



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

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

Respondent earned admission to the New Jersey bar in 1989. During the relevant period, he maintained a practice of law in Raritan, New Jersey. He has two prior admonitions.

First, in 2012, respondent received an admonition for having violated RPC 1.3 (lack of diligence) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In the Matter of William Timothy Howes, DRB 12-193 (October 1, 2012). Specifically, after respondent's attempts to resolve a client's matter were unsuccessful, he misrepresented to the client's spouse that he had filed a notice of appeal and case information statement and was awaiting a scheduling order from the court. He later made other misrepresentations about the status of the case to both the client and the client's spouse. In imposing only an admonition, we considered respondent's unblemished twenty-three-year

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

disciplinary history at that time, his remorse, and the absence of personal gain to him or permanent harm to the client.

In 2018, respondent received a second admonition, this time for violations of RPC 1.1(a) (gross neglect); RPC 1.3; RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information); and RPC 8.4(c). In the Matter of William Timothy Howes, DRB 18-136 (June 29, 2018). Specifically, in 2010, a client had retained respondent to file a motion to intervene in a case filed by the Division of Youth and Family Services (now the Division of Child Protection and Permanency) and, subsequently, to file an appeal from the trial court's adverse order on that intervention motion.

At the motion stage, respondent failed to reply to the Law Guardian's opposition and to seek an adjournment of the motion hearing; in addition, he misrepresented to the client that the trial court had resolved the matter on the papers, when in fact it was decided after oral argument, in which respondent himself took part. At the appeal stage, respondent failed to file an appellate brief; he likewise failed to obtain the requisite trial transcripts, while nevertheless misrepresenting to the client that he had ordered them. Throughout, respondent failed to communicate regularly with the client about the status of the matter.

In deciding to impose an admonition rather than a reprimand, we considered that, although respondent previously had been disciplined, the misconduct that gave rise to the 2018 ethics matter occurred at about the same time as the conduct underlying the 2012 matter. Thus, in our view, this was not a situation where respondent had failed to learn from past mistakes. We also considered that the misconduct at issue had taken place about eight years earlier; respondent had not been the subject of discipline in the intervening years; and respondent had promptly admitted his misconduct, entering into a stipulation of facts and violations.

Service of process was proper. On August 17, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail was returned, marked "return to sender – unclaimed – unable to forward." The regular mail was not returned.

On September 27, 2022, the OAE sent a second letter, by certified and regular mail, to respondent's office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the charges of the complaint would be deemed admitted; he could face immediate temporary suspension from the practice of law; and, without need for further hearing, the record could be certified directly to us for the imposition of discipline. Additionally, based on respondent's failure to answer the complaint

already issued, the letter amended the formal ethics complaint to charge a willful violation of RPC 8.1(b). The certified mail receipt was returned with respondent's initials. The regular mail was not returned.

As of October 14, 2022, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

Moreover, on November 15, 2022, Acting Chief Counsel to the Office of Board Counsel (the OBC) sent respondent a letter, by certified, regular, and electronic mail, stating that the matter had been certified to us as a default due to respondent's failure to timely answer the ethics complaint, and that the matter would be reviewed on the written record at our January 19, 2023 session. The letter further informed respondent that any motion to vacate the default must be filed by December 12, 2022. The certified mail was returned to the OBC as "unclaimed." The letter sent by regular mail, however, was not returned. Delivery to respondent's e-mail address was completed, although no delivery notification was sent by the destination server.

Finally, on December 5, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on January 19, 2023. The notice informed respondent that, unless he filed a successful motion

to vacate the default by December 12, 2022, his failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default by December 12, 2022. Rather, on December 13, respondent attempted to file an answer; affirmative defenses; statement in mitigation; and request for hearing in response to the OAE's formal ethics complaint. The next day, Acting Chief Counsel to the OBC sent a response, by electronic and regular mail, informing respondent that his submission was not part of the record, which had been closed; that the only procedural mechanism that had been available to him was to file a motion to vacate the default; and that we would be proceeding, on January 19, 2023, to review the matter based solely on the written record as certified to us by the OAE. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

On February 17, 2021, the OAE received notice from PNC Bank of an overdraft in respondent's attorney trust account (ATA). Consequently, the OAE opened an investigation and wrote to respondent, directing him to provide, by March 24, 2021, a written explanation of the overdraft.

By letter dated April 26, 2021, respondent replied to the OAE's inquiry. He explained that, on January 13, 2021, he had deposited in his ATA a

\$120,984.22 cashier's check received from a client in connection with a real estate closing. The next day (January 14), respondent wrote an ATA check for the same amount to a title company, which was to hold the money in escrow pending the closing. The title company deposited the check later the same day, before the cashier's check had cleared. Consequently, respondent overdrew his ATA by \$120,759. Nevertheless, PNC Bank honored the check to the title company and did not assess respondent an overdraft fee.<sup>2</sup>

Respondent provided bank documentation corroborating his explanation of the causes of the overdraft. Additionally, he described meeting with a PNC Bank representative to learn both why the overdraft occurred and how to avoid similar incidents in the future.

After receiving respondent's correspondence, the OAE, by letter dated June 22, 2021, directed respondent to provide, by July 9, 2021, records for all his trust and business accounts from January 2020 through May 31, 2021. It further required him to appear on July 22, 2021 for a demand audit. The OAE

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<sup>2</sup> Disbursement against uncollected funds is a practice prohibited by Advisory Committee on Professional Ethics Opinion 454, 105 N.J.L.J. 441 (May 15, 1980), as amended by 114 N.J.L.J. 110 (August 2, 1984) (Opinion 454), and disciplinary precedent. See, e.g., In re Clausen, 231 N.J. 193 (2017); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015). Although Opinion 454 establishes a narrow exception permitting attorneys to deposit certified, bank or cashier's checks and then draw against those funds for real estate "closing transactions representing the consummation of an agreement resulting in transfers of property," in the instant matter, on the limited record before us, this exception does not apply because the disbursement did not effectuate the closing. However, respondent was not charged with any RPC violations in connection with the overdraft.

enclosed with the letter a copy of its “Blue Book” – a manual explaining the Trust Account process” – and pointed out to respondent the relevant examples, contained in the manual, of the recordkeeping documents that the OAE sought from him.

On July 19, 2021, respondent requested an adjournment of the demand audit due to a scheduled vacation. The OAE granted the adjournment but directed respondent to submit his records within two days. Five days later, respondent called the OAE, acknowledged he had missed the deadline, and agreed to submit the materials by July 28; nevertheless, he failed to do so.<sup>3</sup>

On August 9, 2021, respondent provided the OAE with a portion of the records it had requested. Specifically, he provided statements from his attorney business account (ABA) from January 1, 2020 through May 29, 2021.<sup>4</sup> Two days later, he told the OAE that he would submit the remaining documents that day, but he failed to do so.

On August 23, 2021, the OAE again wrote to respondent, repeating its direction that he provide the records and setting a new deadline of August 27,

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<sup>3</sup> Respondent later claimed that he had tried to send the documents to the OAE, via e-mail, before leaving for vacation in late July 2021, but that his e-mail did not go through.

<sup>4</sup> Exhibit 6 to the complaint – although identified in the complaint as containing materials received by the OAE on August 9, 2021 – included records stamped “received” on September 28, 2021. For purposes of our determination, we considered the records provided by respondent to the OAE in totality, encompassing both the August and September 2021 submissions.



2021. Respondent missed the deadline and sent an e-mail to the OAE, explaining that he had suffered heat stroke that week and also needed to be tested for COVID-19. In response, the OAE requested the documents as soon as possible.

On or about September 28, 2021, respondent provided additional records to the OAE. In total, the documents submitted by respondent on August 9 and September 28, 2021 included: general ledgers for respondent's ATA from May 31 through December 2020, and from January through May 2021; ATA bank statements from January 2020 through August 2021, with handwritten reconciliations on the statements; ABA statements, from January 2020 through August 2021, from a PNC Bank "Business Checking Plus" account designated "Howes & Howes Atty;" ABA statements, from June through August 2021, from a TD Bank account designated "Howes and Howes, Attorney Business Account;" and a memorandum representing that, as of September 29, 2021, there were no outstanding checks issued from respondent's ATA.

On October 13, 2021, respondent appeared for the OAE demand audit. He explained that, to reconcile his ATA, he compared his ATA bank statements to his check registers. Following up on the audit, the OAE sent respondent another letter request for the missing records, expanding the request to include records through September 2021. Notwithstanding the OAE's submission deadline of October 27, 2021, respondent contacted the OAE on October 28 to seek an

extension until November 10. As of November 17, 2021, the OAE still had not received the records.

The OAE requested the same records in three more letters to respondent, dated November 23, 2021, and January 11 and 26, 2022. Respondent failed to submit any additional records.

Based on the demand audit and the incomplete records received during its investigation, the OAE identified numerous recordkeeping deficiencies. Specifically, it concluded that respondent failed to (1) perform three-way reconciliations of his client ledgers, journals, and checkbook, 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; and (4) maintain a correct ABA account designation, as R. 1:21-6(a)(2) requires.

Based on the foregoing, the formal ethics complaint charged respondent with having violated RPC 1.15(d). In addition, because respondent failed to submit complete R. 1:21-6 records, the complaint charged him with violating RPC 8.1(b). As noted above, on notice to respondent, the OAE amended the complaint to add the second RPC 8.1(b) charge due to respondent's failure to timely file a verified answer to the formal ethics complaint.

Following a review of the record, we determine that the facts recited in the formal ethics complaint support all the charged RPC violations by clear and convincing evidence. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, the record clearly and convincingly demonstrates that respondent violated RPC 1.15(d) by failing to perform monthly three-way reconciliations; failing to maintain receipts and disbursements journals for his ATA and ABA accounts; and failing to maintain client trust ledgers. R. 1:21-6(c)(1)(A), (B), and (H). Moreover, he failed to designate his PNC Bank ABA as an "Attorney Business Account," "Attorney Professional Account," or "Attorney Office Account," as R. 1:21-6(a) requires.

Likewise, the record clearly and convincingly demonstrates respondent's failure to cooperate with disciplinary authorities. Rule 1:20-3(g)(3) requires a lawyer to cooperate in a disciplinary investigation and to reply, in writing, within ten days of receipt of a request for information. RPC 8.1(b), in turn, prohibits a lawyer from knowingly failing to reply to a lawful demand for information from a disciplinary authority.

Notwithstanding respondent's satisfactory response to the OAE's February 2021 inquiry into the overdraft, he subsequently failed repeatedly, over

a prolonged period, to cooperate with the OAE's request for his R. 1:21-6 books and records. The OAE sent respondent six requests by letter; further addressed the matter with him by e-mail and telephone communications; and discussed the missing records with him at the demand audit. Despite extensions that ultimately totaled seven months, respondent never fully replied to the OAE's requests, thus violating RPC 8.1(b).

It is well-settled that partially responding to a disciplinary authority's lawful demands for information does not satisfy RPC 8.1(b). See, e.g., In the Matter of James H. Wolfe, III, DRB 18-107 (September 6, 2018), at 14-15 (weighing, as an aggravating factor, attorney's failure to produce complete bookkeeping records; the attorney had produced only partial records, notwithstanding the OAE's multiple requests and a Court Order requiring that he produce additional materials), so ordered, 236 N.J. 450 (2019); In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016), at 48 (describing 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 disciplinary precedent. See In re Gavel, 22 N.J. 248, 263 (1956).

Finally, respondent violated RPC 8.1(b) a second time by failing to timely answer the formal ethics complaint.

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not 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 a 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 receipts or disbursements journals; the attorney's recordkeeping deficiencies resulted in the return of more than twenty checks, issued to the Superior Court, for insufficient funds; we found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing an admonition, we weighed the fact that the attorney corrected his recordkeeping

errors, took remedial measures to decrease the likelihood of a future recordkeeping violation, had no disciplinary history, and did not injure any client through his misconduct); In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (after the attorney presented a trust account check against insufficient funds, the OAE conducted a demand interview and discovered that 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; the attorney responded to each of the OAE's requests for additional documentation, but his three-way trust account reconciliations were still not in compliance at the time of argument before us; in imposing an admonition, we weighed the fact that the attorney had no disciplinary history in thirty-three years at the bar and cooperated with ethics authorities to the extent that he admitted his misconduct in the matter).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney's ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney

who, following two OAE random audits uncovering numerous recordkeeping deficiencies (including an unidentified client ledger card that held a negative \$50,200.35 balance), repeatedly failed to comply with the OAE's requests for his law firm's financial records; he also failed to comply with two Court Orders directing him to cooperate, in violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice); the attorney, however, provided some of the required financial records; we found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate with the OAE; however, we imposed a reprimand in light of the lack of injury to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar); In re Picker, 218 N.J. 388 (2014) (reprimand for an attorney who, following the OAE's discovery of a \$240 overdraft in the attorney's trust account, failed to appear for a demand audit and failed to provide the OAE with documents requested in connection with the overdraft, in violation of RPC 8.1(b); the OAE's investigation revealed that the attorney used her trust account for the payment of personal expenses, in violation of RPC 1.15(a) (commingling of funds); the attorney asserted that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE

because they were in storage at the time; in imposing a reprimand, we found that, although the attorney had a prior three-month suspension and was then temporarily suspended at the time of the decision, the conduct underlying her suspensions was unrelated to the conduct at hand); In re Tobin, 249 N.J. 96 (2021) (censure, in a default matter, for an attorney who, following an OAE random audit that uncovered several recordkeeping deficiencies, including more than \$800,000 in negative client balances, failed to provide the documents requested in the OAE's seven letters and eight telephone calls, spanning more than one year; although we noted that a reprimand was appropriate for the attorney's recordkeeping violations and failure to cooperate, we imposed a censure in light of the attorney's prior reprimand for recordkeeping violations and the default status of the matter; in mitigation, however, the attorney had been practicing law for sixty-three years and suffered serious health problems prior to the continuation date of the random audit).

Recently, we issued a decision determining that a reprimand was the appropriate quantum of discipline in a matter in which the attorney failed to comply both with the recordkeeping requirements of Rule 1:21-6, in violation of RPC 1.15(d), and with the OAE's numerous requests for his financial records and for his written reply to a grievance, in violation of RPC 8.1(b). In the Matter of David M. Schlachter, DRB 22-040 (September 13, 2022), at 15-16, 21. We



weighed, in aggravation, that the attorney's noncompliance with the recordkeeping Rules had persisted. Id. at 16, 20-21.

In contrast, in a recent case where an attorney fully cooperated with the OAE's investigation and remediated his recordkeeping deficiencies, but subsequently was charged with violating RPC 8.1(b) based on failing to answer the formal ethics complaint, we determined that an admonition was the baseline quantum of discipline for the combined violations of RPC 1.15(d) and RPC 8.1(b). Darryl George Smith, DRB 22-033 (August 9, 2022), at 12, 15.

Here, respondent's prolonged noncompliance with the OAE's record requests parallels Schlachter's noncompliance. Conversely, it contrasts starkly with Smith's cooperation during the OAE investigation.

Accordingly, we determine that a reprimand is the baseline quantum of discipline for the totality of respondent's misconduct. To craft the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, this matter represents respondent's third disciplinary proceeding. The misconduct that gave rise to respondent's 2012 and 2018 matters did not stem from recordkeeping deficiencies and, thus, it cannot be said that respondent has failed to learn from his past mistakes. Moreover, respondent's underlying misconduct in those matters took place in 2010. Nevertheless, respondent's multiple encounters with the disciplinary system

should have engendered heightened awareness of his obligations pursuant to the Rules of Professional Conduct. His second disciplinary matter did not conclude until June 2018; yet, by January 2020 (the earliest month for which the OAE sought records in the present matter), respondent was, through his wholly deficient recordkeeping, failing to comply with those Rules. However, in mitigation, respondent's misconduct resulted in no identified harm to his clients.

Finally, we consider the default status of this matter. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008).

In light of respondent’s heightened awareness of the significance of compliance with the Rules and the default status of this matter, we determine that the enhanced sanction of a censure is warranted.

In addition, considering respondent’s demonstrated failure to comply with the recordkeeping Rules, we determine to require respondent to (1) complete a recordkeeping course pre-approved by the OAE within sixty days of the Court’s disciplinary Order in this matter; (2) submit to the OAE all the outstanding, previously requested financial records; and (3) provide to the OAE monthly reconciliations of his attorney accounts, on a quarterly basis, for a two-year period.

Member Rodriguez did not participate.

Member Joseph 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 William Timothy Howes  
Docket No. DRB 22-187

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Decided: March 23, 2023

Disposition: Censure

<i>Members</i>	Censure	Did Not Participate	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez		X	
Total:	7	1	1

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