

comply with the recordkeeping requirements of R. 1:21-6), and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (two instances).¹

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

Respondent earned admission to the New Jersey Bar in 2009. He maintains a practice of law in Jersey City, New Jersey.

On May 6, 2021, the Court censured respondent for having violated RPC 1.15(d); RPC 8.1(b); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). In that matter, respondent failed to maintain an attorney trust account from April 2015 through May 2018, and passed to the Superior Court (Hudson vicinage) sixteen bad checks, ranging in amounts from \$50 to \$325, and totaling \$3,353. In the Matter of Santo V. Artusa, Jr., DRB 20-184 (October 21, 2020) at 1. Thirteen of the checks were for amounts that constituted a fourth-degree crime, pursuant to N.J.S.A. 2C:21-5(c)(3) (\$200 to \$999.99), and three

¹ Due to respondent's failure to file an answer to the ethics complaint, and on notice to respondent, the OAE amended the complaint to include a second RPC 8.1(b) charge.

were for amounts that constituted a disorderly person's offense, pursuant to N.J.S.A. 2C:21-5(c)(4) (less than \$200). Id. at 2-3.

In determining the proper quantum of discipline, we noted that few disciplinary cases had addressed the consequences imposed on attorneys who pass bad checks and, thus, analogized Artusa's conduct to that of attorneys who had engaged in less serious criminal conduct. Id. at 3-4.

We found, in mitigation, that, although Artusa had passed bad checks, he did not do so for pecuniary gain or other personal benefit. Id. at 5. He also stipulated to his violations; had been a member of the bar for eleven years; and had no disciplinary history. Ibid. In aggravation, however, Artusa had not only repeatedly engaged in the passing of bad checks but had passed them to the Superior Court. Ibid. We, thus, determined that the aggravation outweighed the mitigation, warranting a censure. Ibid. The Court agreed. In re Artusa, 246 N.J. 154 (2021).

In the instant matter, service of process was proper. On August 23, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to what it believed was respondent's office address listed in the New Jersey Lawyers' Diary. However, the address that the OAE used was 26 Journal Square, Suite 205, Jersey City, NJ 0730, and respondent's current address in the New Jersey Lawyers' Diary is 35 Journal Square, Jersey City, NJ 07306. It is

unknown whether respondent changed his office address without updating the Court's Central Attorney Management System (CAMS) via his annual registration. On September 13, 2022, the certified mail was returned marked vacant and, on October 19, 2022, the regular mail also was returned marked vacant.

Despite the potential mistake in its first attempt to serve respondent, on September 19, 2022, the OAE properly sent the complaint, by certified and regular mail, to respondent's home address of record in CAMS. On September 29, 2022, the certified mail receipt was returned unsigned. The record does not indicate whether the regular mail was returned.

On October 25, 2022, the OAE sent a letter, by certified and regular mail, to respondent's home address, informing him that, unless he filed a verified answer within five days of the date of receipt of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). United States Postal Service (USPS) tracking shows that the certified mail was delivered on October 29, 2022. The regular mail was not returned to the OAE.

As of November 9, 2022, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired.

Accordingly, the OAE certified this matter to us as a default.

On December 19, 2022, Acting Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, with another copy by electronic mail, informing him that the matter was scheduled before us on February 16, 2023, and that any motion to vacate must be filed by January 17, 2023.

According to the USPS tracking printout, the certified mail sent to respondent's home address was returned to the Office of Board Counsel (the OBC) as unclaimed. The letter sent by regular mail was not returned to the OBC and delivery to respondent's e-mail address was complete, with delivery notification received from the destination server.

Moreover, on December 6, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on February 16, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by January 17, 2023, his failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate.

We now turn to the allegations of the complaint.

On August 28, 2018, the OAE docketed the instant matter after receiving an ethics grievance against respondent. Here, the nature of the grievance is not

relevant, except to demonstrate the inception of the OAE's investigation into respondent's recordkeeping practices.

On May 27, 2020, the OAE provided respondent's then counsel with a copy of the grievance and requested that respondent submit a written reply by June 9, 2020. On July 1, 2020, respondent sent the OAE a pro se written reply. The record does not reveal when respondent's counsel had provided him with the grievance.

By letter dated August 12, 2020, the OAE directed respondent to (1) appear for a demand interview on August 25, 2020, and (2) provide his attorney trust and business account statements for the period between November 1, 2019 and the then present date, by Tuesday, August 18, 2020.²

Respondent maintained two accounts with Bank of America at the time: an attorney trust account (ATA) and an attorney business account (ABA). He had previously maintained another attorney business account with Bank of America. However, that account was closed on June 27, 2020.

² The OAE simply stated that the statements were due on "Tuesday" without specifying which Tuesday. However, Tuesday August 18, 2020 was the only Tuesday that interceded between the date of the letter and the interview, and the OAE did explain that it needed to review the statements before the interview.

On August 24, 2020, the OAE rescheduled the demand interview to September 16, 2020, at respondent's request. The OAE set a new submission deadline of September 8, 2020 for the bank statements.

Respondent, however, did not make a submission by September 8, 2020; consequently, on September 15, 2020, the OAE sent a subpoena to Bank of America, seeking respondent's records. It is unknown whether the bank responded to the subpoena.

On September 15, 2020, respondent sent an e-mail to the OAE, stating "[c]an you confirm our date? I am working on the documents with my CPA." The OAE responded, stating that the interview would take place as scheduled, and that the requested records were overdue.

During the interview on September 16, 2020, respondent admitted to certain recordkeeping violations, including failing to perform monthly reconciliations and failing to update his attorney registration to reflect his ABA, as R. 1:20-1(c) requires. Respondent also apologized for being "slow" and maintained that he had been holding off on submitting documents because he was still in the process of preparing certain items, and he wanted to "send everything [the OAE] wanted at once." In response, the OAE stated that it was not "a great plan" to "hold[] everything until the end." The OAE and respondent

discussed a number of documents necessary for the investigation, and respondent agreed to provide these documents by September 28, 2020.

The transcript of the September 16, 2020 interview indicates that respondent submitted ATA records either before or during the interview. However, the OAE alleged in the complaint that respondent “failed to provide his attorney trust account and attorney business account records at the demand audit but did provide copies by email following the demand audit.”

Following the interview, the OAE sent respondent a letter memorializing the documents that he had agreed to provide, including (1) bank statements and a completed Attorney Bank Account Disclosure form, both of which previously had been requested; (2) documents pertaining to the grievant’s file, including proof of retainer payment, the settlement agreement between respondent and grievant, and proof that respondent had satisfied the settlement; (3) three-way reconciliations for the audit period and all client ledgers; (4) proof that respondent had updated his attorney registration to reflect his ABA; and (5) the file for another client. The OAE also instructed respondent to appear for another interview on Monday, October 5, 2020.

On October 1, 2020, the OAE sent respondent a letter notifying him that it had not received any of the required documents from him. On the same date,

respondent's assistant informed the OAE that respondent had been hospitalized due to fluid in his lungs and around his heart.

On October 6, 2020, the OAE sent respondent a letter requesting that he provide proof of hospitalization and informing him that his interview and submission deadline had been rescheduled to October 19, 2020.

During the interview on October 19, 2020, respondent stated that he would provide the documents enumerated in the OAE's September 16, 2020 letter by October 26, 2020. He also agreed to produce proof of hospitalization by October 20, 2020. Following the interview, the OAE sent respondent a letter, dated October 19, 2020, memorializing those deadlines.

The record does not disclose whether respondent ever furnished proof of hospitalization. On October 26, 2020, "[r]espondent provided the OAE with his attorney trust account and attorney business account bank statements." However, he did not include a completed Attorney Bank Disclosure Form; three way-reconciliations; or ABA statements for certain months. The complaint is silent on whether he produced the remaining items, such as client files.

On October 29, 2020, respondent sent the OAE a "reconciliation detail report" and transaction reports for all three accounts. On November 5, 2020, respondent sent the OAE an e-mail stating "see attached." However, the record does not indicate whether the e-mail actually contained an attachment.

On November 9 2020, the OAE sent respondent an e-mail, setting forth the deficiencies in his reconciliation reports. Among other things, the OAE stated that respondent had failed to identify the clients to whom his ATA funds belonged. He had not included ledger balances or individual client ledgers and, furthermore, at least one deposit was not associated with any client matter. The OAE attached instructions on how to prepare proper monthly reconciliations so respondent could update his records accordingly. The OAE also requested proof of the grievant's retainer deposit and respondent's satisfaction of his settlement with grievant, which already had been requested in the OAE's September 16, 2020 letter.

On December 2, 2020, the OAE sent respondent an e-mail, stating that it had received a submission from him on the previous day,³ but that his submission did not include three-way reconciliations or proof of the two transactions concerning the grievant. The OAE asked respondent to refer to the instructions sent on November 9, 2020, since "what [he had] provided w[as] a list of deposits not a three-way reconciliation." The record does not contain any further communication between respondent and the OAE subsequent to this e-mail. In the complaint, the OAE alleged that respondent never provided "proper

³ The record does not contain a copy of this submission.

trust account reconciliations” but made no mention of the other items that it had requested.

In the formal ethics complaint, the OAE charged respondent with the following violations of RPC 1.15(d): (1) failure to prepare three-way monthly reconciliations; (2) failure to maintain a ledger card for each client; (3) failure to maintain a client ledger card for attorney funds in the ATA; (4) failure to maintain trust receipts and disbursement journals; (5) failure to maintain business receipts and disbursement journals; (6) incurrence of three debit balances in his ATA, from May 1, 2018 to September 30, 2020: an unidentified debit balance of \$4,063, a debit balance of \$165 for attorney fees, and a debit balance of \$10 for client Sewbarran Rajnarain.

Additionally, the OAE charged respondent with twice violating RPC 8.1(b), both by failing to cooperate with the investigation and by failing to file a verified answer to the complaint.

We find that the facts recited in the complaint support the allegations that respondent committed unethical conduct. 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). Here, the facts set forth in the complaint clearly and convincingly support the charges that respondent violated RPC 1.15(d) and RPC

8.1(b).

First, RPC 1.15(d) requires lawyers to comply with the recordkeeping provisions of R. 1:21-6. Respondent violated this RPC by (1) incurring debit balances in his trust account, (2) failing to prepare three-way monthly reconciliations, and (3) failing to properly maintain client ledger cards and receipt and disbursement journals.

Next, RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Rule 1:20-3(g)(3) further provides that, in responding to such demands, an attorney must furnish the requested information within ten days or explain in writing why the information cannot be furnished. Here, respondent missed numerous deadlines set by the OAE, even though he agreed to some of them and none of them afforded him less than ten days to prepare an answer.

Specifically, on August 24, 2020, the OAE instructed respondent to submit certain documents by September 8, 2020. Instead of complying with this deadline, respondent provided a partial submission approximately one week late – on September 16, 2020. Respondent then agreed to a deadline of September 28, 2020, which he again failed to honor. Although this failure may have been attributable to his health, he subsequently promised to fully cooperate by October 26, 2020, but again provided a partial response on that date. As of

December 2, 2020, respondent still had not provided proof of certain transactions that the OAE had requested on September 16, 2020. Thus, there can be no doubt that respondent's conduct in this regard fell short of the full cooperation contemplated by the Rules and constitutes a violation of RPC 8.1(b). See, e.g., In re Wolfe, 236 N.J. 450 (2019); In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48 (we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate[,]" noting that "partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion."), so ordered, 225 N.J. 611 (2016).

Following his failure to cooperate with the underlying investigation, respondent failed to file a verified answer to the complaint. This second failure constitutes a separate violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b) (two instances).

On this record, there is no evidence of any misappropriation by respondent. Recordkeeping irregularities ordinarily are met with an admonition where they have not directly caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain attorney trust or business account cash

receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) did not maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain an attorney business account, in violation of RPC 1.15(d) and R. 1:21-6); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his attorney trust account to cover overdrafts in his attorney business account, a demand audit uncovered several recordkeeping deficiencies: (1) deficient client ledgers, (2) failure to promptly remove earned fees from the attorney trust account, and (3) failure to perform monthly three-way reconciliation, in violation of RPC 1.15(d) and R. 1:21-6).

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, e.g., In re Leven, 245 N.J. 491 (2021) (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, including trust account reconciliations, client ledger cards, disbursements journals, and two specific client files; thereafter, although the attorney, for more than eight months, repeatedly assured the OAE that he would provide the required records, he 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 Picker, 218 N.J. 388 (2014) (reprimand for an attorney who, following the OAE's discovery of a \$240 overdraft in the attorney's trust account, failed to appear for a demand audit and failed to provide the OAE with documents requested in connection with the overdraft, in violation of RPC 8.1(b); the OAE's investigation revealed that the attorney used her trust

account for the payment of personal expenses, in violation of RPC 1.15(a); the attorney asserted that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE because they were in storage at the time; in imposing a reprimand, we found that, although the attorney had a prior three-month suspension and was temporarily suspended at the time of its decision, the conduct underlying her suspensions was unrelated to the conduct at hand); In re Tobin, 249 N.J. 96 (2021) (censure, in a default matter, 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, however, the attorney had been practicing law for sixty-three years and suffered serious health problems prior to the continuation date of the random audit).

Pursuant to the above disciplinary precedent, we determine that a reprimand is the appropriate baseline discipline for respondent's violations of RPC 1.15(d) and RPC 8.1(b). See In the Matters of Neal E. Brunson, DRB 22-

015 and DRB 22-075 (August 3, 2022) (finding that a reprimand was the baseline level of discipline for the attorney's violation of RPC 1.15(d) and RPC 8.1(b); penalty enhanced to a three-month suspension due to attorney's violations of RPC 8.4(b) and (c) and demonstrated pattern of failure to cooperate with disciplinary authorities, including the fact that attorney allowed matter to proceed as a default and previously had allowed another matter to proceed as a default).

In crafting the appropriate discipline, we also consider mitigating and aggravating circumstances.

There is no mitigation to consider.

We find and apply three aggravating factors. First, respondent recently was disciplined for violating RPC 1.15(d) and RPC 8.1(b). The investigation and disciplinary proceedings underlying that matter placed respondent on a heightened awareness of his recordkeeping duties and his obligation to cooperate with disciplinary authorities. Second, in this matter, he failed bring his records into compliance, despite the OAE's instructions and dogged efforts. Lastly, he allowed this matter to proceed as a default. "[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).

Given the aggravating factors, we conclude that the baseline discipline level of reprimand should be enhanced to a censure.

As conditions, we require respondent to: (1) complete a recordkeeping course pre-approved by the OAE within sixty days of the Court's issuance of a disciplinary Order in this case, (2) bring his records into compliance within sixty days of the Court's issuance of a disciplinary Order in this case, and (3) provide to the OAE monthly reconciliations of his accounts, on a quarterly basis, for a two-year period following the Court's issuance of a disciplinary Order in this case.

Member Joseph voted to impose a reprimand, with the same conditions.

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

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Santo V. Artusa, Jr.
Docket No. DRB 22-209

Decided: May 2, 2023

Disposition: Censure

<i>Members</i>	Censure	Reprimand
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	8	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel