Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-031
District Docket No. XIV-2020-0061E and
I-2021-0901E

In the Matter of	:
Andrew Michael Carroll	:
An Attorney at Law	:

Decision

Argued: May 12, 2022

Decided: August 18, 2022

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle 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 on a recommendation for a reprimand filed by the District I Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2004 and to the Pennsylvania bar in 2003. At the relevant times, he maintained a law practice in Hammonton, New Jersey.

On February 9, 2018, the Court reprimanded respondent for his violation of RPC 1.7(a)(2) (conflict of interest) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In the Matter of Andrew Michael Carroll, DRB 17-049 (August 22, 2017), so ordered, 232 N.J. 111 (2018) (Carroll I).

In that matter, in October 2015, while employed as an Assistant Deputy Public Defender with the Office of Parental Representation, respondent was appointed to defend L.S. against allegations that she neglected her minor son. The Division of Child Protection and Permanency (DCPP) alleged that L.S. was an alcoholic, became intoxicated, and passed out while caring for her son. Due to L.S.'s struggles with alcoholism, DCPP removed her son from her care and placed him in the custody of his maternal grandmother.

Following the child's removal, DCPP sought to curtail L.S.'s parenting time and to implement supervised visitation. After representing L.S. at the Order to Show Cause hearing, respondent offered to drive her home due to bad weather. L.S. declined the offer. However, respondent and L.S. later began

texting each other, including messages that were sexual in nature. On the day before Thanksgiving, respondent and L.S. consummated a sexual relationship.

We found that respondent was aware, given his trusted status as L.S.'s appointed counsel, that she was suffering from alcoholism so severe that she lost custody of her child. Despite his knowledge, respondent sought and commenced a sexual relationship with her, which he did not disclose to the New Jersey Office of the Public Defender (the OPD). Respondent also did not withdraw as L.S.'s counsel, despite questioning her mental status. Instead, he chose to continue the sexual relationship with his client.

We further found that, by engaging in a sexual relationship with L.S., while serving as her appointed counsel, respondent created a significant risk that his representation of L.S. would be materially limited by his own interests. Additionally, we concluded that respondent had wasted the resources of the Superior Court and the OPD by continuing his representation of L.S. while maintaining his sexual relationship, which necessitated the appointment of new counsel and an OPD investigation into his conduct.

Next, on November 24, 2020, we imposed an admonition on respondent for his violation of RPC 1.15(d).[1] In the Matter of Andrew Michael Carroll, DRB 20-195 (November 24, 2020) (Carroll II). In that matter, in approximately

[1] The formal ethics complaint in that matter was filed on July 15, 2019.

September 2017, a married couple retained respondent to file a Chapter 7 bankruptcy petition. Although respondent testified, during the ethics proceeding, that the couple had signed a retainer agreement, he was unable to produce a copy of that document.

We found that respondent's failure to produce a copy of the retainer agreement fell short of the requirements of R. 1:21-6(c)(1)(C), which mandates that every attorney retain, for a period of seven years, copies of all retainer and compensation agreements with clients. Thus, we found that respondent's violation of the recordkeeping Rule in that respect violated RPC 1.15(d).

Among other mitigating factors, we considered respondent's remorse and the detailed steps that he had taken to improve his law practice in connection with his recordkeeping violation.

Turning to the facts of the instant matter, respondent maintained, at Branch Banking and Trust Company (BB&T), four accounts related to his law practice[2] – two attorney trust accounts (ATAs) and two attorney business accounts (ABAs). On February 7, 2020, BB&T advised the OAE of a $813.98 overdraft of one of respondent's ATAs. BB&T's notice failed to provide any information relating to any check or dollar amount that had been disbursed from

[2] In 2019, BB&T and SunTrust Bank merged and formed the Truist Financial Corporation. However, this decision will refer to respondent's financial institution as BB&T, as it was referenced throughout the record below.

the ATA; rather, it included only the total amount that had been overdrawn.[3]

By letter dated February 12, 2020, the OAE provided respondent with a copy of the overdraft notice and requested a written explanation, along with specific documentation, to be submitted by February 27, 2020.

On February 27, 2020, counsel for respondent submitted a facsimile reply enclosing respondent's ATA bank statements. In the letter, respondent claimed that he did not often use the ATA, and that he maintained only $250 in the account to cover bank fees. Nevertheless, respondent stated that, after he reviewed his ATA bank statements, they lacked a transaction for $813.98. However, there was a $36 charge for insufficient funds.

In the letter, respondent explained that he was surprised to learn about the $813.98 overdraft and learned that "the entity which had been trying to get paid the 813.98 was the bank for my business credit card, used for business expenses." Respondent explained that, after he established his ATA with BB&T,

[3] R. 1:28A-1(d) grants the Court-appointed Trustees of the New Jersey Interest on Lawyers Trust Accounts (IOLTA) Fund the power to adopt regulations, subject to the approval of the Court, that govern the "administration of the Fund." Thus, according to the Guidelines for Financial Institutions, a manual prepared by the IOLTA Fund, financial institutions that wish to offer ATAs first must file an agreement with the Court that it will report overdrafts to the OAE and will comply with the rules and regulations governing the IOLTA program. Indeed, the IOLTA manual states that, to become an authorized ATA depository, a financial institution must contact the OAE to request a "Trust Account Overdraft Notification Agreement." That agreement requires banks to forward notice in the form identical to the overdraft notice issued to the depositor. The notice typically contains, at a minimum, the identification number of the dishonored instrument, the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the amount of the overdraft created by the presentation of the instrument.

there had been many updates over the years and believed that he had, in error, "repopulated [his] bank account online to make a payment and included [his] ATA instead of [his] business account." The OAE later confirmed that the $813.98 was a payment for respondent's business credit card, which typically was paid by funds drawn from his ABA.

Respondent also acknowledged the importance of complying with the recordkeeping Rules and conceded that he was deficient in his recordkeeping.

Based upon respondent's February 27, 2020 letter, the OAE conducted a demand audit of respondent's attorney accounts, which revealed several recordkeeping deficiencies. Specifically, on May 18, 2020, the OAE sent respondent a letter enumerating the following nine recordkeeping deficiencies:

a) Improper designation of the attorney trust account on bank statements, checks, and deposit slips (R. 1:21-6(a)(2));

b) No monthly trust account reconciliation with client ledgers, journals, and checkbook (R. 1:21-6(c)(1)(H));

c) Attorney trust account receipts and disbursements journal not maintained (R. 1:21-6(c)(1)(A));

d) Ledger cards not fully descriptive (R. 1:21-6(c)(1)(B));

e) Failure to maintain a separate ledger sheet for each client (R. 1:21-6(c)(1)(B));

f) Improper electronic transfers from the ATA without the appropriate documentation (R. 1:21-6(c)(1)(A));

g) Personal funds were commingled with client trust funds (R. 1:21-6(a));

h) No running checkbook balance (R. 1:21-6(c)(1)(G)); and

i) Improper designation of the attorney business account on deposit slips (R. 1:21-6(a)(2)).

The OAE requested confirmation from respondent, within forty-five days of its letter, that he had cured the identified deficiencies.

On June 11, 2020, respondent sent the OAE a letter advising that he had corrected the noted deficiencies. Respondent explained that, in the past, he had attempted to conduct "two way reconciliation[s]," but had done so poorly. Respondent admitted that he failed to maintain separate client ledgers for each client but stated that he would begin to do so in the future.

Respondent further stated that his oversight of his ATA was "not persistent and consistent," and he admitted that, at times, he commingled earned fees with his clients' funds.[4] Ultimately, respondent conceded that he had "poor bookkeeping and insufficient bookkeeping measures."

On July 10, 2020, the OAE sent respondent a letter requesting additional records, including monthly three-way reconciliations, a receipts and disbursements journal, and client ledgers. On August 3, 2020, respondent

[4] Notwithstanding this admission and its review of respondent's records, the OAE did not charge respondent with having violated RPC 1.15(a) (commingling funds).

provided the requested records; however, they were not in compliance with the recordkeeping Rules.

Two days later, the OAE provided respondent with certain appendices from the recordkeeping publication created by the OAE's Random Audit unit, entitled "Outline of Recordkeeping Requirements under RPC 1.15 and R. 1:21-6" (February 2017). Subsequently, on August 17, 2020, respondent provided the OAE with updated records that complied with the recordkeeping Rules.

In his verified answer to the formal ethics complaint, respondent admitted all the allegations against him and requested a mitigation hearing. R. 1:20-6(c)(1) (requiring a hearing where respondent's answer requests an opportunity to be heard in mitigation, even where there is no dispute of material fact).

At the September 29, 2021 mitigation hearing, the OAE observed that an admonition was the usual sanction imposed on an attorney who is determined to have committed recordkeeping violations. However, the OAE invited the DEC to consider respondent's disciplinary history as an aggravating factor, particularly, his prior admonition for a recordkeeping violation, which was based on his failure to maintain records for seven years. Thus, the OAE maintained that, depending on how much weight the DEC gave to respondent's past ethics infractions, respondent should receive either an admonition or a reprimand.

At the hearing, respondent testified that approximately eighty to ninety-percent of his practice consisted of bankruptcy law, but claimed that his role in the bankruptcy cases did "not include any sort of financial care-taking for want of a better term." However, he believed in economic justice and wanted to help his clients remain in their homes.

Regarding his admitted recordkeeping deficiencies, respondent testified that he had taken at least two continuing legal education courses on recordkeeping; ordered books about recordkeeping; updated his recordkeeping software; and now had a bookkeeper. As a result, respondent testified that, as of the date of the ethics proceeding, he was in compliance with his recordkeeping obligations.

Respondent also claimed that he had "scrubbed" the physical locations in his office and improved the location where he stored his checks. Further, respondent "scrubbed the business side from the trust side, so that way when I'm working with business, there's no chance of me accidentally you know, cutting a check from the trust account or vice-versa." In addition to changing the physical aspects of his recordkeeping, respondent also testified that he had electronically separated his trust accounts from his business accounts.

With respect to community service, respondent testified that he was an active member of the National Association of Consumer Bankruptcy Attorneys

and served as a panel member for "various" unidentified community organizations. Nevertheless, respondent testified that, several months before the ethics hearing, he participated in a "conversation" at a local synagogue wherein he answered the public's legal questions, mostly surrounding evictions, but also addressing other topics. Additionally, respondent represented that he accepts six clients from South Jersey Legal Services each year to represent on a pro bono basis.

Finally, respondent submitted two character letters from current clients. Both clients stated that they found respondent to be diligent in his representation and, despite being aware of the allegations against him, would recommend respondent's services to others in need of assistance with a bankruptcy.

Although respondent acknowledged that his misconduct normally would be met with a reprimand, he asserted that, based upon the mitigating factors present in this matter, an admonition could be supported.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent had violated RPC 1.15(d).

The DEC accepted as true the uncontested allegations set forth in the formal ethics complaint. Summarizing respondent's testimony at the disciplinary proceeding, the DEC credited respondent's representations that he strongly believed in economic justice, wanted to help working class people, and

had worked to assist debtors to retain their homes.

The DEC found respondent's service to his clients and community to be a compelling mitigating factor. It did not address how respondent's disciplinary history impacted its analysis.

After acknowledging that both the OAE and respondent argued that a reprimand might be appropriate, the panel found that a reprimand was the appropriate quantum of discipline to be imposed for respondent's recordkeeping violations.

On April 26, 2022, the OAE and respondent separately provided us with letters advising that they would rely upon the hearing panel report and the record below to argue that a reprimand was warranted for respondent's misconduct.

At oral argument before us, the OAE agreed with the DEC's recommendation of a reprimand. Similarly, during oral argument, respondent asserted that the DEC's recommendation was fair and requested that we impose a reprimand upon respondent for his misconduct.

Following a de novo review of the record, we find that the DEC's determination that respondent violated RPC 1.15(d) is supported by clear and convincing evidence.

Specifically, respondent violated RPC 1.15(d) by failing to comply with R. 1:21-6 in numerous respects. Specifically, respondent failed to prepare

monthly bank reconciliations of his ATA; had improper designations on his ATA and ABA bank statements and deposit slips; failed to maintain an ATA receipts and disbursements journal; failed to maintain descriptive ledger cards; failed to maintain a separate ledger sheet for each client; improperly transferred funds electronically from his ATA; failed to maintain a running checkbook balance; and commingled personal funds with client trust funds.

Indeed, although uncharged, respondent's admission that he commingled his legal fees with his clients' funds also violated RPC 1.15(a). Although we may not find a violation of an uncharged RPC, we nevertheless may consider respondent's uncharged misconduct in aggravation. See In re Steiert, 201 N.J. 119 (2010) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

In sum, we find that respondent violated RPC 1.15(d). The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matters of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (an OAE demand audit uncovered multiple recordkeeping deficiencies,

including that the attorney (1) did not properly designate the trust account; (2) did not maintain trust account ledger cards for bank charges; (3) allowed an inactive balance to remain in the trust account, and (4) did not maintain business receipts or disbursements journals; the attorney's recordkeeping deficiencies resulted in more than twenty dishonored checks, issued to the Superior Court, for insufficient funds; we found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing only an admonition, we weighed the fact that the attorney corrected his recordkeeping errors and took remedial measures to decrease the likelihood of a future recordkeeping violation).

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 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).

Based upon the above precedent, an admonition could be supported for the totality of respondent's misconduct. However, to craft the appropriate discipline in this case, we considered mitigating and aggravating factors.

In mitigation, respondent highlighted many of the same mitigating factors that he underscored to us to support his 2020 admonition. Particularly, respondent is active in his community, offers helpful legal information to the public regarding bankruptcies, and provides pro bono legal services in excess of Court requirements.

In aggravation, just two years ago, respondent was disciplined for a violation of the recordkeeping Rules after failing to keep his attorney records for the requisite seven years. Despite taking "detailed steps" to improve his law practice, the record here demonstrates a failure to appreciate the importance of complying with the recordkeeping Rule in its totality. Thus, respondent's heightened awareness that recordkeeping violations run afoul of RPC 1.15(d), notwithstanding his November 1, 2020 representation to us that he thereafter improved his law practice,[5] supports the imposition of enhanced discipline.

[5] In his November 1, 2020 letter to us in Carroll II, respondent represented that he had "improved his intake process and upgraded my professional software . . . became a professional Corporation now, and overall, I am treating the business aspect of my practice with a more technologically and professionally upgraded approach." Here, the OAE examined respondent's records provided August 17, 2020, and determined that they complied with R. 1:21-6.

Moreover, respondent's recordkeeping deficiencies resulted in his personal funds commingling with his clients' funds, a violation, albeit uncharged, of RPC 1.15(a).

Finally, this is respondent's third time before us in four years. In our view, respondent's recent disciplinary matters illustrate a troubling inability to conform his conduct in accordance with the Rules of Professional Conduct.

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).

Thus, on balance, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. Because respondent has remediated his recordkeeping deficiencies, we find that additional conditions are unwarranted.

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 Andrew Michael Carroll
Docket No. DRB 22-031

Argued: May 12, 2022

Decided: August 18, 2022

Disposition: Reprimand

Members	Reprimand
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Singer	X
Total:	9

Johanna Barba Jones
Chief Counsel