

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-193
District Docket Nos. XII-2021-0902E
and XIV-2019-0415E

In the Matter of
Brian M. Miranda
An Attorney at Law

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Decision

Argued: January 19, 2023

Decided: March 30, 2023

Christopher W. Goodwin appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky 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 an admonition filed by the District XII Ethics Committee (the DEC). We determined to treat the admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4). The formal ethics complaint charged respondent with 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 that a reprimand, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2015 and to the New York bar in 2016. At all relevant times, he maintained a practice of law in Westfield, New Jersey.

On July 16, 2021, respondent received an admonition for violating RPC 8.4(d) (conduct prejudicial to the administration of justice). In the Matter of Brian M. Miranda, DRB 21-039 (July 16, 2021). In that matter, respondent was retained to represent a realtor in a dispute with the realtor's former employer, a real estate agency, regarding the realtor's commission. In furtherance of the representation, respondent sent a letter to the title company, directing it to hold the commission in escrow pending resolution of the dispute. Two weeks later, respondent terminated the representation and notified all interested parties to cease communication with him, and to instead communicate with his client's new attorney. Less than one month after his withdrawal from the representation, the principal of the real estate agency filed an ethics grievance against

respondent, alleging he had violated the Rules of Professional Conduct by requesting that the title company hold the disputed commission in escrow.

For the next several months, despite his withdrawal and repeated requests to be removed from correspondence related to the dispute, respondent continued to be copied on contentious e-mail communications among the parties and their counsel. Those e-mails pertained to several disputed real estate commissions, including the one for which respondent had been retained, and contained threats of litigation regarding the disputed commissions.

Approximately six months after the grievance had been filed, respondent was copied on an e-mail from the attorney representing the real estate agency and its principal (the grievant) to an attorney representing one of the title agencies. Respondent replied to this e-mail, copying all recipients including the grievant, stating “[y]our client has already filed a frivolous claim with the bar association on my firm and please be advised that I will be taking action against her as well if she continues with these allegations against my firm.” In the Matter of Brian M. Miranda, DRB 21-039, at 3.

We determined that respondent’s e-mail, and particularly his threat to take action against the grievant if she pursued her allegations against him and his firm, was intended to coerce a withdrawal of the grievance, in violation of RPC

8.4(d). In imposing only an admonition, we considered, in mitigation, respondent's unblemished disciplinary record and multiple character references.

We now turn to the facts of this matter.

Prior to the ethics hearing, the parties entered into a stipulation of facts, adopting the facts set forth in the complaint. Respondent also admitted that his conduct violated RPC 1.15(a); RPC 1.15(d); and RPC 8.1(b). Thus, the January 19, 2022 ethics hearing was limited to the issue of mitigation.

During the relevant period, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at PNC Bank.

On August 8, 2019, the Office of Attorney Ethics (the OAE) docketed the instant matter, upon receipt of an ethics grievance against respondent and, on September 26, 2019, directed respondent to produce the following financial records for the time period September 1, 2018 to September 26, 2019:¹

- Monthly bank statements, canceled checks, wire transfers, deposit slips, and checkbook stubs for his ATA and ABA;
- Monthly three-way reconciliations for his ATA;
- Client ledger cards; and

¹ The allegations of the underlying grievance did not result in any formal ethics charges; however, the OAE's ensuing demand audit revealed the misconduct giving rise to the instant matter.

- Receipts and disbursements journals for his ATA and ABA.

The OAE also required respondent to appear, on October 22, 2019, for a demand audit.

Respondent failed to appear for the audit and, in response to the OAE's inquiry, informed the OAE that he had not been aware of the scheduled audit and had not received the OAE's prior telephone messages. Consequently, the OAE rescheduled the audit for October 29, 2022 and, again, provided respondent with a list of the documents he was required to produce.

On October 24, 2022, the OAE granted respondent's request to postpone the audit to November 14, 2019.

On November 14, 2019, respondent appeared for the audit. His document production, however, was incomplete as follows: his ATA and ABA designations were improper; he failed to submit proof that he did not maintain overdraft production on his ATA; failed to maintain individual client ledger cards; failed to perform monthly three-way reconciliations; failed to maintain ATA or ABA receipts and disbursement journals; failed to maintain his records for seven years; and failed to provide his attorney bank disclosure form.

On November 14, 2019, the OAE instructed respondent to produce, no later than December 2, 2019, the outstanding financial records.

On December 2, 2019, respondent submitted additional records to the OAE; his production, however, remained deficient. Specifically, respondent failed to submit individual client ledger cards; ATA or ABA receipts or disbursements journals; proof that his ATA and ABA designations had been corrected; or proof that he did not maintain overdraft protection on his ATA. Accordingly, on December 3, 2019, the OAE again directed respondent to provide the requested documents by December 10, 2019. Respondent provided the OAE with proof that he had corrected his ATA designation and that he did not maintain overdraft protection on his ATA, but he failed to produce the remainder of the outstanding documents.

On December 12, 2019, the OAE again informed respondent that his production was deficient and directed him to produce the requested documents by December 16, 2019. Subsequently, respondent produced partial client ledger cards and, when notified by the OAE that his production was incomplete, again produced multiple sets of incomplete client ledger cards.

On December 20, 2019, the OAE once again informed respondent that his production remained incomplete and reminded respondent to refer to the OAE's audit handbook as a reference guide to create appropriate receipts and disbursements journals. In response, on December 27, 2019, respondent informed the OAE that he intended to hire someone to assist with his

bookkeeping and requested an extension until January 31, 2020, which the OAE granted.

Respondent did not produce any additional records and, on January 27, 2020, sought another extension, which the OAE granted to February 7, 2020. In its January 27, 2020 e-mail to respondent, the OAE confirmed respondent's agreement to provide the OAE with reconstructed client ledger cards.

On January 28, 2020, respondent produced additional documents to the OAE, however, his production remained deficient as follows:

- Respondent's client ledger cards were partially updated and remained inaccurate; and
- Respondent failed to provide any ABA receipts or disbursements journals.

On February 7, 2020, respondent again produced documents; however, the production remained deficient as follows:

- Respondent's client ledger cards remained inaccurate; and
- Respondent's ABA receipts and disbursements journals were inaccurate and did not comply with R. 1:21-6.

The OAE notified respondent that his document production remained deficient. On February 14, 2020, respondent informed the OAE that he was attempting to reach his bookkeeper and was unable to produce the outstanding

records. On February 25, 2020, respondent again informed the OAE that he and his bookkeeper were unable to reconcile his ATA records. On that same date, the OAE sent partially reconstructed records it had prepared to assist respondent with recreating his own records.

On March 3, 2020, respondent produced additional records to the OAE, however, the production remained deficient as follows:

- client ledger cards remained inaccurate;
- ATA three-way reconciliations remained inaccurate and incomplete;
- Cash receipts and disbursements journals were incomplete and inaccurate;
- Respondent's reconciliation for September 2018 revealed an ATA shortage of \$147,930.87; and
- Respondent was unable to identify client funds or transactions in several instances.

On March 3, 2020, in response to the OAE's notification that his production remained deficient, respondent advised that his bookkeeper was unfamiliar with three-way reconciliations and that he did not know why his records remained inaccurate.

On March 4, 2020, nearly six months following the commencement of the OAE's demand audit, respondent hired Robert D. Gelman, an accountant and

developer of the trust account software “Trust Accounts Made Easy” (TAME), to review his financial records and assist with the OAE’s audit. Thus, on March 5, 2020, the OAE directed respondent to produce his updated records by March 20, 2020. Subsequently, the OAE granted Gelman’s request for additional time to produce the records, until May 15, 2020.

On May 11, 2020, Gelman provided the OAE with respondent’s reconstructed records and, on June 3, 2020, the OAE conducted respondent’s demand audit, with Gelman in attendance.

Following its audit, the OAE directed respondent to provide additional documents, as enumerated in its June 5, 2020 letter, no later than June 15. Respondent was further directed to provide his May and June 2020 reconciliation records by July 15, 2020. Gelman timely produced the requested records on respondent’s behalf.

In summary, the OAE’s demand audit ultimately revealed the following recordkeeping deficiencies:

- a) Failure to maintain ATA and ABA receipts and disbursements journals (R. 1:21-6(c)(1)(A));
- b) Failure to maintain separate client ledger cards (R. 1:21-6(c)(1)(B));
- c) Failure to conduct three-way reconciliations of his ATA (R. 1:21-6(c)(1)(H));

- d) Outstanding ATA checks were not resolved (R. 1:21-6(d));
- e) Improper ATA and ABA designations (R. 1:21-6(a)(2));
- f) Deposit slips lacked client identification (R. 1:21-6(c)(1)(A)); and
- g) Improper cash withdrawals from ATA (R. 1:21-6(c)(1)(A)).

As of June 30, 2020, however, the OAE determined that respondent's records complied with R. 1:21-6.

Gelman's reconstruction and reconciliation of respondent's records, including his client ledger cards, revealed the following negative client account balances:

DATE²	CLIENT NAME	CLIENT ID	AMOUNT
4/27/2020	EBB Properties LLC	62	(\$15,000)
4/27/2020	All City Restoration, Inc.	209	(\$249)
4/27/2020	Calle, Monica	216	(\$5,841.87)
4/27/2020	Gilyard, Terence	268	(\$14,750)
4/27/2020	Blake, Dominique	347	(\$1,525)
4/27/2020	Yanes, Stephanie	377	(\$770)
4/27/2020	Ramirez, Elizabeth	383	(\$5,000)
4/27/2020	Pinto, Diamitino	440	(\$11,044.38)
4/27/2020	Over the Rainbow LLC	444	(\$200)

² This chart was reproduced from the parties' stipulation.

4/27/2020	EBB Littleton Properties LLC	517	(\$291.71)
4/27/2020	Brahver, Esther	518	(\$62,721.08)
4/27/2020	Unallocated Transactions	520	(\$34,968.94)
4/27/2020	Unidentified Withdrawal	523	(\$546.94)
		TOTAL:	\$152,908.92

To correct these shortages, on April 27, 2020, respondent deposited \$152,908.92 of his personal funds in his ATA.

The OAE's review of respondent's financial records and reconstructed client ledger cards also revealed that respondent had over-disbursed client funds, resulting in the invasion of other client funds, in the following matters:

- **EBB Properties LLC – Esther Brahver** (Client Ledger 62): On August 27, 2018, respondent over-disbursed \$15,000 to EBB Properties, thereby invading funds belonging to 41 other clients;
- **Ford, Nafeeshah** (Client Ledger 195): On September 6, 2019, respondent disbursed \$1,000 to Simplicity Title LLC before he received his client's deposit, thereby invading funds belonging to 19 other clients;
- **All City Restoration, Inc.** (Client Ledger 209): On July 5, 2019, respondent over-disbursed \$249 to the Essex County Register, thereby invading funds belonging to 18 other clients;
- **Calle, Monica** (Client Ledger 216): On June 28, 2019, respondent disbursed \$10,500 to Nelson Monteiro, Esq., however Calle's client ledger card reflected a balance of \$1,000, thereby resulting in an over-disbursement of \$9,500 and the invasion of funds belonging to 18 other clients;

- **Gilyard, Terence** (Client Ledger 268): On June 28, 2019, respondent over-disbursed \$14,750, thereby invading funds belonging to 18 other clients;
- **Blake, Dominique** (Client Ledger 347): On October 14, 2019, respondent over-disbursed \$1,525 to Clear Skies Title Agency, thereby invading funds belonging to 20 other clients;
- **Yanes, Stephanie** (Client Ledger 377): On January 3, 2020, respondent over-disbursed \$770 to Simplicity Title, LLC, thereby invading funds belonging to 20 other clients;
- **Ramirez, Elizabeth** (Client Ledger 383): On January 28, 2020, respondent over-disbursed \$5,000 to Simplicity Title, LLC, thereby invading funds belonging to 22 other clients;
- **Pinto, Diamitino** (Client Ledger 440): On June 4, 2019, respondent disbursed \$11,044.38 to Pinto despite having a ledger balance of \$0, thereby invading funds belonging to 19 other clients;
- **Over the Rainbow, LLC** (Client Ledger 444): On November 6, 2019, respondent over-disbursed \$4,200 to Johnson & Johnson, thereby invading funds belonging to 20 other clients. Respondent had incorrectly maintained two client ledger cards for this client and, once those client ledger cards were merged, there remained a shortage of \$200;
- **Canossa, Joaquin** (Client Ledger 478): On June 5, 2018, respondent disbursed \$2,500 to Canossa prior to receiving the corresponding funds, which were not received until July 23, 2018, thereby invading funds belonging to 45 other clients. Respondent also incorrectly maintained two client ledger cards for this client;
- **Harris, Alex** (Client Ledger 498): On October 4, 2019, respondent disbursed funds prior to receiving the corresponding funds from his client, thereby invading funds belonging to 21 other clients. Further, respondent incorrectly maintained three client ledger cards for this client;
- **EBB Littleton Properties, LLC** (Client Ledger 517): On May 3, 2018, respondent disbursed \$291.71 to First American Title although the

client ledger balance was \$0, thereby invading funds belonging to 36 other clients;

- **Brahver, Ester - Unallocated Transactions** (Client Ledger 518): The OAE's investigation revealed respondent created this client ledger to account for an ATA check he disbursed on May 16, 2018, in the amount of \$400,000, an over-disbursement of \$62,721.08. This overpayment invaded funds belonging to 38 other clients; and
- **Texeira, Bryan** (Client Ledger 520): On August 16, 2018, respondent disbursed \$34,968.94, prior to his receipt of the corresponding funds from his client. By doing so, respondent invaded funds belonging to 42 other clients.

Thus, as the result of his recordkeeping deficiencies, including his failure to maintain client ledger cards, respondent negligently misappropriated client funds.³ The OAE, thus, charged respondent with having violated RPC 1.15(a) and (d). For his failure to timely cooperate with the OAE's investigation, the OAE also charged respondent with having violated RPC 8.1(b). Respondent admitted this misconduct.

Respondent presented character testimony from two witnesses: Michael Lamela, C.P.A., and Sandip Pandya, Esq. Respondent also presented the testimony of Gelman, who described his involvement with the OAE's audit of respondent's financial records; respondent's cooperation with the OAE; and his

³ The OAE did not charge respondent with knowing misappropriation of client funds, in violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979). During oral argument before us, the OAE explained that its investigation revealed no clear and convincing evidence that respondent had knowingly invaded client funds.

ongoing provision of accounting services to respondent and his law firm. Respondent also testified, in respect of mitigation, on his own behalf.

Lamela, a certified public accountant of eight years, testified that he had known respondent for five or six years. Lamela explained that had been respondent's client in several real estate transactions; had worked with him in conjunction with real estate clients; and had referred clients to him. Lamela believed respondent to be professional, honest, and trustworthy.

Pandya, a solo practitioner in Jersey City, testified that he had known respondent for more than ten years, having started law school with him, and remaining friends and professional colleagues thereafter. Pandya explained that that he and respondent referred real estate clients to one another and, on occasion, jointly provide legal services to clients. Pandya believed respondent to be honest, and of good character and integrity.

Gelman, a certified public accountant since 1986, explained that he had developed the TAME software to assist attorneys with the proper maintenance of their trust accounts and, for the past twenty-five years, had been assisting lawyers in this regard. Gelman explained that respondent had requested his assistance with the OAE's ongoing audit and to ensure his records complied with the Rules. Gelman acknowledged that, prior to his review and corrective actions, respondent's records were not in conformity with the recordkeeping

Rules.

After his review of respondent's records, Gelman was able to fully reconstruct respondent's ATA records and put them into the TAME format. According to Gelman, respondent's financial records are now fully compliant with the Rules. Gelman confirmed that respondent uses his services as follows:

So [respondent] went from records that were deficient, even though when I spoke to him he thought he was doing everything right, but then understood, I believe, in my opinion, what was deficient, and now he uses the software on a daily basis, he inputs his deposit, he inputs his payments, and on a monthly basis, as soon as he gets his bank statement, which he always sends it to me as soon as he can ... I then prepare the reconciliation for him, question him on any items that may not be right or missing

[T75.]⁴

Because TAME is cloud-based, Gelman explained that he is able to access the system, review the documents, and help resolve any issues as they arise.

Gelman acknowledged that respondent's recordkeeping was deficient and that he failed to conduct three-way reconciliations or to maintain client ledger cards. Once he recreated respondent's records, Gelman identified a shortage of

⁴ "T" refers to the January 19, 2022 hearing transcript.

"HPR" refers to the July 15, 2022 hearing panel report.

"RB" refers to respondent's November 29, 2022 submission to us.

ATA funds for some of respondent's clients. Gelman concluded that respondent's \$152,908.92 ATA shortage was caused by his failure to properly maintain client ledger cards. Once Gelman informed respondent regarding the total shortage, respondent fully replenished his ATA.

Respondent also testified in mitigation. He explained that his career began in 2015 as an associate with a small law firm located in Metuchen, where he performed foreclosure and real estate work. Respondent opened his own office in October 2017, specializing in residential real estate. Although his former law firm trained him how to perform recordkeeping, he later learned that the firm's recordkeeping practices were not in conformity with the Rules.

Respondent further explained that he had attempted to provide the OAE with the information it had requested and, when unable to do so, he hired Gelman to assist. Respondent emphasized that he had no intent to evade the OAE or its investigation. He apologized; acknowledged it was a mistake; and stated he was prepared to accept the consequences. He further testified that he did not intend to violate the RPCs and, until the OAE's audit, did not realize his records were noncompliant. Respondent explained that, to date, he still utilizes Gelman's software and services on a continuous basis.

Respondent acknowledged his recordkeeping responsibilities under R. 1:21-6. He admitted that, on April 27, 2020, he deposited \$152,908.92 of

personal funds to his ATA to cover the negative ATA balances that were revealed following Gelman's reconciliation of his trust account and client ledger cards. Respondent also acknowledged that he received the OAE's initial document request, in September 2019, but that he failed to provide the OAE with complete and accurate records until July 2, 2020, after he retained Gelman.

Respondent, through counsel, admitted his misconduct and, citing to the disciplinary precedent discussed below, urged imposition of an admonition or reprimand.

Respondent emphasized numerous mitigating factors, including his ready admission to wrongdoing and cooperation with the disciplinary authorities; his demonstration of contrition, remorse, and exemplary conduct since the transgression; that the circumstances are unlikely to recur; his good reputation and character; and that no client was harmed.

The OAE asserted that a censure was the appropriate discipline for respondent's admitted misconduct. The OAE acknowledged the presence of several mitigating factors, including respondent's good reputation and character, and his ready admission of wrongdoing. In aggravation, however, the OAE cited respondent's 2021 admonition.

The OAE acknowledged that, ordinarily, a reprimand would be the appropriate discipline for an attorney's negligent misappropriation of client

funds caused by recordkeeping deficiencies, and failure to cooperate with disciplinary authorities where the attorney has an ethics history. The OAE, however, urged that a censure was the necessary quantum of discipline for the “totality of [r]espondent’s recordkeeping violations, [r]espondent’s failure to cooperate with this disciplinary investigation, and [r]espondent’s disciplinary history.” The OAE recommended that respondent also be required to attend a continuing legal education course in attorney recordkeeping.

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.15(a); RPC 1.15(d); and RPC 8.1(b). Specifically, the DEC determined that “each of the ethical violations set forth in the [c]omplaint have been acknowledged [and] hence proven by clear and convincing evidence.” In reaching its determination, the DEC relied upon the parties’ stipulation of facts, wherein respondent admitted to the factual allegations set forth in the complaint, as well as the supporting documentation entered into evidence. The DEC also recounted the testimony introduced at the hearing, including the testimony of respondent, the two character witnesses, and Gelman.

In mitigation, the DEC considered that: respondent had admitted his wrongdoing; had shown remorse and contrition; took significant measures to correct his recordkeeping deficiencies; there was little likelihood of repeat misconduct; he had refunded the ATA shortages; his misconduct was not

intentional; and no client was injured. The DEC further determined that respondent's failure to cooperate with the OAE in the production of documents was neither deliberate nor intentional.

... Respondent did not seek to avoid or evade the OAE's investigation. Rather, his failure stemmed from his lack of understanding of his recordkeeping and bookkeeping responsibilities and the fact that he did not have much of the documentation the OAE asked for. Once he retained Mr. Gelman, the ATA was reconstructed, and the materials were produced.

[HPR¶58.]

Although the DEC acknowledged that disciplinary precedent could support a censure for respondent's negligent invasion of client funds, it recommended that we impose an admonition for his misconduct. In support of its recommendation, the DEC cited In re Berger, 249 N.J. 355 (2022), discussed below, where the Court:

reduced the [Board's issuance of] a censure to an attorney for multiple ethical violations including violations of R.P.C. 1.15(a) and 1.15(d) as well as violations of R.P.C. 5.3(a) and (c) to an admonishment. In that case, the Board found that [r]espondent had negligently misappropriated funds belonging to several clients and the client funds were effected. This included the [r]espondent's inability to return \$200,000 to a client due to the fact that the client's account had been raided by the improper bookkeeping and co-mingling.

Based on the forgoing, the Panel recommends that [r]espondent receive an admonishment.

[HPR¶60.]

The DEC further recommended that respondent be required to continue using TAME software and to retain Gelman (or another qualified accountant) for at least two years.

The OAE maintained, in its written submission and during oral argument before us, that respondent should be censured for his misconduct. In response to our questioning, the OAE acknowledged that it did not take exception with the DEC's conclusion that respondent's inability to fully cooperate with the OAE in the production of documents was neither deliberate nor intentional.

In his November 29, 2022 submission to us, respondent, through his counsel, asserted an admonition was the appropriate quantum of discipline, as the DEC had recommended. Citing disciplinary precedent, respondent acknowledged that attorneys who negligently misappropriated client funds ordinarily receive a reprimand or censure. Respondent asserted, however, that his current compliance with his recordkeeping obligations, along with numerous mitigating factors, justified an admonition. Specifically, respondent stated:

No client was harmed and no funds were missing. [Respondent] is a young hard working attorney who started his solo practice before this grievance. He did not know how to properly prepare or manage his firm's trust account in accordance with N.J. attorney trust account rules and practices.

[Respondent] has since used the TAME software, and retained Mr. Gelman to overlook and properly review his attorney trust account. [Respondent] is now fully compliant and utilizing Mr. Gelman's software and his services on a regular basis.

[RBp5.]

During oral argument, respondent emphasized: (1) his good reputation and character; (2) his ready admission to wrongdoing; (3) his contrition and remorse; (4) his exemplary conduct since the misconduct; (5) no likelihood of recurrence; (6) the client who filed the grievance was not injured and received his funds, albeit late; and (7) his cooperation with disciplinary authorities.

Following our de novo 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) and RPC 1.15(d). For the reasons set forth below, however, we determine to dismiss the charge that respondent violated RPC 8.1(b).

Specifically, the record demonstrates that, as the result of his recordkeeping deficiencies, respondent negligently misappropriated and, thus, failed to safeguard client funds, in violation of RPC 1.15(a). Gelman's trust account reconciliations, upon which the OAE relied, revealed thirteen client ledger cards with negative account balances, totaling \$152,908.92. Many of these negative account balances spanned months or years, until April 27, 2020,

when respondent deposited \$152,908.92 of his own funds to this ATA to cover the shortages. By maintaining negative trust account balances, respondent failed to safeguard client funds that he was required to hold, inviolate. Further, the OAE's investigation revealed, and respondent admitted that, on fifteen occasions, respondent's disbursement of trust account funds created shortages that resulted in the invasion of funds belonging to upwards of forty-two other clients. Respondent, thus, repeatedly violated RPC 1.15(a).

Next, respondent violated RPC 1.15(d), which requires an attorney to comply with the recordkeeping provisions of R. 1:21-6. The OAE's demand audit revealed, and respondent admitted to having committed, multiple recordkeeping deficiencies, including: (1) failure to maintain ATA and ABA receipts and disbursements journals; (2) failure to maintain separate client ledger cards; (3) failure to conduct three-way reconciliations of his ATA; (4) failure to resolve outstanding ATA checks; (5) improper ATA and ABA designations; (6) failure to provide client identification on deposit slips; and (7) improper cash withdrawals from his ATA. Respondent's failure to comply with the recordkeeping requirements of R. 1:21-6 resulted in his inability to promptly cooperate with the OAE's investigation; his inability to reconcile his ATA until he retained the services of an accountant specializing in trust and attorney bank accounts; and his negligent misappropriation of client funds. Respondent, thus,

violated RPC 1.15(d).

We respectfully part company with the DEC, however, and determine there is insufficient evidence to prove that respondent violated RPC 8.1(b), which requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Here, respondent was charged with violating RPC 8.1(b) based upon his failure to timely provide the OAE with complete and accurate records in response to its repeated requests for his financial records. However, it is undisputed that respondent, within nine months of the OAE’s initial request for documents, recreated, reconciled, and produced to the satisfaction of the OAE all the requested records. Indeed, the OAE acknowledged respondent had conformed his recordkeeping to that required by the Rules.

Further, the record demonstrates that respondent replied to each of the OAE’s deficiency letters, albeit in an incomplete manner. Within months of the OAE’s initial request and following his failed attempts to recreate the requested records, respondent enlisted the assistance of a bookkeeper. When that effort failed, he retained Gelman who recreated the missing records and brought respondent’s records and recordkeeping practices into compliance. Thus, on the unique facts of this record, we cannot conclude that respondent failed to cooperate with the OAE, in violation of RPC 8.1(b). Although we have held that

partial cooperation by an attorney can be violative of RPC 8.1(b), respondent's conduct simply is not of the same ilk. See, e.g., In the Matter of Christopher Roy Higgins, DRB 19-456 (November 19, 2020) at 18-19 (the attorney failed, for more than seventeen months, to comply with the OAE's numerous requests for information and written responses to the matters under investigation, necessitating his temporary suspension by the Court; although the attorney ultimately filed a reply to the ethics grievance, brought his recordkeeping deficiencies into compliance, and stipulated to his misconduct, we concluded the lengthy period of non-compliance constituted a failure to cooperate, violative of RPC 8.1(b)), so ordered, 247 N.J. 20 (2021); In the Matter of James H. Wolfe, III, DRB 18-107 (September 6, 2018) at 12 (we determined the attorney had violated RPC 8.1(b) by failing to cooperate with the OAE for more than three years and, even after the Court ordered him to comply, the attorney initially did so only in part, and later, not at all), so ordered, 236 N.J. 450 (2019); In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48 (the investigator had to coax the attorney's cooperation with the investigation and then was only partially successful in obtaining from the attorney the information he needed and had requested; we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate[,]") noting that "partial cooperation can be more disruptive to a full and fair investigation,

as it forces the investigator to proceed in a piecemeal and disjointed fashion”), so ordered, 225 N.J. 611 (2016).

In sum, we find that respondent violated RPC 1.15(a) and RPC 1.15(d). Considering the specific facts of this case, we determine to dismiss the RPC 8.1(b) charge. The sole issue left for our determination is the proper quantum of discipline for respondent’s misconduct.

As the OAE correctly observed, a reprimand usually is imposed for recordkeeping deficiencies that result in the negligent misappropriation of 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, in violation of RPC 1.15(a); 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 more than \$40,000 in client funds held in his trust account; no prior discipline in thirty-five-years at the bar; no prior discipline); 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); In re Weinberg, 198 N.J. 380 (2009) (the attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account, because he failed to regularly reconcile his trust account records; his mistake when undetected until an overdraft occurred; no prior discipline).⁵

Based upon the above precedent, the baseline level of discipline for respondent's misconduct is a reprimand. However, to craft the appropriate discipline in this case, we consider both aggravating and mitigating factors.

⁵ The additional cases cited by the OAE in its summation brief to the DEC are in accord. See In re Macchiaverna, 203 N.J. 584 (2010) (reprimand; the attorney negligently misappropriated client funds as the result of a bank charge for trust account replacement checks; recordkeeping deficiencies); In re Clemens, 202 N.J. 139 (2010) (reprimand; the attorney caused a \$17,000 shortage in his trust account as a result of his deficient recordkeeping practices; in aggravation, a prior audit revealed the same recordkeeping deficiencies, although this fact was offset by the attorney's otherwise unblemished disciplinary history with forty years at the bar); In re MacDuffie, 202 N.J. 138 (2010) (reprimand; the attorney negligently misappropriated client funds as the result of poor recordkeeping practices; two prior audits revealed the same recordkeeping deficiencies; prior reprimand for conflict of interest); In re Fox, 202 N.J. 136 (2010) (reprimand; the attorney's poor recordkeeping caused the negligent misappropriation of client funds on three occasions and commingling of personal and trust funds); In re Dias, 201 N.J. 8 (2010) (reprimand; the attorney's recordkeeping deficiencies caused an over-disbursement resulting in a negligent misappropriation; the attorney also failed to cooperate with ethics authorities' requests for her attorney records and received a prior admonition for practicing while ineligible; in mitigation, we weighed the fact the attorney had been replenishing the trust account shortfall in installments despite having little access to extra funds); In re Seradzky, 200 N.J. 230 (2009) (reprimand; due to poor recordkeeping practices, the attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; attorney received prior private reprimand and prior audit revealed some of the same recordkeeping deficiencies).

In aggravation, this matter represents respondent's second brush with the disciplinary system in the last two years, having been admonished in 2021, albeit for dissimilar conduct.

In mitigation, we consider that respondent stipulated to his misconduct; retained an accountant with expertise in attorney recordkeeping; corrected his recordkeeping deficiencies; and is now in compliance with the recordkeeping Rules. See In the Matter of Ronald L. Lueddeke, DRB 21-056 (September 22, 2021) at 10 (where we considered, in mitigation, the attorney entering into a stipulation with the OAE, his corrective action, and his current compliance with the Rules), so ordered, 2022 N.J. LEXIS 456 (2022). Further, respondent replenished his ATA shortfalls and no clients were harmed.

The DEC, in support of its recommendation that respondent be admonished for his misconduct, relied upon In re Berger, 249 N.J. 355, where the Court imposed an admonition for the attorney's negligent misappropriation of client funds and recordkeeping violations, among other misconduct. In our view, the DEC's reliance on Berger is misplaced.

In Berger, we recommended that the attorney be censured for the totality of his misconduct, including the negligent invasion of client funds, stemming from the attorney's recordkeeping deficiencies. Unlike the present matter, however, Berger's misconduct also included a multitude of prolonged conflicts

of interest over the course of his lengthy career from which he profited and financially benefitted, in violation of RPC 1.7(a) and RPC 1.8(a); his failure to supervise an employee to whom he had wholly delegated his recordkeeping obligations, in violation of RPC 5.3(a) and (c); and, falsely representing on his law firm banner, Bornstein & Berger, LLC, that Bornstein was a member of the LLC, in violation of RPC 7.1(a) and RPC 8.4(c). In the Matter of Lawrence S. Berger, DRB 20-225 (June 8, 2021).

In our analysis, we acknowledged that negligent misappropriation and recordkeeping violations typically are met with a reprimand. Id. at 67. The most serious of Berger's misconduct, however, was his prolonged conflicts of interest, from which he profited. Although we recognized that a reprimand would typically be the appropriate discipline for a conflict of interest, the presence of egregious circumstances warranted greater discipline.

A reprimand is insufficient discipline in this case. First, respondent's violations do not stand alone. Of particular concern is the multitude of prolonged conflicts of interest in which he has engaged throughout his career. As respondent admitted, ninety percent of B&B's reason for existence was USLR and its entities. Respondent's livelihood stemmed from his business interests in USLR and its entities, in addition to the legal fees generated by USLR and its entities. Respondent's numerous conflicts of interest have significantly and improperly enhanced his source of income, thus resulting in personal gain, which constitutes an aggravating factor.

[Id. at 68.]

We also weighed additional aggravating factors.

In further aggravation, despite his lessons learned during the 2004 random audit, respondent failed to take his recordkeeping and supervisory responsibilities more seriously. Soares continued to be the “go to” person in respect of the firm’s recordkeeping responsibilities of which she had “almost complete responsibility.” Most concerning is the multiple times Soares brought shortages to respondent’s attention. Rather than work with her to determine the cause, rectify the problem, and ensure that it did not happen again, respondent simply told Soares to “fix it.” Simply put, respondent improperly abdicated his non-delegable recordkeeping responsibilities.

[Ibid.]

Although we recognized Berger’s otherwise unblemished career in his fifty-five years at the bar, we determined that the aggravating factors were, at best, in equipoise with any mitigation and, thus, determined to impose a censure.

The Court, however, disagreed. By way of Order, the Court found that Berger only had committed negligent misappropriation, recordkeeping violations, and failure to supervise. It dismissed the remaining violations of the Rules of Professional Conduct, including the conflict of interest violations which we had considered in determining to impose a censure. In re Berger, 249 N.J. 355. The Court’s Order did not state why it imposed an admonition for misconduct that, as we had recognized, is routinely met with a reprimand.

However, as we noted in mitigation, Berger had an unblemished fifty-five years at the bar, a mitigating factor that ordinarily is accorded significant weight and could have justified a downward departure from a baseline discipline of a reprimand.

Here, on the other hand, respondent has been a member of the bar for only eight years and he was admonished in 2021. In this circumstance, where the aggravating and mitigating factors are in equipoise, a downward departure from the baseline discipline of a reprimand is not warranted. Indeed, it is unsupportable.

Accordingly, we determine that a reprimand is the appropriate quantum of discipline to protect the public and preserve the public's confidence in the bar.

Further, as a condition to his discipline, we require respondent to complete, within ninety days of the Court's Order in this matter, two OAE-approved recordkeeping courses.

Chair Gallipoli voted to impose a censure, with the above condition.

Member Campelo voted to impose an admonition, with the above condition.

Member Joseph 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 Brian M. Miranda
Docket No. DRB 22-193

Argued: January 19, 2023

Decided: March 30, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Admonition	Absent
Gallipoli		X		
Boyer	X			
Campelo			X	
Hoberman	X			
Joseph				X
Menaker	X			
Petrou	X			
Rivera	X			
Rodriguez	X			
Total:	6	1	1	1

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