

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-184
District Docket No. XIV-2021-0134E

In the Matter of Rodrigo Sanchez
An Attorney at Law

Argued
October 19, 2023

Decided
February 22, 2024

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

Respondent waived appearance for oral argument.

Table of Contents

Introduction	1
Facts	4
The Parties' Positions.....	10
Analysis and Discipline	11
Violations of the Rules of Professional Conduct.....	11
Quantum of Discipline.....	13
Conclusion	15

Introduction

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).¹ The Office of Attorney Ethics (the OAE) charged respondent with having violated RPC 1.15(a) (negligently misappropriating entrusted client funds) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6). In his verified answer, respondent admitted the allegations of the complaint.

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 2001. At the relevant times, he maintained a practice of law in Elizabeth, New Jersey.

On November 18, 2010, the Court censured respondent for his violation of RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c)

¹ 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.

(conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Sanchez, 204 N.J. 74 (2010) (Sanchez I).

In that matter, respondent represented a client who claimed to have been injured by a basketball player in a bar fight. In the Matter of Rodrigo Sanchez, DRB 10-102 (June 24, 2010) at 2. The client claimed to possess a videotape showing the basketball player assaulting another person and, further, informed respondent that the basketball player's agent had contacted him and offered to pay him for the footage. Id. at 2-3. Respondent was unaware that the client had demanded \$3 million in exchange for the damaging footage in such a manner that the basketball player's agent characterized it as extortion.

Subsequently, respondent engaged in settlement negotiations on the client's behalf and, when he arrived to accept the settlement check, he was arrested. Respondent ultimately pled guilty to one count of attempted grand larceny in the fourth degree, a class A misdemeanor. Id. at 3-5. In imposing a censure, we accorded significant weight to numerous mitigating circumstances, including respondent's inexperience and failure to understand that his actions constituted involvement in a criminal scheme. Id. at 18.

On October 11, 2013, the Court reprimanded respondent for his violation of RPC 1.3 (lacking diligence); RPC 1.16(d) (failing to protect a client's interests on termination of the representation); and RPC 8.4(d) (engaging in

conduct prejudicial to the administration of justice). In re Sanchez, 216 N.J. 84 (2013) (Sanchez II).

In that matter, which proceeded as a motion for discipline by consent, respondent represented the tenant in a landlord-tenant matter. In the Matter of Rodrigo Sanchez, DRB 13-108 (October 9, 2013). On the date of trial, respondent attended mediation, but left before trial could take place because his child required an emergent dental procedure. Due to respondent's absence, his client's case was dismissed, without prejudice. The judge later reinstated the case on the condition that respondent pay the landlord's attorney's fees, in the amount of \$1,500. Respondent failed to comply with the condition. As a result, the judge again dismissed the client's complaint. Although respondent later attempted to pay the attorney's fees, the attorney no longer represented the landlord and refused payment. Respondent then failed to follow up.

Subsequently, the client sued respondent in small claims court and was awarded \$750 because respondent failed to appear. Thereafter, respondent paid his client both the \$750 judgment and the \$1,500 for attorney's fees. In imposing a reprimand, we noted that respondent's absence from the landlord-tenant trial could be excused due to his child's emergency, but that his subsequent failure to pay the imposed attorney's fees demonstrated a disregard for his client's welfare.

Facts

The facts of this matter are undisputed. Respondent maintained four bank accounts at Wells Fargo in connection with his law practice: two attorney trust accounts (ATA1 and ATA2) and two attorney business accounts (ABA1 and ABA2). On May 5, 2021, the OAE received a notice from Wells Fargo, indicating that, on April 28, 2021, respondent had overdrawn his ATA1 in the amount of \$10.57. Consequently, on May 12, 2021, the OAE notified respondent of his ATA overdraft and directed him to provide a written explanation by June 11, 2021.

On June 9, 2021, respondent provided the OAE with his written explanation, stating that the overdraft had occurred in connection with the sale of his home, which had been handled by his law firm. Specifically, on April 12, 2021, he deposited the proceeds of the sale, in the amount of \$216,520.62, in his ATA1. On April 28, 2021, in anticipation of his purchase of a new home, he wired an additional \$8,537 to his ATA1 to cover the closing costs. Later on April 28, 2021, respondent wired \$225,073.19 out of the account, believing he held sufficient funds to cover this amount plus a \$30 outgoing wire fee. However, respondent and his staff had been unaware that a \$15 incoming wire fee also had been assessed for his earlier wire of \$8,537. As a result, his ATA1 was

overdrawn by \$10.57. Importantly, respondent held no client funds in his ATA1 at the time of the overdraft.

On June 28, 2021, the OAE directed respondent to appear for a demand audit, on August 5, 2021, for the audit period spanning January 1, 2020 to June 30, 2021. Further, in preparation for the audit, the OAE instructed respondent to produce the following financial records by July 16, 2021:

- (1) monthly bank statements, cancelled checks, wire transfers, deposit items, debit and credit items, and checkbooks for all trust and business accounts;
- (2) monthly three-way reconciliations for both ATA1 and ATA2;
- (3) client ledger cards for all clients whose funds were held during the audit period;
- (4) monthly cash receipt and disbursement journals;
- (5) monthly ending client balances;
- (6) a list of outstanding checks in ATA1 and ATA2;
- (7) any documents which would explain the ATA1 overdraft; and
- (8) a completed "Attorney Bank Account Disclosure Form."

On June 29, 2021, the OAE issued a subpoena to Wells Fargo, seeking statements for ATA1 and ATA2 from January 2020 to June 2021. On July 14, 2021, respondent produced to the OAE some, but not all, of the requested

documents. On July 16, 2021, the OAE informed respondent that his submission was incomplete and directed that he address the following deficiencies by July 23, 2021:

- (1) incomplete three-way reconciliations for ATA1 which were missing outstanding check amounts under the bank balance column and names of clients under the client balance section;
- (2) missing running balance on ledger cards;
- (3) missing deposited items, cancelled checks, or debit credit items;
- (4) the ledger card for respondent's real estate matter showed a negative balance (\$10.57); however, his three-way reconciliation showed a balance of \$52.99;
- (5) in the event that respondent did not have an attorney business account, he needed to open one; and
- (6) stop payment fees, wire transfer fees, and overpayments should be attributed to specific clients or the ledger card for bank fees.

On July 23, 2021, respondent provided the OAE with additional documents and, in his cover letter, explained that ATA1 had outstanding checks in June 2021, that all funds held on clients' behalf in that account had been disbursed, and that the \$52.99 balance included the deposit that was made after the overdraft. Respondent further stated that there were no cancelled checks for either ATA1 or ATA2 during the relevant period, and that he had corrected the

ledger card for his real estate matter as well as the three-way reconciliation for the corresponding month.

On August 2, 2021, the OAE notified respondent that it had reviewed respondent's July 23 submission, which remained deficient. Specifically, the OAE informed respondent that there were at least nine cancelled checks associated with ATA1 and ATA2. Further, the OAE advised respondent to amend his attorney ledger for ATA1 to reflect his explanation regarding fees and deposits and to submit his disbursement journals for ABA1. The OAE directed respondent to submit the additional documents by August 9, 2021.

On September 10, 2021, following its demand audit, the OAE directed respondent to take corrective action and produce the following documents by September 20: (1) amended three-way reconciliations; (2) proof that he had deposited \$74.51 in his ATA to cover a stop payment fee, wire transfer, and overpayment; (3) void outstanding ATA2 checks #5016, #5024, and #5069 and issue replacement checks; (4) amend Joel Gonzalez ledger card (after making a deposit to zero out over payment); and (5) amend ledger cards for open client matters (ATA2) with running balances. Further, the OAE directed respondent to state whether the Prieto and Williamson client matters were closed and, if so, to immediately disburse any remaining client funds.

On September 16, 2021, respondent provided the OAE with the requested records. Respondent stated that he had reissued the three checks, that both Prieto and Williamson were active matters, and that he had deposited \$74.51 in ATA2. The three checks he reissued were #5105 in the amount of \$13, to replace #5016 in the Diane Gonzalez matter; #5106 in the amount of \$6,495, to replace #5024 in the Nicosia matter; and #5107 in the amount of \$290.57, to replace #5069 in the Villanueva matter.

On October 6, 2022, the OAE acknowledged receipt of respondent's recent e-mail regarding three outstanding checks in ATA2 (#5105 in the amount of \$3,² #5107 in the amount of \$290.52,³ and #5110 in the amount of \$1,450). The OAE informed respondent that check numbers 5105 and 5107, which had been issued in September 2021 as replacement checks, may constitute unclaimed funds pursuant to R. 1:21-6(j). Regarding the third outstanding check, the OAE directed respondent to provide the OAE with the date of the check, stating that it also might constitute unclaimed funds.

On October 12, 2022, respondent informed the OAE that he was working to depositing the funds associated with checks #5105 and #5107 with the

² The complaint stated that the check amount was \$13, whereas the OAE's October 6, 2022 letter stated that the amount was \$3. This distinction is immaterial to our determination.

³ The complaint stated that the check amount was \$290.57, whereas the OAE's October 6, 2022 letter stated that the amount was \$290.52. This distinction is immaterial to our determination.

Superior Court Trust Fund. In response to the OAE's inquiry concerning a \$7,300 deposit in ATA2, respondent explained that, on January 29, 2019, he had undergone a major medical procedure. He had made arrangements, however, for another attorney at his firm, his office manager, and his accountant to continue operating his office in his absence. On January 30, 2019, his office received a settlement check, in the amount of \$100,000, in the Villanueva matter. The firm's legal fees were \$32,949.52 and he had "met with and instructed my office manager to disburse the [settlement proceeds] and to take a portion of our legal fees and place it in a savings for any unforeseen issues that may arise while I was recovering." Thereafter, during his extended recovery, he discovered that his ATA2 was not reconciling and, although he mentioned the issue to his accountant, they were unable to resolve the discrepancy.

When respondent returned to the office, following his recovery, he learned that his office manager had transferred \$7,300 from his ATA2 to the business savings account, "instead of from the [firm's] business account to savings" as he had instructed. He maintained that the transfer was inadvertent and attributed the confusion to how the accounts are displayed on the Wells Fargo webpage.

Respondent's banking records established that, on January 29, 2019, his firm deposited the \$100,000 settlement check in ATA2. On February 1, 2019, respondent issued a check to the firm, for its legal fees, in the amount of

\$32,949.52. The mistaken \$7,300 transfer from ATA2 happened the same date and invaded client funds in fourteen matters. On July 22, 2020, respondent corrected the shortages by depositing \$7,300 to ATA2.

On two additional occasions, respondent invaded client funds that he held in ATA2. On December 26, 2019, respondent incurred a \$31 stop payment fee, thereby exceeding the \$24 he held in ATA2 for bank charges and resulting in the invasion of funds in two client matters. Next, on December 30, 2019, respondent issued himself an ATA2 check in the amount of \$28.51, representing a payment from a client on whose behalf he was holding no funds. This disbursement exceeded the \$24 he held in ATA2 for bank charges, causing the invasion of funds in three client matters. On September 16, 2021, at the OAE's direction, respondent cured these shortages by depositing \$74.51 in ATA2.

The Parties' Positions

During oral argument before us, the OAE urged that respondent had violated RPC 1.15(a) and RPC 1.15(d), as charged in the complaint. The OAE emphasized that respondent had remedied his recordkeeping deficiencies and no client had suffered any financial loss. Accordingly, the OAE recommended a reprimand for his misconduct. In response to our questioning, the OAE maintained that progressive discipline was not required despite respondent's

prior censure in Sanchez I and reprimand in Sanchez II because the misconduct addressed in those prior matters were wholly unrelated to his recordkeeping practices.

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

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our review, we are satisfied that the facts recited in the formal ethics complaint, as admitted by respondent in his verified answer, clearly and convincingly establish the charged unethical conduct.

Respondent violated RPC 1.15(a), which requires a lawyer to safeguard client funds by, on three separate occasions, negligently misappropriating entrusted funds. Specifically, on February 1, 2019, respondent's office manager erroneously transferred \$7,300 from his ATA2 to a business savings account, resulting in the invasion of client funds in fourteen matters. Although respondent intended that the funds be transferred from his business account and not his trust account, it is well-established that an attorney may not delegate recordkeeping duties to nonlawyers, and he failed to have proper processes in place to avoid such mistakes. In the Matter of Gerard A. Del Tufo, DRB 21-071 (September

23, 2021) at 17 (we concluded that the attorney had committed negligent misappropriation even though the fund invasion was caused by his staff's clerical error because recordkeeping duties cannot be delegated), so ordered, ___ N.J. ___ (2022), 2022 N.J. LEXIS 511.⁴ Further, the mistake was not corrected until July 22, 2020 and, consequently, the shortage persisted for sixteen months until respondent replenished the funds.

Next, on December 26, 2019, respondent incurred a \$31 stop payment fee in another client matter. At the time, however, he held in his ATA2 only \$24 in funds for bank charges, creating a \$7 shortage. As a result of the shortage, respondent invaded funds in two other client matters.

Lastly, on December 30, 2020, issued himself an ATA2 check in the amount of \$28.51 in connection with the Gonzalez client matter, for whom he was holding no funds. Consequently, responded invaded funds in three other client matters. On September 16, 2021, respondent deposited funds in his ATA2 to correct the shortages. Accordingly, respondent's failure to hold client trust funds, inviolate, constituted negligent misappropriation, in violation of RPC 1.15(a).

Respondent also violated RPC 1.15(d), which requires an attorney to comply with the recordkeeping provisions of R. 1:21-6. Respondent violated

⁴ On July 7, 2022, the Court vacated its Order due to Del Tufo's death.

this Rule by failing to maintain correct client ledger cards (R. 1:21-6(c)(1)(B)); permitting an electronic transfer from a trust account without proper authorization (R. 1:21-6(c)(1)(A)); and failing to maintain his records in accordance with generally accepted accounting practices via negative ATA balances and unprocessed checks (R. 1:21-6(d)). 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 left for our determination is the appropriate quantum of discipline for his misconduct.

Quantum of Discipline

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 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. To craft the appropriate discipline in this case, however, we consider aggravating and mitigating factors.

In aggravation, we consider respondent's prior discipline. Specifically, he was censured in connection with Sanchez I and reprimanded in Sanchez II. The misconduct underpinning Sanchez I and Sanchez II, however, were dissimilar to the instant conduct. Thus, we accord this factor minimal weight.

In mitigation, respondent readily admitted his misconduct, thereby conserving disciplinary resources. He promptly replenished his ATA once he became aware of the shortages and, further, his conduct caused no financial harm to his clients. Moreover, during oral argument, the OAE informed us that respondent had corrected his recordkeeping deficiencies to its satisfaction.

Conclusion

On balance, we conclude that neither the aggravating or mitigating factors are so compelling as to 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 conditions to his discipline, we recommend that the Court require respondent to (1) complete a recordkeeping course pre-approved by the OAE within sixty days of the Court's issuance of its disciplinary Order in this matter; and (2) provide to the OAE monthly three-way 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 Member 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rodrigo Sanchez
Docket No. DRB 23-184

Argued: October 19, 2023

Decided: February 22, 2024

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure
Gallipoli		X
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker		X
Petrou	X	
Rivera	X	
Rodriquez	X	
Total:	7	2

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel