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August 7, 2024

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Joseph Ricigliano, Jr.
Docket No. DRB 24-081
District Docket Nos. VIII-2023-0903 and
XIV-2023-0295E
CORRECTED LETTER DECISION

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined that a censure, with conditions, is the appropriate quantum of discipline for respondent's violations of RPC 1.15(b) (failing to promptly deliver funds to the client or a third party); RPC 1.15(d) (failing to comply with the recordkeeping provisions of R. 1:21-6); RPC 5.5(a)(1) (failing to file a certificate of insurance with the Clerk of the Supreme Court as required by R. 1:21-1A(b)); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

The stipulated facts are as follows. In February 2017, respondent attended the OAE's Trust and Business accounting class. In 2019, he received a

reprimand in a default matter, for violating RPC 1.3 (lacking diligence), RPC 1.4(b) (failing to communicate with a client), and RPC 8.1(b).

Subsequently, in November 2021, the OAE conducted a random audit of respondent's financial books and records. In December 2021, the OAE sent respondent a letter, identifying the following recordkeeping deficiencies: (1) failure to maintain a running cash balance in his attorney trust account (ATA); (2) incomplete descriptions in his client trust ledgers; (3) failure to maintain separate client ledger sheets; (4) failure to deposit legal fees in his attorney business account (ABA); (5) failure to maintain ABA receipts and disbursements journals and complete monthly reconciliations; (6) inadequate descriptions in his ATA receipts journal; (7) failure to maintain ABA and ATA records for seven years; and (8) inactive trust ledger balances in seven client matters, totaling \$13,373.34. The OAE further advised respondent that his failure to file a certificate of insurance with the Clerk of the Supreme Court violated R. 1:21-1A(b) and directed him to confirm in writing, within forty-five days, that he had corrected all the enumerated deficiencies. The OAE also directed respondent to produce specific financial records. Respondent neither replied to the OAE's deficiency letter nor provided proof that he had corrected any of the deficiencies. Moreover, although he furnished the OAE with proof of insurance, he failed to file it with the Clerk of the Supreme Court.

In July 2022, the OAE again directed respondent to provide the enumerated records. Because he failed to reply, the OAE sent another letter, on July 27, 2022, warning him that his failure to produce the requested records could "form the basis for a violation of RPC 8.1" and result in his temporary suspension. Although the OAE extended respondent's deadline for document submission three more times, he turned his records in twelve days late, on September 6, 2022. Further, the two-hundred pages of handwritten notes and bank statements he submitted lacked specificity as to the OAE's requests. However, based on these records, the OAE determined that there were eleven inactive balances in his ATA, ranging from \$25 to \$9,923.63, totaling \$26,598.57.

Respondent and his bookkeeper attended a second demand audit on September 8, 2022. Although he had provided the OAE with a copy of his certificate of insurance, the auditor again instructed him to file it with the Clerk of the Supreme Court. Respondent acknowledged that, during the 2021 audit,

the auditor had suggested ways to improve his recordkeeping practices, but he had yet to incorporate QuickBooks, as planned. Moreover, respondent's bookkeeper had withheld his records until September 6, 2022 (due to nonpayment), and she had been ill most of 2011, so admittedly, there was a delay in compliance. However, respondent acknowledged that it was his sole responsibility to comply with the recordkeeping requirements of R. 1:21-6.

Respondent provided explanation for some of the inactive balances, including his failure to transfer legal fees to his ABA and circumstances in which he did not know to whom he should disburse funds. Then, after the auditor reviewed the remaining deficiencies in detail, respondent and his bookkeeper agreed to provide full, candid, and written response to address each one "immediately." When confronted about his ongoing failure to cooperate, respondent insisted that, although he did not reply in writing to the OAE's requests, he did respond to telephone calls from the OAE.

Following the second demand audit, on September 14, 2022, the OAE sent respondent another letter, directing him to provide, within thirty days of that the date of the letter: (1) an itemized, written reply to the twelve deficiencies identified in the December 3, 2021 letter, along with supporting documents, and (2) his three-way reconciliations for the month of August 2022.

On October 13, 2022, respondent replied to the OAE with a two-page letter purportedly addressing all the deficiencies. Respondent made vague claims that he had rectified all the issues but failed to provide any supporting documents. He stated that he would be "glad to provide" his October 2022 reconciliations, rather than including them, as instructed. He also claimed he was still "researching new software" that would demonstrate his compliance. Respondent reiterated that he provided his certificate of insurance to the auditor, despite repeated instructions that he file it with the Clerk of the Supreme Court. Finally, he claimed that the inactive trust ledger balances had been "fully researched," "allocations [had] been determined for all inactive balances," and that checks would be "issued in the month of October 2022."

The OAE accepted respondent's representation that he cured one \$50 inactive balance, but he still had not addressed the remaining inactive balances, totaling \$26,548.57. On March 30, 2023, the OAE filed the formal ethics complaint in this matter. Respondent failed to timely reply, so it was certified

as a default on May 15, 2023. However, on July 21, 2023, the Board granted respondent's motion to vacate the default.

Although the matter was remanded in July 2023, and almost two years have passed since his September 2022 audit, respondent has failed to provide any proof that the inactive balances "have been disbursed or submitted to the Superior Court Trust Fund." He also has failed to provide the required ABA records, including his business receipts and disbursements journals, or to file his certificate of insurance with the Clerk of the Supreme Court.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.15(b), RPC 1.15(d); RPC 5.5(a)(1); and RPC 8.1(b).

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support the finding that the respondent committed all the charged misconduct.

The record clearly and convincingly supports the charged violations of RPC 1.15(b) and RPC 1.15(d). First, RPC 1.15(b) requires attorneys "to promptly deliver to the client or third person any funds . . . that the client or third person is entitled to receive." The record supports the conclusion that respondent failed to comply with that Rule. Respondent represented that he had "fully researched" and determined the nature of all the inactive balances in his ATA, and that he would issue checks in the month of October 2022. Although those inactive balances totaled \$26,598.57, there is no evidence of either claim in the record. Respondent's admission that he had been holding funds belonging to clients or third parties and needed to disburse those funds supports the charged violation of RPC 1.15(b). Next, RPC 1.15(d) requires attorneys to "comply with the provisions of R. 1:21-6." Nearly two years after respondent's second audit, he has failed to offer any supporting documents to show that he has remediated the numerous recordkeeping deficiencies identified by the OAE.

Respondent remains in violation of RPC 5.5(a) because he still has not filed his certificate of insurance with the Clerk of the Supreme Court.

The record also clearly and convincingly demonstrates that respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand

for information from . . . [a] disciplinary authority.” Further, an attorney who fails to comply with the requirements of R. 1:21-6 in respect of maintenance, availability, and preservation, or fails to produce to respond completely to questions regarding such records “shall be deemed to be in violation RPC 1.15(d) and RPC 8.1(b).” R. 1:21-6(i). Here, respondent admittedly failed, over a prolonged period and despite the OAE’s extensive efforts, to bring his financial records into compliance with R. 1:21-6. Indeed, at two demand audits and via numerous letters, the OAE provided respondent with specific guidance as to what was lacking from the records he had produced to date and, further, what specific steps were required to bring his records into compliance. Notwithstanding the OAE’s repeated good faith efforts to accommodate respondent, his productions consistently remained deficient.

Attorneys who fail to promptly deliver funds to clients or third persons, even when accompanied by other ethics violations, ordinarily receive an admonition or a reprimand, depending on the circumstances. See In the Matter of George W. Pressler, DRB 19-423 (March 20, 2020) (admonition; in an estate matter, the attorney deducted his entire legal fee and administrator’s fee from a non-client beneficiary’s share of the estate without his authorization and failed to disburse any funds for more than twenty months, in violation of RPC 1.15(b); no prior final discipline), and In re Dorian, 176 N.J. 124 (2003) (reprimand; attorney failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney was previously admonished and reprimanded).

Generally, as the OAE observed, recordkeeping irregularities will be met with an admonition, so long as they have not caused a negligent misappropriation of clients’ funds. See 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 that the attorney (1) did not properly designate the trust account, (2) did not maintain trust account ledger cards for bank charges, (3) allowed an inactive balance to remain in the trust account, and (4) did not maintain business receipts or disbursements journals; the attorney’s recordkeeping deficiencies resulted in more than twenty checks, issued to the Superior Court, being rejected for insufficient funds; the Board found that the attorney’s recordkeeping failures were neglectful, but not purposeful; in imposing an admonition, the Board 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 did not injure any client through his misconduct). However, the quantum of discipline can be enhanced to a reprimand when, as here, an attorney fails to resolve the recordkeeping deficiencies or fails to cooperate with the OAE's audit. See In re Leven, 245 N.J. 491 (2021) (following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative \$50,200.35 balance, the attorney failed to resolve those deficiencies, and repeatedly provided incomplete records to the OAE, but had no prior discipline in nearly forty-seven years at the bar).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney's ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See In re Spielberg, DRB 21-089 (October 4, 2021) (reprimand imposed, in default matter, upon the attorney who failed to cooperate with the OAE's investigation into his recordkeeping deficiencies and failed to correct deficiencies despite claiming he had; the attorney also violated RPC 1.4(b); RPC 1.15(b); RPC 1.15(d); the Board found that the baseline level of discipline was a reprimand and determined that a reprimand was appropriate despite the default because of the attorney's unblemished history of almost forty-five years at the bar), so ordered, ___ N.J. ___ (2022), and Leven, 245 N.J. 491 (2021) (despite two Court Orders directing him to cooperate, the attorney only provided some of the required financial records; the Board found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate with the OAE, but imposed a reprimand in light of the lack of injury to the clients, the attorney's remorse and contrition, and an otherwise unblemished forty-six-year career at the bar). A censure may result if an attorney fails to file an answer and allows their matter to proceed as a default. See In re Tobin, 249 N.J. 96 (2021) (censure for an attorney who, in a default matter, failed to comply with recordkeeping provisions of R. 1:21-6, failed to cooperate with disciplinary authorities, and previously had been reprimanded for recordkeeping violations).

Here, respondent's failure to promptly deliver funds exceeds the misconduct of the admonished attorney in Pressler, who only failed to disburse

funds to one client. His misconduct is more analogous to the attorney in Dorian, who had prior, albeit dissimilar, discipline. Respondent's recordkeeping irregularities were similar to the admonished attorney in Robinson because he allowed inactive balances to remain in his trust account, he did not maintain business receipts or disbursements journals, and he failed to take the appropriate remedial action. However, unlike Robinson, respondent had a recent disciplinary history, and he failed to correct his recordkeeping deficiencies.

Like the reprimanded attorneys in Spielberg and Leven, respondent committed recordkeeping deficiencies, failed to cooperate with the OAE's investigation, and committed additional, non-serious misconduct. However, unlike Spielberg and Leven, who would have been censured but for their long-standing "unblemished" careers at the bar, respondent has been reprimanded in the past. Unlike the censured attorney in Tobin, respondent had not been disciplined in the past for recordkeeping violations, and respondent did not allow this matter to proceed as a default. However, as the OAE observed, respondent took a course in recordkeeping, so he was acutely aware of his obligations under R. 1:21-6.

Thus, based on the foregoing disciplinary precedent, the Board concluded that the baseline level of discipline for respondent's misconduct is a reprimand. In crafting the appropriate discipline, the Board also considered mitigating and aggravating circumstances.

In mitigation, as the parties stipulated, respondent "admitted to wrongdoing" and he "entered into this discipline by consent."

In aggravation, respondent was disciplined in 2020 for dissimilar misconduct. Notably, his discipline in that matter was imposed prior to the commencement of the OAE's random audit in this matter, and that case also proceeded following respondent's default. However, as the OAE observed, respondent "failed to learn from recent past experiences that he, like all New Jersey attorneys is obligated to cooperate with disciplinary authorities and file a conforming answer once charged." Moreover, the Court has signaled an inclination toward progressive discipline and the stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Given respondent's prior contacts with the OAE, he had a heightened awareness of his duty to timely reply to its inquiries, and he had an acute awareness of his recordkeeping obligations, given his 2017 attendance of the OAE's Trust and Business accounting class. The Board was most troubled by respondent's prolonged failure to comply with the OAE's requests for information and his failure to correct his recordkeeping deficiencies.

On balance, the Board determined that the aggravating factors were sufficiently compelling to warrant an increase from the reprimand baseline here. Thus, the Board determined that a censure is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

In addition, considering respondent's demonstrated failure to comply with the recordkeeping Rules, the Board determined that respondent shall (1) immediately submit to the OAE proof that he filed his certificate of insurance with the Clerk of the Supreme Court; (2) complete a recordkeeping course pre-approved by the OAE within sixty days of the Court's disciplinary Order in this matter; (3) submit to the OAE all of the outstanding, previously requested financial records within sixty days of the Court's disciplinary Order in this matter; and (4) provide to the OAE monthly reconciliations of his attorney accounts, on a quarterly basis, for two years.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 11, 2024.
2. Stipulation of discipline by consent, dated April 10, 2024.
3. Affidavit of consent, dated March 25, 2024.
4. Ethics history, dated June 28, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

Re: I/M/O Joseph Ricigliano, DRB 24-081

August 7, 2024

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TME/akg

Enclosures

- c: Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
Disciplinary Review Board (e-mail)
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Rachael Weeks, Deputy Ethics Counsel
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Joseph Ricigliano, Jr., Esq., Respondent (e-mail and regular mail)