation on his ABA checks; 6) failure to include client references on his ATA checks; 7) failure to include client references on his ATA deposit slips; 8) commingled personal funds in his ATA; and 9) improper online transfers between his ATA and ABA.

Respondent also stipulated that his recordkeeping deficiencies led to the negligent invasion of client funds, in violation of RPC 1.15(a), and we are satisfied that the record clearly and convincingly supports his admission. Specifically, on August 28, 2018, respondent caused a \$3,552.55 overdraft of the ATA, which resulted from his failure to account for a prior \$4,000

disbursement in the Auerbach matter. Respondent admitted that his error resulted in the negligent misappropriation of ATA funds in the Belli matter, a shortfall respondent promptly corrected the following day.

We are also satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 8.1(b). Respondent admittedly exhibited a pattern of failing to promptly cooperate with the OAE's investigation from October 2018 through July 2019, including but not limited to his failure to communicate with the OAE and his failure to produce complete documentation when he did communicate with the OAE. Ultimately, the OAE had to perform four demand audits to secure respondent's full compliance.

In sum, we find that respondent violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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).

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) (the attorney's poor recordkeeping practices caused a negligent invasion of, and 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) (the attorney was 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; no prior discipline in thirty-five years at the bar); and In re Rihacek, 230 N.J. 458 (2017) (the attorney

was 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 at the bar).

Additionally, when an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; the 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) (the 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) (the 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).

Just like the attorneys in Mitnick and Rihacek, who received reprimands, respondent's poor recordkeeping practices resulted in his negligent misappropriation of client funds held in his ATA, in violation of RPC 1.15(a). Like the attorneys in Wood, DeBosh, and Williamson, respondent failed to cooperate with disciplinary authorities, and he has a disciplinary history: a 2020 reprimand.

An apt comparison may also be drawn to our recent decision in In the Matter of Stanley R. Sherer, DRB 20-295 (July 14, 2021), which remains pending with the Court. There, we imposed a reprimand on an attorney who, like respondent, failed to cooperate with disciplinary authorities by repeatedly failing to fully comply with requests for production of records, despite multiple extensions. Also like the instant matter, the OAE's audit ultimately uncovered Sherer's negligent misappropriation of client funds.

The totality of respondent's misconduct warrants a reprimand. In crafting the appropriate discipline, however, we also must consider aggravating and mitigating factors.

In mitigation, at oral argument, respondent represented that his law firm hired a bookkeeper and that there have been no further recordkeeping violations. Respondent apologized for both the delay and incompleteness of his responses to the OAE, and he accepted responsibility for his misconduct.

In aggravation, this matter represents respondent's second disciplinary proceeding in less than two years.

Further, this matter highlighted respondent's failure to remediate his recordkeeping practices despite the knowledge and opportunity to do so afforded by his educational May 2016 random audit. Worse, respondent claimed at the end of that audit to have corrected his accounting deficiencies, a claim that the OAE's instant investigation disproved.

Additionally, considering the timeline of respondent's disciplinary history, he had a heightened awareness of his obligations under the RPCs, yet failed to cooperate with the OAE in this matter, despite follow up correspondence from the OAE and multiple opportunities to comply. As a result of respondent's non-compliance, the OAE scheduled four demand audits to painstakingly extract information it had clearly requested, and to which it was entitled by Rule. Respondent showed considerable disregard for his recordkeeping obligations until the conclusion of those iterative demand audits. Respondent's conduct, thus, warrants progressive, enhanced discipline.


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

Moreover, as conditions, 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.

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:   
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Johanna Barba Jones  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD


In the Matter of David Ryan Nussey  
Docket No. DRB 21-065

Argued: September 23, 2021

Decided: November 8, 2021

Disposition: Censure

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



Johanna Barba Jones  
Chief Counsel