SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-280
District Docket Nos. VI-2022-0902E
and XIV-2017-0024E

In the Matter of John J. Collins
An Attorney at Law

Argued
February 15, 2024

Decided
June 17, 2024

Rachael L. Weeks appeared on behalf of the
Office of Attorney Ethics.

John McGill, III appeared on behalf of respondent.

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Introduction

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

This matter was before us on a recommendation for an eighteen-month suspension filed by the District VI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(a) (commingling); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (practicing law while suspended); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine that a six-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2005. At the relevant times, he maintained a private practice of law in Jersey City, New Jersey, and also served as Assistant County Counsel for Hudson County, New Jersey.

On January 3, 2013, the Court temporarily suspended respondent from the practice of law due to his failure to cooperate with the OAE in an unrelated matter. In re Collins, 216 N.J. 88 (2013).

Subsequently, pursuant to R. 1:20-11(e), respondent filed a motion for reinstatement to the practice of law and to lift the restraints on his attorney accounts. In re Collins, 213 N.J. 84 (2013). In support of that motion, respondent and the OAE agreed that his reinstatement should be subject to certain conditions.

On March 8, 2013, the Court reinstated respondent to the practice of law, with conditions, modifying the restraints on his attorney accounts. Ibid. Significant to the instant matter, the conditions included a requirement that, "within seven days after the filing date of this Order, respondent shall identify a co-signatory for his attorney trust account to be approved by the Office of Attorney Ethics and there shall be no disbursements from the trust account pending approval of the cosignatory and thereafter, there shall be no disbursements without the signature of the cosignatory." Ibid.

On September 20, 2016, the Court suspended respondent for three-months on a motion for final discipline based on his guilty plea, in the Superior Court of New Jersey, to three disorderly persons offenses: two counts of simple assault,

in violation of N.J.S.A. 2C:12-1(a), and one count of criminal mischief, in violation of N.J.S.A. 2C:17-3(b)(1), conduct that violated RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer). In re Collins, 226 N.J. 514 (2016) (Collins I). Specifically, respondent's criminal conviction arose from a 2011 "road rage" incident. In the Matter of John J. Collins, DRB 15-140 (December 15, 2015) at 3. Angered by the actions of another driver, he exited his vehicle, retrieved a baseball bat from the trunk, and struck the driver's vehicle multiple times. Ibid. His strikes to the vehicle broke the windshield and a side mirror and caused the driver and a passenger in the vehicle to be placed in imminent fear of bodily injury. Ibid.

Respondent's suspension in Collins I took effect on October 21, 2016. On March 21, 2017, the Court reinstated him to the practice of law. In re Collins, 228 N.J. 235 (2017). As conditions of his reinstatement, the Court continued to require that, until the further Order of the Court, "no disbursements be made from his attorney trust account without the signature of the cosignatory, pursuant to the Order of the Court filed March 8, 2013," and newly ordered that respondent "shall practice law under the supervision of a practicing attorney

approved by the Office of Attorney Ethics until the further Order of the Court." Ibid.

Facts

The parties stipulated to the facts underlying the present matter.

In connection with respondent's private legal practice, he maintained an attorney trust account (ATA) and attorney business account (ABA) at BCB Community Bank.

As noted above, between January and March 2013, respondent was temporarily suspended from the practice of law. Upon his reinstatement, the Court prohibited respondent from making disbursements from his ATA without the signature of the OAE-approved cosignatory. The Court did not, however, require respondent to have a cosignatory for his ABA.

The Mira Holdings Matter

On September 20, 2016, in connection with Collins I, the Court suspended respondent for three-months, effective October 21, 2016 and until further Order of the Court. The Court's Order required respondent to "comply with Rule 1:20-20 dealing with suspended attorneys."

Pursuant to R. 1:20-20(b)(15), respondent's affidavit of compliance was due on or before October 20, 2016. On December 12, 2016, more than seven weeks after the deadline, respondent filed his affidavit.

In the interim, on September 30, 2016 – prior to the effective date of his suspension in Collins I – respondent filed defendants' answer in Alliance International LLC v. Mira Holdings (the Mira Holdings matter). The trial court's staff accepted the answer with a filing fee of $175, which respondent paid by an ABA check.

By letter dated October 17, 2016, the trial court informed respondent that $175 had been the incorrect filing fee, he would receive a check refunding that amount, and the answer should be re-submitted with the correct fee, which was $250.

Respondent claimed that he did not receive the court's correspondence until November 20, 2016, after the effective date of his suspension. On November 22, he refiled the same answer, using a check from his ABA to pay the corrected filing fee. He also filed a substitution of attorney on that date.

In respondent's December 2016 R. 1:20-20 affidavit, he brought to the OAE's attention his error in filing the answer and substitution of counsel and his use of an ABA check to pay the filing fee, while suspended. He acknowledged

that he now realized, by doing so, he had failed to comply with R. 1:20-20, and expressed his contrition.

Based on the above facts, the parties stipulated that respondent violated the Rules of Professional Conduct, as follows:

> a. RPC 5.5(a), in that [r]espondent practiced law when he was ineligible to practice from October 21, 2016 until reinstatement after January 20, 2017; and
>
> b. RPC 8.4(d), in that [r]espondent failed to comply with the Court's September 20, 2016 Order requiring that he refrain from practicing law.
>
> [S¶24.][1]

The Velardi and Jedziniak Matters

The OAE's investigation, including its examination of respondent's bank records for the period October 2015 through January 2017, revealed no evidence of activity in his ATA during that time. However, between December 2015 and June 2016, funds belonging to two clients and entrusted to respondent were improperly deposited in and disbursed from his ABA, which was not subject to the cosignatory requirement imposed by the Court on his ATA.

[1] "S" refers to the Stipulation of Facts, dated February 14, 2023.

Specifically, on December 31, 2015, respondent deposited, in his ABA, $15,000 in settlement proceeds received on behalf of his client, Velardi (the Velardi matter). Those funds should have been deposited in his ATA, which would have triggered the requirement that the Court-ordered cosignatory approve any disbursements. Respondent claimed that the deposit of the check in his ABA was a mistake, caused by his assistant writing the wrong account number on the back of the check and his admitted failure to catch this error.

Subsequently, on February 15, 2016, respondent issued from his ABA a check for $5,000, payable to Optum, toward Velardi's medical expenses. On the same date, he issued an ABA check to Velardi for the $10,000 balance of the settlement proceeds. He later stipulated that, by issuing the two checks from his ABA, he knowingly disbursed client funds without the cosignatory's approval, in violation of the Court's March 8, 2013 Order.

In addition, on February 25, 2016, ten days after he had disbursed the funds in the Velardi matter from his ABA, respondent deposited in his ABA a check for $23,246.19, received in connection with a client's divorce matter (the Jedziniak matter). These funds should have been deposited in his ATA, which would have required the approval of the cosignatory for any disbursements. Moreover, the improperly deposited check had been made payable to "John

Collins Attorney Trust Account." As with the Velardi check, respondent claimed that the deposit of the Jedziniak check in his ABA was a mistake, caused by his assistant writing the wrong account number on the back of the check.

Subsequently, between the date he received the Jedziniak funds and June 11, 2016, respondent made seven disbursements of the funds from his ABA: three to himself for legal fees, totaling $10,500; two on behalf of Jedziniak, totaling $9,327.27; and two to Jedziniak, representing the balance of $3,418.84.[2] On the date he made the final disbursement to Jedziniak, he also provided her with an itemized accounting of all the disbursements. He later stipulated that, by issuing the Jedziniak disbursements from his ABA, he knowingly disbursed client funds without the cosignatory's approval, in violation of the Court's March 8, 2013 Order.

Based on the above facts, the OAE alleged that respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, contrary to RPC 8.4(c), and engaged in conduct prejudicial to the administration of justice, contrary to RPC 8.4(d). In the parties' stipulation of facts, respondent did not concede that he committed either violation. Subsequently, however, in conjunction with the March 2023 disciplinary hearing, he admitted the charged

[2] The amount disbursed was apparently eight cents less than the amount deposited.

violation of RPC 8.4(d). Moreover, before us, during oral argument, he also admitted the charged violation of RPC 8.4(c).

Failure to Safeguard Client Funds and Recordkeeping Violations

The parties stipulated that, when the OAE examined respondent's ABA records, the OAE identified not only the client funds described above, but also "deposits and disbursements relating to fees, other incomes sources, loans from [a family member], and personal expenses, including bank charges." Moreover, the OAE discovered the following recordkeeping deficiencies, in violation of R. 1:21-6: failure to maintain business receipts and disbursements journals; failure to maintain ABA records for seven years; and deposited and maintained client funds in his ABA.

Based on the above facts, the parties stipulated that respondent violated the Rules of Professional Conduct, as follows:

> a. RPC 1.15(a), in that Respondent commingled $38,246.19 in client funds with personal funds in his ABA;[3] and

[3] The $38,246.19 total is the sum of the two amounts deposited in respondent's ABA in connection with the Velardi and Jedziniak matters.

b. RPC 1.15(d), in that Respondent failed to comply with R. 1:21-6 in the maintenance of required financial records.

[S¶45.]

The Ethics Proceedings

The Parties' Stipulation of Facts

On February 14, 2023, the OAE and respondent entered into a stipulation of facts, incorporated above.

Respondent and the OAE further stipulated that, on June 29, 2018, respondent was involved in a motor vehicle accident and suffered a traumatic brain injury. During the subsequent ethics hearing, respondent referred to his injury to explain that he had difficulty remembering the finer details of the events at issue here, which predated the accident. However, his accident was not otherwise addressed or asserted as a defense in the matter before us.

The Ethics Hearing

Respondent was the sole witness to testify at the March 27, 2023 ethics hearing. In addition to his testimony incorporated above, he acknowledged responsibility for his admitted misconduct, while also asserting that his

misconduct in the Mira Holdings, Jedziniak, and Velardi matters had been inadvertent mistakes.

Regarding his deposit of client funds in his ABA, he admitted that, in hindsight, "I should have redeposited the money into the trust account, but I didn't." Further, he stated that the transactions in the Jedziniak and Velardi matters "would not have been denied by [the cosignatory]" and "[t]here was nothing to be gained" from depositing the clients' funds in, and disbursing them from, his ABA.

He stated that he disbursed the funds in the Velardi matter from the ABA "[b]ecause I wanted to get the money to [the client] as quickly as possible," the client's settlement had been delayed, and the client was seriously ill and in need of the money. He similarly recalled, with regard to the Jedziniak matter, that once "[t]he funds went into the wrong account," he "was just trying to take care of [the client's] matter . . . to wrap it up as quickly as possible," because the client was ill and needed the funds to address her housing situation.

For both matters, respondent testified that "ma[king] the same mistake twice" was "first embarrassing, and then it's how can you be so stupid?" He admitted that "[i]t was easily correctible" but asserted, "I wasn't thinking . . . now I see it needed to be corrected, but then, I wasn't." He pointed out that he

had fully accounted for the funds, added that both clients were family friends whom he had known "for a very long time," and stated he "would never take from my clients." While stressing the sense of urgency he had felt on behalf of the clients, he clarified that he was "not saying that there was an excuse or some loophole I was trying to exploit . . . I screwed up royally. That's why I admitted it from the beginning . . . I made a mistake, and it's up to me to own up to my mistake." Further, he expressed his contrition and remorse.

In addition, respondent testified that no harm had resulted to his clients from his misconduct. More specifically, he explained that clients Velardi and Jedziniak had received "everything that they were entitled to," and that the corporate client in the Mira Holdings matter may have been spared a default, and in any event, was not harmed by his refiling of the answer during his suspension from the practice of law. He also testified that his unethical conduct had not resulted in any personal gain to himself.

The Parties' Written Summations

In his post-hearing summation, respondent, through counsel, reiterated the facts and admitted all the charged RPC violations except the violation of RPC 8.4(c) in connection with the Velardi and Jedziniak matters.

Regarding his activities while suspended in the Mira Holdings matter, although respondent admitted that he had violated RPC 5.5(a)(1) and RPC 8.4(d), he asserted that "such violation was inadvertent and merely a technical mistake, resulting in protection of the client's interest with no personal gain" for himself.

Similarly, respondent characterized his misconduct in the Velardi and Jedziniak matters as "the result of inadvertent mistake, resulting in protection of the client with no personal benefit" to himself. He recounted his testimony that "he did not properly supervise his assistant, who probably put the wrong account number on the deposit slip," "signed the checks to be deposited but they were put in the wrong account," and failed to catch the mistake. He likewise admitted that, after he realized the funds were in his ABA, he improperly disbursed the funds from his ABA on his clients' behalf, but asserted he did so "because he wanted to quickly get those clients their funds due to their perceived dire circumstances."

In mitigation, respondent stressed that he had reported his misconduct in the Mira Holdings matter; taken responsibility for his unethical conduct; "admitted all allegations that he does not dispute;" apologized to the court, the public, and the bar for his unethical conduct; expressed contrition and remorse for his unethical conduct; and cooperated with disciplinary authorities. Further, he asserted that his misconduct caused no harm to his clients and resulted in no personal gain.

In addition, while acknowledging his prior disciplinary matter in Collins I, he urged that this history should not serve to enhance the sanction for his current unethical conduct. Specifically, citing In the Matter of Herbert F. Lawrence, DRB 19-168 (December 12, 2019), he argued that the principle of progressive discipline should not apply here because his admitted misconduct in the instant matter was dissimilar to the misconduct at issue in Collins I, and it could not "be credibly said that [his] prior discipline should or could have heightened his awareness to avoid his current unethical conduct."

In conclusion, respondent urged that, in light of the mitigating factors, a reprimand was the appropriate quantum of discipline for his admitted misconduct.

In turn, the OAE argued that respondent's re-filing of the Mira Holdings answer with the correct filing fee was not an inadvertent mistake, given that he intentionally refiled the answer. Moreover, OAE cited his acknowledgment that he failed to forward the returned filing to either the client or the client's new counsel. Thus, the OAE argued that not only had he stipulated to violating RPC 5.5(a) and RPC 8.4(d), but the record independently supported a finding of these violations.

Similarly, the OAE argued that its investigation uncovered commingling and failure to comply with recordkeeping requirements, thus, supporting respondent's admitted violations of RPC 1.15(a) and (d).

Third, the OAE argued that, when respondent deposited the funds in the Velardi and Jedziniak matters in his ABA and disbursed them without his cosignatory's approval, he knowingly violated the Court's Order prohibiting disbursements from his ATA without the signature of the cosignatory, thus violating RPC 8.4(c) and (d). Moreover, the OAE pointed out that he deposited the Jedziniak funds in his ABA on February 25, 2016, after he had disbursed the Velardi funds from his ABA; consequently, by the time he improperly deposited the Jedziniak funds, he already was aware of the allegedly inadvertent mistake in Velardi. The OAE argued that respondent had the opportunity not to repeat

the "inadvertent mistake" made in the Velardi matter. Instead, in the Jedziniak matter, he repeated the process of depositing client funds in his ABA and disbursing them without the cosignatory's approval. Thus, he repeatedly "made material misrepresentations to the cosignatory by failing to disclose that he was disbursing client funds."

Finally, citing In the Matter of Neal Brunson, DRB 22-149 (January 17, 2023), and In the Matter of John M. Mavroudis, DRB 22-151 (January 31, 2023), the OAE asserted that the intentional violation of the Court's Order constituted a violation of RPC 8.4(d).

Turning to the applicable quantum of discipline, the OAE cited disciplinary precedent establishing that attorneys who practice law while suspended receive discipline ranging from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. Accordingly, the OAE argued that the appropriate range of discipline presumptively begins at a one-year suspension.

Further, the OAE asserted that attorneys who make misrepresentations to third parties generally receive reprimands, but those who make misrepresentations to a court or tribunal receive discipline ranging from a

reprimand to a long-term suspension. The OAE also noted that conduct prejudicial to the administration of justice results in discipline ranging from a reprimand to suspension. The OAE argued that, in combination, respondent's violations of RPC 8.4(c) and (d) required a term of suspension beyond the term to be imposed for practicing while suspended and, in combination with his other violations and the aggravating factors, a two-year suspension was warranted.

In aggravation, the OAE argued that respondent's suspension in Collins I warranted enhanced discipline under In re Kivler, 193 N.J. 332, 342 (2008), where the Court "recognized that a prior disciplinary record will generally call for an increase in the penalty that would ordinarily be appropriate for the same behavior." Further, citing In re Silber, 100 N.J. 517 (1985), the OAE urged that he had opportunities to remedy his unethical conduct but failed to do so, thus implicating the aggravating factor of failure to remediate alleged mistakes. Specifically, the OAE argued, respondent could have redeposited in his ATA the funds that had been deposited in his ABA or sought the cosignatory's approval to disburse those funds from the ABA. In further aggravation, the OAE urged that respondent engaged in a pattern of misconduct: specifically, "a pattern of disregarding Supreme Court Orders restricting or suspending his practice of law."

Conversely, the OAE argued that the hearing panel should give little weight to the mitigation claimed by respondent.

In conclusion, the OAE urged that a two-year suspension was the appropriate quantum of discipline for respondent's misconduct.

The DEC's Findings

The DEC found that respondent's admissions of misconduct were well supported by the facts in the record. Specifically, in the Mira Holdings matter, the DEC concluded that respondent violated RPC 5.5(a) and RPC 8.4(d) by refiling the answer, using an ABA check to pay the filing fee, while suspended pursuant to the Court's Order in Collins I. In addition, in the Jedziniak and Velardi matters, he violated RPC 8.4(d) by depositing funds in his ABA instead of his ATA and then disbursing those funds without the required approval of the cosignatory. Finally, respondent violated RPC 1.15(a) and (d) by commingling client funds with personal funds in his ABA and failing to comply with the R. 1:21-6 recordkeeping requirements.

Further, the DEC concluded, by clear and convincing evidence, that respondent violated RPC 8.4(c) in the Velardi and Jedziniak matters. Specifically, the DEC found that he "intentionally and knowingly engaged in

conduct involving dishonesty, fraud, deceit, or misrepresentation when he intentionally and knowingly funneled client funds through his ABA and bypassed the cosignatory." The DEC found that, at the latest, respondent knew by February 15, 2016 (the date he disbursed the Velardi funds) that he had "funneled" client funds through his ABA and bypassed the cosignatory requirement applicable to the ATA. Nevertheless, just ten days later, on February 25, 2016, he deposited the client funds in the Jedziniak matter in his ABA, and between that date and June 11, 2016, wrote multiple checks disbursing those funds from his ABA, including three disbursements to himself for fees totaling $10,500.

Reviewing the transactions in the two matters in totality, the DEC concluded that, between December 2015 and June 2016, respondent "knowingly accepted client funds for which he knew he required a cosignatory to accept," "knowingly deposited them into the ABA instead of ATA," and "knowingly made two disbursements in the Velardi matter and seven disbursements in the Jedziniak matter, each without the cosignatory's approval."

Turning next to mitigating and aggravating factors, the DEC acknowledged the mitigating factors set forth by respondent. In aggravation, the DEC weighed respondent's failure to remediate the alleged inadvertent mistakes

with regard to his ABA deposits and disbursements. The DEC declined, however, to find that respondent's suspension in Collins I warranted enhanced discipline because that matter involved dissimilar misconduct.

The DEC recommended an eighteen-month suspension for respondent's misconduct. Citing In re Marra, 170 N.J. 411 (2002), and In re Phillips, 224 N.J. 272 (2016), the DEC concluded that his unauthorized practice of law alone merited a one-year suspension. In addition, the DEC found that his violations of RPC 1.15(a) and (d), which ordinarily would be met with an admonition, served to enhance the range of applicable discipline. Finally, citing In re Walcott, 217 N.J. 367 (2014), and In re Marraccini, 221 N.J. 487 (2015), the DEC observed that violations of RPC 8.4(c) and (d) are met with discipline ranging from a reprimand to a suspension.

Weighing the totality of the circumstances and the charges against respondent, the DEC determined that an eighteen-month suspension was warranted.

The Parties' Positions Before the Board

At oral argument before us, the OAE again urged the imposition of a two-year suspension for respondent's misconduct, based on the arguments put forward during the proceedings before the hearing panel.

For his part, at oral argument and in his brief to us, respondent, through counsel, reiterated his prior admitted RPC violations. Notably, in addition, he accepted the DEC's conclusion that he had violated RPC 8.4(c) in connection with the Velardi and Jedziniak matters and acknowledged that "he should have been more attentive to his ethical requirements, at the time, and will endeavor to do so going forward." He again stated that his primary motivation was to get the funds of the two clients as quickly as possible. In reply to our question regarding how much delay would have resulted had he transferred the funds to his ATA and sought the cosignatory's approval, he conceded "[p]robably none" and frankly acknowledged that he should have taken those steps, while maintaining again that "nothing about the transactions themselves . . . would have been . . . objectionable to the cosignator[y]."

Respondent urged that the DEC's recommended sanction of an eighteen-month suspension was excessive. Regarding the DEC's reliance on Marra and Phillips for the proposition that a one-year suspension is the baseline sanction

for practicing law while suspended, he countered that those cases were distinguishable and involved more egregious misconduct. Specifically, he pointed out that the attorneys in each of those matters had "extensive prior disciplinary records," whereas here, the DEC concluded that respondent's prior discipline should not enhance his sanction.

Respondent also argued that the basis for the Court's entry of a one-year suspension in Marra was not clear, particularly where we had recommended a reprimand based on exceptional circumstances. In the Matter of Allen C. Marra, DRB 00-205 (January 29, 2001) at 11-12.[4] Moreover, he stressed the fact-sensitive nature of disciplinary cases, as we set forth in our decision underlying Marra. Specifically, he asserted that the same "special circumstances" analysis that we applied there should be applied here. He highlighted that his unethical conduct involved "admittedly, violat[ing] Court orders in three limited matters to the benefit of those clients without personal gain to himself;" asserted that his conduct was "remote, having occurred in 2015 and 2016, at least eight (8) years ago;" and urged that, unlike the attorneys in Marra and Phillips, his prior disciplinary matter should not enhance his sanction. Further, he emphasized that

[4] After we issued our decision in the 2001 Marra matter, the OAE filed with the Court a petition for review, which the Court granted. In re Marra, 170 N.J. 411 (2002). Subsequently, the Court issued an Order imposing a one-year suspension in the matter. Id. at 411-12.

in our decision underlying Marra, where the attorney voluntarily withdrew from a representation that he improperly had undertaken while suspended, we viewed this withdrawal favorably, as signaling the attorney's "recognition that his conduct was wrong and that the wrong should not be perpetuated;" similarly, he argued, he voluntarily brought to disciplinary authorities' attention his misconduct in the Mira Holdings matter, thus "demonstrating recognition that his conduct was wrong and that the wrong should not be perpetuated." Moreover, he accentuated that his correction of a pleading and fee filing problem, to benefit his client in that matter, constituted his sole practice of law while suspended.

Also relying on our decision underlying Marra, wherein we had determined that the attorney's "recordkeeping deficiencies do not elevate the level of discipline above that required for his more serious misconduct, practicing law during his suspension," DRB 00-205 at 11, he asserted that the DEC's conclusion that his own recordkeeping violations warranted an enhancement of discipline beyond a one-year suspension was arbitrary and unwarranted.

Finally, he argued that we should reject the DEC's enhancement of the suspension by an additional six months based on his violations of RPC 8.4(c) and RPC 8.4(d). He noted that, in recommending the enhanced suspension based

on those charges, the DEC had cited only reprimand cases (Walcott and Marraccini), and argued that the DEC failed to cite any precedent in support of suspension. Specifically, he argued that, as in Marraccini, where we found, in mitigation, that the attorney's "actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain," so too, here, his actions "were motivated by a misguided attempt at quickly benefiting his clients, rather than by dishonesty or personal gain." See In the Matter of Jenel R. Marraccini, DRB 15-065 (May 29, 2015) at 2. Thus, he reasoned, "it is unknown upon what authority the [DEC] relied in recommending 'an additional six-month suspension,'" and consequently, the DEC's recommendation was arbitrary and unwarranted.

Addressing aggravating and mitigating factors, respondent noted that the DEC had not rejected any of the mitigating factors that he had advanced before it. He acknowledged that the DEC had weighed, as the sole aggravating factor, his failure to remediate the errors with regard to his ABA deposits and disbursements. He argued that the mitigating factors substantially outweighed the sole aggravating factor, and that there was no purpose or need to suspend him for the protection of the public based on his "remote . . . isolated and non-egregious unethical conduct."

In conclusion, respondent again urged that a reprimand was the appropriate sanction for his unethical conduct.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we are satisfied that the DEC's determination that respondent violated RPC 1.15(a), RPC 1.15(d), RPC 5.5(a)(1), RPC 8.4(c), and RPC 8.4(d) (one instance) is supported by clear and convincing evidence. However, we respectfully part company with the DEC's determination that respondent also violated RPC 8.4(d) in the Mira Holdings matter.

Respondent violated RPC 1.15(a) by depositing client funds in the Velardi and Jedziniak matters in his ABA rather than his ATA. It is uncontested that respondent also used his ABA for legal fees and personal funds (including income from other sources, loans from a family member, and money used for personal expenses). Accordingly, his deposit of the clients' funds into that

account violated the requirement that an attorney "hold property of clients . . . separate from the lawyer's own property."[5] RPC 1.15(a).

In addition, respondent's failure to maintain receipts and disbursements journals for his ABA and to maintain ABA records for seven years clearly constituted violations of the R. 1:21-6 recordkeeping requirements, contrary to RPC 1.15(d).

Equally clear is respondent's unauthorized practice of law while suspended. RPC 5.5(a)(1) prohibits an attorney from "practic[ing] law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." Pursuant to Collins I, respondent was suspended for three months and until further Order of the Court, effective October 21, 2016. Nevertheless, on November 22, 2016, respondent re-filed the answer in the Mira Holdings matter, using an ABA check to cover the re-assessed filing fee. In so doing, he admittedly engaged in the practice of law, in violation of the Court's Order of suspension.

[5] The stipulation sets forth the violation as "RPC 1.15(a) (commingling)." In most cases, the applicable theory for respondent's violation of that RPC would be "(failing to safeguard client funds)." The term "commingling" typically applies to an attorney's improper use of an attorney trust account to house personal funds, rather than the deposit of client funds into a business account. See, e.g., In the Matter of Ihab Awad Ibrahim, DRB 20-135 (April 26, 2021) at 16-17; In the Matter of Walter Toto, DRB 19-071 (October 22, 2019) at 21-22. Here, since respondent intentionally used his ABA in lieu of his ATA in two client matters, the stipulated misconduct of commingling has been established by clear and convincing evidence.

Previously, in his response to the formal ethics complaint and in the proceedings before the DEC, respondent argued that his admitted misconduct in the Velardi and Jedziniak matters did not include "conduct involving dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c). However, before us, respondent adopted the DEC's finding that he had, in fact, violated this Rule.

As an initial matter, we find that the record regarding the depositing of these funds in respondent's ABA does not, in isolation, clearly and convincingly support a finding that respondent violated RPC 8.4(c). His testimony that the improper deposits resulted primarily from errors made by his assistant was uncontroverted. The fact that his assistant made a second improper deposit, after respondent became aware of the first, suggests that respondent did not adequately safeguard against the error's recurrence. However, it falls short of demonstrating that the erroneous deposits, alone, constituted knowing, dishonest conduct by respondent.

However, the opposite holds true of respondent's disbursements of those funds, whereby he blatantly circumvented the 2013 Court Order that required a cosignatory and knowingly misrepresented to his cosignatory, by omission, that he had not disbursed any client funds. Moreover, respondent knowingly persisted in making such disbursements between February and June 2016. He

first issued two checks from his ABA in the Velardi matter, and subsequently made seven disbursements from his ABA in the Jedziniak matter. The fact that there is no allegation that he misdirected the clients' funds does not lessen the dishonesty involved in his egregious failure to alert the cosignatory, over a period of months, as he repeatedly disbursed funds entrusted to him.

By the same conduct, respondent prejudiced the administration of justice, in violation of RPC 8.4(d). In 2013, the Court terminated respondent's temporary suspension and allowed him to resume the practice of law, subject to the safeguard that funds entrusted to him by clients (which, pursuant to R. 1:21-6(a)(1), must be deposited in an attorney trust account) could be disbursed only with the cosignatory's authorization. Having received the clients' funds in the Velardi and Jedziniak matters, he was obligated to hold them in trust. Thus, following the erroneous deposits of the funds in his ABA, the corrective action was not to disburse them from the ABA but, rather, to transfer them to his ATA. Respondent's decision to do otherwise subverted the Court's supervision of his practice pending the resolution of an ongoing disciplinary matter. Accordingly, it prejudiced the administration of justice, in violation of RPC 8.4(d).

We determine to dismiss, however, the charged violation of RPC 8.4(d) in the Mira Holdings matter. That charge was based on respondent's failure to

comply with the Court's Order of suspension in Collins I, which required that he refrain from practicing law. In our view, however, respondent's violation of the suspension Order is fully encompassed by the charged violation of RPC 5.5(a)(1).

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(d); RPC 5.5(a)(1); RPC 8.4(c); and RPC 8.4(d) (one instance). We determine to dismiss the second charged violation of RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the 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).

Likewise, cases involving an attorney's failure to safeguard funds usually result in the imposition of an admonition, even if accompanied by other

infractions. See In re Sternstein, 223 N.J. 536 (2015) (after the attorney had received five checks from a bankruptcy court, representing payment of his clients' claim against the bankrupt defendant, he failed to deposit the checks in his attorney trust account, choosing instead to place the checks in his desk, a violation of RPC 1.15(a); the attorney also failed to inform his clients of his receipt of the funds; only after numerous inquiries, first from the clients and then from an attorney retained by them to pursue their interests, did he finally take the steps necessary to receive the funds from the bankruptcy court, which he then turned over to the clients, a violation of RPC 1.15(b) (failing to promptly deliver funds); despite two prior suspensions, we did not enhance the discipline because those matters were remote in time and involved unrelated conduct).

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Gonzalez, __ N.J. __ (2022), 2022 N.J. LEXIS 996 (one-year suspension for an attorney who, during a three-month term of suspension, called the Motor Vehicle Commission (the MVC) on behalf of a friend whose driver's license had been suspended, identified himself as an attorney, and requested information on how to adjourn the friend's MVC hearing; thereafter,

the attorney accompanied his friend, in a representative capacity, to the MVC hearing, where the attorney presented an MVC employee with a business card of another lawyer with an active law license; following the attorney's failure to produce his own driver's license or social security number to confirm his identity, the attorney left the MVC; violations of RPC 3.3(a)(1) (making a false statement of material fact to a tribunal), RPC 3.3(a)(5) (failing to disclose material fact to a tribunal, knowing the omission is reasonably certain to mislead the tribunal), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 5.5(a)(1), and RPC 8.4(c); we weighed the fact that the attorney's misconduct was confined to a singular matter against his prior discipline, which included a 1995 reprimand, a 2012 admonition, and a 2017 three-month suspension); In re Choi, 249 N.J. 18 (2021) (two-year suspension for an attorney who, following his indefinite suspension in New York for federal criminal convictions for money laundering and submitting false statements to federal authorities, represented a client, in New York state court, where he falsely certified that he was admitted to practice in that state; the attorney also maintained a law firm website that improperly claimed that he was admitted to practice in New York; finally, the attorney failed to comply with New York's affidavit of compliance rule for suspended or disbarred attorneys); In re

Boyman, 236 N.J. 98 (2018) (three-year suspension for an attorney, in a default matter, who, for more than four years following his temporary suspension, represented borrowers in nineteen, predominately commercial, real estate transactions involving the same title company; when the title company discovered the attorney's suspended status, the attorney misrepresented to the title company that he had been reinstated to practice; additionally, despite the OAE's numerous attempts, spanning almost nine months, seeking the attorney's written reply to the ethics grievance, the attorney failed to respond, notwithstanding his acknowledged receipt of the OAE's letters; in aggravation, we weighed the attorney's 2010 and 2014 censures, in default matters, in which he also failed to cooperate with disciplinary authorities; we also weighed the fact that the attorney's misconduct had continued, unabated, for four years, in numerous high-value matters); In re Kim, __ N.J. __ (2022), 2022 N.J. LEXIS 1068 (attorney disbarred, in a default matter, for practicing while suspended for almost three and a half years following his temporary suspension, in connection with sixteen small business loan closings before the United States Small Business Administration (the SBA); during each loan closing, the attorney falsely certified that he maintained an active New Jersey law license; the attorney also ignored the OAE's communications, spanning several months,

which required him to reply to the SBA's ethics grievance; the attorney had received a prior three-year suspension, in 2020, also for practicing law while suspended in connection with at least two client matters, among other misconduct).

Among recent cases in which attorneys received one-year suspensions for practicing law while suspended, respondent's conduct is most like that of the attorney in In re Nihamin, 235 N.J. 144 (2018). There, the attorney did not actively practice law while suspended but, rather, continued to discuss client matters with personnel at his law firm. In the Matter of Felix Nihamin, DRB 17-295 (February 8, 2018) at 17-18. We acknowledged that previously, in cases in which a one-year suspension had been imposed for practicing while suspended, "the attorneys actively engaged in the practice of law." Id. at 18. However, we likewise pointed out that, in those matters, "[s]ubstantial mitigating factors were present . . . absent which lengthier suspensions might have been imposed." Ibid.

In Nihamin, we found that the limited nature of the attorney's activities did not justify a deviation from the minimum measure of discipline for practicing law while suspended. Id. at 9, 18. We found especially significant the attorney's disciplinary history, including an admonition and previous three-month suspension arising from his conviction of third-degree misapplication of

entrusted property; and his "less than candid" statements, made under oath, describing his activities while suspended in response to questioning by a disciplinary authority in connection with his application for reinstatement. Id. at 2-5, 17. Specifically, he initially had claimed that he was not personally or directly involved in the firm's practice of law in New York and denied having engaged in conversations with the firm's only other attorney about the handling of client matters. Id. at 17. However, when he was later informed that the disciplinary authority "had obtained records of communications, including e-mails and text messages that respondent had exchanged with the firm's staff and others, during his period of suspension, in addition to records of payments for respondent's personal benefit from the firm's operating bank account," he submitted an affidavit of resignation from the New York bar and conceded his "continued practice of law" during his suspension, "communicat[ions] with members of his law firm and others," and the receipt of payments from his firm's operating bank account. Id. at 5-6.

Here, in contrast to Nihamin, there is no evidence that respondent engaged in discussions with his law firm's personnel regarding client matters or otherwise applied his legal knowledge while suspended. He merely refiled a previously filed document with an ABA check for a corrected filing fee.

Accordingly, although a one-year suspension is typically imposed for the practice of law while suspended, we determine that a lesser term of suspension is sufficient under these highly unusual circumstances, where respondent's one-time act constituting the practice of law while suspended was taken solely to correct the amount of the filing fee for a pleading he had filed with the court before his suspension took effect.

The crux of respondent's misconduct in the Velardi and Jedziniak matters was his failure to receive authorization for the disbursement of client funds from the OAE-approved cosignatory on his ATA. In In re Wright, 230 N.J. 345 (2017), we similarly addressed an attorney's failure to comply with an Order imposing a supervision or cosignatory requirement as a condition on the attorney's practice of law. Although the attorney in that case was found to have violated RPC 3.4(c) by failing to cooperate with her OAE-approved supervisor, and was not charged with violating RPC 8.4(c), the case is analogous to the matter at hand.

Specifically, in Wright, the attorney received a six-month suspension for violating RPC 3.4(c) and RPC 8.4(d) by failing to comply with the Court's Order to file monthly case listings reports with her supervising attorney, who in turn was required to file supervisor's reports with the OAE on a quarterly basis. In

the Matter of Katrina F. Wright, DRB 16-237 (February 23, 2017) at 14-16. Corresponding to the cosignatory arrangement in the present matter, in Wright, the arrangement with the supervising attorney reflected the outcome of a motion filed by the OAE with the Court, seeking the attorney's temporary suspension. Id. at 11, 14. The Court denied the OAE's motion and, instead, permitted the attorney to continue to engage in the practice of law subject to certain conditions: specifically, under the supervision of a practicing attorney approved by the OAE. Id. at 11. Notwithstanding the Order and the OAE's efforts to follow up when it did not receive the quarterly supervisory reports, the attorney failed to provide to her supervising attorney the required monthly reports. Id. at 14-16.

The attorney in Wright knowingly left her supervising attorney without the information necessary to complete the supervisor's Court-ordered function. Analogously, here, respondent repeatedly disbursed funds entrusted to him without informing the cosignatory, thus preventing the cosignatory from carrying out his Court-ordered function. However, distinguishing Wright from the present matter, the attorney there failed to cooperate with disciplinary investigators, contrary to RPC 8.1(b); misrepresented to the OAE that she had refunded her legal fee to a former client more than nine months before she in

fact did so, causing harm to the client; had previously received a reprimand and a censure; and allowed the matter to proceed as a default. Id. at 2, 21-22, 26-27. Thus, whereas we determined that her failure to comply with the Court's Order, imposing the supervisory requirement, alone warranted a reprimand, we concluded that in light of her additional RPC violations and the aggravating factors, including the matter's default status, a six-month suspension was appropriate. Id. at 27.

Other matters involving misrepresentations to a court, disciplinary authorities, or both, have resulted in discipline ranging from a reprimand to a long-term term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., Marraccini, 221 N.J. 487 (reprimand for an attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; however, the attorney was unaware that the manager had died; upon learning that information, the attorney withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, upon learning of the inaccuracies in the verifications, she ceased the practice, and her actions were motivated by a misguided attempt at efficiency, rather than by

dishonesty or personal gain); In re Bakhos, 239 N.J. 526 (2019) (censure for an attorney who, in one of three client matters, misrepresented to the court that he had authority from his client to resolve the litigation by dismissing it and submitting the matter to binding arbitration, and by failing to notify the court and his adversaries that he did not have such authority, violations of RPC 3.3(a)(1) and (5); these false statements to the court, along with his misrepresentations to his supervising attorney, also violated RPC 8.4(c); the attorney's misrepresentation to the court resulted in the cancellation of a scheduled jury trial and dismissal of a medical malpractice case in favor of binding arbitration and, thus, constituted a violation of RPC 8.4(d); in another client matter, the attorney falsely represented to the court that he was still working with his client on finalizing his client's discovery responses, even though he had not yet made his client aware of the pending requests, in violation of RPC 3.3(a)(1) and RPC 8.4(c); further, he wasted judicial resources, in violation of RPC 8.4(d), by failing to comply with discovery, even in the face of court orders that he do so, resulting in the striking of his client's answer and the entry of a default against his client, along with the subsequent motions to vacate that default; the attorney also exhibited gross neglect, a pattern of neglect, and lack of diligence, and failed to communicate with the client in three matters; in

mitigation, the attorney cooperated with disciplinary authorities, acknowledged his wrongdoing, and sought to alleviate any damage to his clients; no prior discipline); In re Allen, 250 N.J. 113 (2022) (three-month suspension for an attorney who falsely represented to the OAE and to us that he had procured a settlement with a client, knowing he had not, in violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also committed recordkeeping violations, failed to maintain required professional liability insurance, and did not produce a number of records requested by the OAE during its investigation, violations of RPC 1.15(d), RPC 5.5(a)(1), and RPC 8.1(b); prior admonition and censure); In re DeClement, 241 N.J. 253 (2020) (six-month suspension for attorney who, in an attempt to secure a swift dismissal of a federal lawsuit, made multiple misrepresentations to a federal judge; specifically, the attorney misrepresented, in a certification, that earlier state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney omitted, in his submissions to the federal judge, critical portions of the state court record; the attorney then continued to misrepresent to the federal judge and, later, to the OAE, the status of the state court matter; violations of RPC 3.1 (engaging in frivolous litigation), RPC 3.3(a)(1), RPC 8.1(a) (making a false statement of material fact in a disciplinary matter), and RPC 8.4(c),

among other RPCs; in aggravation, the attorney did not cease his acts of deception until he was "completely cornered" by the OAE; prior reprimand); In re Mavroudis, 254 N.J. 124 (2023) (one-year suspension for an attorney who, following entry of a judgment against him in a civil matter, was prohibited by court order from removing, transferring, or otherwise disposing of personal property in his home; nevertheless, the attorney made arrangements for the removal and sale of a valuable painting; he also misrepresented to the court that he had not had an opportunity to review the court's orders and a Sheriff's inventory of his property, misrepresented during a deposition the value of artwork in his home, and misrepresented during the ethics investigation that the painting was removed only to be photographed; violations of RPC 3.3(a)(1), RPC 3.4(c), RPC 8.1(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in aggravation, the attorney demonstrated an utter lack of remorse for his misconduct; in significant mitigation, he had no prior discipline in forty-eight years at the bar, he had been "invaluable" in helping his church implement procedures to protect against sexual abuse of children, and his misconduct had occurred almost ten years earlier); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the

"signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); In re Clausen, 231 N.J. 193 (2017) (three-year suspension, in a default matter, for an attorney who, in connection with a voluntary bankruptcy petition, made multiple misrepresentations, under penalty of perjury, regarding his debt and his creditors, in an attempt to manipulate the bankruptcy code for his personal benefit, violations of RPC 3.3(a)(1) and (a)(5), RPC 8.4(c), and RPC 8.4(d); in connection with an earlier disciplinary matter involving his mishandling of a client's case, he made misrepresentations to us regarding the status of payments made to the client, in an attempt to mitigate the discipline imposed on him, violations of RPC 3.3(a)(1) and (5) and RPC 8.4(c); he also made multiple misrepresentations during an OAE demand audit and committed violations of RPC 1.15(a) and (d); prior censure and two prior reprimands).

Recently, the Court imposed a three-month suspension on an attorney who made misrepresentations by omission during proceedings before the DEC and us. In re Gonzalez, 256 N.J. 509 (2024). Specifically, the attorney failed to

disclose that he had recently reemployed and continued to employ his wife, whose prior misconduct during an earlier period of employment in his office was closely intertwined with the RPC violations at issue. In the Matter of Nelson Gonzalez, DRB 23-139 (December 13, 2023) at 4, 25-26. Instead, having informed disciplinary authorities that he had terminated her employment after those violations came to light, he allowed the DEC and us to proceed with the misapprehension that he had once and for all addressed his wife's pervasive undermining of his practice. Id. at 24-27.

Based on the above precedent, respondent's misconduct in the Velardi and Jedziniak matters alone merits a suspension. His blatant misrepresentations by omission, in contravention of the Court's 2013 Order, bear similarities to the brazen misrepresentations made by the suspended attorneys in Allen, Gonzalez, and DeClement. His actions in contravention of a condition imposed by the Court, which specifically was crafted to enable him to resume his practice of law (rather than face continued temporary suspension), makes his conduct particularly egregious. Moreover, he and the OAE had agreed upon the conditions incorporated by the Court in the March 2013 Order; thus, in our view, his violation of the cosignatory condition reflects a deeply troubling breach of his prior assurance to the Court.

For the totality of respondent's misconduct, we conclude that the baseline level of discipline is a six-month suspension. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors.

In mitigation, respondent reported his misconduct in the Mira Holdings matter; cooperated with disciplinary authorities; admitted most of his violations of the Rules of Professional Conduct from the start of the disciplinary process; and, before us, admitted all his violations. He expressed contrition and remorse and also apologized to the Court, the public, and the bar for his unethical conduct. Finally, his misconduct neither caused harm to his clients nor resulted in personal gain to himself.

In aggravation, respondent could have remediated the improper deposit of his clients' funds in his ABA, which he discovered by mid-February 2016 at the latest, simply by transferring the funds to his ATA. However, far from undertaking remedial measures, he decided to embark on a course of misconduct by repeatedly disbursing his clients' funds without the cosignatory's authorization.

In the Velardi matter, the client's ill health and respondent's corresponding wish to deliver her funds promptly might mitigate his admittedly unethical conduct in making the two unauthorized disbursements. Notably, those

disbursements were made on the same date, and they mark the earliest point in time when respondent clearly knew that client funds improperly had been deposited to his ABA rather than his ATA. However, the client's similar circumstances cannot reasonably account for respondent's repetition of the identical misconduct in the Jedziniak matter, where he made seven disbursements of the client's funds, without the cosignatory's authorization or knowledge, during a span of four months.

Respondent's disciplinary history also weighs in aggravation. Between December 31, 2015 and mid-June 2016, when respondent committed the earliest misconduct at issue here (in the Velardi and Jedziniak matters), he had no final discipline, because the Order in Collins I was not entered until September 20, 2016. However, we had issued our decision underlying Collins I on December 15, 2015, prior to this misconduct. Thus, respondent should have had a heightened awareness of the importance of complying with the Rules of Professional Conduct.

Conclusion

On balance, finding the aggravating and mitigating factors in equipoise, we determine that a six-month suspension is the appropriate quantum of discipline to protect the public and to promote confidence in the bar.

Chair Gallipoli and Members Hoberman and Rivera voted to impose an eighteen-month suspension.

Member Campelo voted to impose a one-year suspension.

Member Menaker was recused.

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 John J. Collins
Docket No. DRB 23-280

Argued: February 15, 2024

Decided: June 17, 2024

Disposition: Six-month suspension

Members	Six-month suspension	One-year suspension	Eighteen-month suspension	Recused
Gallipoli			X	
Boyer	X			
Campelo		X		
Hoberman			X	
Joseph	X			
Menaker				X
Petrou	X			
Rivera			X	
Rodriguez	X			
Total:	4	1	3	1

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