Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-071
District Docket Nos. XIV-2018-0473E
and IIA-2019-0903E

In the Matter of	:
Daniel David Hediger	:
An Attorney at Law	:

Decision

Argued: October 20, 2022

Decided: November 1, 2022

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Joshua G. Curtis appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District IIA Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(d) (failing to comply with

the recordkeeping requirements of R. 1:21-6) and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey; New York; Pennsylvania; and Connecticut bars in 1995. During the relevant timeframe, he maintained a practice of law in Hackensack, New Jersey.

Respondent has a lengthy disciplinary history, consisting of two reprimands and four censures in a seven-year period. Specifically, in 2004, in a default matter, respondent received a reprimand for his violations of RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (engaging in lack of diligence); RPC 1.4(a) (failing to communicate with a client and to comply with reasonable requests for information); and RPC 8.1(b). In re Hediger, 179 N.J. 365 (2004) (Hediger I).

In July 2007, the Court twice censured respondent. In the first 2007 disciplinary matter, he was censured for his violations of RPC 1.3; RPC 1.15(a) (two instances – failing to safeguard property belonging to a client or a third party and negligent misappropriation of funds); RPC 1.15(b) (failing to promptly deliver funds to a third party); RPC 1.15(d); RPC 7.5(d) (improperly

using firm name); and RPC 8.1(b). In the Matter of Daniel Hediger, DRB 06-223 (December 8, 2006) at 19-25 (we determined that "respondent admittedly failed to comply with the recordkeeping requirements, a violation of R. 1:21-6 and RPC 1.15(d)" by (1) retaining fees due to him in his attorney trust account and failing to properly and timely transfer those funds into his attorney business account, and (2) failing to disburse checks to a third party), so ordered, 192 N.J. 105, 106 (2007) (the Court also adopted our recommendation that, for a period of two years, respondent (1) practice under the supervision of a practicing attorney approved by the OAE, and (2) submit quarterly reconciliations of his attorney financial accounts to the OAE, further directing that those reconciliations be prepared by a certified public accountant approved by the OAE) (Hediger II).[1]

In the second 2007 disciplinary matter, respondent received another censure for his violations of RPC 1.3; RPC 1.4(a); RPC 1.15(d); and RPC 8.1(b). In the Matter of Daniel Hediger, DRB 07-010 (May 24, 2008), we noted that:

> [r]espondent has had ongoing problems in complying with the recordkeeping rules. In fact, we have already determined to censure him, in the matter pending with the Court [referencing the Hediger II matter], for failure to promptly deliver funds to third persons and failure to correct recordkeeping deficiencies . . . . Hopefully, with

[1] Although the Court's corresponding disciplinary Order did not include the RPC 1.15(d) violation, based upon the conditions imposed by the Court, we conclude this to be a scrivener's error.

> the proper assistance, including the continuation of his proctorship and the use of an accountant, respondent's recordkeeping problems will be resolved.
>
> [Id. at 13.]

See also In re Hediger, 192 N.J. 108, 108-109 (2007) (continuing the conditions imposed in Hediger II) (Hediger III).

The following year, in 2008, respondent received a second reprimand for his violations of RPC 1.4(b) (failing to communicate with a client) and RPC 5.5(a) (practicing law while ineligible). In re Hediger, 197 N.J. 21 (2008) (Hediger IV).

In 2010, he received a third censure for his violation of RPC 1.3. In re Hediger, 202 N.J. 336 (2010) (Hediger V).

Most recently, in 2011, respondent received a fourth censure for his violations of RPC 1.15(a) and RPC 1.15(d), again for failing to comply with the recordkeeping Rules. In the Matter of Daniel D. Hediger, DRB 10-280 (December 13, 2010) at 15 (in imposing only a censure, we cautioned respondent that "any further trust account problems may result in the imposition of more severe discipline and measures"), so ordered, 206 N.J. 67 (2011) (Hediger VI). The Court required respondent, until further Order of the Court, to (1) designate a member of his staff to assume daily responsibility for the monitoring and proper recording of his trust account activity, (2) submit to the OAE monthly

reconciliations of his attorney accounts and records prepared by an approved certified public accountant, and (3) practice under the supervision of a practicing attorney until further Order of the Court. Hediger, 206 N.J. at 68. Those requirements remain in place today, more than ten years later.

Notably, in 2013, respondent received further guidance regarding New Jersey's attorney recordkeeping obligations by participating in the random audit compliance program (the RAP). We note that it is standard practice for the RAP auditors to provide audited attorneys with a copy of the OAE's Outline of Record Keeping Requirements Under RPC 1.15 and R. 1:21-6 (February 2017).

We now turn to the facts of this matter, which are largely undisputed, although respondent denies having violated any RPCs.

On August 28, 2018, the OAE docketed the instant matter, upon receipt of an ethics grievance against respondent, and sought to schedule a demand audit of respondent's financial books and records. Here, the nature of the grievance is irrelevant, except to demonstrate the inception of the instant investigation into respondent's recordkeeping practices.

During the relevant timeframe, respondent maintained an attorney trust account (ATA) and an attorney business account (ABA) at Wells Fargo Bank. On October 18, 2018 and April 25, 2019, the OAE issued subpoenas to Wells

Fargo for all financial documents related to respondent's ATA and ABA, from January 2017 through April 2019.

On January 9, 2019, a disciplinary auditor for the OAE sent a letter to respondent, scheduling a demand audit of his financial books and records for November 2017 through January 2019.[2] The OAE also directed that respondent produce by February 11, 2019: (1) three-way reconciliations for May 2018 through January 2019; (2) receipts and disbursements journals for May 2018 through January 2019; (3) copies of ATA checks used to resolve inactive trust ledger balances; (4) copies of ATA checks used to resolve ten outstanding checks in the trust ledger balances; (5) cover letters to each client to resolve the inactive trust ledger balances and outstanding checks; (6) a summary of any checks sent to the Superior Court Trust Fund (the Fund); (7) a spreadsheet summary of checks sent to clients for outstanding checks or inactive balances; and (8) client ledger cards for active accounts from January 2018 through January 2019.[3] The OAE further informed respondent that his failure to cooperate would be deemed a violation of RPC 8.1(b).

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[2] The instant matter arose from a demand audit and, accordingly, the OAE's review of respondent's financial books and records is separate and distinct from the OAE's supervision ordered in Hediger VI. On February 1, 2019, respondent sent the OAE an e-mail, enclosing his ATA reconciliations for May through December 2018.

[3] Unidentified funds are funds in an attorney's ATA that the attorney cannot identify as belonging to a particular client. See R. 1:21-6(j). Inactive funds are funds belonging to a

(footnote cont'd on next page)

After receiving the OAE's January 9, 2019 letter, respondent hired an attorney and began compiling the requested documents, which took him several weeks. On February 13, 2019, respondent produced some, but not all, of the documents requested. Specifically, respondent failed to produce: (1) his three-way reconciliations and receipts and disbursement journals for January 2019; (2) copies of ATA checks used to resolve inactive trust ledger balances; (3) copies of checks used to resolve the ten outstanding checks in the trust ledger balances; (4) cover letters sent to clients to resolve the inactive trust ledger balances and outstanding checks; (5) a summary of the checks sent to the Fund; and (6) a spreadsheet summary of checks sent to clients resolving outstanding checks or inactive balances.

Two days later, on February 15, 2019, an OAE disciplinary auditor sent a follow-up letter seeking respondent's full compliance with the January 9, 2019 document request, explaining that it was respondent's duty to create any required documents which did not yet exist. The OAE also directed respondent to explain what steps he had taken to locate the owners of outstanding checks and to remit unclaimed or unidentified ATA funds to the Fund. Based upon the documents respondent submitted on February 13, 2019, the OAE requested that

known client whose matter has been closed, but the funds have yet to be disbursed. Outstanding checks are checks that have been issued but not negotiated by the payee.

he further provide: (1) all client ledger cards for open, inactive, and closed accounts from December 2017 through February 2019, (2) copies of ATA checks reissued to resolve eight outstanding checks[4] in the trust ledger balances, and (3) three-way reconciliations and receipts and disbursement journals for January 2019. The February 15, 2019 letter again notified respondent that his failure to cooperate would be deemed a violation of RPC 8.1(b).

On February 27, 2019, respondent replied to the OAE's February 15, 2019 letter, again producing some, but not all, of the documents requested. Specifically, respondent failed to produce: (1) a spreadsheet summary of checks sent to clients for outstanding checks or inactive balances; (2) client ledger cards; (3) copies of reissued checks used to resolve the outstanding ATA funds; (4) cover letters sent to clients to resolve the ten inactive trust ledger balances and outstanding checks; (5) copies of canceled checks; and (6) a summary of the checks sent to the Fund.

Later, on March 13, 2019, respondent supplemented his February 27, 2019 submission by producing the requested spreadsheets.

The following day, on March 14, 2019, respondent appeared for a demand audit and answered questions about the documents produced related to his

[4] Three of the outstanding checks simply needed to be reissued to respondent and deposited in his ABA.

financial accounts. The demand audit revealed the following recordkeeping deficiencies: (1) inactive balances left in respondent's ATA, in violation of R. 1:21-6(d); (2) outstanding checks in his ATA, in violation of R. 1:21-6(d); and (3) earned legal fees in his ATA, in violation of R. 1:21-6(a)(2) and RPC 1.15(a).[5] At the conclusion of the demand audit, the OAE impressed upon respondent the need for him to produce all the previously requested documents, in order for the OAE to verify that he had resolved the deficiencies in his recordkeeping practices. Respondent replied that he both understood and intended to comply.

The following day, on March 15, 2019, the OAE sent a letter to respondent's counsel memorializing the essential documents that respondent had committed to provide during the continuing demand audit. Specifically, the OAE requested that respondent produce: (1) copies of seven ATA checks used to resolve outstanding checks in the trust ledger balances, identified from respondent's February 27, 2019 submission; (2) in connection with twenty-two inactive trust ledger balances, copies of cover letters, canceled checks, amended ledger cards, and bank statements attesting to the date the checks had been

[5] Respondent was not charged with having violated RPC 1.15(a) (commingling).

negotiated to resolve the inactive balances;[6] (3) if new checks had not been issued to resolve the inactive balances, a spreadsheet attesting to the due diligence made to resolve the balances; and (4) three-way reconciliations for his ATA for February 2019.

On April 23, 2019, respondent sent the OAE an e-mail, producing: (1) a spreadsheet detailing the status of seven outstanding ATA checks in his trust ledger balances, four of which had been reissued; (2) a spreadsheet detailing the status of inactive trust ledger balances; (3) the February and March 2019 ATA bank statements, with copies of checks written during that time; and (4) a transaction history for his ATA. Respondent, however, failed to produce: (1) copies of checks used to replace the outstanding checks; (2) copies of canceled checks, cover letters, and amended ledger cards for outstanding balances that had been resolved; (3) any correspondence to the Fund; and (4) the February 2019 three-way reconciliations for his ATA.

The following day, on April 24, 2019, the OAE sent a letter to respondent, providing him with yet another opportunity to cure his recordkeeping deficiencies and to provide the requested documents. Specifically, the OAE

[6] From the documents produced by respondent, the OAE prepared a detailed list of twenty-two inactive trust ledger balances in respondent's ATA, including 54 Belmont; Abril; DePena; Kim; Miller; Theodorou; and Vasquez. Notably, the inactive balances for Abril, Kim, and Vasquez were more than two years old.

requested that respondent produce, by May 15, 2019: (1) copies of four replacement ATA checks used to resolve outstanding checks; (2) proof that he had resolved two outstanding ATA checks, based upon his self-prepared list from February 27, 2019 showing the uncleared transactions; (3) canceled checks, amended ledger cards, and bank statements proving that he had resolved ten outstanding ATA checks issued to himself, based upon the self-prepared spreadsheet included in his April 23, 2019 submission; (4) canceled checks, amended ledger cards, and bank statements for nine inactive client balances, including 54 Belmont; Abril; Borbon; DePena; Kim; Miller; Theodorou; Vazquez; and Williams, previously requested on March 15, 2019; and (5) three-way reconciliations for his ATA for February, March, and April 2019. All the requested documents, with the exception of the April 2019 three-way reconciliations, had been requested in the March 15, 2019 letter. The April 24, 2019 letter notified respondent, yet again, that his failure to cooperate would be deemed a violation of RPC 8.1(b).

It is undisputed that respondent failed to reply to the OAE's April 24, 2019 letter. Additionally, because respondent failed to produce full and complete records, the OAE could not confirm that his recordkeeping practices complied with the Rules. Thus, on October 28, 2019, the OAE filed the formal ethics

complaint underlying this matter, charging respondent with having violated RPC 1.15(d) and RPC 8.1(b).

During the ethics hearing, regarding RPC 1.15(d), respondent acknowledged his recordkeeping responsibilities under R. 1:21-6 – namely, his duty to maintain disbursement and receipt journals for his ATA, client ledger cards, and monthly three-way reconciliations. He further acknowledged his duty to maintain those recordkeeping documents for seven years, to produce the documents upon the OAE's request, and to "completely" comply with the OAE's document requests.

Respondent admitted that his ATA held inactive balances and outstanding checks. He argued, however, that R. 1:21-6(d) did not require him to resolve the inactive trust balances within a specific timeframe and that no Rule defined ATA checks as being outstanding after six months or required that outstanding funds be remitted to the Fund. Respondent further maintained that he had not been required to deposit the outstanding funds with the Fund, but, instead, considered it an option. Yet, despite that claim, respondent admitted that he previously had identified outstanding funds in his ATA, attempted to locate the owner of those funds, and, on occasion, had remitted the outstanding balances to the Fund.

In turn, the OAE disciplinary auditor testified that respondent had violated R. 1:21-6(d), which required him to comply with the generally accepted

accounting principles (GAAP principles), including the requirement that inactive trust funds be promptly resolved, and R. 1:21-6(j), which required outstanding trust balances to be remitted to the Fund. He further testified that respondent should have reissued new checks for any outstanding checks or, if he no longer had contact with the client, remitted the balances to the Fund. The auditor stated that respondent further failed to comply with R. 1:21-6(d), which incorporates the recordkeeping requirements of R. 1:21-6(a) and (c) requiring an attorney to keep copies of all disbursements related to client matters. He stated that respondent also failed to disburse earned legal fees from his ATA to his ABA, in violation of R.1:21-6(a)(2) and RPC 1.15(b).[7]

Second, with regard to RPC 8.1(b), it is undisputed that respondent failed to reply to the OAE's April 24, 2019 letter. Respondent also admitted that, at the time of the filing of the complaint on October 28, 2019 – six months after the OAE's April 24, 2019 letter – he had not produced all the documents requested by the OAE. He further admitted that, at the time of the ethics hearing on June 2, 2021 – more than two years after the OAE's April 24, 2019 letter – he still had not produced all the requested documents.

Despite his admitted failure to reply to the April 24, 2019 letter, respondent emphasized that he had replied to the OAE's January 9, February 15,

[7] Notably, respondent was not charged with having violated RPC 1.15(b).

and March 15, 2019 letters, producing substantial financial records. He also asserted that he had cooperated with the demand audit. Respondent further alleged that he had begun compiling the documents requested in the OAE's April 24, 2019 letter, but neither provided proof of those efforts nor submitted any additional documents.

As an explanation for his failure to reply to the April 24, 2019 letter, respondent offered that, from April through summer 2019, he experienced overwhelming hardships, specifically: a fire at a property that he owned, which resulted in the loss of a life; the lawsuit that followed; financial difficulties; substantial demands at his law office; and a strained marriage. He also appeared to blame the OAE, stating that his "course of dealing with the OAE had always involved at least one follow-up letter to counsel before taking action," suggesting that the OAE should have followed-up on its April 24, 2019 letter prior to filing the instant complaint. Respondent maintained that the auditor's testimony confirmed that noncompliant attorneys received at least one follow-up letter, which respondent described as being fair.

The OAE auditor, in turn, stated that he did not follow up with the April 24, 2019 letter because he determined that respondent had been afforded sufficient time to comply with the OAE's repeated demands.

Respondent, via counsel, argued in his post-hearing submission to the hearing panel that he had not violated R. 1:21-6, because the OAE failed to cite, with specificity, the portion of the Rule that he had violated, thus, depriving him of notice of the alleged violation and an opportunity to defend himself.[8] He further asserted that, at trial, the presenter had to prove that he had violated the specific Rules charged in the complaint.

Regarding the recordkeeping deficiencies, respondent argued that he had not violated the express provisions of R. 1:21-6, but instead only unwritten conventions that the OAE had adopted[9] to determine what constituted old checks and balances and what procedures should be taken to resolve them. He argued that R. 1:21-6(d) neither requires checks and balances to be "promptly" resolved nor outstanding checks and balances to be remitted to the Fund. Respondent further argued that an attorney (1) is not required to so designate a trust balance until the passage of more than two years, (2) cannot remit trust balances to the Fund until after the passage of at least three years, and (3) that even after three years, an attorney's use of the Fund is optional, not mandatory.

[8] In a light most favorable to respondent, his constitutional arguments are reserved for the Court. See R. 1:20-15(h).

[9] As stated above, it is the RAP auditor's standard practice to provide audited attorneys with a copy of the OAE's Outline of Record Keeping Requirements Under RPC 1.15 and R. 1:21-6. Moreover, that guideline is easily accessible online at https://www.njcourts.gov/attorneys/assets/oae.outline.pdf?c=xVH (visited October 24, 2022).

Regarding his cooperation with the OAE, respondent argued that the OAE charged him with having violated RPC 8.1(b) for failing to reply to a single letter – namely, the April 24, 2019 letter. He argued that the OAE did not send him a follow-up letter, consistent with past dealings and in the interest of fairness. Respondent also argued that he had produced substantial documentation on February 13, February 27, March 13, and April 23, 2019, maintaining that he had substantially cooperated with the OAE's investigation by replying to all but one of the OAE's document requests.[10] Respondent stated that, "although his response [to the OAE's letters] may have been imperfect, he was trying to comply . . . [.]"

The OAE, in turn, argued in its post-hearing submission that the record and respondent's own admissions proved his violation of RPC 1.15(d) and RPC 8.1(b) by clear and convincing evidence. Specifically, the OAE noted that respondent admittedly failed to produce all the documents requested in the March 15, 2019 letter and admittedly failed to reply to the April 24, 2019 letter.

The OAE argued that respondent's partial compliance with its document requests did not satisfy his duty to cooperate with the investigation. It contended that the April 24, 2019 letter sufficiently notified respondent that his failure to

[10] Respondent included in that list an April 2, 2019 date. No such letter exists in the record before us.

comply would be deemed a violation of RPC 8.1(b). The OAE also noted that the April 24, 2019 letter had been a follow-up to its March 15, 2019 letter and, therefore, respondent was not entitled to yet another follow-up letter.

Moreover, the OAE noted respondent's candid admission that, despite the Court-ordered monitoring and supervision imposed in 2011's Hediger VI – which remains in place today – his financial books and records remained "not one-hundred-percent complaint" ten years later.

Neither party addressed respondent's lengthy disciplinary history in their post-hearing submissions.

The hearing panel found that "Rule 1:21-6 does not specifically state that a check or balance is 'old' after a period of six (6) months" and "[w]hile prompt disposition of checks and balances may be good accounting practices . . . Respondent's actions in this matter did not rise to a violation." Additionally, in the panel's opinion, R. 1:21-6(j) did not require respondent to transmit balances to the Fund, but instead provided the Fund as an option that an attorney may utilize to dispose of unidentifiable or unclaimed balances. The panel found that, although "[r]espondent failed to comply with R[.] 1[:]21-6 in the maintenance of required financial records [and his] records may not have been in strict compliance with generally accepted accounting practices," he had not violated RPC 1.15(d).

Next, the panel found that respondent violated RPC 8.1(b) by admittedly failing to reply to the OAE's April 24, 2019 letter. The panel recommended that respondent be reprimanded for his violation of RPC 8.1(b). The panel considered, in mitigation, the hardships experienced by respondent. It did not, however, consider respondent's lengthy disciplinary history.[11]

Both respondent and the OAE were provided the opportunity to submit briefs to us. Respondent submitted a brief, agreeing with the hearing panel's dismissal of the RPC 1.15(d) charge and reiterating that the disciplinary auditor had (1) held respondent to the standard of unwritten "house rules" utilized by the OAE, and (2) been unable to identify specific subsections of the Rules for the charged violations.

Next, respondent argued that we should diverge from the hearing panel's finding that he violated RPC 8.1(b). Respondent maintained that he produced voluminous records in reply to the OAE's extensive document requests and failed to reply only to the April 24, 2019 letter. He maintained that the OAE's failure to provide him with a follow-up letter to its April 24, 2019 letter violated his due process rights and fundamental fairness.

[11] See R. 1:20-7(n) ("On a finding of unethical conduct the trier of fact shall request the Office of Attorney Ethics to disclose to it and to the presenter and to the respondent a summary of any orders, letters or opinions imposing temporary or final discipline or disability on the respondent") (emphasis added).

Notwithstanding his aforementioned arguments, respondent conceded that, if we agreed with the panel's RPC 8.1(b) determination, then the recommended reprimand was appropriate. He also repeated the mitigation detailed above.

During oral argument before us, the OAE reiterated the arguments made in its summation brief. In turn, respondent, through counsel, reiterated his arguments in his brief to us, particularly regarding his perceived lack of notice regarding what recordkeeping Rules he had violated, and what he again described as the OAE's "house rules" for recordkeeping. In sum, respondent claimed that no one, including the OAE auditor who testified during the ethics hearing, could adequately define what GAAP principles mean in connection with New Jersey's recordkeeping Rules.

Following a de novo review of the record, we are satisfied that the DEC's determination that respondent committed unethical conduct is supported by clear and convincing evidence. However, we disagree with the DEC's conclusion that respondent did not violate RPC 1.15(d) in various aspects.

An attorney has a duty to cooperate in an ethics investigation. R. 1:20-3 states, in relevant part:

> Every attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information. Such reply may include the assertion of any available constitutional

> rights, together with the specific factual and legal basis therefor. Attorneys **shall** also produce the original of any client or other relevant office file for inspection and review, if requested, as well as **all** accounting records required to be maintained in accordance with R. 1:21-6. (Emphasis added.)

That Rule unambiguously establishes an attorney's affirmative legal duty to fully comply with a lawful demand for information from a disciplinary authority, but it does not itself provide an independent basis for discipline. Notably, this is not respondent's first disciplinary proceeding, as evidenced by his six prior disciplinary matters, three of which involved recordkeeping deficiencies, in violation of RPC 1.15(d). He also has been provided guidance, in 2013, by the OAE's RAP program, and has been subject to Court-ordered monitoring of his financial books and records for more than a decade. In our view, at this point, neither the clearly enumerated obligations set forth in the recordkeeping Rules nor the duty to fully cooperate with disciplinary authorities should be unfamiliar to respondent.

RPC 1.15(d) states that a "lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules." Thus, preliminarily, respondent received proper notice of the charges against him. Moreover, respondent should have been exceedingly familiar the R. 1:21-6 requirements given his prior discipline and his now ten plus years of Court-ordered monitoring.

More specifically, R. 1:21-6(d) states that the "financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with the generally accepted accounting practices." R. 1:21-6(a)(1) and (2) require, in relevant part, that an attorney maintain separate attorney trust and business accounts. R. 1:21-6(c)(1)(H) requires an attorney to maintain "copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger balance." R. 1:21-6(h) requires, in relevant part, that:

> Any of the records required to be kept by this rule shall be . . . available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond **completely** to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. (emphasis added).

R. 1:21-6(i) further states that:

> An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond **completely** to questions regarding such records as required shall be deemed in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b). (emphasis added).

Last, R. 1:21-6(j), titled "Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Fund Missing Owners," provides:

> When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, **may**, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. (emphasis added).

We, thus, diverge from the hearing panel's determination and find that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6, including the GAAP principles clearly embodied in that Rule and required to be followed as part of respondent's Court-ordered monitoring. At the March 14, 2019 demand audit, the disciplinary auditor identified the deficiencies in respondent's recordkeeping practices. The following day, on March 15, 2019, the OAE sent a letter to respondent making further documentary demands and detailing how respondent could ameliorate the deficiencies in his recordkeeping practices. Although respondent replied to

the OAE, stating that he both understood and intended to comply, he failed to comply.

Respondent's failure to promptly produce the requested documents makes clear that he did not maintain adequate attorney financial records, despite his heightened awareness and Court-ordered monitoring. Specifically, he failed to maintain proper client ledger cards, perform monthly reconciliations, resolve outstanding checks, and he left inactive trust balances in his ATA, in violation of R. 1:21-6(c)(1)(H), R. 1:21-6(d), and R. 1:21-6(a) and (c). He also failed to transfer earned legal fees from his ATA to his ABA, in violation of R. 1:21-6(a)(1) and (2). The requested documents should have been prepared monthly, in compliance with both the Rule and respondent's Court-ordered monitoring imposed in Hediger VI. Indeed, respondent failed to produce documents which, arguably, should have been easily produced if properly maintained. Thus, respondent violated RPC 1.15(d), in various aspects, over a prolonged period.

Next, R. 1:21-6(j) specifically states that "[w]hen for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds **shall** be so designated." (emphasis added). That Rule further provides that funds, designated as unidentifiable, may be deposited with the Fund after the passage of a one-year, unsuccessful attempt to identify the proper owner. Here,

respondent first failed to properly designate funds as unidentified. Thereafter, despite the Rule and the OAE's February 15, 2019 letter, respondent failed to remit the unidentified balances to the Fund. The OAE's directive that respondent remit the balances to the Fund specifically applied to the Abril, Kim, and Vazquez balances, which were more than two years old. Respondent admittedly failed to remit those balances to the Fund, perpetuating the deficient nature of his attorney financial records. Respondent, thus, further violated RPC 1.15(d).

Respondent's claim that he tried to comply with the OAE's document requests, as evidenced by his imperfect submissions, is belied by his historic, persistent recordkeeping deficiencies. Notably, those deficiencies have persisted despite the Court-ordered monitoring, which has been in place for more than ten years, and the 2013 guidance provided to him by the OAE's RAP program.

Based on the same facts, it is equally clear that respondent failed to fully comply with the OAE's reasonable requests, in violation of RPC 8.1(b). Respondent did not, as he claimed, fail to comply with "a single letter." He failed to fully comply with the OAE's January 9, February 15, and March 15, 2019 document production directives. He also admittedly failed to reply to the OAE's April 24, 2019 letter.

It is well-settled that cooperation short of the full cooperation required by the Rules results in the finding that the attorney violated 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 (wherein 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).

Respondent's partial compliance, here, certainly is not the "full, candid, and complete disclosure" contemplated by the Rules and case law. See In re Gavel, 22 N.J. 248, 263 (1956). Moreover, after having had the benefit of the 2007 two-year proctorship and monitoring period, in addition to the ongoing proctorship and monitoring period which began in 2011, respondent should have been able to readily comply with all the OAE's financial records requests.

In sum, we determine that respondent violated RPC 1.15(d) and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, recordkeeping irregularities are met with an admonition where, they have not caused a negligent misappropriation of client funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (the attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations,

and proper trust and business account check images; no prior discipline); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE's demand audit revealed that the attorney (1) failed to 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) failed to properly designate the trust account; and (5) failed to maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6; no prior discipline); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his Interest on Lawyers Trust Account (IOLTA) to cover overdrafts in his attorney business account, a demand audit revealed several recordkeeping deficiencies: (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; no prior discipline); In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (for a period of six years, the attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified, in violation of RPC 1.15(d)

and R. 1:21-6; no prior discipline; we required all unidentified funds to be remitted to the Fund in accordance with R. 1:21-6(j)).

However, reprimands have been imposed for recurring recordkeeping violations. See In re Epstein, 195 N.J. 186 (2008) (reprimand imposed based upon the attorney's continued failure to address trust account problems that were the subject of a prior disciplinary proceeding; the attorney violated RPC 1.15(b) and RPC 8.1(b); prior censure, where the baseline reprimand for the attorney's violations of RPC 1.15(b) and RPC 1.15(d) was enhanced by her default). Although respondent was not charged with having violated RPC 1.15(b), Epstein remains instructive as it relates to respondent's repeated failure to correct the deficiencies in his ATA.

Additionally, 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 Larkins, 217 N.J. 20 (2014) (default; the attorney did not reply to the ethics investigator's attempts to obtain information about a 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 similarly failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (the attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (the attorney failed to cooperate with disciplinary authorities; prior three-month suspension for similar conduct); In re Williamson, 152 N.J. 489 (1998) (the attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Like the attorneys in Newman, Salzman, Miller, and Ibezim, respondent failed to maintain adequate trust account records. Just like the attorney in Epstein, respondent repeatedly failed to cure his recordkeeping deficiencies. Like the attorneys in Larkins, DeBosh, and Williamson, respondent further failed to cooperate with disciplinary authorities.

In isolation, a reprimand could be sufficient discipline for respondent's misconduct. In crafting the appropriate discipline, however, we also consider mitigating and aggravating factors.

In limited mitigation, respondent claimed to have experienced hardships around the time of his failure to reply to the OAE's April 24, 2019 letter. However, those hardships should not have affected respondent's Court-ordered compliance with his recordkeeping obligations, which commenced in 2011.

In significant aggravation, this matter represents respondent's seventh disciplinary proceeding and constitutes his fourth violation of RPC 1.15(d). As detailed above, in 2007, the Court twice censured respondent and imposed a two-year Court-ordered monitoring and proctorship (Hediger II and Hediger III). Thereafter, in 2011, after respondent again failed to maintain adequate trust account records, we specifically cautioned him that "any further trust account problems may result in the imposition of more severe discipline and measures." Hediger VI. In that matter, the Court imposed a censure and required that respondent submit to the OAE monthly reconciliations of his attorney accounts and records prepared by an approved certified public accountant, and practice under the supervision of a practicing attorney until further Order of the Court. Although those provisions remain in place today, more than ten years later, respondent's financial records remain noncompliant.

Thus, it is clear that respondent has not taken the opportunity to curb his misconduct reform himself despite his second, lengthy Court-ordered monitoring and supervision. Respondent's two prior censures similarly have been insufficient to ensure his appreciation of the recordkeeping requirements and to bring about his compliance. His failure to learn from his past mistakes warrants progressive, enhanced discipline – as we previously cautioned. See, e.g., In the Matter of Herbert J. Tan, DRB 13-316 (December 10, 2013) at 12

(the attorney violated RPC 1.4(b) by failing to return approximately twenty calls from his client; due to his disciplinary history, which included, among other things, a censure for failure to communicate with a client, discipline was enhanced from an admonition to a reprimand based upon the attorney's failure to learn from his prior mistakes), so ordered, 217 N.J. 149 (2014). In our view, one fact was made abundantly clear by respondent's oral arguments before us – despite his significant ethics history, 2013 RAP education, and prolonged, Court-ordered monitoring, he still will not hold himself accountable for his persistent failure to comply with New Jersey's recordkeeping Rules. Such behavior continues to place his client's entrusted funds at risk, as evidenced by the facts set forth in this record.

On balance, we determine that, based upon the substantial aggravating factors present in this case, a three-month suspension is the quantum of discipline required to protect the public and preserve confidence in the bar.

Additionally, based upon his meritless arguments in the instant matter, we conclude that respondent still does not grasp his recordkeeping responsibilities under the Rules. Therefore, we require respondent to complete two recordkeeping courses pre-approved by the OAE, with proof of completion to be submitted to the OAE within ninety days of the Court's disciplinary Order in this matter.

We are further concerned that, although the proctorship and monitoring imposed in Hediger VI are ongoing, respondent's recordkeeping deficiencies have persisted for more than a decade. To ensure respondent's compliance with R. 1:21-6, we further require that, as a condition precedent to his reinstatement to the practice of law in New Jersey, respondent bring his ATA and ABA into full compliance with the recordkeeping Rules, subject to the OAE's review and confirmation of same.

Member Petrou voted to recommend a six-month suspension, 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 Daniel David Hediger
Docket No. DRB 22-071

Argued: October 20, 2022

Decided: November 1, 2022

Disposition: Three-month suspension

Members	Three-month suspension	Six-month suspension	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker			X
Petrou		X	
Rivera	X		
Total:	6	1	1

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