Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-153
District Docket Nos. XIV-2016-0404E;
XIV-2016-0407E; VA-2018-0900E;
and VA-2018-0901E

In the Matter of	
John Thomas Doyle	
An Attorney at Law	

Corrected Decision

Argued: November 17, 2022

Decided: February 10, 2023

Amanda Figland appeared on behalf of the Office of Attorney Ethics.

John Thomas Doyle appeared pro se.

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 three-month suspension filed by the District VA 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)); RPC 5.5(a)(1) (knowingly practicing law while ineligible); RPC 8.1(a) (making a false statement of material fact to disciplinary authorities); RPC 8.4(b) (two instances – committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (three instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1997 and has no prior discipline. At the relevant times, he maintained a practice of law in Lyndhurst and Bloomfield, New Jersey.

Effective November 17, 2014, the Court declared respondent ineligible to practice law in New Jersey for his failure to comply with Continuing Legal Education (CLE) requirements. Effective September 22, 2015, the Court reinstated respondent from the CLE ineligibility list following his compliance with CLE requirements.

Procedural History

As detailed below, following several years of delay attributable to, among other factors, respondent's conduct, lack of available courtrooms to conduct the ethics hearing, and the COVID-19 pandemic, this matter came before us. Following the confidential procedural events that occurred in 2016, the OAE and respondent entered discussions regarding the execution of a disciplinary stipulation.

However, because the OAE and respondent could not agree on the contents of the stipulation, on August 31, 2017, the OAE filed a formal ethics complaint, which it served on respondent on September 13, 2017. Respondent, however, failed to file an answer. Consequently, on December 11, 2017, the OAE sent respondent a letter, informing him that the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) (failing to cooperate with disciplinary authorities). The OAE also advised respondent that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline.

On December 16, 2017, respondent filed his verified answer to the complaint, which alleged that he previously had filed his answer with the OAE, on November 6, 2017.

Following the filing of respondent's verified answer, the OAE and respondent resumed discussions regarding the execution of a disciplinary stipulation. Because the OAE and respondent again could not agree on the contents of the stipulation, on May 11, 2018, the OAE filed an amended complaint, which did not include a separate RPC 8.1(b) charge based on respondent's purported failure to timely answer the original complaint. The OAE directed respondent to file his answer to the amended complaint within twenty-one days, as R. 1:20-4(e) requires.

On June 12, 2018, four days after respondent's June 8 deadline, he requested that the OAE grant him a three-week extension to file his answer. The OAE granted respondent's request and required him to file his answer by July 3, 2018.

On June 29, 2018, respondent requested an additional extension, until July 16, to file his answer because of upcoming deadlines in connection with unrelated client matters. The OAE granted respondent's request but declined to allow any further extensions. However, respondent failed to file his answer by the July 16 deadline and, consequently, the OAE required respondent to file his answer by July 20. On July 26, 2018, respondent filed his verified answer to the amended complaint.

On September 14, 2018, the DEC assigned this matter to a hearing panel. Four months later, on January 25, 2019, the OAE sent the DEC a letter requesting the scheduling of a pre-hearing conference, as R. 1:20-5(b) requires in complex cases alleging unethical conduct.

On March 19, 2019, respondent sent the OAE and the DEC an e-mail requesting that any "potential hearing date" be "reschedule[ed]" until "May [2019]" to allow him "time to tend to certain current cases" and to "explore" the possibility of retaining counsel.

On April 12, 2019, the DEC, with the agreement of respondent and the OAE, scheduled the ethics hearing for June 11 and 12, 2019. However, due to the lack of available courtrooms, the scheduled hearing dates were adjourned.

Between July 22 and November 14, 2019, the OAE sent respondent and the DEC letters requesting the scheduling of a pre-hearing conference.

On January 13, 2020, the DEC conducted a pre-hearing conference and scheduled the ethics hearing for March 10 and 11, 2020. However, on February 6, 2020, respondent requested an adjournment of the scheduled ethics hearing due to his alleged upcoming appearance at a criminal trial scheduled for March 2, 2020. Although the DEC granted respondent's adjournment request, the DEC did not reschedule the ethics hearing due to the onset of the COVID-19 pandemic.

On February 9, 2021, following a second pre-hearing conference, the DEC issued a case management order, which scheduled the ethics hearing for July 14 and 15, 2021.

On March 23, 2022, eight months after the conclusion of the July 14 and 15, 2021 ethics hearing, the DEC issued its decision recommending the imposition of a three-month suspension.

We now turn to the facts of this matter, which are largely undisputed, although respondent denied having committed any criminal acts.

Respondent's Issuance of Two Bad Checks for Filing Fees

On February 5, 2013, Tameka Mitchel retained respondent in connection with personal injuries she sustained in an automobile accident. On March 15, 2013, Yusef Jabri, in another client matter, retained respondent in connection with personal injuries he sustained when he "slip[ped] and f[e]ll on [. . .] ice."

On January 15, 2015, respondent filed a personal injury lawsuit on behalf of Mitchel in the Essex County Superior Court. In his submission to the Superior Court, respondent included a $250 filing fee check, issued from his Wells Fargo attorney trust account (ATA1), made payable to the State of New Jersey. Respondent's November 2014 through January 2015 ATA1 bank statements, however, reflected that respondent continuously had an ATA1 balance of $0 and that he had conducted no other ATA1 transactions. Indeed, during his April 17,

2015 demand interview with the OAE, respondent admitted that, since "early 2014," he had only one other, unrelated ATA1 transaction.

On January 22 and 26, 2015, the Superior Court attempted to negotiate respondent's filing fee check, which was returned for insufficient funds, resulting in two $35 overdraft fees, causing a negative $70 ATA1 balance.

Meanwhile, on January 26, 2015, respondent filed a personal injury lawsuit on behalf of Jabri in the Essex County Superior Court. Although respondent's ATA1 balance was negative $70, respondent submitted a $250 ATA1 filing fee check, which was made payable to the State of New Jersey. On February 4 and 6, 2015, the Superior Court attempted to negotiate respondent's check, which was returned for insufficient funds and resulted in two additional $35 overdraft fees, raising the total negative balance in ATA1 to $140.

Between January 30 and February 9, 2015, the OAE received overdraft notices from Wells Fargo in connection with the Superior Court's attempts to negotiate respondent's $250 filing fee checks. Thereafter, the OAE sent respondent letters, directing him to explain, in writing, the circumstances underlying each of the ATA1 overdrafts.

On February 16, 2015, respondent sent the OAE a letter, explaining that he "took it upon [himself] to pay" Mitchel and Jabri's filing fees because both of his clients were "indigent" and unable to pay for the costs of their respective

lawsuits. Respondent also maintained that he "had to file" the clients' respective lawsuits "right away in order to meet the statute of limitations." Respondent, conceded, however, that his law practice recently had "not brought in any significant money," and that his ATA1 "had a zero balance in it for at least the last six months." Additionally, although respondent claimed that he "thought [he] had written these checks" from his Wells Fargo attorney business account (ABA1), he conceded that he "had no money left in [his ABA1] and that it was actually overdrawn."[1] Respondent also maintained that, on the "day after" he had issued both ATA1 checks, he had "expect[ed] to receive a payment from a relative" to cover the amounts of both checks. Respondent admitted, however, that "the money did not come through," and that he still owed $500 to the State of New Jersey and $140 to Wells Fargo.

During respondent's April 17, 2015 demand interview with the OAE, he maintained that, although he "was out of money," he had issued the filing fee checks "with the intention that people had told me that I was going to be receiving some funds to put in there to cover the filing fee[s]. But they didn't come in, and that's why they didn't clear." Specifically, respondent maintained

[1] On November 17, 2014, Wells Fargo closed respondent's ABA1 based on his failure to remediate the account's negative $254.55 balance. During the ethics hearing, respondent conceded that he knew that he had issued the filing fee checks from his ATA1 as opposed to his closed ABA1.

his view that he "had some municipal court matters that people were supposed to pay me on" but that the fees "never came in." In respondent's verified answer, he elaborated that he "fully intended" for his filing fee checks to clear based on his perspective "that it takes a while for filing fees to be presented for payment[.]"

During the ethics hearing, respondent conceded that, when he issued both ATA1 filing fee checks to the Superior Court, he knew that he had no corresponding funds in his ATA1. However, respondent claimed that he had anticipated receiving funds from "either one of my current clients or my father or my brother" before the Superior Court would attempt to negotiate his filing fee checks. Specifically, respondent claimed that he "was contacting the clients that owed me money at that time to [. . .] get the money to cover" the filing fee checks. Although respondent maintained that some of his clients had expressed their willingness to pay his purported overdue fees, none of them made a firm commitment to do so. Moreover, respondent conceded that his ninety-five-year-old father had told him that he "didn't want to provide any [. . .] money at that time." Respondent also stated that his brother "couldn't help me [. . .] at that time." Thus, although respondent testified that he had "hoped" that his father and brother "would relent and [. . .] give me the funds[,]" he conceded that "they just hadn't agreed to it firmly[.]"

Following respondent's submissions to the Superior Court, he failed to pay the $500 owed to the State of New Jersey for filing fees or the $140 owed to Wells Fargo for overdraft fees.[2] Meanwhile, in March 2015, Wells Fargo closed respondent's ATA1 for his failure to pay the account's $140 in overdraft fees.[3]

In June 2015, approximately seven months after Wells Fargo closed his ABA1 and approximately three months after Wells Fargo closed his ATA1, respondent opened a new attorney trust (ATA2) and attorney business account (ABA2) at PNC Bank. Thereafter, although respondent did not deposit any funds in his ATA2, his June 2015 ABA2 bank statement reflected that he had deposited a total of $1,230 in that account, funds which he largely used to pay for personal expenses. Respondent, however, did not use those funds to reimburse the State of New Jersey for the $500 in unpaid filing fees.

On April 29, 2021, more than six years after respondent had issued the bad checks to the Superior Court, and less than three months before the start of

[2] Despite respondent's failure to pay the required filing fees, the Superior Court accepted for filing both of respondent's lawsuits. During the ethics hearing, respondent claimed that he neither "settled" nor "pursued" the two lawsuits, which "were both dismissed." The reasons underlying the dismissals, however, are unclear from this record.

[3] Following the closure of respondent's ATA1, Wells Fargo did not attempt to recoup from respondent the $140 in unpaid overdraft fees. Although respondent claimed that he "was going to reimburse" Wells Fargo, he maintained that it had "written off" his unpaid overdraft fees and that there was "no way to pay them at that point."

the July 14, 2021 ethics hearing, respondent contacted the finance division of the Superior Court to determine whether his filing fees "were still considered as being not paid" and to inquire how he could reimburse the Superior Court. During the ethics hearing, when queried why he previously had not made efforts to reimburse the Superior Court, respondent stated that "a lot of time had passed and I didn't even know if it was an issue. Maybe I was waiting for them to come to me, I don't know, but I should have addressed it earlier[.]" Respondent then apologized for his failure to reimburse the State of New Jersey and expressed his intention to do so "right now."

On October 26, 2021, following the parties' submissions of their summation briefs to the DEC, respondent sent the DEC a certification, to which he attached "alleged proof of payment" of the $500 to the State's "collection agent."[4]

Respondent's Submission of a False Retainer Agreement to the OAE

During respondent's April 17, 2015 demand interview, the OAE required that respondent provide, by April 20, retainer agreements for "all of [his] active cases," in addition to other financial records. On April 24, 2015, following

[4] The DEC did not admit respondent's October 26, 2021 certification into evidence "due to its tardiness." However, the DEC considered respondent's submission and "give it appropriate evidentiary consideration."

respondent's failure to comply, the OAE sent respondent a letter, requiring that he submit the requested records by May 8, 2015.

On May 8, 2015, respondent sent the OAE an e-mail, producing four unexecuted retainer agreements. Respondent also requested a two-week extension, until May 22, 2015, to provide the required records, claiming that he recently had relocated both his law office and personal residence. That same day, the OAE granted respondent's request.

On May 21, 2015, the day before the deadline, respondent sent the OAE an e-mail requesting a second extension, until June 1, to provide the required records. Respondent stated that he was "still dealing with the move of my home and office" and that he had not had time to "organize" the required records because of his "constant work and court appearances." The OAE granted respondent's second extension request and required him to submit the records by June 1, 2015.

On June 1, 2015, respondent sent the OAE another e-mail, requesting a third extension, until June 5, to provide the required records based on his purported illness. On June 2, 2015, the OAE granted respondent's request but advised him that it would not allow any further extensions.

On June 5, 2015, respondent sent the OAE an e-mail containing nine unexecuted retainer agreements and some of the required financial records.

Consequently, on June 8, 2015, the OAE sent respondent another letter requiring that he provide, by June 12, additional financial records along with fully-executed retainer agreements in connection with all his active client matters. Alternatively, if respondent could not locate the fully-executed retainer agreements, the OAE required respondent to provide a written statement explaining why the agreements were unsigned.

On June 12, 2015, respondent sent the OAE an e-mail, enclosing the executed retainer agreements for the Mitchel and Jabri matters, along with other financial records. Respondent, however, noted that he could not "locate" "[s]ome signed retainers" because of his recent "move" of his "home and office."

On June 17, 2015, the OAE sent respondent another letter, again requiring that he produce, by June 19, fully-executed retainer agreements for all his active client matters. On that same date, the OAE also required respondent to appear for a June 26 demand interview. Later on June 17, respondent sent the OAE an e-mail claiming that some of the executed retainer agreements "were ruined" during a prior "flood"[5] in his basement and that he had to "find" the other retainer agreements "after moving my home and office." Respondent, thus,

[5] During the ethics hearing, respondent claimed that the flood had occurred in 2014 and had caused the destruction of "a lot" of client records.

requested until June 26 to produce "as many of the [retainer] agreements that I can locate." Additionally, at respondent's request, the OAE agreed to reschedule the demand interview from June 26 to June 30.

On June 26, 2015, respondent sent the OAE a facsimile containing unexecuted retainer agreements in connection with six client matters. In his cover letter to the facsimile, respondent claimed that the retainer agreements "were all signed by my clients" and that he had to "locate the signed originals."

On June 29, 2015, one day before the scheduled demand interview, respondent sent the OAE a facsimile containing five executed retainer agreements. In his cover letter to the facsimile, respondent stated that he had attached "the signed retainers that I [could] locate at the moment." Among other documents, respondent included Wendell Doughty's purported retainer agreement; Doughty was a client who had retained respondent in connection with a matrimonial matter. The agreement contained Doughty's purported signature next to the handwritten notation "12/21/14[,]" the alleged date of the agreement.

On June 30, 2015, respondent appeared for the demand interview and admitted that he could not locate at least twelve of the executed retainer agreements requested by the OAE. Respondent again claimed that "[a] [l]ot of things were destroyed" in connection with a prior flood in his basement and that

he was still "trying to locate" his retainer agreements following his recent "move[.]" Thereafter, the following exchange occurred:

> The OAE: Now, for those [retainer agreements] that you provided, I have Doris Kudis (phonetic). Did you sign them or the client signed those retainer agreements?
>
> Respondent: The clients sign them.
>
> The OAE: Are you sure?
>
> Respondent: Uh-huh. Yes.

Thereafter, when the OAE questioned whether Doughty himself signed his retainer agreement, respondent replied "[t]his one he gave me authorization to sign. I didn't – he didn't sign it himself." As a result of respondent's claim that he had signed Doughty's signature on his retainer agreement, the following exchange occurred:

> The OAE: So why did he give you authorization to sign that then?
>
> Respondent: I – I just – I don't know if he actually – I don't know exactly when he gave me authorization, but I know he signed it.
>
> The OAE: But he didn't sign that one?
>
> Respondent: No.
>
> The OAE: You signed that one?
>
> Respondent: Right.

The OAE: So you don't know if he gave authorization? You just know that he signed it and –

Respondent: Yeah.

[. . .]

The OAE: So you're saying the original retainer, that would have been December 21, 2014?

Respondent: Right.

The OAE: That Wendell [Doughty] signed it?

Respondent: Right.

The OAE: But you couldn't find –

Respondent: I couldn't locate it.

The OAE: And so you produced this one to us?

Respondent: Right.

The OAE: Are you telling us that you just filled in then the date of 12/21/14?

Respondent: That's the date that I – that I gave it to him.

The OAE: And did you write 12/2[1]/14 on here?

Respondent: Right.

The OAE: Okay. And then you signed your name and then you signed his name again?

Respondent: Right.

The OAE: So you're giving us the one that – that you created. When did you create this?

Respondent: I just reproduced it a couple of weeks ago, but he did sign.

During the ethics hearing, respondent maintained that, in December 2014, he and Doughty had executed the original retainer agreement at Doughty's house. Respondent also claimed that it was "possible" that he had allowed Doughty to retain the original agreement, without "retain[ing] a copy for myself, because I didn't have a copy machine at my disposal at that time."

Based on these alleged circumstances, respondent conceded that, on "the day before" his June 30, 2015 demand interview, he had "printed" Doughty's unexecuted retainer agreement "off my computer[,] [. . .] signed my name and signed his name[,]" and then "hand wrote in the date 12-21-2014[.]" Respondent admitted that although he "should have" attempted to contact Doughty to retrieve the original retainer agreement, he was unable "to contact him at that time and I was nervous, my first ethics procedure I'd ever been through, and I irrationally signed his name to the document to show what it looked like [. . . .] when it was signed." Respondent also apologized for "not immediately" informing the OAE, at the outset of the June 30, 2015 demand interview, that he had "recreated" Doughty's retainer agreement. Respondent reiterated that he "was nervous and – there's no rhyme or reason a[s] to why I did that, it was a stupid thing to do. I just felt insufficient in the amount of documents that I was able to locate off the – right away[.] I felt pressured by the OAE to come up with

documents right away, and so I signed that one just to show that it had been signed, nothing more."

On May 3, 2021, respondent sent the OAE and the DEC hearing panel chair an e-mail, which contained purported excerpts of text messages between himself and Doughty. Specifically, the text messages demonstrated that, on May 2, 2021, respondent requested that Doughty provide him with a copy of their original retainer agreement. Hours later on May 2, Doughty sent respondent a photograph, via text message, of their original retainer agreement, dated December 21, 2014. Although the OAE objected to the admission of the text messages and photograph because it was unable verify their authenticity, the DEC admitted the documents into evidence, provided that respondent submitted a certification, under penalty of perjury, describing the circumstances underlying his communications with Doughty.

On July 20, 2021, five days after the close of the ethics hearing, respondent sent the OAE and the DEC the required certification, wherein he represented that, on December 21, 2014, he and Doughty had executed the original retainer agreement at Doughty's house. Moreover, respondent claimed that he had allowed Doughty to retain "sole possession" of the agreement because Doughty "did not have a photocopier." Respondent alleged that, given the passage of "more than six years[,]" he "had since forgotten that [. . .]

Doughty had kept the original signed agreement." Additionally, respondent maintained that, on May 2, 2021, he had sent Doughty a text message requesting a copy of their original retainer agreement, to which Doughty replied with a photograph of their original agreement and the comment "Is this what you need? I also have receipts off [sic] payment." Respondent represented that he then sent the text messages and photograph to the OAE and to the DEC hearing panel chair.

Respondent's Knowing Practice of Law While Ineligible

As noted above, on November 12, 2014, the Court declared respondent ineligible to practice law for his failure to comply with CLE requirements. Effective September 22, 2015, the Court reinstated respondent from the CLE ineligibility list following his compliance with CLE requirements. Despite his ineligibility at the time, on January 15 and 26, 2015, respondent filed Mitchel and Jabri's respective lawsuits in the Essex County Superior Court.

On February 3, 2015, the OAE sent respondent a letter notifying him not only of his ATA1 overdrafts in connection with his attempts to pay Mitchel and Jabri's respective filing fees, but also of his ineligibility to practice law because of his failure to comply with CLE requirements.

In respondent's February 16, 2015 letter explaining the circumstances underlying his ATA1 overdrafts, respondent also claimed that he "did not realize

that I was considered ineligible at this point." Respondent maintained that he had reviewed his CLE records and noted that, although he had "one or two classes left to take[,]" he had "not been able to afford the course fees as of late."

During respondent's April 17, 2015 demand interview, he admitted to the OAE that, although he was "aware" of his ineligibility, he continued to (1) provide "some" legal services, (2) accept retainer fees from new clients, and (3) appear in court. Respondent also noted that the Honorable Alberto Rivas, P.J.Cr., had informed him, during a recent court appearance, of his ineligibility and of the need to "take the classes as soon as possible." Respondent advised the OAE that he "plan[ned] on taking the classes" before his next court appearance before Judge Rivas, which was scheduled for April 29, 2015.

Despite respondent's purported commitment to fulfill his CLE requirements, on May 12, 2015, Judge Rivas sent the OAE a letter stating that respondent, who remained ineligible, had appeared in the Middlesex County Superior Court on behalf of a client "[a]s recently as May 7, 2015[.]"

Two weeks later, as a result of respondent's May 21, 2015 e-mail to the OAE requesting an adjournment to provide his retainer agreements and financial records in part because of his "constant work and court appearances[,]" the OAE required respondent to provide a list of his court appearances since the April 17, 2015 demand interview.

On June 12, 2015, respondent sent the OAE an e-mail, which listed eleven court appearances that he had made, in various New Jersey Superior and municipal courts, between April 28 and May 28, 2015.

During his June 30, 2015 demand interview, respondent further admitted that, although he remained ineligible to practice law, he still had several active client matters, some of which required court appearances. Respondent, however, again expressed his intent to take the required CLE classes "immediately" and to adjourn an upcoming July 6 court appearance.

On July 1 and 17, 2015, the OAE sent respondent letters directing him to cease the practice of law until his reinstatement by the Court.

On July 24, 2015, respondent sent the OAE a facsimile, stating that he successfully had adjourned his July 6 scheduled court appearance and that he had requested adjournments in connection with two other court appearances scheduled for July 27. Additionally, respondent listed seven upcoming court appearances, scheduled between July 28 and August 21, 2015, for which he had not requested adjournments. Respondent also noted that he recently had completed two CLE classes and that he had planned to "finish" his "[o]nline [c]ourses in the next few days."

During a July 31, 2015 telephone conversation with the OAE, respondent stated he planned to fulfill his CLE requirements that "weekend" and that he had

received a one-week adjournment for his court appearances scheduled for that week.

On August 3, 2015, respondent sent the OAE a letter, claiming that he had completed his CLE requirements and attaching several CLE certificates for courses that he purportedly had completed that same day.

During an August 10, 2015 telephone conversation with the OAE, respondent claimed that he had adjourned a court appearance scheduled for that day. The OAE, however, reiterated to respondent that he was prohibited from practicing law until his reinstatement by the Court. Despite the OAE's warnings, in August 2015, respondent continued to make prohibited court appearances.

On September 22, 2015, the Court reinstated respondent from the CLE ineligibility list.

During the ethics hearing, respondent claimed that, between February 2015, when he first learned of his ineligibility, and August 2015, when he had completed the required CLE courses, he was "under extreme financial hardship" and had no funds to pay for CLE courses. Respondent also stated that, although he "regret[ted]" his "decision to continue practicing" while ineligible, in his view, he would have been unable to "pay for the courses if [he] did [not] continue working." Respondent, however, claimed that he had made "every effort to take the classes that I needed to take."

Respondent's Recordkeeping Violations

During the April 17, 2015 demand interview, respondent admitted that he failed to maintain ABA1 receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires. Respondent also conceded that he failed to deposit his earned legal fees in his ABA1, as R. 1:21-6(a)(2) requires.

Additionally, respondent admitted that he not only failed to perform three-way reconciliations of his ATA1, as R. 1:21-6(c)(1)(H) requires, but that he also failed to maintain ATA1 receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires. Respondent further conceded that he failed to maintain client ledger cards in connection with at least twenty active client matters, as R. 1:21-6(c)(1)(B) requires.

Moreover, during the April 17, 2015 demand interview, the OAE discovered that respondent's ATA1 and ABA1 did not contain the correct account designations, as R. 1:21-6(a)(2) requires.

During the OAE's investigation, it discovered that, between November 2014, when Wells Fargo closed respondent's ABA1, and June 2015, when respondent opened his ABA2 with PNC Bank, respondent failed to maintain an attorney business account, as R. 1:21-6(a)(2) requires. Additionally, between March 2015, when Wells Fargo closed respondent's ATA1, and June 2015,

when respondent opened his ATA2 with PNC Bank, respondent failed to maintain an attorney trust account, as R. 1:21-6(a)(1) requires.

Following its investigation, the OAE identified additional recordkeeping deficiencies. Specifically, respondent failed to (1) perform three-way ATA reconciliations, as R. 1:21-6(c)(1)(H) requires; (2) maintain ATA and ABA receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (3) maintain client ledger cards, as R. 1:21-6(c)(1)(B) requires; (4) maintain copies of all client retainer agreements, as R. 1:21-6(c)(1)(C) requires; (5) deposit earned legal fees in his ABA, as R. 1:21-6(a)(2) requires; (6) conduct electronic transfers pursuant to signed written instructions from the attorney to the financial institution, as R. 1:21-6(c)(1)(A) requires; (7) maintain correct ATA and ABA account designations, as R. 1:21-6(a)(2) requires; and (8) maintain an ATA and ABA, as R. 1:21-6(a)(1) and (2), respectively, requires.

During the ethics hearing, respondent admitted to each of the charged recordkeeping violations. Additionally, respondent claimed that he had corrected the recordkeeping errors and has since remained in compliance with his recordkeeping obligations.

The Parties' Submissions to the DEC

In its August 30, 2021 brief to the DEC, the OAE urged the DEC to recommend the imposition of a three-month suspension, based primarily on

respondent's submission of a "false" retainer agreement to the OAE and his issuance of two bad $250 ATA1 filing fee checks to the Superior Court.

The OAE argued that respondent's issuance of two bad filing fee checks was more severe than that of the censured attorney in In re Artusa, 246 N.J. 154 (2021), who, as detailed below, issued to the Superior Court sixteen bad checks, ranging in amounts from $50 to $325, and totaling $3,353. The OAE maintained that, unlike Artusa, who stipulated to his misconduct, respondent denied committing any criminal acts and, instead, asserted "vague and at times contradictory" theories regarding his state of mind in connection with his issuance of the checks. Specifically, the OAE noted that respondent initially claimed, in his February 16, 2015 letter to the OAE, that he believed that he had issued the checks from his ABA1, rather than from his ATA1, and that he had anticipated receiving funds from a relative to cover the checks. The OAE argued, however, that respondent later alleged, during the April 2015 demand interview, that he had anticipated receiving legal fees from clients, rather than a relative, to cover the checks. The OAE also emphasized respondent's testimony, during the ethics hearing, that he knew that he had issued the checks from his ATA1, rather than from his ABA1.

Additionally, the OAE analogized respondent's acts of deception, in connection with his reproduction of Doughty's retainer agreement, to the

attorney in In re Homan, 195 N.J. 185 (2008), who received a censure, and the attorney in In re Picillo 205 N.J. 234 (2011), who received a three-month suspension.

As detailed below, in Homan, the attorney fabricated a promissory note reflecting a loan to him from a client and forged the signature of the client's attorney-in-fact, to mislead the OAE throughout its investigation that the note was authentic.

In Picillo, the attorney misrepresented to the OAE that an overdraft in his ATA was caused by an "overdisbursement" to a client rather than by his failure to perform required ATA reconciliations. The attorney then fabricated documents to support his false narrative but, one month later, confessed to his deception.

The OAE argued that, similar to the misconduct encountered in Harmon and Picillo, respondent knowingly submitted a false retainer agreement to the OAE in a deceptive attempt to demonstrate his compliance with recordkeeping requirements. The OAE emphasized that respondent compounded his deception by claiming, at the outset of the June 2015 demand interview, not only that his clients each had signed their retainer agreements, but then falsely claiming that Doughty had authorized respondent to sign his name.

In his August 20, 2021 brief to the DEC, respondent admitted to most of the charged RPC violations but denied having committed any criminal acts in connection with (1) his tendering of the two bad ATA1 filing fee checks to the Superior Court, and (2) his deceptive reproduction of Doughty's retainer agreement.

Specifically, respondent disputed that he intentionally had passed two bad checks, in violation of RPC 8.4(b), RPC 8.4(c), and N.J.S.A. 2C:21-5(c), because he knew that such actions would trigger an OAE audit. Respondent also claimed that the OAE failed to present clear and convincing evidence that he knew that his two bad ATA1 filing fee checks would be dishonored. In his view, respondent anticipated receiving "significant payments" from either his clients, his father, or his brother before the Superior Court attempted to negotiate his checks. Respondent also emphasized his testimony at the ethics hearing that he had contacted his clients that "owed [him] money at that time[,]" in order to obtain the necessary funds to cover his filing fee checks.

Additionally, although respondent conceded that he violated RPC 8.1(a) and RPC 8.4(c) in connection with his reproduction of Doughty's retainer agreement, he argued that he did not engage in the criminal falsification of a record, in violation of RPC 8.4(b) and N.J.S.A. 2C:21-4(a). Respondent argued that, other than signing Doughty's name to the retainer agreement and

transmitting it to the OAE as if it was his client's actual signature, he did not alter the substantive terms of the original retainer agreement.

For his recordkeeping violations, practice of law while ineligible, and, in his view, non-criminal acts of deception, respondent urged the DEC to recommend the imposition of a reprimand or a censure. Specifically, respondent argued that his misconduct was less serious than that of the attorney in Artusa, who issued many more bad checks totaling a greater amount to the Superior Court. Respondent also emphasized that he did not "purposely" issue bad filing fee checks for his own pecuniary gain, but rather out of a misguided attempt to preserve the timeliness of his clients' claims.

In mitigation, respondent argued that he has had no prior discipline in his twenty-five-year career at the bar and that he was experiencing severe financial hardship at the time of the misconduct. Respondent also claimed that he "panick[ed] under the weight of the OAE's investigation and [. . .] made a mountain out of a molehill regarding the Doughty retainer agreement." Respondent also urged the DEC to consider his otherwise good reputation based on the testimony and reference letters of four character witnesses, each of whom attested to respondent's reputation for honesty. Finally, respondent emphasized the significant passage of time since he committed the misconduct.

The DEC's Findings

The DEC found that respondent violated RPC 8.4(b) and RPC 8.4(c) by committing fourth-degree passing bad checks, in violation of N.J.S.A. 2C:21-5(c)(3). Specifically, the DEC found that respondent issued two bad $250 ATA1 filing fee checks to the Superior Court, despite knowing that he did not have sufficient funds to cover the checks. The DEC rejected respondent's arguments that he reasonably expected to receive funds from either his father, his brother, or his clients to cover the checks, given that none of them had expressed any firm commitment to do so. The DEC, thus, found that respondent's "anticipation" of receiving such funds was "disingenuous" and amounted to nothing more than "gambl[ing]."

The DEC also found that respondent violated RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c) by committing fourth-degree falsification of a record, in violation of N.J.S.A. 2C:21-4(a). Specifically, the DEC found that, the day before respondent's June 30, 2015 demand interview, he printed an unexecuted version of Doughty's retainer agreement from his computer, signed Doughty's name, without Doughty's authorization, and then submitted it to the OAE in an attempt to "disguise" the document as the original retainer agreement. The DEC also found that, during the June 2015 demand interview, respondent engaged in multiple acts of deception by initially claiming to the OAE that his clients had

signed their respective retainer agreements and, later, claiming that Doughty had authorized respondent to sign his name on his behalf. The DEC rejected respondent's argument that he could not have falsified a record by merely attempting to "recreat[e]" a version of the original retainer agreement by signing Doughty's name. Rather, the DEC found that respondent falsified Doughty's signature, without authorization, and then engaged in repeated acts of deception toward the OAE in connection with his reproduction of the document.

Additionally, the DEC found that respondent violated RPC 5.5(a)(1) by knowingly practicing law while ineligible. The DEC emphasized that respondent admitted that he knew of his ineligible status since at least February 2015 but, nevertheless, continued to practice law until his September 2015 reinstatement.

Finally, the DEC found that respondent violated RPC 1.15(d) based on his admission that he failed to comply with each of the charged recordkeeping obligations.

In recommending the imposition of a three-month suspension, the DEC emphasized that respondent "violated the law" by passing bad checks; "lied to the OAE[;]" committed numerous recordkeeping violations; and knowingly practiced law while ineligible. Although the DEC found that respondent's passing of bad checks was not as severe as that of Artusa, the DEC found that a

three-month suspension was warranted "[d]ue to the number of" respondent's ethics infractions.

The Parties' Positions Before Us

At oral argument and in his brief to us, respondent again urged the imposition of a reprimand or censure, for the same reasons expressed in his brief to the DEC.

Specifically, respondent disputed that he had violated RPC 8.4(b), RPC 8.4(c), and N.J.S.A. 2C:21-5 by knowingly passing two bad ATA1 checks to the Superior Court because, in his view, he expected to receive funds from either his clients, his father, or his brother to cover the checks before they were negotiated for payment. Respondent, however, acknowledged that he should have required Mitchel and Jabri to pay for the costs of their respective lawsuits before he filed them with the Superior Court.

Additionally, although respondent admitted that he had violated RPC 8.1(a) and RPC 8.4(c) based on his acts of deception in connection with his reproduction of Doughty's retainer agreement, respondent denied that he had violated RPC 8.4(b) and N.J.S.A. 2C:21-4(a). Respondent argued that his reproduction of Doughty's retainer agreement did not alter the substantive terms of the actual agreement and, thus, in his view, he could not be said to have falsified a record with the intent to deceive the OAE, in violation of N.J.S.A.

2C:21-4(a). Similarly, respondent characterized his reproduction of Doughty's retainer agreement as a mere "technical misrepresentation" because Doughty himself had signed the original agreement, which respondent failed to locate during the OAE's audit.

Further, respondent admitted that he had violated RPC 5.5(a)(1) by knowingly practicing law while ineligible. Respondent emphasized, however, that his misconduct had been motivated by financial hardship.

Finally, respondent admitted that he had violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Respondent noted, however, that he has since corrected his recordkeeping practices and is now in "appropriate compliance."

In urging the imposition of a reprimand or a censure, respondent emphasized, as mitigation, his lack of prior discipline; his contrition and remorse; his view that he did not engage in the misconduct for any personal gain; and his view that his misconduct is unlikely to recur because he no longer is facing financial hardship. Respondent also argued that his passing of bad checks to the Superior Court was less severe than that of the censured attorney in In re Artusa, 246 N.J. 154 (2021), who issued sixteen bad checks, totaling a far greater amount, during a much longer timespan.

The OAE did not submit a brief for our consideration. However, at oral argument, the OAE pressed the same arguments it had advanced before the DEC and urged us to adopt the DEC's recommendation of a three-month suspension. The OAE also urged, as aggravation, respondent's prolonged failure to reimburse the Superior Court following his issuance of the two bad filing fee checks. The OAE further stressed that respondent had engaged in "clearly deceptive" actions in connection with his reproduction of Doughty's agreement. Finally, the OAE requested that we accord limited mitigating weight to the passage of time since the underlying misconduct because, in the OAE's view, the delayed presentment of this matter was attributable to respondent.

Respondent's Belated Attempt to Submit Evidence

On November 14, 2022, three days before oral argument in this matter, and almost three weeks after the deadline by which the parties were permitted to submit briefs to us, respondent sent the Office of Board Counsel a November 10, 2020 letter from his physician. Respondent urged us to review the submission in advance of oral argument.

The OAE objected to respondent's belated submission because it was not admitted into the evidentiary record before the DEC, which had determined, during the ethics hearing, to exclude similar medical letters as inadmissible hearsay. The OAE also emphasized that it had no opportunity to cross-examine

respondent's physician regarding the contents of the letter, which, in the OAE's view, contained prohibited "net opinions."

R. 1:20-15(e) requires that our review of this matter be "de novo on the record." Because respondent failed to file a motion with us to supplement the record with his belated submission, which was not admitted into the evidentiary record below, we did not consider his November 10, 2020 letter as part of our de novo review of this matter.

Analysis and Discipline

Following our de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent's misconduct resulted in the commission of at least two criminal acts, both of which we may find despite the absence of any formal criminal convictions. 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). See also In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense); In re Nazmiyal, 235 N.J. 222 (2018) (although an attorney was not charged with, or convicted of,

violating New Jersey law surrounding the practice of debt adjustment, the attorney was found to have violated RPC 8.4(b)); In the Matter of Nancy Martellio, DRB 20-280 (June 29, 2021) (after an attorney committed forgery when she altered the lease of the law firm that employed her and stole the law firm's security deposit, we found an RPC 8.4(b) violation even though the attorney had never been criminally charged).

Specifically, respondent violated RPC 8.4(b) and RPC 8.4(c) by committing fourth-degree passing bad checks, in violation of N.J.S.A. 2C:21-5(c)(3).[6]

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

> A person who issues or passes a check [. . .] 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 [. . .] would not be paid, if:
>
> [. . .]
>
> b. Payment was refused by the drawee for lack of funds [. . .] 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

[6] 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."

> address. Notice of refusal may be given to the issuer orally or in writing in any reasonable manner by any person.

A conviction pursuant to N.J.S.A. 2C:21-5 does not require an "intent to defraud" but, rather, "merely knowledge at the time the check is issued or passed that it will not be honored by the drawee." State v. Kelm, 289 N.J. Super. 55, 59 (App. Div. 1996) (noting that the previous requirement to demonstrate an "intent to defraud" rested on the plain language of N.J.S.A. 2A:111-15, an "old" version of the bad check statute),[7] certif. denied, 146 N.J. 68 (1996).

Pursuant to N.J.S.A. 2C:2-2(b)(2), "[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."

As a preliminary matter, respondent's misconduct satisfies the presumption of knowledge standard set forth in N.J.S.A. 2C:21-5(b). Specifically, on January 15 and 26, 2015, respondent issued two $250 ATA1 filing checks to the Superior Court in connection with Mitchell and Jabri's respective lawsuits. Within eleven days of respondent's issuance of both checks,

[7] N.J.S.A. 2A:111-15 was repealed effective September 1, 1979. See N.J.S.A. 2C:98-2.

the Superior Court twice attempted to negotiate the checks, which were returned for insufficient funds. Thereafter, in respondent's February 16, 2015 letter to the OAE, he acknowledged not only that he had issued both checks without having any ATA1 funds "for at least the last six months[,]" but also that he still owed $500 to the Superior Court for filing fees. Despite knowing that the Superior Court did not honor his checks, respondent failed, for more than six and a half years, to reimburse the Superior Court. Respondent, thus, is presumed to have known that his checks would not be honored, given that the Superior Court attempted to negotiate the checks well within the forty-six-day period set forth in N.J.S.A. 2C:21-5(b), after which respondent knowingly failed, for years, to reimburse the Superior Court.

Additionally, it was wholly unreasonable for respondent to expect that his checks would be honored. As he conceded during the ethics hearing, respondent knew, at the time he had issued both ATA1 checks to the Superior Court, that he had no funds in his ATA1. Although respondent expressed his hope that he would receive funds from either his father, his brother, or his clients to cover the checks before they were negotiated, respondent received no firm commitment from anyone to pay such funds on short notice. Rather, respondent admitted that his father and brother were unwilling to provide financial help, despite his "hope" that they "would relent and [. . .] give me the funds."

Moreover, although some of respondent's clients purportedly had expressed their general willingness to pay his alleged outstanding legal fees, none of the clients expressed a firm commitment to do so immediately.

As the DEC correctly concluded, respondent issued the ATA1 filing fee checks, despite knowing that his ATA1 had no funds, and then "gambled" that he would receive funds from either a family member or a client before the Superior Court negotiated the checks. Based on these circumstances, respondent knowingly issued two bad ATA1 checks to the Superior Court.

In connection with his reproduction of Doughty's retainer agreement, respondent committed multiple acts of deception. First, respondent violated RPC 8.4(c) by signing Doughty's name, without authorization, on an unexecuted version of their retainer agreement.

Additionally, respondent violated RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c) by committing fourth-degree falsification of a record, in violation of N.J.S.A. 2C:21-4(a).

N.J.S.A. 2C:21-4(a) provides, in relevant part:

> a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

Here, on June 29, 2015, the day before respondent's second demand interview with the OAE, respondent printed from his computer an unexecuted version of Doughty's retainer agreement, signed Doughty's name, without authorization, and then handwrote, next to Doughty's false signature, the notation "12/21/14[,]" the alleged date of the original agreement. Respondent then sent the OAE a facsimile containing the falsified retainer agreement in an attempt to disguise the document as Doughty's original agreement. To achieve his deception, respondent drafted the cover letter to his facsimile to state that he had "attach[ed] [. . .] the signed retainers that I [could] locate at the moment."

At the outset of the June 30, 2015 demand interview, respondent compounded his deception by falsely claiming that his "clients" had signed the retainer agreements. Thereafter, when the OAE presented respondent with his reproduction of Doughty's retainer agreement, respondent furthered his deception by claiming that he had signed Doughty's name with his authorization. When queried why Doughty had provided such authorization, respondent finally confessed the truth that Doughty had provided no such authorization. Rather, respondent admitted that he recently had "reproduced" the retainer agreement by signing Doughty's name and then by falsely dating the document.

Although respondent admitted that his multiple acts of deception to the OAE in connection with his reproduction of Doughty's retainer agreement constituted violations of RPC 8.1(a) and RPC 8.4(c), respondent denied having violated RPC 8.4(b) and N.J.S.A. 2C:21-4(a), asserting that he did not alter the substantive terms of the original retainer agreement.

In our view, respondent's violation of N.J.S.A. 2C:21-4(a) does not hinge on whether he altered the substantive terms of Doughty's retainer agreement. Rather, respondent's misconduct stems from the fact that he submitted to the OAE a reproduction of Doughty's retainer agreement, wherein respondent fabricated Doughty's signature and falsified the date of the document. Respondent then submitted the falsified record to the OAE attempting to disguise the document as the original retainer agreement, to deceive the OAE and conceal his wrongdoing. Thus, he violated N.J.S.A. 2C:21-4(a).

Additionally, respondent violated RPC 5.5(a)(1) by knowingly practicing law while ineligible. As noted above, between November 17, 2014 and September 22, 2015, the Court declared respondent ineligible to practice law because of his failure to comply with CLE requirements. At the latest, respondent became aware of his CLE ineligibility on February 16, 2015, when he sent a letter to the OAE claiming that he "did not realize that I was considered ineligible at this point."

Thereafter, despite his awareness of his ineligibility, respondent continued to provide legal services to his clients, accept retainer fees from new clients, and appear in court on numerous occasions. Respondent's practice of law while ineligible continued even after a Superior Court judge had confronted him regarding his ineligibility and even after the OAE repeatedly had directed him to cease practicing law until his reinstatement by the Court. Although respondent claimed that financial hardship had prevented him from taking the required CLE courses, respondent failed to explain whether he had attempted to obtain CLE courses at a reduced cost. See Board on Continuing Legal Education Regulation 302.8 (noting that every approved CLE provider "shall have a detailed financial hardship policy for lawyers who wish to attend its courses, but for whom the expense of such courses would pose a financial hardship [. . .] A financial hardship policy may include [. . .] the award of scholarships, waivers of course fees, reduced fees, or discounts").

Finally, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:20-6. Specifically, as the OAE's investigation revealed, and as respondent conceded, he failed to (1) perform required three-way ATA reconciliations; (2) maintain ATA and ABA receipts and disbursements journals; (3) maintain client ledger cards; (4) maintain copies of all client retainer agreements; (5) deposit earned legal fees in his ABA; (6)

maintain correct ATA and ABA account designations; and (7) conduct electronic transfers pursuant to signed, written instructions to a financial institution. Moreover, between November 2014 and June 2015, respondent failed to maintain an ABA and, between March 2015 and June 2015, failed to maintain an ATA. Respondent, however, represented that he has corrected his recordkeeping errors and has remained in compliance with such obligations.

In sum, we find that respondent violated RPC 1.15(d); RPC 5.5(a)(1); RPC 8.1(a); RPC 8.4(b) (two instances); and RPC 8.4(c) (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 In the Matter of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (following an OAE demand audit, the OAE uncovered multiple recordkeeping deficiencies, including that the attorney (1) did not properly designate the trust account, (2) did not maintain trust account ledger cards for bank charges, (3) allowed an inactive balance to remain in the trust account, and (4) did not maintain business account receipts or disbursements journals; the attorney's recordkeeping deficiencies resulted in more than twenty checks, issued to the Superior Court, despite insufficient funds; we found that the

attorney's recordkeeping failures were neglectful, but not purposeful, as was the case in Artusa; in imposing an admonition, we weighed the fact that the attorney corrected his recordkeeping errors and took remedial measures to decrease the likelihood of a future recordkeeping violation).

Ordinarily, when an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g., In re Mordas, 246 N.J. 461 (2021) (reprimand for attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection with his client's criminal matter; the attorney's ATA records also revealed that he had engaged in the unauthorized practice of law through a minimum of five ATA transactions in connection with three client matters; in mitigation, the attorney stipulated to his misconduct and had a remote disciplinary history); In re Freda, __ N.J. __ (2022) (censure for attorney, in a default matter, who knowingly practiced law while ineligible in connection with seven client matters; the attorney's ABA bank statements demonstrated that, for more than one year, the attorney continued to provide unauthorized legal services; the attorney had no prior discipline in his nearly thirty-year career at the bar).

Respondent's most significant misconduct, however, is his knowing issuance of two bad ATA1 filing fee checks to the Superior Court and his submission of Doughty's falsified retainer agreement to the OAE.

Concerning the bad checks, our decision in In re Artusa, 246 N.J. 154 (2021), provides relevant guidance in this matter. In Artusa, between July 2017 and February 2018, the attorney issued to the Superior Court sixteen personal checks, in amounts ranging from $50 to $325, and totaling $3,535, all of which were returned for insufficient funds. In the Matter of Santo V. Artusa, Jr., DRB 20-184 (October 21, 2020) at 1. The attorney claimed that he first received notice of the returned checks via a March 26, 2018 OAE letter. Id. at 2. Thereafter, the attorney maintained that he had contacted the Department of Treasury to determine the total amount owed for the returned checks. Ibid. However, the attorney failed to reimburse the State and, thus, all the returned checks had been placed "in collection." Ibid.

Additionally, during the OAE's investigation, it directed the attorney to produce various financial records in connection with his practice of law. Ibid. The attorney, however, provided only limited records to the OAE. Ibid.

Based on these circumstances, we found that the attorney violated RPC 1.15(d) and RPC 8.1(b) in connection with the OAE's investigation of his

financial records and RPC 8.4(b) and RPC 8.4(c) in connection with his passing of bad checks to the Superior Court. Artusa, DRB 20-184 at 2-3.

In determining the appropriate 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 he passed them to the Superior Court. Ibid. We determined that the aggravation outweighed the mitigation, warranting a censure. Ibid. The Court agreed. In re Artusa, 246 N.J. 154.

More recently, on August 3, 2022, we issued a decision, in two consolidated default matters, in which we determined that a three-month suspension was the appropriate quantum of discipline for an attorney who issued a $537.75 ABA check to a private company despite knowing that his ABA held insufficient funds to cover the check. In the Matter of Neal E. Brunson, DRB 22-015 and DRB 22-075 (August 3, 2022) at 20. Additionally, the attorney

violated RPC 8.1(b) by repeatedly failing to comply with the OAE's efforts to investigate his financial records. Id. at 19. The attorney further violated RPC 8.1(b) by failing to comply with the DEC's repeated requests to submit a written reply to an unrelated client grievance. Id. at 22. Finally, the attorney violated RPC 1.15(d) by committing numerous recordkeeping infractions. Id. at 18-19.

In determining the appropriate quantum of discipline, we found that the attorney's issuance of a single bad $547 check to a private company was less severe than Artusa's issuance of sixteen bad checks, totaling $3,353, to the Superior Court. Id. at 26. However, we weighed, in aggravation, the default status of both consolidated matters and the attorney's demonstrated pattern of failing to cooperate with disciplinary authorities, despite his heightened awareness of his obligation to cooperate. Id. at 29-30. Our decision in that matter is pending with the Court.

Attorneys who backdate or fabricate documents to deceive disciplinary authorities or courts have received discipline ranging from a reprimand to a term of suspension, depending on the gravity of the offense. See, e.g., In re LaVan, 238 N.J. 474 (2019) (reprimand for attorney who, in response to her adversary's motion to compel discovery, provided a federal court and her adversary a fee agreement signed by her client; although the fee agreement was dated August 2, 2012, it had been executed in February 2013; the attorney, however, failed to

disclose to the federal court and to her adversary that she had falsified the date of the agreement; the attorney admitted that, after she could not locate the agreement, she reprinted it from her computer and arranged for her client to sign it to "recreate what was already existing[;]" in imposing a reprimand, we noted that the backdating of documents is a serious ethics offense and that the attorney's "cover-up was worse than the crime[;]" in mitigation, the attorney had no prior discipline and caused no ultimate harm to her client); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and provided the note to the OAE during the investigation of a grievance against him; for several months, the attorney continued to mislead the OAE, claiming that the note was authentic and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; compelling mitigating factors were considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction connected to the note, the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE, and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Picillo, 205 N.J. 234 (2011) (three-month suspension for attorney who misrepresented to the OAE that an overdraft

in his ATA was caused by an "overdisbursement" of funds in one client matter rather than his failure to reconcile his ATA for a ten-month period; the attorney fabricated documents to support his false claim but, one month later, confessed to his acts of deception; the attorney also committed recordkeeping violations and had engaged in a conflict of interest by obtaining an interest-free loan from a client).

In our view, respondent's misconduct is similar to, though not as severe as, the misconduct of the censured attorney in Artusa. Like Artusa, respondent knowingly issued bad ATA1 checks to the Superior Court. Respondent, however, issued only two bad checks, totaling $500, whereas Artusa issued sixteen bad checks, totaling $3,535. Also, unlike Artusa, whose passing of sixteen bad checks spanned several months, respondent's passing of two bad checks occurred during a relatively short, eleven-day period. Additionally, despite Artusa's purported efforts to reimburse the State, he failed to do so, resulting in all the returned checks being placed "in collection." By contrast respondent eventually reimbursed the State for the $500 in filing fees. Nevertheless, it took respondent more than six years after issuing the bad checks to even attempt to initiate such efforts. As respondent conceded during the ethics hearing, he "should have addressed" his failure to reimburse the State much "earlier."

Moreover, we find that respondent's acts of deception in connection with his reproduction of Doughty's retainer agreement were more severe than the misconduct of the reprimanded attorney in LaVan.

In LaVan, the attorney printed from her computer an unexecuted version of a client retainer agreement, arranged for her client to sign the agreement, and then transmitted the agreement to her adversary and to a federal court in connection with her adversary's motion to compel discovery. The attorney, however, failed to disclose to the federal court and to her adversary that, although the agreement was dated August 2, 2012, it had been executed in February 2013. In defense of her deception, the attorney argued that she was merely attempting to "recreate what was already existing."

Like LaVan, respondent attempted to pass off his reproduction of Doughty's retainer agreement to the OAE as a contemporaneously executed, original document. Also, like LaVan, respondent argued that his deception stemmed from his purported desire "to show what [the retainer agreement] looked like [. . .] when it was signed." However, unlike LaVan, who did not forge her client's signature on the backdated retainer agreement, respondent forged Doughty's signature on the backdated document, without authorization, and then repeatedly attempted to conceal his actions from the OAE.

Respondent's acts of deception are most like the censured attorney in Homan, who fabricated a promissory note reflecting a genuine, though undocumented, client loan, forged the signature of the client's attorney-in-fact, and then passed off the note to the OAE as a genuine document. Homan continued to mislead the OAE regarding the authenticity of the note for several months before he confessed to his deception. In defense of his misconduct, Homan claimed that he had "panicked" at being contacted by the OAE and was embarrassed by the fact that he did not prepare the note contemporaneously with the client loan.

Like Homan, respondent forged Doughty's name on the unexecuted version of their retainer agreement, backdated the agreement, and then attempted to pass off the agreement to the OAE as a genuine document. Also like Homan, who had an actual, though undocumented, client loan, respondent had an actual attorney-client relationship with Doughty, the terms of which were reflected in an original retainer agreement, which respondent failed to locate during the OAE's audit. Additionally, as in Homan, respondent's misconduct appears to have been motivated by his embarrassment regarding his failure to produce executed versions of his clients' retainer agreements to the OAE in connection with its audit. Unlike Homan, however, whose deception spanned several

months, respondent's deception to the OAE was confined to a two-day period, during which he, eventually, admitted to his impropriety.

Finally, like the censured attorney in Freda, respondent knowingly and brazenly practiced law while ineligible for several months. Unlike Freda, however, respondent did not allow this matter to proceed as a default.

In mitigation, more than seven years have elapsed since respondent's misconduct ended and, in that time, he has had no additional discipline. See In re Alum, 162 N.J. 313 (2000) (after passage of eleven years with no further ethics infractions, discipline was tempered based on "considerations of remoteness"). Indeed, like the facts of Artusa, LaVan, and Homan, this matter represents respondent's first brush with the disciplinary system in his twenty-five-year career at the bar.

Nevertheless, the delayed presentment of this matter before us was partly attributable to respondent, who failed to timely file his verified answers to the formal ethics complaints and who requested multiple adjournments of the scheduled ethics hearing. Much of the delay in this matter, however, appears to have been attributable to factors beyond the control of the parties, including the lack of available courtrooms to conduct the ethics hearing and the COVID-19 pandemic.

On balance, weighing respondent's repeated acts of deception against his otherwise unblemished twenty-six-year legal career, we determine that a censure is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Member Hoberman was absent.

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 John Thomas Doyle
Docket No. DRB 22-153

Argued: November 17, 2022

Decided: February 10, 2023

Disposition: Censure

Members	Censure	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	7	1

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