Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-122
District Docket Nos. XIV-2020-0018E;
XIV-2021-0007E; XIV-2021-0034E;
IIA-2021-0902E; IIA-2021-0903E;
and IIA-2021-0904E

In the Matter of	:
Philip V. Toronto	:
An Attorney at Law	:

Decision

Decided: December 16, 2022

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint in this matter charged respondent with having violated RPC 1.15(a) (negligent misappropriation of client funds); RPC 1.15(d) (failure to comply

with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (unauthorized practice of law – practicing law while ineligible); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey bar in 1982. At all relevant times, he maintained a practice of law in Hasbrouck Heights, New Jersey.

On March 14, 1997, respondent was reprimanded for having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Toronto, 148 N.J. 85 (1997) (Toronto I). In that matter, respondent misrepresented to a disciplinary investigator the nature of his sexual and employment relationship with the grievant, a former student. In the Matter of Philip V. Toronto, DRB 96-151 (November 18, 1996).

On July 11, 1997, on a motion for final discipline, the Court suspended respondent for three-months, effective August 6, 1997, based upon his conviction for simple assault, which constituted domestic violence, in violation of N.J.S.A. 2C:12-1(a)(1). In re Toronto, 150 N.J. 191 (1997) (Toronto II). In that matter, respondent allegedly attempted to strangle his ex-wife with a

telephone cord, resulting in a four-count indictment charging him with second-degree aggravated assault, in violation of N.J.S.A. 2C:12-1(b)(1); third-degree aggravated assault with a deadly weapon, in violation of N.J.S.A. 2C:12-1(b)(2); third-degree possession of a weapon for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(d); and fourth-degree unlawful possession of a weapon, in violation of N.J.S.A. 2C:39-5(d). In the Matter of Philip V. Toronto, DRB 95-438 (September 16, 1996) at 2. As part of his guilty plea to simple assault, respondent admitted that he had pushed his ex-wife away from him, while in the midst of an argument. Ibid. Respondent was reinstated to the practice of law on December 16, 1997. In re Toronto, 152 N.J. 75 (1997).

On December 8, 2005, respondent was reprimanded for his negligent misappropriation of client funds (RPC 1.15(a)) and recordkeeping violations (RPC 1.15(d)). In re Toronto, 185 N.J. 399 (2005) (Toronto III). He admitted, that, due to his poor recordkeeping practices, he negligently misappropriated $59,176.82 in client funds. We required, and the Court agreed, that respondent submit to the OAE quarterly reconciliations of his attorney accounts, prepared by an accountant, for a period of two years. Respondent also was required to complete a course in law office management approved by the OAE. In the Matter of Philip V. Toronto, DRB 05-211 (October 26, 2005).

Effective November 9, 2020, the Court declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts (IOLTA) registration, pursuant to R. 1:28A-2(d). Respondent's eligibility status was restored on January 13, 2021.

Effective March 11, 2021, the Court temporarily suspended respondent, pursuant to R. 1:20-3(g)(4) and R. 1:20-11, for his failure to cooperate with the investigation underlying this matter, as detailed below. In re Toronto, 245 N.J. 378 (2021).

Turning to the instant matter, service of process was proper. On September 13, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. On October 1, 2021, having received no response from respondent, the OAE sent a letter to respondent informing him that, unless he filed a verified answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline.

On October 5, 2021, the OAE granted respondent an extension to submit his answer, with a new deadline of October 18, 2021. On October 15, 2021, respondent filed an unverified answer in which he simply denied nearly all of the OAE's eighty-two factual allegations.

On October 18, 2021, the OAE informed respondent that his answer failed to comply with R. 1:20-4(c) and the principles set forth in In re Gavel, 22 N.J. 248, 263 (1956). Respondent also was cautioned that, as a suspended attorney, he was required to desist from using "Esq." in his answer or any other document that would suggest to the public he was permitted to practice law. Respondent's deadline to file a conforming answer was extended to October 26, 2021.

On October 21, 2021, rather than filing a verified amended answer, respondent submitted a letter to the OAE stating that he lacked the financial resources to hire counsel; he could not properly defend himself; no client had ever filed a complaint against him; and, considering his age, he proposed resolving the ethics matter by agreeing to close his office and retire from the practice of law.[1]

On November 1, 2021, the OAE again informed respondent that he was required to file a conforming verified answer, this time citing our decision in In the Matter of Saleemah Malikah Brown, DRB 16-339 (May 31, 2017), Gavel,

[1] Resolution of a disciplinary proceeding by way of "plea bargain" is prohibited. In re Wallace, 104 N.J. 589, 593-594 (1986) (condemning a "respondent's attempt to settle the ethics complaint," and observing that "[s]uch behavior shows extreme indifference to the intent of the Disciplinary Rules. Public confidence in the legal profession would be seriously undermined if we were to permit an attorney to avoid discipline by purchasing the silence of complainants"); R. 1:20-5(g) (setting forth the very limited bases for which a motion to dismiss will be entertained). See also Advisory Committee on Professional Ethics, Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (prohibiting withdrawal or abstention from filing an ethics grievance as a condition of settling a civil cause of action, and deeming such conduct to violate RPC 8.4(d) because "disciplinary charges concern public, not private, interests").

and R. 1:20-4(c). The OAE explained that respondent was required to answer the complaint with "a full, candid, and complete disclosure of all facts reasonably within the scope of the complaint" and instructed respondent to file his conforming verified answer by November 8, 2021.

Respondent failed to file an answer. Instead, on November 16, 2021, respondent submitted a second letter to the OAE, stating he wanted to provide "a more in depth explanation of what occurred with" a particular client matter; explained that the COVID-19 pandemic and its impact on his bookkeeper had caused the delay in responding to the OAE's previous requests for information; and stated that the shortage in his ATA was a "glitch" that immediately was corrected. Respondent reiterated that he intended to "close his practice and retire due to age and would have done so by this time had it not been for this situation."[2]

Ultimately, respondent failed to submit a conforming answer to the OAE, and the matter was assigned to a hearing panel of the District IIA Ethics

[2] On December 14, 2021, Scott B. Piekarsky, Esq., requested a copy of the OAE's pleadings because respondent had contacted him seeking representation. The OAE provided Piekarsky with the requested documents. On February 1, 2022, in response to the OAE's inquiry, Piekarsky informed the OAE that he had not been formally retained by respondent, who remained pro se.

Committee, with the Honorable Alexander H. Carver, III, J.S.C. (Ret.), serving as panel chair.

On April 11, 2022, prior to the scheduling of any prehearing conference, the OAE moved to strike respondent's answer and suppress his defenses for his failure to file a conforming amended answer, as R. 1:20-4(c) requires. The OAE served the motion on respondent by certified, regular, and electronic mail. Although the certified mail was returned to the OAE as unclaimed, the regular and electronic mail were not returned as undeliverable.

On May 6, 2022, the panel chair advised the OAE that he had just opened its April 11 e-mail with attached motion and, following his review, would advise the respondent of the deadline for any opposition brief. Respondent did not file opposition to the motion.

Approximately six weeks later, on June 20, 2022, the OAE informed the panel chair that the matter had been assigned to a different OAE attorney who would be handling the motion to strike, which remained pending and unopposed.

On July 11, 2022, the panel chair granted the OAE's motion and, pursuant to R. 1:20-5(c), suppressed respondent's October 15, 2021 answer and defenses. Consequently, on July 18, 2022, the OAE certified this matter to us as a default.

On July 25, 2022, Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, with another copy sent by electronic

mail, informing him that the matter was scheduled to be considered by us on September 15, 2022, and that any motion to vacate the default must be filed by August 8, 2022. On September 2, 2022, the certified mail was returned to the Office of Board Counsel (the OBC) as "unclaimed." The letter sent by regular mail, however, was not returned to the OBC. Delivery to respondent's e-mail address was completed, although no delivery notification was sent by the destination server.

Moreover, on August 1, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on September 15, 2022. The notice informed respondent that, unless he filed a successful motion to vacate the default by August 8, 2022, his failure to answer would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

During the relevant time period, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at TD Bank.

On December 23, 2019, respondent issued ATA check number 1157, payable to Donna Cristelli, in the amount of $30,000. At the time of the disbursement, however, respondent only held $21,308.58 in his ATA, resulting in an $8,691.42 overdraft. On December 26, 2019, TD Bank notified the OAE

of this overdraft and, on January 21, 2020, the OAE directed respondent to provide an explanation by February 4, 2020.

On January 27, 2020, respondent replied to the OAE, stating that, in connection with the Cristelli matter, he inadvertently had deposited $30,000 in his ABA, rather than his ATA. Respondent explained that he represented Mario and Donna Cristelli as the sellers in a real estate transaction and that the $30,000 represented the buyers' initial down payment toward the purchase. Respondent claimed that, immediately upon his receipt of the overdraft notice, he contacted the Cristellis, advised them of his mistake, and promised to wire $30,000 to their bank by the end of the day. Respondent further claimed that he transferred $23,133.34 from his ABA to his ATA to correct the shortage and, on January 8, 2020, wired $30,000 to the Cristellis' bank account.[3]

Following its review of respondent's explanation for the overdraft, the OAE determined to docket this matter for further investigation and, on February 26, 2020, directed respondent to produce the following financial records for the time period January 1, 2019 to February 26, 2020:

- Monthly bank statements, canceled checks, wire transfers deposit items, debit and credit items as well as the checkbooks;

[3] Respondent should have replenished his ATA with $30,000.

- Monthly three-way reconciliations for his ATA;
- Client ledger cards;
- Cash receipts and disbursements journals for his ATA and ABA;
- Any other document to explain the ATA overdraft.

The OAE also required respondent to appear, on March 18, 2020, for a demand audit.

On March 12, 2020, due to the emerging pandemic, the OAE rescheduled the demand audit for April 2, 2020, by telephone, and directed respondent to produce the requested financial records by March 25, 2020. In anticipation of the demand audit, the OAE instructed respondent to be prepared to discuss the documents he had produced to the OAE on January 28, 2020, as well as the documents requested in the OAE's February 28 letter.

On March 17, 2020, the OAE indefinitely postponed the audit due to the pandemic. On April 6, 2020, the OAE verified respondent's e-mail address and reiterated that the audit was postponed.

On April 13, 2020, the OAE again directed respondent, via e-mail, to produce the financial documents requested in its February 26, 2020 letter, no later than May 1. The OAE simultaneously rescheduled the demand audit for May 7, 2020. Respondent failed to produce the required financial records by May 1, 2020 and, on May 5, 2020, in response to the OAE's inquiry, requested

an extension. The OAE granted his extension request, directed him to produce the financial records by June 5, and to appear for the rescheduled telephonic audit on June 16, 2020.

On June 5, 2020, respondent submitted a partial production of his financial records to the OAE, however his production was, according to the OAE, "incomplete and inaccurate."[4] Nonetheless, the OAE proceeded with respondent's audit on June 16, 2020. Respondent informed the OAE he was unaware of the December 24, 2019 overdraft that resulted in the audit. The OAE recounted respondent's lack of preparation in its June 16, 2020 follow-up letter to respondent:

> Furthermore, during the audit you were not prepared to discuss your December 24, 2019 trust account overdraft (see enclosed the OAE's initial letter and TD Bank overdraft notice). Similarly, you were unable to provide more details about your initial response to the overdraft (see enclosed your letter to the OAE dated January 27, 2020). Surprisingly, you were also unaware of the overdraft, which actually caused this audit.
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> [CEx16.][5]

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[4] Respondent's partial production included spreadsheets titled "cash receipts" and "cash disbursements" for 2019; "client balance @ 12/31/19" with a list of fourteen clients identified by a client number; "bank reconciliation" for 2019; and partial bank statements for his ATA. The production also included a partial spreadsheet for 2020 and ATA bank statements.

[5] "CEx" refers to exhibits to the formal ethics complaint, dated August 31, 2021.

The OAE instructed respondent to produce, no later than July 1, 2020, the previously requested financial records. The OAE also directed respondent to submit a written explanation "in reference to your client #227 (shortage of $50,000) and client #245 (overdraft)." Respondent further was required to produce all client ledger cards for each client whose funds he maintained in his ATA during the audit period, which now spanned January 1, 2019 to May 30, 2020. To assist respondent to prepare the requested documents, the OAE provided him with its "Outline of Record Keeping Requirements Under RPC 1.15 and R. 1:21-6 Manual."

At respondent's request, the OAE extended the deadline for the production of his documents to July 13, 2020.

On July 13, 2020, respondent submitted additional records to the OAE. According to the OAE, the records again were "incomplete and inaccurate" and failed to comply with R. 1:21-6. Specifically, respondent failed to submit any client ledger cards, monthly three-way reconciliations for his ATA, or receipts and disbursements journals.

Consequently, on July 14, 2020, the OAE again directed respondent to provide the requested documents by August 1, 2020. This time, the OAE directed respondent to the applicable sections of the OAE's previously provided recordkeeping manual to assist him in recreating the documents.

> The OAE directed you to provide all requested documents, which you have not already provided, as requested in our February 26, 2020 letter. Specifically, the letter directed you to provide the following documents:
>
> 1. Monthly bank statements, canceled checks, wire transfers, deposit items, debit and credit items as well as the checkbooks;
>
> 2. Monthly three-way attorney trust account reconciliations. Please refer to **Appendix J** in the OAE's Outline of Recordkeeping Requirements for accurate and proper reconciliations;
>
> 3. Client ledger cards for those client whose funds were maintained in your attorney trust account during the audit period. Please refer to **Appendices E-1 through E-7** in the OAE's Outline of Recordkeeping Requirements for proper preparation and maintenance of client ledger cards;
>
> 4. Cash receipts and cash disbursements journals for your trust and business accounts. Please refer to **Appendices C and D** for proper preparation of these documents;
>
> 5. Any other documents which would explain the overdrafts in your trust account. This was [sic] request was referring to your trust account overdraft on December 24, 2019.
>
> [CEx19 (emphasis in original).]

Respondent failed to produce the required records by August 1, 2020. During an August 3, 2020, telephone call, respondent informed the OAE that he

was "still waiting for his bank records" and requested his third extension to submit the required documents, which the OAE granted to August 14, 2020.

On August 13, 2020, respondent submitted his third supplemental document production to the OAE, consisting of his ATA bank records and spreadsheets. Respondent's submission was, according to the OAE, identical to his earlier production and, thus, the OAE determined the production remained incomplete, inaccurate, and noncompliant with R. 1:21-6. Thus, on August 14, 2020, the OAE notified respondent that his production was deficient and demanded the outstanding documents by the end of the day. The OAE notified respondent that his failure to submit the required documentation might result in its filing of a motion for his temporary suspension. Respondent failed to reply.

On September 1, 2020, the OAE again reminded respondent that his document production remained incomplete, scheduled his second demand audit for September 17, and directed him to submit the required financial records by September 10, 2020. Respondent was advised that, if he failed to provide the documents or appear at the demand audit, the OAE may seek his temporary suspension pursuant to R. 1:20-3(g)(4).

On September 9 and 10, 2020, respondent submitted his fourth supplemental production of documents to the OAE; however, the OAE again determined his production was deficient. According to the OAE, his client

ledger cards were incomplete; he failed to provide receipts and disbursements journals; and he failed to submit monthly three-way reconciliations for his ATA. Respondent also failed to appear for the September 17, 2020 demand audit.

Between September 17 and November 13, 2020, the OAE attempted to contact respondent by telephone and in writing, and offered additional deadlines for compliance and dates for his demand audit. Respondent failed to provide the outstanding financial records and documents and failed to appear for his audit.

Therefore, on December 1, 2020, the OAE moved for respondent's immediate and temporary suspension.[6]

The OAE's review of respondent's limited financial records revealed that, in December 2018, respondent had invaded $59,433.50 in client funds that he was required to hold, inviolate. Specifically, as of December 31, 2018, the OAE determined that respondent should have maintained the following trust account balances for five clients:[7]

Client	Required ATA Client Balances
Client #59 – Luciano	$7,750
Client #196 - Bello	$62,988.22
Client #227 –Albanese	$50,000
Client #234 – Guariello (Frank Piazza)	$15,000.10

[6] Although respondent submitted additional financial records to the OAE on December 9, 2020, including client ledger cards and three-way reconciliations, the production (which represented respondent's fifth partial production) was, again, incomplete and inaccurate.

[7] The chart is duplicated from the OAE's complaint.

Client #241B – Piazza Pizza	$9,150
Unidentified Funds	$8,309.47
Total Client Ledger Balances	**$153,197.79**

However, on December 31, 2018, respondent's ATA balance was only $93,764.29 – a shortage of $59,433.50. Respondent, thus, invaded client funds that he was obligated to hold, inviolate.

The OAE's review also revealed that, on December 23, 2019, respondent again invaded client funds by disbursing the $30,000 check from his ATA, payable to Donna Cristelli, thereby causing an $8,691.42 overdraft to his ATA.

Further, according to the OAE, on December 31, 2019, respondent should have maintained funds on behalf of four clients: Luciana; Cristelli; Janakat; and Piazza Pizza. Respondent, however, failed to safeguard $9,726.42 on behalf of Luciana and Piazza Pizza and invaded client funds belonging to Janakat and Cristelli.

After the OAE had filed its motion for his temporary suspension, respondent caused two additional overdrafts in his ATA. Specifically, on December 11, 2020, respondent's ATA held $30,768.66. Respondent then issued check number 1185, in the amount of $31,000, thereby overdrawing the account by $231.34. Next, on January 25, 2021, respondent's ATA was overdrawn by $709.34. In each instance, respondent failed to provide the OAE with an explanation for the additional overdrafts of his ATA, or any financial

records related to these two additional matters, despite the OAE's repeated requests for same. The OAE, thus, was unable to determine the nature of the disbursements or the specific clients' funds that were invaded as the result of his overdraft.

Between November 9, 2020 and January 13, 2021, respondent practiced law despite being administratively ineligible for his failure to comply with the mandatory IOLTA requirements. Specifically, on December 11, 2020, respondent issued ATA check number 1185, resulting in the second overdraft to his ATA.

On February 19, 2021, in response to respondent's two additional overdrafts of his ATA, along with his unauthorized practice of law, the OAE submitted a supplemental affidavit to the Court in further support of its pending motion for respondent's temporary suspension. On March 11, 2021, the Court granted the OAE's motion and temporarily suspended respondent. He remains suspended to date.

Ultimately, respondent failed to provide to the OAE either a written explanation concerning his three ATA overdrafts, or his complete financial records, despite the OAE's repeated requests and his multiple requests for

extensions of deadlines. For his negligent misappropriation of client funds;[8] recordkeeping violations; practicing law while administratively ineligible; and failing to cooperate with the OAE's investigation underlying this matter, which respondent allowed to proceed as a default, the complaint charged respondent with having violated RPC 1.15(a); RPC 1.15(d); RPC 5.5(a)(1); and RPC 8.1(b).

As a preliminary matter, we determined that the panel chair's ruling to strike respondent's answer and suppress his defenses was appropriate. As we observed in In the Matter of Saleemah Malikah Brown, DRB 16-339, at 10, "R. 1:20-4(e) requires the answer to a formal ethics complaint to set forth, among other things, 'a full, candid, and complete disclosure of all facts reasonably within the scope of the formal complaint.'" Thus, an answer that simply denies an allegation is insufficient. Ibid; In re Brown, 231 N.J. 166 (2017).

Here, the OAE filed its motion to strike with proper notice to respondent. On July 11, 2022, the panel chair determined that respondent had failed to bring

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[8] The OAE did not charge respondent with knowing misappropriation of client funds, in violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979). It is likely that the OAE was unable, based upon the limited financial records submitted, to fully reconstruct respondent's financial activities during the relevant time frame and, in the absence of his cooperation, unable to clearly and convincingly prove that he knowingly misappropriated client funds. Importantly, issuance of our decision in this matter will not preclude the OAE from continuing its investigation, if and when respondent seeks reinstatement from either his temporary suspension, or the term of suspension we recommend herein. See R. 1:20-7(c) ("[t]here are no time limitations with respect to the initiation of any discipline or disability matter"). See also In the Matter of Thomas De Seno, DRB 10-247 (December 13, 2010) at 11 (principles of double jeopardy, res judicata, and collateral estoppel, are inapplicable in disciplinary proceedings).

his answer into compliance, despite having been afforded multiple opportunities, and, accordingly, granted the motion and entered an order striking respondent's answer and suppressing his defenses. See In the Matters of Peter Jonathan Cresci, DRB 18-124 and 18-196 (December 12, 2018) at 24, so ordered, 237 N.J. 210 (2019) (we determined that the special master had properly struck the attorney's amended answer, as non-compliant with In re Gavel and R. 1:20-4(e), following a prehearing conference where the sufficiency of the OAE's complaint and the attorney's answer were considered, along with the possible sanctions for non-compliance).

Moving to our review of the record, we find that the facts recited in the formal ethics complaint support the allegations that respondent violated RPC 1.15(a); RPC 1.15(d); RPC 5.5(a)(1); and RPC 8.1(b). Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, in December 2018, respondent negligently misappropriated, and, thus, failed to safeguard, client funds, in violation of RPC 1.15(a). On December 31, 2018, respondent was required to hold $153,197.79 in his ATA on behalf of five clients (including $8,309.47 in unidentified funds). Nevertheless, respondent's ATA balance on that date was $93,764.29, due to the

invasion of $59,433.50 of other client funds that he was required to hold, inviolate. Respondent again misappropriated client funds when, in December 2019, he failed to safeguard $9,726.42 that he was required to hold on behalf of two clients, resulting in the invasion of funds belonging to two different clients. Respondent also issued an ATA check on December 11, 2020, in the amount of $31,000, despite having insufficient funds in his ATA. On January 25, 2021, respondent caused his ATA to be overdrawn for the third time. Respondent, thus, repeatedly violated RPC 1.15(a).

The record also supports the allegation that respondent violated RPC 1.15(d), which requires an attorney to comply with the recordkeeping provisions of R. 1:21-6. Here, the OAE's demand audit revealed that respondent committed numerous recordkeeping violations, including: (1) failure to maintain separate client ledger cards; (2) failure to conduct three-way reconciliations of his ATA; (3) failure to maintain ABA and ATA receipts and disbursements journals; and (4) incorrect designations of his ABA and ATA. Despite the OAE's exhaustive efforts, respondent failed to correct these deficiencies. Thus, the charge that respondent violated RPC 1.15(d) is proper and supported by clear and convincing evidence.

Further, despite being administratively ineligible to practice law from November 9, 2020 to January 13, 2021, respondent issued an ATA check on

December 11, 2020, resulting in an overdraft of his trust account. RPC 5.5(a)(1) provides that a lawyer shall not:

> Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

R. 1:20-20(b)(5) precludes a suspended attorney from using any bank accounts or checks on which the attorney's name appears as a lawyer. Thus, respondent engaged in the authorized practice of law, in violation of RPC 5.5(a)(1), when he issued a check from his ATA while administratively ineligible.

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Here, for over a year, respondent failed to comply with the OAE's numerous investigative requests that he produce financial records and other requested documentation, in derogation of his duty to cooperate. R. 1:20-3(g)(3). His noncompliance prevented the OAE from conducting its investigation and examining the numerous, questionable ATA transactions it had identified, including client shortages and three overdrafts. Respondent's failure to cooperate, ultimately, resulted in his temporary suspension, pursuant to R. 1:20-3(g)(4) and R. 1:20-11. To date, the Court has not reinstated respondent to the practice of law.

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(d); RPC 5.5(a)(1); and RPC 8.1(b). The sole issue left for our determination is the

appropriate quantum of discipline for respondent's misconduct.

Generally, a reprimand is the appropriate discipline for negligent misappropriation caused by poor recordkeeping practices. See, e.g., In re Osterbye, 243 N.J. 340 (2020) (attorney reprimanded when his poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, funds owed to clients and others, in violation of RPC 1.15(a); his inability to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b), among other misconduct; in mitigation, attorney had no prior discipline and stipulated to his misconduct); In re Mitnick, 231 N.J. 133 (2017) (attorney reprimanded for violations of RPC 1.15(a) and (d); as the result of poor recordkeeping practices, the attorney negligently misappropriated more than $40,000 in client funds held in his trust account; the attorney had an unblemished disciplinary record in a thirty-five-year legal career); In re Rihacek, 230 N.J. 458 (2017) (attorney reprimanded for negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years at the bar); In re Weinberg, 198 N.J. 380 (2009) (attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account, because he failed to regularly reconcile his trust

account records; his mistake went undetected until an overdraft occurred; no prior discipline).

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the bar).

Here, there is no evidence in the record that respondent was aware of his ineligibility when he engaged in the misconduct under scrutiny. Consequently, that misconduct merits an admonition.

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Howard, 244 N.J. 411 (2020) (the attorney failed to respond to the DEC's four requests for a written reply to an ethics grievance, which alleged that the attorney had failed to prosecute his client's claim for social security disability benefits; the attorney had received a prior censure for similar misconduct in which he had failed to cooperate with disciplinary authorities; in mitigation, the attorney ultimately retained ethics counsel, cooperated with the DEC, and stipulated to some of his misconduct); In re Larkins, 217 N.J. 20 (2014) (default; the attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation).

Based upon the above disciplinary precedent, respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b) would each, on its own, warrant imposition of a reprimand. Further, respondent committed additional

misconduct – engaging in the unauthorized practice of law while he was administratively ineligible. Based upon the severity of respondent's combined misconduct, we conclude that a censure is the baseline discipline for the totality of his violations. To craft the appropriate discipline, we must consider mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, respondent has a disciplinary history, which includes two reprimands (1997 and 2005) and a three-month suspension (1997). 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).

Here, despite the passage of time, progressive discipline is warranted in light of respondent's disciplinary history and, specifically, his failure to learn from his past mistakes. In 2005, respondent was reprimanded for the same misconduct as the instant matter –his failure to comply with the recordkeeping requirements of R. 1:21-6, which resulted in his negligent misappropriation of over $59,000 in client funds. He, thus, was on notice that his failure to comply with the recordkeeping Rules, resulting in the negligent misappropriation of client funds, would result in discipline. Having a heightened awareness of his

obligations pursuant to the Rules, respondent should have conformed his conduct to that required of New Jersey attorneys and resolved his recordkeeping deficiencies to prevent his future invasion of client funds. Further, having participated in previous disciplinary matters, respondent also was aware of his duty to cooperate with, and participate in, the disciplinary investigation. His failure to conform his conduct to the Rules, despite his heightened awareness of this obligation, reflects a willful decision on his part to not only ignore our previous decision, and the Court's Order, regarding his recordkeeping deficiencies, but also his obligation to cooperate.

In further aggravation, respondent defaulted in this matter. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

Respondent already has been disciplined for his negligent misappropriation of client funds and recordkeeping violations. His refusal to conform his conduct to that required by the Rules, in conjunction with his default in this matter, serves to justify enhancement of what ordinarily would be a censure to a six-month suspension.

On balance, we determine that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. As a condition precedent to his reinstatement, we require respondent to fully cooperate with the OAE's investigation underlying this matter.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Philip V. Toronto
Docket No. DRB 22-122

Decided: December 16, 2022

Disposition: Six-Month Suspension

Members	Six-Month suspension	Did Not Participate	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Singer		X	
Total:	7	1	1

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