

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-215
District Docket No. XIV-2022-0388E

In the Matter of :
: :
David Wayne Crook :
: :
An Attorney at Law :
: :
: :

Decision

Decided: May 3, 2023

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). 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) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).¹

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

Respondent earned admission to the New Jersey Bar in 1983. At the relevant times, he maintained a practice of law in Rutherford, New Jersey.

Effective July 19, 2021, the Court declared respondent ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Effective January 3, 2022, the Court declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts registration (IOLTA).

Finally, effective October 17, 2022, the Court declared respondent ineligible to practice law for his failure to comply with Continuing Legal Education (CLE) requirements.

Respondent has not cured those CPF, IOLTA, or CLE deficiencies and remains ineligible, on all three bases, to date.

¹ Due to respondent's failure to file an answer to the ethics complaint, and on notice to respondent, the OAE amended the complaint to include a second RPC 8.1(b) charge.

Service of process was proper. On October 5, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The OAE also sent respondent a copy of the complaint to respondent by e-mail. On October 8, 2022, the certified mail was delivered, and the return receipt was signed by respondent. The regular mail and e-mail were not returned.

On October 28, 2022, the OAE sent a letter, by certified and regular mail, to respondent's home address of record, informing him that, unless he filed a verified answer within five days of receipt of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The OAE also sent the letter to respondent by e-mail. On November 3, 2022, the certified mail was delivered, and the return receipt was signed by respondent. The regular mail and e-mail were not returned.

On or about October 31, 2022, respondent left a voicemail message with the Office of Board Counsel (the OBC), stating that he was not practicing law and would not be filing an answer to the complaint.

As of November 18, 2022, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On December 19, 2022, despite respondent's voicemail message, Acting Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, with an additional copy by e-mail, informing him that the matter was scheduled before us on February 16, 2023, and that any motion to vacate must be filed by January 17, 2023. On December 22, 2022, the certified mail was delivered, and the return receipt was signed, although the signature is not legible. The regular mail was not returned, and the e-mail delivery was completed, as evidenced by the delivery notification sent by the destination server.

Moreover, on December 26, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on February 16, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by January 17, 2023, his failure to answer would remain deemed an admission of the allegations of the complaint.

We now turn to the allegations of the complaint.

Respondent maintained an attorney trust account (ATA) and an attorney business account (ABA) with PNC Bank. On September 23, 2019, the OAE conducted a random audit of respondent's financial books and records for the period September 1, 2017 through August 31, 2019. The audit uncovered an unspecified number of outstanding ATA checks, totaling approximately

\$27,000, and twenty-two inactive balances, totaling approximately \$79,700. The OAE previously had directed respondent to remediate some of the outstanding ATA checks in connection with a 2012 audit.

As of March 31, 2020, there were thirty-five outstanding ATA checks, totaling \$26,446.80, and four inactive balances, totaling approximately \$51,500.

On May 8, 2020, the OAE sent respondent a letter directing that he provide, by May 23, 2020, (1) certain financial records, (2) an explanation for why there were outstanding checks and inactive balances associated with his ATA, and (3) “an update on the corrective action taken on all checks returned from the Superior Court Trust Fund Unit (the SCTFU) due to missing verbiage and notation.”

On May 18, 2020, respondent sent the OAE an e-mail, attaching financial records, and stating that (1) “the inactive balances were a result of post-closing title requirements, post-closing escrow agreements, post-closing walk thru issues, bulk sales escrows and waiting for Estates to be settled ie: Tax Waivers and Payments;” (2) the outstanding checks were occasioned by the payees’ failure to negotiate their checks and respondent’s difficulty in contacting them; and (3) all checks returned by the SCTFU had been re-issued with appropriate corrections. The OAE did not allege that this submission was incomplete or inadequate.

On August 27, 2020, the OAE sent respondent a letter, by e-mail, directing him to appear for a September 15, 2020 demand interview. On September 15, 2020, the OAE sent respondent another e-mail reminding him of the interview. Nonetheless, once the interview began, respondent stated that he was not ready, claiming he had not received the OAE's August 27, 2020 letter. He "requested a two-week extension to contact [his] bookkeeper for assistance and to become prepared." The OAE granted respondent's request.

On September 17, 2020, the OAE sent respondent a letter, by e-mail and facsimile, advising him that his interview had been rescheduled for October 7, 2020 and that he was required to submit, by October 2, 2020, the following financial records for the period from September 2020 to the then present time: (1) monthly bank statements, cancelled checks, wire transfers, deposit items, debit and credit items, and checkbooks; (2) monthly three-way reconciliations; (3) client ledger cards; and (4) cash receipts and disbursements journals.

On October 7, 2020, respondent failed to appear for his interview. The OAE attempted to contact him, leaving two voicemails and sending a facsimile to his office. However, these efforts to reach respondent were unsuccessful.

On October 24, 2020, the OAE sent respondent a letter, by e-mail and facsimile, directing him to (1) submit the previously requested documents by November 2, 2020, and (2) appear for an interview on November 6, 2022.

According to the OAE, “[r]espondent failed to submit the requested trust reconciliations by November 2, 2020.”² Nonetheless, he appeared for the interview on November 6, 2020.

On November 9, 2020, the OAE sent respondent a letter, by e-mail, certified mail, and regular mail,³ directing him to provide “copies of the following documents . . . by no later than November 13, 2020,” specifically: (1) his bookkeeper’s contact information; (2) “the most current reconciliations . . . for August 2020 and September 2020;” (3) an explanation addressing the outstanding checks discussed during the interview; (4) “an update on the corrective action taken on all checks returned from the Superior Court Trust Fund Unit due to missing verbiage and notarization;” and

(5) “[i]nactive trust ledger balances⁴ remaining in the trust account for an extended period in violation of R. 1:21-6.

a. #4385: Gallegos – inactive since 9/19/14 in the amount of \$31,305.82.

b. #5021: LaForgia – inactive since 7/8/16 in the amount of \$11,200.00

c. #5099: Wong- inactive since 11/2/16 in the

² This quote from the complaint seems to suggest that respondent submitted the remaining items. However, the record does not contain any submission from respondent in response to the letter of October 24, 2020.

³ The OAE also attempted to send the letter by facsimile but was not successful because respondent’s line was busy or disconnected.

⁴ It is not clear if the OAE was seeking the ledgers reflecting these inactive balances or some other document related to these matters.

amount of \$2,000.00

d. #4521 Bigley – inactive since 7/19/17 in the amount of \$8,000.00

e. #5412: Bergantino – inactive since 9/24/18 in the amount of \$1,000.00

Respondent did not answer the OAE’s November 9, 2020 letter. Consequently, on January 4, 2021, the OAE sent respondent another letter, by e-mail, regular mail, and certified mail, instructing him to provide the items previously requested by January 14, 2021. The certified mail was returned marked “NO MAIL RECEPTABLE UNABLE TO FORWARD.” The regular mail was not returned.

On January 25, 2021, given respondent’s failure to cooperate, the OAE sent respondent another letter demanding the required documents and setting a deadline of February 4, 2021 for their submission. This letter was sent by e-mail, certified mail, and regular mail. The OAE received a confirmation receipt for the e-mail; the regular mail was not returned; and the certified mail was returned marked “RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD.”

According to the OAE, “[r]espondent failed to submit the requested trust reconciliations by February 4, 2021.”⁵ On March 27, 2021, the OAE contacted respondent by telephone and left a voice message. On March 29, 2021,

⁵ The complaint is not explicit on whether he submitted the remaining documents. However, the record does not contain a submission from respondent dated prior to February 4, 2021.

respondent returned the call and left a message. The record does not reveal the content of either parties' voicemail messages.

On March 30, 2021, the OAE "contacted [r]espondent on his cell phone and asked why he wasn't contacting [it] and complying with [its] investigation." It is unclear if the OAE was able to reach respondent. On May 5, 2015, respondent "provided a portion of the information and documents . . . but failed to provide the Attorney Trust Reconciliations for April 2020 to the [then] present."

Through the random audit and the interview of November 6, 2020, the OAE discovered the following recordkeeping violations: (1) inactive trust ledger balances; (2) old outstanding checks; (3) improper account designation; (4) funds held in fiduciary capacity deposited in ATA; (5) funds received for professional services deposited in ATA; (6) improper three-way reconciliations; (7) improper ATA receipts and disbursement journals; and (8) improper ABA receipts and disbursements journals. Of these violations, those noted in points (1), (2), and (4) "were repeat deficiencies from the 2004 random audit involving the same funds and checks." The violation noted in point (2) was "a repeat deficiency from the 2012 random audit."

Based on the above, the OAE charged respondent with violating RPC 1.15(d). The OAE also charged respondent with two instances of violating RPC

8.1(b) – by failing to cooperate with the investigation and by failing to file a verified answer to the complaint.

We find that the facts recited in the complaint support the allegations that respondent committed unethical conduct. Respondent’s failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Here, the facts in the complaint support the conclusion, by clear and convincing evidence, that respondent violated RPC 1.15(d) and RPC 8.1(b).

RPC 1.15(d) requires lawyers to comply with the recordkeeping provisions of R. 1:21-6. Respondent violated this Rule by (1) permitting inactive balances and old outstanding checks to linger in his ATA; (2) depositing fees for services and fiduciary funds in his ATA; (3) failing to correctly perform three-way reconciliations; and (4) failing to properly maintain receipts and disbursements journals.

RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Rule 1:20-3(g)(3) further provides that, in responding to such demands, an attorney must furnish the requested information within ten days or explain in writing why the information cannot be furnished. Here, from November 2020 through January 2021, the OAE repeatedly requested financial records from respondent. In the face of

respondent's continuing noncooperation, the OAE again contacted him in March 2021, but it was not until May 2021 that respondent finally provided some of the records. Even then, he failed to provide three-way reconciliations for certain months and never followed up with the OAE to make these records available. These facts, in conjunction with his failure to attend a demand interview in October 2020, clearly and convincingly demonstrate that respondent violated RPC 8.1(b). He violated this RPC yet again by failing to file an answer the complaint.

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

On this record, there is no evidence of any misappropriation – negligent or otherwise – by respondent. Recordkeeping irregularities ordinarily are met with an admonition where they have not directly caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (attorney commingled and committed several recordkeeping violations, including failure to perform three-way reconciliations, improper account designation, and failure to preserve images of processed checks); In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain attorney trust or business

account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) did not maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain an attorney business account, in violation of RPC 1.15(d) and R. 1:21-6).

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, e.g., In the Matter of Marc A. Spielberg, DRB 21-189 (October 4, 2021) (finding that a reprimand was the baseline level of discipline for the attorney's violations of RPC 1.15(d) and RPC 8.1(b); the attorney failed to correct deficiencies noted in a previous audit even though he claimed he had; the attorney did not bring records into compliance and was temporarily suspended for failing to cooperate with OAE's investigation; the attorney also allowed matter to proceed as a default; however, attorney had no disciplinary history in his almost forty-five years at the bar; on balance, a reprimand was the appropriate quantum of

discipline), so ordered __ NJ __ (2022). In re Abdellah, 241 N.J. 98 (2020) (reprimand for an 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); In re Conroy, 185 N.J. 277 (2005) (reprimand for an 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).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney’s ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See, e.g., In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative \$50,200.35 balance, repeatedly failed, for more than three months, to comply with the OAE’s requests for his law firm’s financial records, including trust account reconciliations, client ledger cards, disbursements journals, and

two specific client files; thereafter, although the attorney, for more than eight months, repeatedly assured the OAE that he would provide the required records, he failed to do so, despite two Court Orders directing him to cooperate; the attorney, however, provided some of the required financial records; we found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate with the OAE; however, we imposed a reprimand in light of the lack of injury to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar); In re Tobin, 249 N.J. 96 (2021) (censure, in a default matter, for an attorney who, following an OAE random audit that uncovered several recordkeeping deficiencies, including more than \$800,000 in negative client balances, failed to provide the documents requested in the OAE's seven letters and eight telephone calls, spanning more than one year; although we noted that a reprimand was appropriate for the attorney's recordkeeping violations and failure to cooperate, it imposed a censure in light of the attorney's prior reprimand for recordkeeping violations and the default status of the matter; in mitigation, however, the attorney had been practicing law for sixty-three years and suffered serious health problems prior to the continuation date of the random audit).

Pursuant to disciplinary precedent, we conclude that a reprimand is the baseline level of discipline for respondent's violations of RPC 1.15(d) and RPC 8.1(b). In crafting the appropriate discipline, however, we also consider mitigating and aggravating circumstances.

In mitigation, respondent has no disciplinary history in his almost forty years at the bar. We assign this mitigating factor compelling weight.

In aggravation, respondent did not bring his records into compliance. He also allowed this matter to proceed as a default. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. at 342 (citations omitted).

We determine that the aggravating and mitigating factors in this case are in equipoise and are virtually undistinguishable from our analysis in Spielberg. Accordingly, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

To date, respondent has not formally retired. Thus, as conditions, we also require him to: (1) complete a recordkeeping course pre-approved by the OAE within sixty days of the Court's issuance of a disciplinary Order in this case, (2) bring his records into compliance within sixty days of the Court's issuance of a

disciplinary Order in this case, and (3) provide to the OAE monthly reconciliations of his accounts, on a quarterly basis, for a two-year period following the Court's issuance of a disciplinary Order in this case.

Chair Gallipoli and Members Campelo and Menaker voted to impose a censure, with the same conditions.

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 David Wayne Crook
Docket No. DRB 22-215

Decided: May 3, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure
Gallipoli		X
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker		X
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	6	3

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel