Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 22-015 and DRB 22-075
District Docket Nos. XIV-2019-0632E,
IIB-2019-0007E, and IIB-2019-0021E

In the Matters of	:
Neal E. Brunson	:
An Attorney at Law	:

Decision

Decided: August 3, 2022

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

We consolidated these matters for review. On April 21, 2022, DRB 22-015 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 charged respondent with having violated RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities); RPC 8.4(b) (commission of a

criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[1]

On July 21, 2022, DRB 22-075 was before us on a certification of the record filed by the District IIB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 8.1(b) (three instances).[2]

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

Respondent earned admission to the New Jersey bar in 1988. At all relevant times, he maintained a practice of law in Rutherford, New Jersey.

On September 9, 1998, respondent was reprimanded for having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c). In re Brunson, 155 N.J. 591 (1998).

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[1] Due to respondent's failure to file an answer to the formal ethics complaint in XIV-2019-0632E, the OAE amended that complaint to include the second RPC 8.1(b) charge.

[2] The formal "Amended and Consolidated Complaint" charged respondent with having twice violated RPC 8.1(b) in connection with his failure to cooperate in two separate DEC IIB investigations (IIB-2019-0007E and IIB-2019-0021E). Due to respondent's failure to file an answer to the ethics complaint, the DEC amended the complaint to include the third RPC 8.1(b) charge.

Effective July 22, 2021, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying DRB 22-015. In re Brunson, 247 N.J. 486 (2021).

DRB 22-015 (District Docket No. XIV-2019-0632E)

Service of process was proper. On December 8, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record. According to the United States Postal Service (USPS), the certified mail sent to respondent's home address was delivered on December 15, 2021. The certified mail sent to respondent's office was returned to the OAE marked "return to sender." The regular mail sent to respondent's home and office address was not returned to the OAE.

On December 8, 2021, the OAE also sent a copy of the letter and complaint to respondent via electronic mail. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

On December 16 and December 20, 2021, the OAE published a disciplinary notice in The Record and the New Jersey Law Journal, respectively. The notice stated that a formal ethics complaint had been filed against respondent; that he had twenty-one days to file an answer; that his failure to do

so would be deemed an admission to the complaint; and that the matter would be certified directly to us.

On January 13, 2022, the OAE sent another letter to respondent, by regular and electronic mail, to the same home, office, and e-mail addresses, 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; 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) by reason of his failure to answer. The regular mail sent to respondent's home and office addresses was not returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

As of February 3, 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 March 3, 2022, Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, and also by electronic mail, informing him that the matter was scheduled before us on April 21, 2022, and that any motion to vacate the default must be filed by March 17, 2022. The certified mail was successfully delivered and the signed certified mail receipt

card was returned to the Office of Board Counsel (the OBC). The letter sent via regular mail was not returned to the OBC, and delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Moreover, on March 7, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on April 21, 2022. The notice informed respondent that, unless he filed a successful motion to vacate the default by March 17, 2022, his failure to answer would remain deemed an admission of the allegations of the complaint.

We now turn to the allegations of the OAE's complaint.

Respondent contracted with Kaplan Leaman & Wolfe (KLW), a litigation support company, for specific court-reporting services. On March 26, 2019, after respondent failed to pay an outstanding invoice, KLW instituted a small claims action captioned Kaplan Leaman & Wolfe v. Brunson, Docket No. BER-SC-635-19.[3]

On April 9, 2019, Jeffrey Campolongo, Esq., counsel for KLW, sent an e-mail to respondent, memorializing their telephone conversation during which respondent agreed to pay his outstanding balance of $991.50, via two

[3] This complaint was not included in the record. Information concerning this and the subsequent Bergen County litigation discussed in this section is available via New Jersey eCourts.

installments. Specifically, respondent agreed to pay fifty percent of the debt, or $495.75, within two days, and the remaining balance within three weeks. In exchange, KLW agreed to dismiss the lawsuit. On the same date, Campolongo notified the Superior Court that respondent and KLW had reached a settlement agreement.

On April 11, 2019, in accordance with the settlement agreement, respondent mailed to Campolongo a $495.75 check, payable to KLW. Respondent advised that he would send the second installment within three weeks, "[p]ursuant to our agreement."

Respondent failed to make the second installment payment. Consequently, on August 19, 2019, KLW re-filed its complaint, captioned Kaplan Leaman & Wolfe v. Brunson, Docket No. BER-SC-1342-19, demanding $495.75, the balance owed for services rendered that respondent had not yet paid, plus costs.

On September 9, 2019, the parties participated in mediation and settled the civil action. Specifically, the parties executed a stipulation of settlement whereby respondent agreed to pay KLW the balance owed, plus costs, totaling $537.75. The parties further agreed that, although respondent would tender the settlement check that day, KLW would not deposit it for ten days, or until September 19, 2019. In the event the check failed to clear due to insufficient funds, the parties agreed that KLW would be entitled to a judgment, without

further court order.

Pursuant to the terms of the settlement agreement, respondent issued an attorney business account (ABA) check, in the amount of $537.75, dated September 19, 2019, payable to KLW.

On September 30, 2019, KLW attempted to negotiate the check, however, the check was returned for insufficient funds. Further, on October 2, 2019, KLW incurred a $20 returned check fee.

Subsequently, KLW notified respondent, via e-mail, that the check had not cleared. Respondent failed to reply.

From September 1 through September 30, 2019, respondent maintained a negative balance in his ABA. During this same timeframe, respondent accumulated approximately fifteen overdraft fees from PNC Bank for his ongoing withdrawal of funds from an automated teller machine (ATM) and debit card purchases, despite having a negative balance.

On September 19, 2019, the date he directed KLW to deposit his check, respondent's ABA balance was ($777.82). In fact, respondent's ABA balance remained negative for nearly two months, until October 28, 2019. Respondent, thus, knew that his ABA held insufficient funds, throughout September 2019, by virtue of his continuous expenditure of those funds and his ongoing accumulation of overdraft fees.

On October 17, 2019, in response to an ethics grievance filed by Gregg B. Wolfe, chief executive officer of KLW, the OAE directed respondent to provide a written explanation for his failure to satisfy the settlement. On December 17, 2019, the OAE again wrote to respondent, this time providing him with a copy of the grievance and directing a written response by January 2, 2020. On January 17, 2020, the OAE investigator sent another letter to respondent and left him a voice message requesting that he contact the OAE. On January 21, 2020, the OAE investigator left another voice message for respondent requesting that he return the OAE's calls.

On January 24, 2020, respondent informed the OAE that he would both send his written reply to the OAE and tender final payment to KLW by January 31, 2020. The OAE memorialized that conversation in a letter sent to respondent via certified and regular mail. The OAE required a written response and proof of payment by January 31, 2020. Respondent failed to reply by the January 31, 2020 deadline.

On February 3, 2020, respondent contacted the OAE and represented that he was sending his written response to the OAE and mailing final payment to KLW. During this telephone call, the OAE directed respondent to appear for a demand interview on March 10, 2020. The OAE memorialized that conversation in a letter sent to respondent via certified and regular mail. Respondent failed to

appear for the demand interview, without notice to the OAE.

On March 10, 2020, the OAE investigator left a voice message for respondent and sent a letter rescheduling the demand interview for March 31, 2020. In its letter, the OAE informed respondent that, if he failed to appear, the OAE might seek his temporary suspension and charge him with having violated RPC 8.1(b). On March 23, 2020, respondent contacted the OAE investigator, claiming he never received the OAE's February 4, 2020 letter scheduling the March 10, 2020 demand interview. He represented that he had been ill but confirmed he would appear on March 31, 2020.

On March 31, 2020, the OAE conducted respondent's demand interview via telephone. At the conclusion of the interview, respondent represented that he would submit a written response to the grievance by April 3, 2020. Respondent, however, failed to do so.

On April 14, 2020, the OAE again wrote to respondent, reminding him to submit a response to the grievance and to advise the OAE whether he had made his promised final payment to KLW. On May 21, 2020, the OAE again attempted to reach respondent via telephone and in writing.

On June 3, 2020, six months after its initial due date, respondent submitted to the OAE his reply to the grievance.

Thereafter, on July 23, 2020, the OAE directed respondent to produce his

firm's financial records for July 2017 through July 23, 2020, no later than August 3, 2020. Respondent also was directed to produce the retainer agreement, settlement statement, and client trust ledger for the Jackson/Wakefern Food Corporation client matter. Respondent immediately contacted the OAE and left a voice message requesting additional time to respond to the document request; respondent, however, failed to submit his request in writing, despite the OAE's instructions that he do so.

On July 31, 2020, the OAE informed respondent that it was continuing its demand audit on August 20, 2020, and that the previously requested records concerning his attorney trust account (ATA) and ABA were due by August 17, 2020. Respondent again requested an adjournment, until September 2020, due to a death in his family and the closing of his Capital One Bank local branch. The OAE granted the request, in part, and rescheduled the demand audit for August 24, 2020, although the requested financial records remained due August 17, 2020.

On August 5, 2020, respondent again sought an adjournment. The OAE denied respondent's request.

On August 24, 2020, the OAE conducted the demand audit, at which time respondent was questioned concerning his recordkeeping practices. The OAE's demand audit revealed the following recordkeeping deficiencies:

a) Improper cash withdrawals from the ATA (R. 1:21-6(c)(1)(A));

b) Earned legal fees not deposited to the ABA (R. 1:21-6(a)(2));

c) Unauthorized electronic transfers from the ATA (R. 1:21-6(c)(1)(A));

d) Special fiduciary funds improperly maintained in the ATA (R. 1:21-6(a)(1));

e) Failure to maintain ATA receipts and disbursements journals (R. 1:21-6(c)(1)(A));

f) Failure to maintain separate client ledger cards (R. 1:21-6(c)(1)(B));

g) Failure to conduct three-way reconciliations of the ATA (R. 1:21-6(c)(1)(H)); and

h) Failure to maintain ABA receipts and disbursements journals (R. 1:21-6(c)(1)(A)).

The OAE's demand audit and review of respondent's ATA records revealed a series of questionable transactions, including:

a) Between December 2012 and May 2019, respondent issued numerous checks from his ATA, in various amounts, without notations concerning which client matters were associated with the checks;

b) Between April 2016 and April 2019, respondent made forty-two withdrawals from his ATA, totaling $125,524.52, without any notation concerning which client matters were associated with the withdrawals;

and

c) On November 2, 2017, respondent withdrew $97,259.94 from his ATA, without any notation concerning which client matter was associated with the withdrawal.[4]

On September 3, 2020, following the audit, the OAE reminded respondent that he had not yet produced any of the previously requested documents, including his ATA and ABA records and, again, directed respondent to submit the records no later than September 14, 2020. The OAE also directed respondent to produce additional documentation that would enable the OAE to address the above-enumerated concerns.

Respondent did not thereafter comply with the OAE's directives, failed to produce his financial books and records, and failed to provide any explanation concerning the above-described transactions. His records are not compliant with R. 1:21-6.

On November 17, 2020, the OAE prepared a petition for temporary suspension against respondent. Less than a week later, on November 23, 2020, respondent submitted to the OAE confirmation that, on November 18, 2020, he

[4] 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). The OAE stated that it could not prove knowing misappropriation on this record because respondent's lack of cooperation and failure to produce the requested records prevented it from conducting a complete investigation.

had paid $468 to KLW, which was $69.75 less than the $537.75 balance owed. To date, respondent has not satisfied the debt in full.

On April 8, 2021, the Court ordered respondent to cooperate with the OAE's investigation and to provide documents within thirty days, or be temporarily suspended. Respondent failed to respond.

Consequently, on July 22, 2021, the Court temporarily suspended respondent "pending his compliance with the Office of Attorney Ethics, and until the further Order of this Court." He remains temporarily suspended on that basis.

DRB 22-075 (District Docket Nos. IIB-2019-0007E and IIB-2019-0021E)

Service of process was proper. On July 15, 2020, the DEC sent a copy of this formal ethics complaint, by certified and regular mail, to respondent's last known office address of record. The certified mail was returned to the DEC as "unclaimed" and the regular mail was returned as "not deliverable."

On September 16, 2021, the DEC sent a copy of the amended consolidated complaint to respondent at his home address of record, by regular and certified mail. Neither the certified mail nor the certified mail receipt were returned to the DEC. Further, the regular mail was not returned to the DEC.

On November 8, 2021, the DEC sent a second letter to respondent at the

same home address of record, by certified and regular mail, 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; 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) by reason of his failure to answer. On November 17, 2021, the certified mail receipt was signed by respondent and returned to the DEC.

As of March 7, 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 DEC certified this matter to us as a default.

On May 23, 2022, Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, and also by electronic mail, informing him that the matter was scheduled before us on July 21, 2022, and that any motion to vacate must be filed by June 13, 2022. The certified mail was delivered and the signed certified mail receipt card was returned to the OBC. The letter sent by regular mail was not returned to the OBC, and delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Moreover, on May 30, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on July 21, 2022. The

notice informed respondent that, unless he filed a successful motion to vacate the default by June 13, 2022, his failure to answer would remain deemed an admission of the allegations of the complaint.

We now turn to the allegations of the DEC's amended and consolidated complaint.

The Khiana Fortune Matter (District Docket No. IIB-2019-0007E)

On February 4, 2019, grievant Khiana Fortune filed an ethics grievance stating that she had retained respondent to represent her in a personal injury matter, but that he had abandoned her case, resulting in its dismissal. Specifically, in March 2016, Fortune retained respondent after she injured her ankle in a slip and fall accident. Despite his agreement to pursue a claim on her behalf, Fortune alleged respondent did nothing in furtherance of the representation, forcing her to retain new counsel, in 2018.[5] Fortune learned from

[5] The record is scant on details concerning Fortune's allegations against respondent and, in fact, it is not clear whether she fully participated in the underlying investigation. Attached to the amended consolidated complaint are three letters from the DEC investigator to Fortune, dated July 17, August 22, and October 14, 2019 requesting documents and information. Although Fortune responded once, on September 22, 2019, with a three-sentence signed statement, it is unclear whether she responded to the DEC's subsequent letter of October 14, 2019, in which the investigator stated she had not received any information from Fortune to substantiate her grievance and, that if a response was not received by October 21, 2019, she would consider the grievance closed.

her new attorney, Marc Ross, Esq., that her case had been dismissed.[6]

The DEC docketed this matter for investigation and, on May 9, 2019, sent a letter to respondent at his office address of record, by certified and regular mail, requesting that he submit a written response to the grievance by May 19, 2019. On May 30, 2019, the certified mail receipt card was signed and returned to the DEC, although the signature was illegible. The letter sent by regular mail was not returned. On June 3, 2019, the DEC investigator called respondent's office and confirmed that he had received the May 9, 2019 letter. Respondent failed to reply by the May 19, 2019 deadline.

On June 24, 2019, the DEC sent a second letter to respondent at the same office address, by certified and regular mail, reminding respondent of his obligation to cooperate with the investigation and cautioning that, if his response was not received by July 1, 2019, the investigation would proceed without him. Again, respondent failed to reply to the grievance.

On October 14, 2019, the DEC sent a third and final letter to respondent at the same office address, by certified and regular mail. In that letter, the DEC

[6] The record did not include information regarding Fortune's personal injury action. However, according to public eCourts records, on March 15, 2018, respondent filed a civil action captioned Fortune v. City of Patterson, Docket No. PAS-L-911-18, arising from Fortune's injuries. On September 28, 2018, the case was dismissed for lack of prosecution, with notice to respondent. There is no further docket activity until February 11, 2019, when respondent filed a substitution of counsel, thereby withdrawing as Fortune's attorney in favor of Ross. Ross successfully reinstated Fortune's complaint and litigated the matter to its conclusion.

informed respondent that if he did not respond by October 21, 2019, he could be charged with violating the Rules of Professional Conduct by virtue of his failure to cooperate. According to the United States Postal Service tracking printout, the certified letter was delivered on October 17, 2019. Respondent never submitted his reply to the grievance.

Based on these facts, the DEC charged respondent with having violated RPC 8.1(b).

The Fee Arbitration Referral (Docket No. IIB-2019-0021E)

On December 17, 2019, the OAE docketed a separate matter against respondent, arising from a referral by a fee arbitration committee (the FAC). The FAC raised concerns regarding whether respondent had violated RPC 1.1 (competence);[7] RPC 1.3; RPC 1.4(b); RPC 1.5(a) (fee overreaching); and RPC 1.5(b).[8]

The OAE assigned the investigation to the DEC and, on January 6, 2020, the DEC sent a letter to respondent, by certified and regular mail, along with a copy of the "investigation referral." On January 28, 2020, when respondent

[7] The complaint does not specify the applicable subsection of RPC 1.1.

[8] Although the complaint recited the FAC's concerns regarding respondent's alleged misconduct, the DEC was unable to fully investigate these allegations due to respondent's failure to cooperate.

failed to reply, the DEC sent a second letter to respondent and requested a reply by February 7, 2020.

Between February 19, 2020 and March 4, 2020, the regular and certified mail sent to respondent was returned to the DEC as undeliverable because respondent's post office box had been closed. Thus, on July 20, 2020, the DEC hand-delivered to respondent copies of its January 6 and January 29, 2020 letters. Despite the DEC's efforts, respondent failed to submit a reply to the DEC and failed to cooperate with the investigation.

Based on these facts, the DEC charged respondent with having violated RPC 8.1(b).

* * *

Following our review of DRB 22-015, we are satisfied that the facts recited in the OAE's complaint support the allegations that respondent violated RPC 1.15(d); RPC 8.1(b) (two instances); RPC 8.4(b); and RPC 8.4(c). 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, the record supports the allegation that respondent violated RPC 1.15(d), which requires an attorney to comply with the recordkeeping provisions of R. 1:20-6. The OAE's demand audit revealed a number of

recordkeeping deficiencies, including: (1) improper cash withdrawals from his ATA; (2) failure to deposit earned legal fees in his ABA; (3) unauthorized electronic transfers from his ATA; (4) special fiduciary funds improperly maintained in his ATA; (5) failure to maintain ABA and ATA receipts and disbursements journals; (6) failure to maintain separate client ledger cards; and (7) failure to conduct three-way reconciliations of his ATA. Accordingly, the charge that respondent violated RPC 1.15(d) is supported by clear and convincing evidence. Further, the OAE confirmed that, as of the date of the filing of the complaint, respondent had failed to correct his recordkeeping deficiencies.

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent violated this Rule in multiple respects. First, 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. Respondent further failed to comply with the Court's Order that he cooperate, resulting in his temporary suspension. R. 1:20-3(g)(4).

Additionally, respondent failed to file a verified answer to the formal ethics complaint and allowed this matter to proceed as a default. R. 1:20-4(f).

Next, respondent violated RPC 8.4(b), which prohibits a lawyer from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is well-settled that a violation of this Rule may be found even in the absence of a criminal conviction or guilty plea. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); In re McEnroe, 172 N.J. 324 (2002) (the attorney was found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense). Respondent's issuance of the $537.75 ABA check to KLW, when he knew his ABA held insufficient funds, constituted a fourth-degree crime, contrary to N.J.S.A. 2C:21-5(c)(3).[9]

N.J.S.A. 2C:21-5, governing bad checks, provides, in relevant part:

> A person who issues or passes a check or similar sight order for the payment of money, or authorizes an electronic funds transfer, knowing that it will not be honored by the drawee, commits an offense as provided for in subsection c. of this section. For the purposes of this section as well as in any prosecution for theft committed by means of a bad check, an issuer is presumed to know that the check, money order, or electronic funds transfer (other than a post-dated check,

[9] N.J.S.A. 2C:21-5(c)(3) provides that it is "a crime of the fourth degree if the amount of the check, money order, or electronic funds transfer is $200.00 or more but is less than $1,000.00."

> money order, or electronic funds transfer) would not be paid, if:
>
> * * *
>
> b. Payment was refused by the drawee for lack of funds, or due to a closed account, after a deposit by the payee into a bank for collection or after presentation to the drawee within 46 days after issue, and the issuer failed to make good within 10 days after receiving notice of that refusal or after notice has been sent to the issuer's last known address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

Consistent with that plain language, the conduct must be "knowing." N.J.S.A. 2C:2-2(b)(2) states that "[a] person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result if he is aware that it is practically certain that his conduct will cause such a result."

Here, as the parties previously had agreed, KLW waited to negotiate respondent's ABA check, dated September 19, 2019, until September 30, 2019. Respondent learned, via e-mail notification, that the check had been returned for insufficient funds, yet, he failed to cure the shortfall. Further, prior to September 19, 2019, respondent made at least fifteen cash withdrawals or debit purchases from his ABA, which had a negative balance, and had been assessed myriad overdraft charges. Given the repeated overdraft notices respondent received

from his bank, we determine that respondent knew that an overdraft was practically certain to result from his issuance of the KLW check. Thus, he violated N.J.S.A. 2C:21-5 and, in turn, RPC 8.4(b).

By passing a bad check, respondent further violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent's issuance of this ABA check occurred during a period when he knew he had a negative account balance in his ABA, made multiple withdrawals from his ABA, and each time incurred overdraft fees. He, thus, possessed actual knowledge that his account held insufficient funds.

We next turn to DRB 22-075. Following our review of the record, we find that the facts recited in the DEC's amended and consolidated complaint support the allegations that respondent violated RPC 8.1(b) (three instances). Pursuant to R. 1:20-4(f)(1), the allegations of the complaint are deemed admitted and provide a sufficient basis for the imposition of discipline.

As previously set forth, RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Here, respondent violated this Rule in three ways. First, respondent violated RPC 8.1(b) when he failed to reply to the DEC's May 9, June 24, and October 14, 2021 written requests for information in response to the Fortune grievance.

Respondent again violated RPC 8.1(b) when he failed to respond to the DEC's January 6 and January 29, 2021 letters, hand-delivered to him on July 20, 2021, seeking information in response to the referral from the FAC. Respondent violated RPC 8.1(b) a third time by failing to file an answer to the formal ethics complaint.

In sum, in DRB 22-015, we find that respondent violated RPC 1.15(d); RPC 8.1(b) (two instances); RPC 8.4(b); and RPC 8.4(c). In DRB 22-075, we find that respondent violated RPC 8.1(b) (three instances). The sole issue left for our determination is the appropriate quantum of discipline for the totality of respondent's misconduct.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, 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) (the 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) (after an overdraft of the attorney's 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 a 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 trust account to cover overdrafts in his business account, a demand audit uncovered several recordkeeping deficiencies, including: (1) errors in information recorded in client ledgers; (2) lack of fully descriptive client ledgers; (3) lack of running balances for individual clients on the clients' ledgers; (4) failure to promptly remove earned fees from the trust account; and (5) failure to perform monthly three-way reconciliation, in violation of RPC 1.15(d) and R. 1:21-6).

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 mandate 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).

Thus, in the absence of negligent misappropriation and in view of respondent's minimal and remote disciplinary history, a reprimand would be the appropriate baseline discipline for respondent's violations of RPC 1.15(d) and RPC 8.1(b). There remains for consideration, however, respondent's RPC 8.4(b) and (c) violations, which arise from his knowing issuance of the bad check to KLW in DRB 22-015, and his subsequent failure to cure the issue.

Our decision in In re Artusa, 246 N.J. 154 (2021), provides relevant guidance in this matter. In Artusa, we imposed a censure on an attorney who, in addition to violating RPC 1.15(d) and RPC 8.1(b), violated RPC 8.4(b) and (c) by passing 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 were for amounts that constituted a disorderly persons 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.

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. In aggravation, however, Artusa had not only repeatedly engaged in the passing of bad checks, but he passed them to the Superior Court. We determined that the aggravation outweighed the mitigation, warranting a censure. The Court agreed.

Here, respondent's additional misconduct is quite similar to that of the attorney in Artusa, who was censured. Like Artusa, respondent knowingly issued a bad check in an amount less than $1,000. Respondent, however, issued a single bad check, in the amount of $547, whereas Artusa had issued sixteen bad checks, totaling $3,353. Artusa received enhanced discipline of a censure, in part, because we weighed, in aggravation, the fact that he had repeatedly

passed bad checks, and had passed them to the Superior Court, factors that are not present here; these factors outweighed Artusa's lack of prior discipline and his cooperation with the disciplinary proceeding. In contrast, respondent passed a single bad check to a private company.

Thus, based upon the above precedent, the totality of respondent's misconduct could be met with a reprimand. In crafting the appropriate discipline, however, we also must consider mitigating and aggravating circumstances.

There is no mitigation to consider.

Respondent has a 1998 reprimand. Prior to these consolidated matters, however, he had been without formal discipline for more than twenty years. Thus, we accord respondent's disciplinary history minimal weight. See In re Keeley-Cain, 247 N.J. 196 (2021); In the Matter of Thomas Martin Keeley-Cain, DRB 20-034 (February 5, 2021) at 19 (prior discipline was not an aggravating factor, because "[a]lthough respondent received an admonition, in 2005, for similar misconduct, given the passage of time, that prior misconduct does not serve to enhance the discipline"); In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (in imposing only an admonition, we considered the significant passage of time since prior discipline for unrelated misconduct (1990, private reprimand (now an admonition), and 1995, admonition)).

In further aggravation, respondent has demonstrated a pattern of failing to cooperate with the attempts of disciplinary authorities to address his misconduct. Respondent defaulted in both matters before us and refused to cooperate with the three underlying ethics investigations involving misconduct impacting two client matters and a third party. Although principles of progressive discipline are not applicable, the timing of respondent's misconduct in the three ethics investigations is relevant to his awareness of his obligation to cooperate with the disciplinary authorities.

Specifically, in DRB 22-015, the complaint was filed on December 8, 2021, for misconduct that occurred in 2019 and 2020. In that matter, respondent partially cooperated with the OAE's investigation from December 2019 to August 2020, but subsequently refused to produce the financial books and records after the OAE identified questionable trust account transactions.

In DRB 22-075, respondent's failure to cooperate with the underlying investigation in the Fortune matter occurred from May 2019 to October 2019 and, thus, took place prior to his interactions with the disciplinary authorities in DRB 22-015. Thus, it cannot be said respondent was on notice that his behavior was under scrutiny at the time because he was provided with Fortune's grievance prior to his receipt of the grievance in DRB 22-015. Thus, the appropriate measure of discipline would remain a reprimand.

The same cannot be said, however, for the investigation arising from the FAC referral. Respondent received the DEC's request for information in that matter in July 2020, after the ethics investigation in DRB 22-015, in which he initially participated. By then, he was also well aware of Fortune grievance. Thus, he was on repeated notice of his duty to conform his conduct to that required of New Jersey attorneys. Instead, he ignored the ethics investigations, effectively preventing the OAE from understanding the transactions occurring in his ATA. Moreover, he refused to comply with the Court's Order directing that he cooperate.

Respondent's pattern of failing to cooperate with disciplinary authorities, therefore, serves to justify enhancement of what would be a reprimand to a censure. See In re Furino, 210 N.J. 124 (2012) (three-month suspension imposed, in a default matter, on an attorney who ignored a letter from the DEC and failed to submit a written reply to a grievance; in aggravation, we considered that, at the time he received the grievance, he was "well aware of his inaction vis-à-vis the DEC in two prior disciplinary matters was under scrutiny," yet, "he continued to evade and avoid the system;" prior reprimand and three-month suspension).

Finally, we consider the default status of both matters. "[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).

In light of the default status of both matters and respondent's demonstrated pattern of failing to cooperate in New Jersey's disciplinary process, despite his heightened awareness of his obligations as an attorney and the consequences that will follow, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar. As a condition precedent to his reinstatement, respondent is required to provide proof to the OAE that he has satisfied the October 15, 2019 fee arbitration determination in IIB-2019-0015F or, alternatively, has reimbursed the New Jersey Lawyers' Fund for Client Protection for any associated claim paid on his behalf.

Chair Gallipoli voted to impose a six-month suspension.

Member Hoberman was absent from consideration of these consolidated matters.

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

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

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Neal E. Brunson
Docket Nos. DRB 22-015 and DRB 22-075

Decided: August 3, 2022

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Six-Month Suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman			X
Joseph[10]	X		
Menaker	X		
Petrou	X		
Rivera	X		
Singer	X		
Total:	7	1	1

Johanna Barba Jones
Chief Counsel

[10] Member Joseph was absent from consideration of DRB 22-015 on April 21, 2022. However, having reviewed the matter anew following our consolidation of both matters on July 21, 2022, she participated and determined to vote for a three-month suspension.