

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-084
District Docket No. XIV-2022-0132E

In the Matter of Richard E. Gehret
An Attorney at Law

Argued
June 20, 2024

Decided
October 2, 2024

Diane M. Yandach appeared on behalf of the
Office of Attorney Ethics.

Mark J. Molz appeared on behalf of respondent.

Table of Contents

Introduction..... 1

Ethics History..... 1

Facts..... 2

 Initial Recordkeeping Violations..... 2

 Subsequent Recordkeeping Violations 3

 Negligent Misappropriation 12

 Failure to Promptly Deliver Trust Funds 13

 Commingling Funds 14

The Parties’ Positions Before the Board..... 14

Analysis and Discipline 17

 Violations of the Rules of Professional Conduct 17

 Quantum of Discipline..... 20

Conclusion 26

Introduction

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.15(a) (two instances – negligently misappropriating client funds and commingling funds); RPC 1.15(b) (failing to promptly disburse funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

For the reasons set forth below, we determine that a reprimand, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Ethics History

Respondent earned admission to the New Jersey bar in 1973. He has no prior discipline. During the relevant period, he maintained a practice of law in Mount Holly, New Jersey.

Effective November 16, 2020, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to comply with continuing legal education (CLE) requirements.

Effective July 19, 2021, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to pay the required annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF), as R. 1:28-2 requires.

To date, respondent has not cured his CLE or CPF deficiencies and, thus, remains ineligible to practice law on both bases.

Facts

Initial Recordkeeping Violations

In April 2016, respondent participated in an OAE random compliance audit. Respondent submitted his financial records to the OAE for inspection and, by letter dated August 15, 2016, the OAE informed him that he held \$19,164.47 in unidentified client funds in his attorney trust account (ATA) and, further, that he failed to maintain records sufficient to reconcile his ATA. Thereafter, on July 31, 2017, respondent sent the OAE a copy of an affidavit, in which he stated that he was tendering \$19,164.47, via an ATA check, to the New Jersey Superior Court Trust Fund. He also attached a copy of his ATA check, payable to the Superior Court of New Jersey, in the amount of \$19,164.47 and dated July 27,

2017.¹ Consequently, on July 31, 2017, the OAE closed the matter.

Subsequent Recordkeeping Violations

On November 5, 2021, the OAE sent a letter to respondent's office address of record, informing him that he had been selected for another random compliance audit and, further, that it would be conducted at his law office on December 1, 2021. Respondent, however, failed to appear for the audit and the OAE was unable to contact him. The next day, the OAE sent a letter to respondent's home address of record, requesting that he contact the OAE regarding the audit. The United States Postal Service (USPS) returned that letter to the OAE as undeliverable.

On May 10, 2022, the OAE sent another letter to respondent's home and office addresses of record, with another copy sent by electronic mail to respondent's e-mail address of record, notifying him that it had opened an investigation, and directing him to produce, no later than May 31, 2022, his financial books and records for the period spanning January 2016 through April 2022. The letter, however, was addressed to an incorrect office address.²

¹ The Superior Court Trust Fund Unit rejected respondent's check because it was not a pre-numbered ATA check.

² Although the OAE addressed its first scheduling letter to respondent's correct office address of record at 774 Eayrestown Road, Mount Holly, it addressed the May 10, 2022 letter to an incorrect

Respondent did not reply to the OAE's May 10, 2022 communications and failed to provide the requested records by the May 31 deadline.

On June 21, 2022, respondent called the OAE investigator and left a voicemail indicating that he was available for a demand audit on July 19, 2022. Thereafter, on July 6, 2022, the OAE sent a letter to respondent's office address of record,³ via regular mail, with another copy sent by electronic mail, directing him to produce, no later than July 29, 2022, his financial books and records for the period spanning January 2016 through June 2022. The OAE did not reschedule the audit. Respondent, however, failed to provide the OAE the requested information.

On July 15, 2022, respondent spoke with the OAE investigator and informed him that he had not received the OAE's July 6, 2022 letter and, further, was having his computer fixed so that he could access his e-mail. The investigator informed respondent that the books and records referenced in the OAE's July 6, 2022 letter were due no later than July 29, 2022. Respondent agreed to participate in a virtual demand interview on August 18, 2022.

On August 2, 2022, respondent spoke with the OAE investigator and

7774 Eayrestown Road, Mount Holly, New Jersey address. However, as noted above, respondent was not eligible to practice law at the time and there are no allegations in the stipulation that respondent engaged in the unauthorized practice of law.

³ The OAE again used the incorrect 7774 Eayrestown Road address.

informed him that he had not yet begun to compile the reconciliations or other requested documents that had been due to the OAE four days earlier. Consequently, he requested an extension of time to submit the records. The investigator directed respondent to submit his extension request in writing and to produce the outstanding documents to the OAE no later than August 10, 2022. Additionally, respondent informed the OAE investigator that he still needed to speak with someone about downloading the Microsoft Teams application to his computer in order to participate in the audit.

On August 5, 2022, the OAE sent a letter, again addressed to respondent's incorrect office address, directing him to produce books and records for the period spanning January 2016 through July 2022. Respondent failed to provide the requested information.

Three days later, on August 8, 2022, the OAE investigator spoke with respondent. Respondent stated that, although he had not yet submitted to the OAE a written request to extend the time in which he was required to submit his records, he planned to do so that same date. Respondent also informed the OAE that he still was trying to obtain access to a computer so that he could participate in the August 18, 2022 virtual demand audit. Respondent told the OAE investigator that, by August 11, 2022, he would provide an update on whether he was successful.

On August 15, 2022, the OAE received a handwritten letter from respondent, dated August 9, 2022, requesting an extension of time to submit the requested documents and information. In his letter, respondent claimed that the computer he had utilized for years was “not currently available, due to access difficulties.” Respondent also confirmed his understanding that the rescheduled virtual audit was “further extended, again at my request, to allow sufficient time to accommodate the forwarding of the required paperwork in advance of the meeting.” Respondent thanked the OAE for its courtesies and indicated he understood the importance of the matter.

During an August 16, 2022 conversation, respondent informed the OAE investigator that he still lacked access to a working computer and, therefore, would be unable to attend the virtual demand audit. The OAE agreed to conduct an in-person demand audit and scheduled it for August 25, 2022.

On August 25, 2022, respondent appeared at the OAE’s office for the demand audit of his financial books and records. During the audit, the OAE discovered that respondent maintained his ATA and attorney business account (ABA) at TD Bank. The OAE, thus, issued a subpoena to TD Bank, seeking records from January 1, 2016 through January 31, 2017, as well as from January 1, 2022 through May 4, 2022.

Following the audit, the OAE learned that respondent had arranged for the

Social Security Administration to deposit his monthly checks in his ABA. Respondent's Social Security income was not connected to his practice of law.

On August 31, 2022, the OAE sent a letter to respondent's incorrect office address, via regular mail, requesting that he provide (1) monthly three-way reconciliations; (2) monthly disbursements and receipts journals; (3) client ledger sheets; (4) proof that he had updated his ABA account name to reflect that it was an attorney business account; (5) proof that he resolved the funds remaining in his ATA for two clients; (6) cancelled checks, bank statements, and any correspondence sent to the Superior Court Trust Fund to resolve unidentified funds held in his ATA; and (7) three specific client files. The OAE directed respondent to submit the documents no later than September 16, 2022, and warned that his failure to do so may result in the OAE filing a complaint against him for his failure to cooperate with the OAE's investigation. On September 21, 2022, the OAE's August 31 letter was returned as undeliverable.

On September 23, 2022, the OAE again sent a letter to respondent's incorrect office address, via regular mail, repeating the requests made in the August 31 letter. The OAE also hand-delivered a copy of the letter to respondent's office at his church, where he served as a pastor, in Gloucester City, New Jersey, instructing him to submit the requested documents no later than October 7, 2022. The letter requested that respondent confirm receipt of the

letter via telephone. Respondent failed to submit any books or records to the OAE.

On October 7, 2022, respondent contacted the OAE investigator, via telephone, and represented that he had not been to his church office for two weeks. The investigator informed respondent which documents he was required to submit to the OAE, no later than October 21, 2022. That same date, the OAE directed respondent, via a letter sent to respondent's correct office address of record, to provide the documents requested in its September 23, 2022 letter, but expanded the audit period to September 2022. Respondent failed to submit any documents to the OAE.

On October 26, 2022, respondent called the OAE investigator, claiming that he had begun to reconcile his ATA but was delayed because he had been taking courses at Rowan University to obtain a certification as a drug and alcohol counselor. Respondent also explained that he was very busy with functions as pastor at his church. Consequently, respondent requested another extension of time to prepare the requested records, which the OAE granted to November 16, 2022. Respondent told the OAE investigator he would call the following week to provide an update regarding the records. The OAE memorialized the extension via an October 28, 2022 letter sent to respondent's correct office address. Respondent failed to submit any books or records.

On December 9, 2022, the OAE investigator spoke with respondent, who again stated he had not yet begun to reconcile his ATA because he still was taking a course at Rowan. The examination for the course was scheduled for December 13, 2022 and, after the examination, respondent claimed that he would have time to work on the documents the OAE had requested. Respondent further stated that he had been very busy with church functions due to the Thanksgiving holiday, as well as the upcoming Christmas holiday. Additionally, for several days, he had stayed with a friend who had a death in the family. Respondent told the OAE that he had looked into adding the words “Attorney Trust Account” to his ATA checks but claimed that it would cost him \$80 to make the modification, which he felt was prohibitive.

One week later, on December 16, 2022, respondent informed the OAE that he had ordered and received new ATA checks and would provide a copy to the OAE. That same date, the OAE investigator spoke with respondent about the proper designation for his ABA checks and statements. As of April 17, 2024, respondent failed to provide the OAE with copies of his ATA or ABA checks.

Following the audit, the OAE determined that respondent had failed to (1) conduct proper three-way reconciliations of his ATA, as R. 1:21-6(c)(1)(H) requires; (2) maintain client ledger cards, as R. 1:21-6(c)(1)(B) requires; (3) maintain ledger cards identifying funds for bank charges, as R. 1:21-6(d)

requires; (4) deposit with the Superior Court Trust Fund the unidentified client funds, totaling \$19,164.47, held in his ATA, as R. 1:21-6(j) requires; (5) properly designate his ABA, as R. 1:21-6(a)(2) requires; (6) maintain an accurate ATA receipts and disbursements journal, as R. 1:21-6(c)(1)(A) requires; (7) maintain an accurate ABA receipts and disbursements journal, as R. 1:21-6(c)(1)(A) requires; (8) disburse inactive trust ledger balances, as R. 1:21-6(d) requires; or (9) pre-number his ATA checks, as R. 1:21-6(c)(1)(G) requires.

Additionally, the OAE concluded that respondent violated R. 1:21-6(a)(2) and A.C.P.E. Opinion 124, 91 N.J.L.J. 108 (1968), by depositing his Social Security income in his ABA.⁴ Finally, after reviewing respondent's records, the

⁴ The Advisory Committee on Professional Ethics (the Committee) considered two inquiries concerning commingling personal funds with business funds. A.C.P.E. Opinion 124, 91 N.J.L.J. 108 (1968). First, the Committee considered whether an attorney must maintain a personal account and a business account if an attorney's income was "almost exclusively" derived from employment as "house counsel" or an officer of a corporation. Id. Second, the Committee considered whether an attorney must maintain a personal account and a business account if an attorney received legal fees, as well as funds for services "rendered in a nonlegal capacity." Id. Although the Committee concluded that compelling an attorney to maintain two accounts when the attorney was compensated for their employment would be an "unnecessary burden" because the attorney would merely transfer salary earnings from one account to another, the Committee did not apply the same analysis to income earned in a non-legal capacity. Id. In that situation, the Committee reasoned that the Court Rules concerning recordkeeping exist to assist an ethics committee to determine whether an attorney kept proper records. Id. Therefore, the Committee determined that under the Court Rules, "only monies received in connection with the practice of law should be deposited in the business account [. . .]. Income received from teaching, as an insurance broker, as a real estate agent or for rendering accounting services, is not received from the practice of law and therefore should not be deposited into such business account." Id.

OAE determined that he failed to maintain signed, written contingent fee agreements and signed, written closing statements, in violation of R. 1:21-7(g).⁵

Based on the foregoing facts, respondent stipulated that he violated RPC 1.15(d) by (1) failing to maintain client ledger cards; (2) failing to maintain ledger cards identifying bank charges; (3) holding unidentified funds, totaling \$19,164.47, in his ATA; (4) commingling personal and client funds; (5) improperly designating his ABA; (5) failing to maintain a trust receipts and disbursements journals; (6) failing to maintain business receipts and disbursements journals; (7) depositing personal funds in his ABA; (8) failing to maintain monthly three-way reconciliations of his ATA; (9) failing to pre-number his ATA checks; (10) maintaining inactive balances in his ATA; and (11) failing to prepare written contingent fee agreements and signed written closing statements.

Respondent also stipulated that he violated RPC 8.1(b) by failing to cooperate completely with the OAE's demands for information and records.

⁵ Aside from its mention as a recordkeeping violation, there is no information in the record related to respondent's handling of contingent fee agreements or closing statements.

Negligent Misappropriation

Respondent further stipulated that he negligently misappropriated client funds by mistakenly issuing ATA checks, rather than ABA checks, to pay personal expenses. Specifically, on February 7, 2017, respondent issued an ATA check, in the amount of \$955, to pay his office rent. The same date, he issued a second ATA check, in the amount of \$268, to his dentist. At the time respondent issued the two ATA checks, he held the following in his ATA (1) \$1,150 for his client, John Parker; (2) \$100 in firm funds; and (3) \$19,164.47 in unidentified funds. On February 7, 2017, respondent's ABA balance was \$191.75. The next day, respondent made two deposits in his ABA, bringing the balance to \$3,761.15.

On March 3, 2017, after realizing he mistakenly had issued the two checks from his ATA rather than his ABA, respondent withdrew \$1,223 from his ABA and deposited the funds in his ATA to replenish those funds.

Respondent stipulated that, by mistakenly issuing two ATA checks to pay personal expenses, he invaded client funds. The OAE evaluated whether respondent knowingly misappropriated client funds and concluded it was not able to prove, by clear and convincing evidence, that he had done so. Specifically, the OAE found respondent's explanation that he accidentally issued ATA instead of ABA checks to be credible because he corrected his error

less than a month later and without the OAE prompting him to do so. The OAE also explained that the invasions intruded upon the \$19,164.47 unidentified client funds respondent held in his ATA. Thus, the OAE concluded that the “condition of respondent’s recordkeeping and the lengthy period over which he held [the unidentified] funds prevented the OAE from proving” that the funds respondent invaded were trust or escrow funds, “as opposed to earned fees.”

Based on the foregoing facts, respondent stipulated that he violated RPC 1.15(a) by using his ATA to pay personal expenses, which constituted the negligent misappropriation of client funds.

Failure to Promptly Deliver Trust Funds

On August 28, 2019, respondent deposited a \$15,000 settlement check from GEICO in his ATA. GEICO had issued the check to both respondent and his client, Mosammat Sumsunnaher. On June 24, 2020, respondent issued an ATA check, payable to Sumsunnaher, in the amount of \$7,600. Additionally, respondent issued an ATA check, payable to himself, in the amount \$2,566.17, for “partial fee dist.” On October 8, 2020, respondent negotiated the undated check. The remaining \$4,833.83 of the settlement proceeds remained in respondent’s ATA through the date of the OAE’s random compliance audit.

Based on the foregoing facts, respondent stipulated that he violated RPC

1.15(b) by failing to promptly deliver funds that a client was entitled to receive.

Commingling Funds

On August 28, 2019, respondent deposited a \$12,500 settlement check in his ATA on behalf of his client, Shirley Carroll. On February 16, 2020, respondent issued a \$9,830 ATA check to Carroll, with the notation “personal injury case payment in full.” Respondent failed to disburse the remaining \$2,670 to himself for legal fees; rather, the outstanding balance remained in his ATA through the date of the random compliance audit. Respondent could not explain his failure to disburse those legal fees to himself.

Based on the foregoing facts, respondent stipulated that he commingled personal funds with client funds, in violation of RPC 1.15(a), by failing to promptly transfer earned legal fees from his ATA to his ABA in the Carroll matter.

The Parties’ Positions Before the Board

The OAE recommended the imposition of a reprimand for the totality of respondent’s misconduct. The OAE analogized respondent’s misconduct to that of the attorney in In re Crook, 255 N.J. 357 (2023), who was reprimanded, in a default matter, for recordkeeping violations and failing to cooperate with the

OAE), and In re Osterbye, 243 N.J. 340 (2020), who was reprimanded for poor recordkeeping practices that resulted in the negligent invasion of entrusted funds, failing to cooperate with the OAE, and failing to conform his recordkeeping practices, despite multiple opportunities to do so.

The OAE argued that, since his random audit in 2016, respondent was on notice of his recordkeeping violations. Additionally, he failed to turn over \$19,164.47 in unidentified funds for eight years, despite having represented he was doing so. The OAE also argued that respondent failed to maintain or produce records that R. 1:21-6 requires. His failure to maintain proper records, according to the OAE, resulted in his negligent misappropriation of client funds and commingling of personal funds with client funds.

In mitigation, the OAE noted that respondent has been an attorney since 1973 and has no disciplinary history. Furthermore, in view of respondent's representation that he no longer wishes to practice law, the OAE asserted that the likelihood of repeat violations is minimal.

The OAE also requested that respondent's discipline include a condition that he be required to deposit \$23,998.29 (\$19,164.47 in unidentified funds and \$4,833.82 in inactive client funds) with the Superior Court Trust Fund, consistent with R. 1:21-6(j), as well as deposit \$2,670 in legal fees for the Carroll matter in his ABA, within 30 days of the Court's issuance of any final

Order of discipline.

During oral argument before us, the OAE reiterated the position it took in the stipulation and recommended the imposition of a reprimand, with conditions.

Respondent did not submit a brief for our consideration. However, respondent appeared, through counsel, for oral argument before us. Counsel stressed that respondent was extremely remorseful for his misconduct. He stated that respondent is kind and helpful to his clients but, when it came to running a law practice, he neglected his obligations. With respect to his failure to cooperate with the OAE's investigation, counsel explained that respondent's wife passed away and he was not going to the office and "could not get it together."

Respondent agreed with the OAE's recommendation for a reprimand and added that, as of the date of oral argument, he had a cashier's check prepared to deposit with the Superior Court Trust Fund.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we conclude that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.15(a) (two instances); RPC 1.15(b); RPC 1.15(d); and RPC 8.1(b).

Specifically, respondent admittedly violated RPC 1.15(a) by commingling his earned legal fees with client funds in his ATA. Attorneys who fail to promptly remove their earned legal fees from their trust accounts commit commingling. See In the Matter of Giovanni De Pierro, DRB 23-024 (July 6, 2023) at 48. Here, respondent admittedly failed to withdraw from his ATA his earned legal fees in the Carroll matter, despite having deposited the settlement check in his ATA on August 28, 2019, more than five years ago.

Furthermore, respondent admittedly violated RPC 1.15(a) by mistakenly issuing two checks – one for rent and one for dental work – from his ATA rather than his ABA, thereby invading other client funds he was required to hold, inviolate. Once he realized what he had done, respondent replenished his ATA with the funds required to rectify his negligent misappropriation.

Additionally, respondent violated RPC 1.15(b) by failing to promptly disburse client funds. Specifically, on August 28, 2019, respondent deposited a

\$15,000 settlement check in his ATA, on behalf of his client, Sumsunnaher. On June 24, 2020, he issued an ATA check, in the amount of \$7,600, to Sumsunnaher. However, as of August 25, 2022, the remaining \$4,833.83 in settlement funds remained in his ATA and, as of April 17, 2024, he had failed to produce any records indicating that he has disbursed the \$4,833.83 to the client.

Respondent also violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in numerous respects. Specifically, he failed to (1) conduct monthly three-way ATA reconciliations, as R. 1:21-6(c)(1)(H) requires; (2) maintain client ledger cards, as R. 1:21-6(c)(1)(B) requires; (3) maintain ledger cards identifying funds for bank charges, as R. 1:21-6(d) requires; (4) turn over the unidentified funds, totaling \$19,164.47, to the Superior Court Trust Fund, as R. 1:21-6(j) requires; (5) properly designate his ABA, as R. 1:21-6(a)(2) requires; (6) maintain accurate ATA and ABA receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (7) disburse inactive trust ledger balances, as R. 1:21-6(d) requires; and (8) pre-number his ATA checks, as R. 1:21-6(c)(1)(G) requires.

Additionally, respondent deposited his monthly Social Security income in his ABA, in violation of R. 1:21-6(a)(2). Further, respondent stipulated that he

failed to maintain signed, written contingent fee agreements and signed, written closing statements, in violation of R. 1:21-7(g).

Finally, respondent violated RPC 8.1(b) by failing to fully cooperate with the OAE's investigation of his financial records, despite being granted respondent multiple opportunities to provide the required financial records and explanations for the recordkeeping deficiencies. Notwithstanding the OAE's repeated efforts to accommodate respondent, he failed to provide the OAE with complete financial records and unnecessarily prolonged the OAE's investigation in this matter. As of the date of the disciplinary stipulation, respondent still had not brought his records into compliance and had failed to turn over any of the unidentified funds, totaling more than \$19,000, to the Superior Court Trust Fund.

We note that the OAE repeatedly sent letters to respondent's office address of record, despite his administrative ineligibility to practice law and, further, that the OAE incorrectly addressed some of those letters, despite the USPS having returned them as undeliverable. Despite those facts, we are satisfied based on the record before us that, as of June 21, 2022, respondent was in communication with the OAE and still failed to cooperate with its investigation. Accordingly, based on his repeated failure to fully cooperate with the OAE's audit and investigation, respondent violated RPC 8.1(b).

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

Quantum of Discipline

Generally, as the OAE observed, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See e.g., In re Sherer, 250 N.J. 151 (2022) (as a the result of poor recordkeeping, the attorney negligently invaded \$3,366 in client and third-party funds; additionally, for a two-week period, the attorney commingled \$8,747 in personal funds in his ATA; the attorney also failed to comply with the OAE's demand audit requirements and failed to reimburse the parties impacted by his negligent misappropriation; in mitigation, the attorney had no prior discipline in a thirty-six-year legal career and was no longer practicing law); In re Steinmetz, 251 N.J. 216 (2022) (reprimand for an attorney who committed numerous recordkeeping violations, negligently misappropriated more than \$60,000, and commingled personal funds in his ATA; the attorney failed to correct his records; in mitigation, the attorney had no prior discipline in sixteen years at the bar, hired an accountant to assist with his records, and no clients were harmed by his

misconduct); Osterbye, 243 N.J. 340 (the attorney's poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, 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; 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).

Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that had been brought to their attention previously. See In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who was cited for numerous recordkeeping deficiencies, failed to resolve those deficiencies, and repeatedly provided incomplete records to the OAE; in mitigation, the attorney had no prior discipline in nearly forty-seven years at the bar; in addition to reprimanding the attorney, the Court required the attorney to disburse unidentified trust funds to

the Superior Court Trust Fund and to submit monthly reconciliations to the OAE for two years), and In re Abdellah, 241 N.J. 98 (2020) (reprimand for an attorney who should have been mindful of his recordkeeping obligations based on a “prior interaction” with the OAE in connection with his recordkeeping practices that had not led to an allegation of unethical conduct).

Here, respondent also commingled personal funds with client funds held in his trust account. Ordinarily, such misconduct will be met with an admonition, even if accompanied by other recordkeeping infractions. See In the Matter of Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney commingled personal funds in his ATA and committed recordkeeping infractions; due to the attorney’s poor recordkeeping practices, the attorney failed, for two months, to remove his personal funds from his ATA; no prior discipline), and In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (the attorney commingled personal loan proceeds in his ATA and committed recordkeeping infractions; the attorney’s commingling did not impact client funds, and he corrected his recordkeeping practices; prior 2015 censure for unrelated misconduct).

Attorneys who fail to promptly deliver funds to clients or third persons, even when accompanied by other ethics violations, ordinarily receive an admonition or reprimand, depending on the circumstances. See In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19,

2012) (admonition imposed on an attorney who, in three personal injury matters, failed to promptly notify his clients of his receipt of settlement funds and to disburse the clients' share of the funds; the attorney also failed to communicate with clients; no prior disciplinary history), and In re Anderson, ___ N.J. ___ (2021), 2021 N.J. LEXIS 1327 (reprimand imposed on an attorney who failed to deliver \$24,575 in escrow funds promptly; attorney also failed to safeguard funds, negligently misappropriated client funds, and had numerous recordkeeping deficiencies; no prior disciplinary history).

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 documents. See, e.g., In re Schlachter, 254 N.J. 375, 376 (2023) (reprimand for an attorney who committed recordkeeping violations, including failing to maintain adequately descriptive receipts and disbursements journals, ledger cards, and checkbooks with running balances; the attorney also failed to properly designate his ATA and to retain checks for seven years; the attorney repeatedly failed, for almost a year, to comply with the OAE's numerous record requests

and ultimately provided only a portion of the requested records; although the OAE attempted to help the attorney take corrective action, he remained non-compliant with the recordkeeping Rules; in mitigation, his misconduct resulted in no harm to his clients and he had no disciplinary history in sixteen years at the bar); Leven, 245 N.J. 491 (reprimand for an attorney who, following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative \$50,200.35 balance, repeatedly failed, for more than three months, to comply with the OAE's requests for his law firm's financial records; thereafter, for more than eight months, the attorney repeatedly assured the OAE that he would provide the required records but failed to do so, despite two Court Orders directing him to cooperate; the attorney, however, provided some of the required financial records; we 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; however, we imposed a reprimand in light of the lack of injury to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar); In re Tobin, 249 N.J. 96 (2021) (censure for an attorney who, following an OAE random audit that uncovered several recordkeeping deficiencies (including more than \$800,000 in negative client balances), failed to provide the documents requested in the

OAE's seven letters and eight telephone calls, spanning more than one year; although we noted that a reprimand was appropriate for the attorney's recordkeeping violations and failure to cooperate, we imposed a censure in light of the attorney's prior reprimand for recordkeeping violations and the default status of the matter; in mitigation, the attorney had been practicing law for sixty-three years and suffered serious health problems prior to the continuation date of the random audit).

Here, like the reprimanded attorney in Leven, respondent repeatedly failed to adequately comply with the OAE's repeated efforts to obtain his financial records. Although the OAE granted him numerous extensions, he failed to produce the required documents or bring his financial records into compliance. Also like the attorney in Leven, respondent has no disciplinary history in his more than fifty years at the bar, a consideration we typically accord significant weight. Respondent, however, committed additional misconduct. He commingled personal funds with client funds and negligently misappropriated trust funds by mistakenly issuing two ATA checks for personal purposes. Moreover, he allowed a client's settlement funds to linger in his trust account for nearly five years.

Thus, based on disciplinary precedent, the totality of respondent's misconduct could be met with a reprimand or a censure. To craft the appropriate

discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, respondent committed numerous recordkeeping infractions, despite having a heightened awareness of his recordkeeping obligations based on his participation in the OAE's 2016 random compliance audit. Notably, the OAE did not conclude its first random audit of respondent's books until July 31, 2017. Notwithstanding the OAE's closure of that matter, respondent's recordkeeping deficiencies both continued at the time of the closure, because the Superior Court Trust Fund rejected his un-numbered ATA check, and persisted through the filing of the disciplinary stipulation in the matter currently before us.

In mitigation, respondent stipulated to his misconduct thereby preserving disciplinary resources. In further mitigation, respondent has no prior discipline in his fifty-one-year career at the bar. In re Convery, 166 N.J. 298, 308 (2001).

Conclusion

On balance, weighing respondent's failure to cooperate with the OAE and to remediate his recordkeeping deficiencies against his otherwise unblemished career at the bar, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, as a condition to his discipline, we recommend that respondent be required, within thirty days of the Court's disciplinary Order in this matter, to demonstrate to the OAE that he has successfully deposited (1) the unidentified and inactive funds held in his ATA, totaling \$23,998.29, with the Superior Court Trust Fund, and (2) his earned legal fees in the Carroll matter, totaling \$2,670, in his ABA.

Member Rodriguez did not participate.

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. Mary Catherine Cuff, P.J.A.D. (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 Richard E. Gehret
Docket No. DRB 24-084

Argued: June 20, 2024

Decided: October 2, 2024

Disposition: Reprimand

<i>Members</i>	Reprimand	Did Not Participate
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez		X
Spencer	X	
Total:	8	1

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