Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-128
District Docket No. XIV-2019-0605E

In the Matter of

William J. Kohlhepp

An Attorney at Law

Decision

Decided: October 23, 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 1.7(a)(2) (concurrent conflict of interest); RPC 1.8(a) (improper business transaction with a client);

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 censure, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1974 and to the New York bar in 1989. During the relevant time, he maintained a practice of law in Somerset, New Jersey.

On October 4, 1984, respondent received a private reprimand (now an admonition) for engaging in a conflict of interest. In the Matter of William J. Kohlhepp, DRB 83-142 (Kohlhepp I).

On April 26, 2004, the Court censured respondent for his violation of Canon 1 of the Code of Judicial Conduct (a judge should uphold the integrity and independence of the judiciary); Canons 2A and 2B (a judge should avoid impropriety and the appearance of impropriety in all activities); and R. 2:15-8(a)(6) (conduct prejudicial to the administration of justice that brings the judicial office into disrepute). In re Kohlepp, 179 N.J. 423 (2004) (Kohlhepp II). At the time of the misconduct, respondent was serving as a judge of the Municipal Court of the Township of Hillsborough. In re Kohlepp, ACJC Docket

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

No. 2003-023 at 2.

In that matter, on July 16, 2002, four teenagers, including the son of respondent's friend, were arrested for drug possession in Hillsborough, the same municipality where respondent sat as a judge. Ibid. Respondent went to the police station, at the request of his friend, and informed the officer that he wanted to be present when his friend's son was interviewed. Id. at 3. After the police denied the request, pointing out to respondent that he could not represent defendants in the same municipality where he sat as a judge, respondent left the station. Id. at 3-4. Two months later, in September 2002, respondent provided a letter to the father of one of the other teenagers, stating that he had observed the teenager on the night of the arrest and that his eyes did not appear bloodshot. Id. at 4. The father then used the letter in an attempt to resolve his son's case. Id. at 4-6.

Effective October 5, 2020, the Court declared respondent administratively ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), as R. 1:28A-2(b) requires.

Effective November 6, 2020, the Court declared respondent administratively ineligible to practice law for his failure to comply with Continuing Legal Education (CLE) requirements.

Effective January 3, 2023, the Court declared respondent ineligible to

practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts (IOLTA) registration, as R. 1:28A-2(b) requires.

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

Turning to this matter, service of process was proper. Since 2019, respondent has resided at a rehabilitation facility in Hillsborough, New Jersey (the Hillsborough facility). On January 23, 2023, the OAE confirmed that respondent still resided at the Hillsborough facility.[2]

On March 7, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent at the Hillsborough facility address. According to the United States Postal Service (USPS) tracking, the certified mail was delivered on March 11, 2023. The regular mail was not returned to the OAE.

On April 10, 2023, the OAE sent a letter to respondent at the Hillsborough facility address, by certified and regular mail, informing him that, unless he filed a verified answer within five days of the date of the letter, the allegations of the

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[2] New Jersey attorneys have an affirmative obligation to inform both the CPF and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court record continues to reflect his office and home addresses. The record does not state if respondent has closed his office. However, respondent informed the OAE that, upon his admission to the Hillsborough facility, one of his clients moved all his client files out of the law office for safe keeping.

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 certified mail receipt was returned to the OAE indicating a delivery date of April 13, 2023, and bearing the signature of Jodi Reff. The regular mail was not returned to the OAE.

On May 22, 2023, the OAE again contacted the Hillsborough facility and confirmed that respondent continued to reside there. As of that date, 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 May 30, 2023, Acting Chief Counsel to the Board sent a letter to respondent at his 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 July 20, 2023, and that any motion to vacate the default must be filed by June 12, 2023. Both the certified and regular mail were returned to the Office of Board Counsel (the OBC). The e-mail also was returned to the OBC as undeliverable.

Moreover, on June 5, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on July 20, 2023. The notice informed respondent that, unless he filed a successful motion to vacate

the default by June 12, 2023, his failure to answer would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

Robert LaCorte, whom respondent had known for thirty years, retained respondent to represent the estate of Norman Herman (the Herman Estate) and to handle the sale of the decedent's home, which was the estate's only asset. Herman, who died on November 20, 2016, had named LaCorte as the executor and sole beneficiary of the estate.

LaCorte also received proceeds from Herman's life insurance, which he used to pay Herman's outstanding debts and liabilities. On February 16, 2017, at LaCorte's direction, respondent deposited the balance of those life insurance proceeds, totaling $98,388, in his attorney trust account (ATA). LaCorte believed that respondent had deposited the insurance proceeds in a separate estate bank account held by respondent.

The decedent's property was sold and, on September 11, 2017, respondent deposited an additional $134,919.07 in his ATA, representing the sale proceeds minus funds LaCorte had retained.[3]

According to the complaint, LaCorte wanted respondent to hold the funds in his ATA for safekeeping to ensure all estate taxes were paid prior to a full disbursement. Also, LaCorte was concerned he would spend the funds if he possessed and controlled them.

Thereafter, between April 20, 2018 and September 23, 2019, respondent disbursed to himself, via thirteen checks, $36,500 in Herman Estate funds. The thirteen disbursements were reflected on the estate's client ledger with the notation "loan." Respondent described twelve of the transactions as loans to himself. The remaining transaction was noted as a loan to "Peter A. Ouda Trust."[4] During his August 13, 2020 demand interview, respondent admitted to the OAE that this disbursement was, in fact, a loan to himself, in the amount of $20,000.[5]

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[3] The complaint alleged that the property sold for $154,919.07 and that, following the sale, LaCorte "received only a part of the funds." Based on the sale price and the amount respondent deposited in his ATA, it is reasonable to conclude LaCorte retained $20,000 from the sale.

[4] The record does not contain additional information regarding the "Peter A. Ouda Trust."

[5] Respondent's August 13, 2020 telephonic demand interview took place while he was residing at the Hillsborough facility.

LaCorte told the OAE that he had agreed, in or around 2018, to loan respondent $10,000 to $20,000 from the Herman Estate funds. LaCorte told the OAE that he also had authorized respondent to disburse approximately $30,000 from the estate funds to a "real estate investment company," and that LaCorte was still collecting those repayments. LaCorte was not aware of any additional loans from the estate funds. LaCorte left the OAE with the impression "that there was a laxed understanding about how much money [r]espondent was allowed to borrow from . . . LaCorte, along with when the money was due back."[6]

Respondent eventually repaid LaCorte $40,000 toward the loans, using proceeds from the sale of his own home. LaCorte confirmed that, in 2020, he had received $40,000 from respondent.

Respondent admitted to the OAE that there were no written loan agreements between he and LaCorte for the funds he borrowed from the Herman Estate. Further, respondent did not advise LaCorte, in writing, of the desirability of seeking independent counsel, nor did he afford LaCorte a reasonable opportunity to do so.

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[6] The OAE confirmed that it had considered charging 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), but ultimately determined that it could not prove that charge by clear and convincing evidence. The OAE based that decision on the lack of clarity in the statements provided by both respondent and LaCorte, along with the lack of documentation concerning the loans.

During his demand interview, respondent maintained that he was unable to provide a written response to the OAE's inquiries due to his medical condition. Further, respondent stated that, upon his admission to the Hillsborough facility, a client had moved his client files from his law office for safekeeping. LaCorte, however, had obtained a copy of the Herman Estate client ledger, which he provided to the OAE.

The OAE subpoenaed respondent's relevant bank records and, following its review, confirmed the information contained on the client ledger. According to the ledger, on November 11, 2019, the balance of Herman Estate funds was $56,210.85. The bank records revealed that, on November 12, 2019, respondent made a final disbursement to the "Estate of Norman Herman" for $56.210.85, reducing the ledger card to a zero balance.

Based upon its reconciliation of respondent's bank records, however, the OAE concluded that the respondent still should have held $12,276.04 in Herman Estate funds. Considering the reconstructed balance, together with the $36,500 in loan disbursements, the OAE determined that respondent should have held $48,776.04 in his ATA on behalf of the Herman Estate. Although respondent repaid LaCorte $40,000 toward the loans, the OAE asserted that $8,776.04 remains owed to LaCorte.

Further, the OAE identified additional discrepancies on the client ledger.

For instance, the client ledger identified a disbursement, on November 27, 2018, to "Downs Estate of Barnaby," in the amount of $28,146.04, and three separate disbursements to Michael Barnaby totaling $6,000. However, the OAE's review of respondent's bank records confirmed that these disbursements were not made from respondent's ATA. LaCorte confirmed that he had, in fact, authorized a loan of approximately $34,000 to Barnaby from the Herman Estate funds. He did not recall, however, how the loan was disbursed, but stated that Barnaby was repaying the loan directly to him.[7]

The OAE also identified twenty-one additional disbursements from respondent's ATA, totaling $54,250, that were not reflected on the Herman Estate's client ledger card. The disbursements ranged from $750 to $14,500, and only one was payable to respondent, in the amount of $750, for legal fees. None of those transactions involved a loan to respondent.

In 2019, LaCorte asked respondent to disburse $15,000 in Herman Estate funds to him for the purchase of a new car. Respondent instructed LaCorte to discuss the issue with his secretary. In the complaint, the OAE stated that "[w]hen LaCorte questioned [r]espondent about the missing money, he never

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[7] Because respondent did not disburse this amount to Barnaby from his ATA, the OAE also alleged that "there should be additional funds totaling $28,146.04" in respondent's ATA on behalf of LaCorte.

received an explanation from [r]espondent about what happened." The record does not indicate whether the "missing money" was the $15,000 that LaCorte had asked respondent to disburse. However, according to LaCorte's client ledger card, as well as the accounting reconstructed by the OAE, on November 11, 2019, respondent disbursed $15,000 to LaCorte.

As of July 31, 2020, respondent held a total of $83,172.58 in his ATA. Based upon its investigation, the OAE identified the funds as follows:

- $12,276.04 – Herman Estate funds
- $245.26 – attorney's fees "for WJK"
- $20 – Ventura client matter
- $1,772.00 – Morris client matter
- $25,000 – unidentified deposit
- $43,859,28 – unidentified balance

The unidentified balance had existed in the account since October 1, 2016. The deposit was made on July 11, 2017, by cashier's check, from a source which the OAE could not identify.

Respondent explained to the OAE that, in addition to LaCorte's matter, he was holding funds in his ATA for two or three beneficiaries in connection with another estate matter, but that he could not recall the name of the other matter or how much he was required to safeguard. He expressed a desire to

identify the beneficiaries once he left the Hillsborough facility.

Respondent further informed the OAE that he suffered from an illness that prevented him from walking and moving, and that he had been living in Hillsborough facility since 2019. He emphasized, however, that his illness was physical and unrelated to his mental health.

The OAE asserted that it had considered, based upon respondent's medical circumstances, whether he should be transferred to disability inactive status, pursuant to R. 1:20-12. However, respondent stated that he wanted to practice law again after he left the Hillsborough facility. In view of nature of respondent's disability, which is not mental or cognitive, the OAE was unable to conclude that he lacked the ability to practice law.

Based on the above facts, the OAE's complaint alleged that respondent engaged in a concurrent conflict of interest, in violation of RPC 1.7(a)(1), by borrowing money from LaCorte, thereby pitting respondent's own interest in direct conflict with his client's interests. Next, the OAE alleged that respondent violated RPC 1.8(a) by borrowing money from LaCorte without adhering to the safeguards required by the Rule. Third, the OAE asserted that respondent committed recordkeeping deficiencies, in violation of RPC 1.15(d). Finally, the OAE alleged that, by failing to file a verified answer to the complaint,

respondent failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

Following a review of the record, we determine that the facts set forth in the complaint support all the charges of unethical conduct by clear and convincing evidence. 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).

RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists not only if "the representation of one client will be directly adverse to another client," but also if "there is a significant risk that the representation . . . will be materially limited . . . by a personal interest of the lawyer." Pursuant to RPC 1.7(b), however, "[n]otwithstanding the existence of a concurrent conflict of interest under paragraph (a)," a lawyer may represent a client, if:

> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation;
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> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
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> (3) the representation is not prohibited by law; and

> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, respondent's representation of LaCorte included the duty to safeguard the Herman Estate funds, including the proceeds from the sale of the decedent's property, and to disburse the funds in accordance with LaCorte's instructions. By borrowing estate funds, respondent created a risk that he would not be able to fulfill his duty. <u>See</u> <u>In the Matter of Wayne A. Schultz</u>, DRB 19-143 (December 5, 2019) at 29, <u>so ordered</u>, 241 N.J. 492 (2020) (finding that the attorney created a significant risk of limiting his representation by accepting loans from his client because he had an incentive to overbill in his effort to "work[] off" the loans). Further, respondent admittedly failed to obtain LaCorte's written, informed consent prior to borrowing the money.

Next, <u>RPC</u> 1.8(a) prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
>
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

> (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Although there is no absolute prohibition on an attorney entering a business transaction with a client, the Court repeatedly has cautioned against such business relationships. See In re Humen, 123 N.J. 289, 300 (1991) (the Court has "warned attorneys repeatedly of the dangers of engaging in business transactions with their clients") (citing In re Silverman, 113 N.J. 193 (1988), and In re Reiss, 101 N.J. 475 (1986)).

Thus, in order to protect the interests of a client who engages in business transactions with their lawyer, RPC 1.8(a) mandates extensive disclosures and writings that are designed to ensure that business transactions between a lawyer and client are knowing, informed, and consensual.

Here, the record is clear that respondent entered into a business transaction with LaCorte when he procured a loan from him, totaling $36,500, via thirteen disbursements, thereby implicating RPC 1.8(a). Further, the record demonstrates that respondent entered into this loan transaction without complying with any of the disclosures or writings required by RPC 1.8(a)(1) through (a)(3). Therefore, respondent violated RPC 1.8(a).

Respondent also violated RPC 1.15(d), which requires an attorney to

comply with the recordkeeping requirements of R. 1:21-6, by holding unidentified funds in his ATA for a prolonged period, and by failing to maintain an accurate client ledger for the Herman Estate matter.

Last, RPC 8.1(b) requires attorneys to cooperate with disciplinary authorities. Respondent violated this Rule by failing to file an answer to the complaint, despite proper notice, and by allowing this matter to proceed as a default. Although his medical condition merits some consideration, respondent remains an attorney in active, albeit ineligible, status and, thus, remains obligated to cooperate with disciplinary authorities.

In sum, we find that respondent violated RPC 1.7(a)(2); RPC 1.8(a); RPC 1.15(d); and RPC 8.1(b). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.

Attorneys who engage in improper business transactions with a client have received discipline ranging from an admonition to a term of suspension. See, e.g., In the Matter of John F. O'Donnell, DRB 21-081 (September 28, 2021) (admonition; the attorney provided his client with a $180,000 loan, at a six-percent interest rate, in violation of RPC 1.8(a); the attorney also engaged in a concurrent conflict of interest, in violation of RPC 1.7(a), by representing the client in connection with "multiple promissory notes" at the same time the attorney represented a property management company in connection with a real

estate transaction in which the client acted as a "broker;" the concurrent representation required the attorney to disburse to his client fees from his trust account, on behalf of the property management company; in mitigation, we considered the passage of time, since the misconduct occurred ten years earlier, and the attorney's otherwise unblemished legal career of more than forty years); In the Matter of John O. Poindexter, III, DRB 19-414 (March 20, 2020) (admonition; the attorney improperly borrowed $30,000 from a client (RPC 1.8(a)) and committed recordkeeping violations (RPC 1.15(d)); the attorney also failed to communicate with his client (RPC 1.4(b)) and failed to set forth the basis of his fees in writing (RPC 1.5(b)); no prior discipline in forty-year career); In re Rajan, 237 N.J. 434 (2019) (reprimand; the attorney, while representing his client in the purchase of a property, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty percent share, a holding company formed by the attorney and his brother and brother-in-law lent $450,000 ($350,000 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client and became potentially adverse to the other clients; the attorney failed to advise his clients to consult independent counsel, and he failed to obtain their informed, written consent to the loan transaction; the attorney also represented the client in the real estate

transaction and received $32,500 in legal fees; violations of RPC 1.7(a) and RPC 1.8(a); despite the attorney's unblemished disciplinary record, the absence of harm to the client, his acceptance of responsibility, and his expression of remorse, we imposed a reprimand because he exercised such poor judgment; the attorney's prior service as a member of a district ethics committee was considered both in aggravation and in mitigation); In re Allegra, 229 N.J. 227 (2017) (reprimand; the attorney represented a client in a number of matters and engaged in a sexual relationship with her after her application for citizenship was denied, a violation of RPC 1.7(a)(2); he also borrowed $17,500 from her, a violation of RPC 1.8(a); significant mitigation) In re Klein, 248 N.J. 204 (2021) (censure; the attorney borrowed $235,000 from two clients; the attorney also unknowingly practiced while ineligible and included the term "law group" in his firm name even though he was a solo practitioner; the attorney committed extensive recordkeeping violations, negligent misappropriation, and commingling; the attorney had to deposit $320,000 of his own funds to make up for shortages in his ATA; in mitigation, the attorney stipulated to the misconduct and had a long unblemished disciplinary history; violations of RPC 1.8(a); RPC 1.15(a) (commingling and negligent misappropriation); RPC 1.15(d); RPC 5.5(a)(1) (unauthorized practice of law – practicing while administratively ineligible); and RPC 7.5(e) (use of an improper professional designation that

violates RPC 7.1, which provides that a lawyer shall not make false or misleading communications about the lawyer or the lawyer's services); In re Bagnara, __ N.J. __ (2022); 2022 N.J. LEXIS 1167 (censure; the attorney directed nineteen clients to a real estate closing company that employed him; the attorney also committed negligent misappropriation and commingling; violations of RPC 1.7(a)(2); RPC 1.15(a); and RPC 1.15(d)); In re Woitkowski, 252 N.J. 41 (2022) (three-month suspension; the attorney directed clients to his company for settlement services; the attorney also retained excess recording fees; prepared inaccurate HUD-1 forms; failed to disclose the basis of his fees in writing; negligently misappropriated client's funds; and committed recordkeeping violations; the attorney previously had been discipline for recordkeeping violations and misconduct involving the same company).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney commingled funds 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 Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (following a demand audit, the OAE uncovered multiple recordkeeping

deficiencies, including the fact 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 the return of more than twenty checks, issued to the Superior Court, for insufficient funds; we found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing an admonition, we weighed the fact that the attorney corrected his recordkeeping errors, took remedial measures to decrease the likelihood of a future recordkeeping violation, had no disciplinary history, and no client harmed by his misconduct); In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (after the attorney presented a trust account check against insufficient funds, the OAE conducted a demand interview and discovered that the attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images; the attorney responded to each of the OAE's requests for additional documentation, but his three-way trust account reconciliations were still not in compliance at the time of argument before us; in imposing an admonition, we considered the attorney's unblemished career o thirty-three years at the bar, and his ready admission to his wrongdoing).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no disciplinary history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney failed to respond to letters from the investigator in the underlying ethics investigation in violation of RPC 8.1(b); the attorney also violated RPC 1.4(b), RPC 1.5(c) (failure to set forth in writing the basis or rate of the attorney's fee in a contingent fee case), and RPC 1.16(d) (failure to protect the client's interests upon termination of the representation)); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, in violation of RPC 8.1(b)).

Respondent's misconduct is most similar to the misconduct in Poindexter. Respondent and Poindexter borrowed a similar sum from their respective clients: respondent borrowed $36,000, and Poindexter borrowed $30,000. Both committed recordkeeping violations in addition to other, non-serious misconduct. However, the admonition Poindexter received resulted, at least partially, from his unblemished disciplinary history, a mitigating factor not present here. Thus, the appropriate baseline discipline for respondent's misconduct is a reprimand. In crafting the appropriate discipline, however, we

also consider mitigating and aggravating circumstances.

In our view, there is no mitigation to consider.

In aggravation, respondent 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. 332, 342 (2008) (citations omitted).

Although respondent has a disciplinary history, including the admonition he received in Kohlhepp I for similar misconduct, and the censure he received in Kohlhepp II, given the passage of time, that prior misconduct does not serve as an aggravating factor justifying enhanced discipline. See In the Matter of Thomas Martin Keeley-Cain, DRB 20-034 (February 5, 2021) at 19 (prior discipline was not an aggravating factor, because "[a]lthough respondent received an admonition, in 2005, for similar misconduct, given the passage of time, that prior misconduct does not serve to enhance the discipline"), so ordered, In re Keeley-Cain, 247 N.J. 196 (2021); In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (in imposing only an admonition, we considered the significant passage of time since prior discipline for unrelated misconduct (1990, private reprimand (now an admonition), and 1995, admonition)).

In light of respondent's default, we conclude that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Further, as a condition to his discipline, we require respondent, within sixty days of the Court's disciplinary Order in this matter, to submit proof to the OAE that he has disbursed all funds remaining in his ATA to his clients or, alternatively, placed them with the Superior Court Trust Fund, in accordance with R. 1:21-6(j). In the event respondent is unable to comply with this condition, we direct the OAE to seek the appointment of a temporary attorney-trustee, pursuant to R. 1:20-19(a)(2), to assume responsibility over respondent's trust and business accounts and to make reasonable efforts to distribute identified trust funds to clients or other parties.

Member Hoberman 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 William J. Kohlhepp
Docket No. DRB 23-128

Decided: October 23, 2023

Disposition: Censure

Members	Censure	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	8	1

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