

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 23-023  
District Docket No. XIV-2021-0172E

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In the Matter of :  
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Scott Joseph Capriglione :  
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An Attorney at Law :  
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Decision

Argued: March 16, 2023

Decided: June 30, 2023

Darrell Felsenstein appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us pursuant to R. 1:20-6(c)(1).<sup>1</sup> The Office of Attorney Ethics (the OAE) charged respondent with having violated RPC

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<sup>1</sup> That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request to present aggravating circumstances.

1.15(a) (negligent misappropriation of client trust funds) and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6). In his verified answer, respondent admitted having violated those RPCs.

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

Respondent earned admission to the New Jersey bar in 1988, to the Pennsylvania bar in 1984, and to the District of Columbia bar in 1986. At the relevant time, he maintained a practice of law in Princeton, New Jersey.

Effective June 16, 2021, the Court suspended respondent for one year. In re Capriglione, 246 N.J. 243 (2021) (Capriglione I). In that matter, which was the consolidation of four grievances, respondent committed gross neglect and demonstrated a lack of diligence when, in three separate client matters, despite having been paid, he failed to file motions in a timely manner and, in one matter, performed no legal work in furtherance of his client's case. His neglectful handling of his clients' cases adversely affected their outcome. In the Matter of Scott Joseph Capriglione, DRB 20-050 (February 3, 2021) at 3-4, 8-9, 10-11. Respondent also failed to effectively communicate with his clients when they would reach out to him, and once the attorney-client relationships were terminated, he failed to answer multiple requests for copies of his clients' files. Id. at 7, 11. Moreover, respondent misrepresented to his clients that he had filed

certain motions and knowingly made a false statement to a court. Id. at 10-11, 28. Lastly, respondent attempted to persuade one client to withdraw their grievance in exchange for the return of his retainer. Id. at 14.

We found that respondent violated RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 1.16(d) (on termination of the representation, failure to surrender the client's papers and property); RPC 3.2 (failure to expedite litigation); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); RPC 8.4(d) (conduct prejudicial to the administration of justice); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); and RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false). Id. at 29.

As of the date of this decision, respondent has not sought reinstatement and, thus, remains suspended from the practice of law in New Jersey.

We now turn to the facts of this matter.

As detailed above, effective June 16, 2021, respondent was suspended from the practice of law until further Order of the Court. During the relevant time underlying the instant matter, respondent maintained his attorney trust account (ATA) at PNC Bank (closed July 12, 2021).

On June 15, 2021, PNC Bank alerted the OAE of a June 3, 2021 overdraft of respondent's ATA, in the amount of \$1.27. On June 16 and July 27, 2021, the OAE directed respondent to provide a written explanation of the overdraft.<sup>2</sup>

On August 23, 2021, the OAE sent respondent an e-mail, via his e-mail address of record with the Court, again directing that he provide a written explanation of the overdraft by September 7, 2021. On August 27, 2021, respondent provided the OAE with a written explanation, wherein he attributed the ATA overdraft to PNC Bank's monthly \$2 maintenance fee and explained that he was in the process of closing his office due to his disciplinary suspension and was under a lot of stress at the time. He described the overdraft as a clerical error.

On April 5, 2022, the OAE conducted a demand audit for the period January 1 through September 27, 2021. As a result of the audit, the OAE identified the following recordkeeping deficiencies:

1. Failure to conduct monthly three-way reconciliations of his ATA (R. 1:21-6(c)(1)(H));
2. Failure to maintain individual client ledger cards (R. 1:21-6(c)(1)(B));
3. Failure to maintain ledger card identifying attorney funds for bank charges (R. 1:21-6(d));

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<sup>2</sup> Because respondent had been suspended effective June 16, 2021, he no longer maintained an office in Princeton, New Jersey when the OAE sent the June 16 and July 27, 2021 letters.

4. Failure to maintain ATA receipts and disbursements journals (R. 1:21-6(c)(1)(A)); and

5. Failure to maintain prenumbered ATA checks (R. 1:21-6(c)(1)(G)).

Additionally, the audit revealed that respondent had negligently invaded settlement funds belonging to his clients, Angela Robinson Sanders (the Sanders matter) and Marcia De Araujo (the De Araujo matter).

On April 6, 2022, the OAE directed respondent to correct the aforementioned deficiencies and to provide the OAE with the following financial records, for the period January 1 to July 30, 2021:

1. Monthly reconciliations for all funds held in his ATA , including the monthly bank statements, and a list of names and amounts held for all clients at the end of each month;
2. Client ledger sheets for all clients;
3. Monthly ATA bank statements;
4. ATA receipts and disbursements journals;
5. ATA checkbook register;
6. Settlement disbursement sheets for the Sanders and De Araujo matters.

On May 10, 2022, respondent corrected all but one of the recordkeeping deficiencies identified in the OAE's April 6, 2022 letter. Specifically, respondent provided the OAE with monthly two-way reconciliations for his ATA, rather than the three-way reconciliations required by the recordkeeping

Rules. According to the OAE, respondent reconciled his book and bank balances, but failed to reconcile the client ledger balances.

### **The Sanders Matter**

On January 1, 2021, respondent held \$10,011.23 in his ATA. This total included \$10,000.00 that he held in connection with the Sanders matter, and \$10.73 of his own personal funds that he held to cover monthly bank charges. As of June 1, 2021, respondent was required to hold \$9,750.50 in his ATA on behalf of Sanders. However, as the result of PNC Bank's \$2 monthly service charge, respondent only held \$9,749.23 in his ATA on Sanders behalf, thereby creating a shortage of \$1.27 in client funds that he was required to hold inviolate.

During the audit, respondent explained that, on June 1, 2021, he issued a counter check from his ATA, in the amount of \$9,750.50, payable to Sanders. Respondent explained that he used counter checks because he rarely used his ATA and, thus, did not believe he had a need to order prenumbered ATA checks. Additionally, respondent explained that he was unaware of his ATA balance because he had not been receiving his monthly bank statements. However, respondent indicated that, although he had not been receiving the bank statements, he was aware of the amount of funds he was required to hold on behalf of Sanders. Further, respondent explained that, at the time Sanders

presented the check to PNC, PNC did not advise respondent that there were insufficient funds in the ATA to pay the \$9,750.50 to Sanders.<sup>3</sup>

On June 3, 2021, PNC Bank honored the \$9,750.50 check issued to Sanders, but the payment resulted in the \$1.27 overdraft of respondent's ATA.

### **The De Araujo Matter**

On May 25, 2021, respondent settled a personal injury matter on behalf of De Araujo. That same date, the Donegal Insurance Group issued a check, in the amount of \$13,000, payable to "Marcia De Araujo & Scott J Capriglione Attorney at Law." On June 9, 2021, respondent deposited the \$13,000 check in his ATA on De Araujo's behalf. Following that deposit, respondent's ATA's balance was \$12,998.73, as a result of the existing negative balance of (\$1.27) stemming from the \$2 bank charge.

On June 14, 2021, respondent disbursed \$4,000 of the De Araujo settlement funds to himself as legal fees. Two days later, on June 16, 2021, respondent disbursed \$9,000 to De Araujo.

Accordingly, between June 9, 2021, when he deposited the De Araujo settlement funds, and June 14, when he disbursed them, respondent should have

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<sup>3</sup> At that time, a PNC Bank representative contacted respondent to verify that he, in fact, issued the check to Sanders.

held \$13,000 on De Araujo's behalf. His failure to do so impacted De Araujo's client funds.

As the result of respondent's two disbursements in the De Araujo matter, totaling \$13,000, respondent again held a negative ATA balance of (\$1.27), which remained until July 1, 2021. On July 1, 2021, PNC Bank assessed a \$2 monthly service charge, increasing the negative balance to (\$3.27). That same date, respondent corrected the shortage by depositing \$3.27 in his ATA, bringing the balance to \$0.

On July 12, 2021, respondent closed his ATA.

In its brief to us, the OAE cited relevant disciplinary precedent and recommended that respondent receive a reprimand or censure.

Respondent did not submit a brief for our consideration and waived his appearance at oral argument.

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. Specifically, we find that respondent violated both RPC 1.15(a), by his negligent misappropriation of client funds, and RPC 1.15(d), via his numerous recordkeeping deficiencies.

Here, although only minor invasions, respondent's failure to deposit additional funds in his ATA to cover the monthly bank charges impacted both



the Sanders and De Araujo client trust funds. Respondent readily admitted that his misconduct was caused by an error on his part, due to the stress associated with closing his law firm in connection with his disciplinary suspension. Accordingly, respondent's failure to hold client trust funds inviolate constitutes negligent misappropriation, in violation of RPC 1.15(a).

Additionally, respondent committed numerous recordkeeping deficiencies, in violation of R. 1:21-6, including: (1) failure to conduct monthly, three-way ATA reconciliations; (2) failure to maintain separate client ledger cards; (3) failure to maintain ledger cards identifying attorney funds for bank charges; (4) failure to maintain trust receipts and disbursement journals; and (5) failure to issue prenumbered ATA checks. Accordingly, respondent violated RPC 1.15(d).

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

Generally, a reprimand is the appropriate discipline for negligent misappropriation caused by poor recordkeeping practices. See, e.g., In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices resulted in the negligent invasion of, and failure to safeguard, funds owed to clients and others in connection with real estate transactions; his inability to

conform his recordkeeping practices, despite multiple opportunities to do so, also violated RPC 8.1(b); in mitigation, the attorney had no prior discipline and stipulated to his misconduct); In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); in mitigation, the attorney had no prior discipline in a thirty-five-year legal career); In re Rihacek, 230 N.J. 458 (2017) (the attorney negligently misappropriated client funds held in his trust account, committed various recordkeeping violations, and charged mildly excessive fees in two matters; no prior discipline in thirty-five years).

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

In mitigation, respondent readily admitted his misconduct, thereby saving disciplinary resources. Additionally, he promptly replenished his ATA once he became aware of the negative balance and, thus, his conduct caused no harm to his clients. Further, the overdraft was caused by respondent's failure to account for PNC Bank's monthly maintenance fee and not his own pecuniary gain. Lastly, respondent corrected all but one of his recordkeeping deficiencies.

In aggravation, we consider respondent's prior discipline. Specifically, respondent was suspended for one-year in connection with Capriglione I and, to date, remains suspended. The misconduct underpinning Capriglione I, however, was dissimilar to the instant misconduct and, unlike here, caused harm to respondent's clients. Thus, we accord this factor limited weight.

On balance, we conclude that the mitigating and aggravating factors do not justify a departure from the baseline discipline. Thus, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, as a condition to his discipline, we require respondent to cure the remaining recordkeeping deficiency within sixty days of the Court's disciplinary Order in this matter.

Member Joseph voted for an admonition, with the same condition.

Chair Gallipoli voted for a censure, with the same condition.

Members Campelo and Hoberman were 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 Scott J. Capriglione  
Docket No. DRB 23-023

Argued: March 16, 2023

Decided: June 30, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	Censure	Absent
Gallipoli			X	
Boyer	X			
Campelo				X
Hoberman				X
Joseph		X		
Menaker	X			
Petrou	X			
Rivera	X			
Rodriquez	X			
Total:	5	1	1	2

/s/ Timothy M. Ellis

Timothy M. Ellis  
Acting Chief Counsel