

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-035
District Docket Nos. XIV-2020-0275E
and VI-2022-0901E

In the Matter of
Robert P. Weinberg
An Attorney at Law

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Decision

Argued: April 20, 2023

Decided: July 7, 2023

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

William O'Connor 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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.15(a) (commingling); RPC 1.15(d) (failing to comply with the

recordkeeping requirements of R. 1:21-(6)); and RPC 5.3(a), (b), and (c) (failing to supervise a nonlawyer employee).

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 1967. He currently maintains a practice of law in Bayonne, New Jersey.

On March 4, 2009, respondent was reprimanded, by consent. In re Weinberg, 198 N.J. 380 (2009). In that matter, respondent failed to reconcile his trust account, resulting in the negligent misappropriation of client funds, in violation of RPC 1.15(a). Respondent committed additional recordkeeping violations by failing to maintain a running checkbook balance and receipts and disbursement ledgers, in violation of RPC 1.15(d). In the Matter of Robert P. Weinberg, DRB 08-357 (February 26, 2009) at 1-2 (Weinberg I).

Several months later, on November 17, 2009, respondent was censured in connection with a disciplinary stipulation. In re Weinberg, 200 N.J. 432 (2009). In that matter, he failed to memorialize the basis or rate of his fee, made loans to a client and to an investor/employee of one of two businesses he represented without advising them to seek independent counsel or reducing the transaction to writing, and placed monies designated to fund the loans in his trust account. In so doing, he violated RPC 1.5(b) (failing to communicate in writing the basis

or rate of the fee); RPC 1.7(a)(2) and RPC 1.8(a) (engaging in an improper business transaction); and RPC 1.15(a). In the Matter of Robert P. Weinberg, DRB 09-110 (August 25, 2009) at 5 (Weinberg II).

In the instant matter, respondent and the OAE entered into a disciplinary stipulation, dated February 13, 2023, which set forth the following facts in support of respondent's admitted ethics violations.

On June 18, 2019, the OAE notified respondent that it would conduct a random audit on July 18, 2019. On October 2, 2019, following an adjournment, the OAE commenced the audit of respondent's financial books and records for the period January 1, 2017 through July 31, 2019.¹ The OAE's review of respondent's attorney trust account (ATA) records, expanded in scope to include years 2012 through 2019, revealed that respondent's paralegal, Bernadette Rodriguez, had impermissibly issued ATA checks to herself, totaling \$374,117.11.

Additionally, the OAE's review of respondent's attorney business account (ABA) records, for the years 2012 through 2019, revealed that Rodriguez had impermissibly issued ABA checks to herself, totaling \$221,321.10. According to the OAE, in May 2018, Rodriguez stopped depositing respondent's retainers

¹ According to the OAE, the adjournment was caused by respondent's paralegal's interference in the OAE's efforts to contact respondent.

and attorney fees in his ABA, when the ending balance in the ABA was only \$89.59. Moreover, the OAE learned that Bank of America had deposited funds in respondent's ABA, via overdraft protection, to offset negative balances caused by bank charges. Respondent was unaware of these bank deposits.

Overall, Rodriguez's scheme of theft reaped \$595,438.21 in illicit proceeds, all stolen from respondent's funds and affecting no entrusted client funds.

Respondent advised the OAE that he did not review his ATA or ABA records because he trusted Rodriguez, his employee for seventeen years, to maintain his records. Respondent also acknowledged that he had no idea how often Rodriguez worked on his ATA or ABA, or what accounting methods she used. Based on these facts, the OAE alleged that respondent had improperly abdicated his non-delegable recordkeeping duties to Rodriguez.

Following the OAE's August 29, 2019 initial request for respondent's ATA and ABA records, respondent discovered, for the first time, that, from May 2018 through July 2019, Rodriguez had deposited all funds, including his retainers and attorney fees, in his ATA, rather than his ABA, thereby commingling the funds, in violation of RPC 1.15(a). He also discovered that Rodriguez had signed ATA and ABA checks without his permission.

The OAE's audit disclosed the following recordkeeping deficiencies:

- a. Client ledger cards with debit balances (R. 1:21-6(d));
- b. Failure to conduct three-way reconciliations of his ATA (R. 1:21-6(c)(1)(H));
- c. Failure to maintain ATA and ABA receipts or disbursement journals (R. 1:21-6(c)(1)(A));
- d. Failure to deposit earned legal fees in ABA (R. 1:21-6(a)(2));
- e. Failure to maintain separate client ledger cards (R. 1:21-6(c)(1)(B)); and
- f. Trust funds on deposit exceeded obligations (R. 1:21-6(d)).

Following the OAE's audit, respondent hired an accounting firm to create and reconcile his attorney financial records, and has corrected all deficiencies to the OAE's satisfaction. Thus, respondent currently is in compliance with the recordkeeping Rules.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed all the charged unethical conduct.

Specifically, respondent violated RPC 1.15(a) by commingling his clients' funds with his personal funds over an extended period of time. RPC 1.15(a) provides that "a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." Here, respondent's complete abdication of his non-delegable recordkeeping obligations to Rodriguez facilitated her deposit and maintenance of his retainer fees in his ATA instead of his ABA – misconduct that continued from May 2018 through July 2019. The commingling of respondent's personal funds with his clients' funds only was discovered as a result of the OAE's audit. Thus, respondent 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 audit revealed, and respondent admitted to having committed, multiple recordkeeping deficiencies, including: (1) failure to conduct three-way reconciliations of his ATA; (2) failure to maintain ATA and ABA receipts or disbursement journals; (3) failure to maintain separate client ledger cards; (4) client ledger cards with debit balances; (5) failure to deposit all earned legal fees in his ABA; and (6) trust funds on deposit exceeded obligations.

Respondent also violated RPC 5.3, which provides that: "with respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) Every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

(b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rule of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or ratifies the conduct involved;

(2) The lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) The lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Respondent violated RPC 5.3(a), (b), and (c) by failing to make reasonable efforts to supervise his paralegal. Indeed, he wholly abdicated his non-delegable recordkeeping obligations, allowing Rodriguez to steal \$374,117.11 from his ATA and \$221,321.10 from his ABA. Fortunately, no client funds were

impacted by Rodriguez's theft. Respondent admitted that he never reviewed his ATA or ABA records, and acknowledged that he had "no idea" how often Rodriguez worked on his attorney financial accounts. Respondent also admittedly lacked the required supervision over Rodriguez to ensure her actions were compatible with his professional obligations.

In sum, we find that respondent violated RPC 1.15(a), RPC 1.15(d), and RPC 5.3(a), (b), and (c).

Attorneys who fail to supervise their nonlawyer staff – including in cases where entrusted funds are stolen – typically receive an admonition or a reprimand, depending on the presence of other violations, prior discipline, or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of the attorney's abdication of his recordkeeping obligations, his nonlawyer assistant was able to steal more than \$149,000 from his trust account; the attorney also violated RPC 1.15(a) and RPC 1.15(d); mitigating factors included the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of \$55,000 in personal funds to replenish the account; his extensive remedial action; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three-year career); In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of the attorney's failure to review and

reconcile his attorney records, his bookkeeper was able to steal \$142,000 from his trust account, causing a shortage of \$94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account; numerous other corrective actions; his acceptance of responsibility for his misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of prior discipline); In re Mariconda, 195 N.J. 11 (2008) (admonition; the attorney delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole \$272,000 in client funds; in mitigation, the attorney had an unblemished career of thirty years); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, \$14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (reprimand; attorney failed to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations; prior discipline); In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys who both had prior discipline reprimanded for failure to supervise bookkeeper/office

manager, who embezzled almost \$360,000 from their firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping Rules; a bonding company reimbursed the losses caused by the embezzlement).

Commingling will be met with an admonition, even in the presence of additional recordkeeping violations. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of \$1,801.67; because the attorney maintained more than \$10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements); In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (an OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and

personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

Moreover, 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).

Based upon the above precedent, the totality of respondent's misconduct could be met with a reprimand. However, to craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

In mitigation, respondent readily admitted to his wrongdoing and entered into a disciplinary stipulation with the OAE. Further, he immediately corrected all of his recordkeeping deficiencies and hired an accounting firm to prepare his trust and business records going forward.

In aggravation, we consider respondent's prior discipline, which includes both a reprimand and a censure in 2009. In Weinberg I, like here, respondent was reprimanded for failing to comply with the recordkeeping requirements. In imposing a reprimand in Weinberg I, we weighed, in mitigation, the efforts respondent had made to bring his records into compliance with the Court Rules, including having hired an accountant and his use of new computer software. Here, respondent's continued recordkeeping deficiencies, resulting from his total abdication of these responsibilities, demonstrates that he has failed to learn from his previous mistakes.

Respondent's conduct is most similar to the conduct of the reprimanded attorneys in both Bergman and Barrett, considering that respondent has a disciplinary history and his failure to supervise Rodriguez resulted in the theft of more than \$500,000 from his firm's trust and business accounts. Additionally, like the attorneys in Bergman and Barrett, respondent cooperated with the OAE, hired an accountant to oversee his accounts, and brought his firm into compliance with the recordkeeping Rules.

Fortunately, respondent's lack of supervision, which led to the theft of more than \$300,000 from his ATA, did not result in the misappropriation of any client funds. As such, no client was harmed, and no replenishment of funds were necessary to rectify the situation.

On balance, weighing respondent's disciplinary history against his cooperation with the OAE and his efforts to correct his recordkeeping deficiencies, we determine that a reprimand is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Member Menaker voted for a censure.

Members Petrou and Rivera 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 Robert P. Weinberg
Docket No. DRB 23-035

Argued: April 20, 2023

Decided: July 7, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker		X	
Petrou			X
Rivera			X
Rodriguez	X		
Total:	6	1	2

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