Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-198
District Docket No. XIV-2020-0168E

In the Matter of

Walter K. Abrams

An Attorney at Law

Decision

Decided: April 28, 2023

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed

decisions about the representation); RPC 1.15(b) (failure to promptly deliver funds to the client or a third party); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 1.16(d) (failure to protect the client's interests upon termination of the representation); RPC 5.3(c)(2)[1] (a lawyer shall be responsible for conduct of a nonlawyer employee that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer under certain circumstances); RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities);[2] and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

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 1975 and to the New York Bar in 1974. He has no prior discipline in New Jersey. During the relevant timeframe, he maintained a practice of law in South Plainfield, New Jersey.

---

[1] In the ethics complaint, the OAE alleged that respondent violated RPC 5.3(c)(3) but cited the text of RPC 5.3(c)(2).

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

Service of process was proper. On August 30, 2022, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail receipt was returned to the OAE, indicating delivery on September 2, 2022. Although the certified mail receipt was signed, the signature is illegible. The regular mail was not returned to the OAE.

On October 12, 2022, the OAE sent a letter to respondent, by regular and certified mail, to respondent's home address of record, informing him that, unless he filed a verified answer within five days of the date of receipt of the letter, the allegations of the complaint would be deemed admitted; the record would be certified to us for the imposition of discipline; and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Although the certified mail receipt was signed, the signature is illegible. The regular mail was not returned to the OAE.

As of October 31, 2022, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On November 15, 2022, Acting Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, with another copy via e-mail, informing him that the matter was scheduled before us

on January 19, 2023, and that any motion to vacate must be filed by December 12, 2022. The e-mail was returned as undeliverable. Although the certified mail receipt was signed, the signature is illegible. The regular mail was not returned to the Office of Board Counsel (OBC).

On December 5, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would review 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.

We now turn to the allegations of the complaint.

Respondent maintained an attorney business account (ABA) and an attorney trust account (ATA) at TD Bank. In a February 15, 2019 letter, the OAE notified respondent that, on March 5, 2019, his books and records would be subject to a random audit covering the two-year period preceding the scheduled audit date. According to the OAE, despite this notification, respondent "was not fully prepared for the random audit [and] did not make several documents available for the auditor's review." The complaint does not specifically enumerate what documents respondent initially failed to produce.

Following the random audit, on April 3, 2019, the OAE sent respondent a letter notifying him of the following recordkeeping deficiencies: (1) inactive trust balances in "18 client matters totaling $144,438.77;" (2) missing ledger for the Maura Villavieja client matter; (3) two old, outstanding checks totaling $67.07; (4) improper designation of his ATA; (5) failure to prepare and reconcile a schedule of client ledgers; and (6) absence of cancelled ATA and ABA checks. In addition to the recordkeeping deficiencies, the OAE advised respondent that he had failed to provide certain documents:

> At the conclusion of the random audit, you were advised you needed to provide additional financial records that were not available. To date our office has not received the cancelled ATA checks for the month [of] December 2018 or cancelled ABA checks for the months of February 2018 through December 2018.
>
> [CEx4.][3]

The OAE also directed that respondent explain certain aspects of two real estate closings involving his client, Abdulhami Algabbari, involving Passaic City and Manalapan properties. Among other things, the OAE asked why "the HUD-1 Settlement Statement" in connection with the Passaic closing "state[d] the seller should receive $404,720.05 at closing, but the seller only received

[3] "CEx" refers to exhibits attached to the August 29, 2022 complaint.

$400,720.05," and why "the HUD-1 Settlement Statement" in connection with the Manalapan closing reflected that "$46,104.96 was due from the borrower at closing but [respondent's] client ledger card reflect[ed] a deposit of $48,200.00, leaving a balance of $2,095.04."

Lastly, the OAE directed respondent to confirm in writing, within "45 days of the date of this letter" that all deficiencies had been corrected, and within the same timeframe, complete a standard "Trust Account Certification Form identifying all funds on deposit."

On June 25, 2019, the OAE notified respondent that it had not received his reply to the April 3, 2019 deficiency letter and directed him to provide a reply within ten days. The OAE further warned that it could file a disciplinary complaint if he failed to reply.

On June 28, 2019, respondent sent the OAE a letter, representing that he had sent three e-mails and a package in reply to the OAE's April 3, 2019 deficiency letter. Although respondent "provided a copy of his prior responses" with his June 28, 2019 letter, the three e-mails are not included in the record before us, and neither is the package, except for its cover letter, which is dated May 22, 2019. In the cover letter, respondent described his purported efforts to resolve the recordkeeping deficiencies. With respect to the inactive balances, respondent stated:

> I have completely reviewed the matters held in my trust account and have issued checks to the clients where there [sic] have otherwise been held for an extensive period of time. Where I was unable to locate the client I am issuing checks to be sent together with my affidavit to the clerk of the superior court pursuant to the information you provided to me.
>
> [CEx6.]

With respect to the $4,000 discrepancy between the HUD statement amount and the amount paid to the seller in connection with Algabbari's Passaic real estate closing, respondent admitted that he was not able to reconcile the two numbers. With respect to Algabbari's Manalpan real estate closing, respondent maintained that Algabbari provided an extra $2,095.04 because the parties were unable to set a firm closing date and Algabbari wished to ensure that there were sufficient funds "so that the closing could go forward." Respondent claimed that he did "a fair amount of work for" Algabarri, who ultimately instructed respondent to retain the $2,095.94 overage to apply as fees for future matters.

Although not mentioned in the cover letter, respondent's May 22, 2019 package to the OAE also contained bank statements confirming that respondent had addressed the improper account designation.

Upon reviewing respondent's submissions and his "bank records obtained via subpoena,"[4] the OAE determined that respondent had violated Rule 1:21-6 and docketed the instant disciplinary matter against him. By letter dated April 13, 2020, the OAE advised respondent that the matter had been docketed and directed him to provide "outstanding trust account records . . . client files, and additional explanations for . . . certain client matters by May 1, 2020." The OAE sent the letter by regular mail to respondent's office, with an additional copy sent via e-mail.

On April 14, 2020, respondent left a voicemail with the OAE requesting an extension of his May 1, 2020 deadline, without specifying how much additional time he needed. The OAE called respondent back the same day, and when he did not answer the telephone, the OAE sent him an e-mail asking him to specify the length of his requested extension. On April 27, 2020, respondent informed the OAE, via e-mail, that he could not provide the records requested without visiting his office and, due to his health, he was concerned that such a visit would expose him to COVID-19. When the OAE repeated its inquiry regarding the requested length of the extension, respondent stated that he would provide an answer once he had reviewed the governor's update on COVID

---

[4] The record does not reveal what bank documents were involved or when the subpoena was issued.

restrictions and consulted with his doctor. On April 29, 2020, respondent sent the OAE an e-mail stating that he sought to extend the deadline to May 21, 2020. The record does not indicate whether the OAE responded to this e-mail.

On June 10, 2020, the OAE sent respondent an e-mail advising him that the Governor's stay-at-home order had been lifted and requiring that he submit the requested records by June 26, 2020. The OAE cautioned respondent that, if he failed to comply, it could conclude its investigation and file a formal complaint without further input from him. Respondent replied on the same date, stating:

> I am requesting the time period be extended to July 10. I have not been in my office since early March and will now go in only on weekends since one of the persons in the office was recently exposed to some [sic] with Covid. This will enable me to meet with my bookkeeper as well since she lives in Toms River.
>
> [CEx12.]

Respondent also indicated that he had decided to retire and "ha[d] already advised most of [his] clients." The record does not indicate whether the OAE granted respondent' extension request.

By letter dated June 25, 2020, respondent submitted "incomplete" documents to the OAE, promising that he would send "the balance of the information . . . next week." On July 6, 2020, respondent sent the OAE an e-mail stating that the outstanding documents would be provided in two to three

days.

On September 22, 2020, the OAE sent respondent a letter informing him that it had not received the required additional documents. The OAE warned that, if respondent failed to submit the required information by October 5, 2020, the OAE could seek his temporary suspension, pursuant to R. 1:20-3(g)(3), and charge him with failure to cooperate, in violation of RPC 8.1(b).

On October 6, 2020, respondent sent the OAE an e-mail stating:

> I have submitted everything I could locate. I announced my retirement this spring and my files were stored – I retrieved them to now have them at my home. The only work I am involved in is completing 2 real estate sales. If you will allow me two weeks I will obtain copies of the checks you requested from my bank.
>
> [CEx16.]

Respondent then sent another e-mail promising to "locate the requested files." The OAE responded the same day, informing respondent that his new deadline for submission was October 23, 2020, and that he needed to update his attorney registration to indicate that he was retired.

On October 19, 2020, respondent sent the OAE an e-mail stating that he had attached copies of checks as requested, but that he could not locate certain client files because they might have been lost in "one of the floods" that affected the basement of his office. Respondent also stated that he could not "explain the discrepancy" between the closing statement and the amount received by the

seller in connection with Algabbari's Passaic closing, although he asserted that he was not guilty of any misappropriation. Regarding his purported retirement, respondent indicated that he would update his attorney registration status once his two remaining client matters were complete.

On December 21, 2020, the OAE sent respondent a letter requiring him to appear for a demand interview on January 7, 2021. During the interview on that date, the OAE asked respondent why the inactive balances in his ATA had not been rectified, and respondent replied that "he did not have a reason why he failed to disburse funds to his clients." He also admitted that he "should have disbursed the funds several years ago," but that, due to the passage of time, he "no longer could find his client files." As part of the audit, the OAE informed respondent that he needed to produce the following items:

(i) Three-way monthly reconciliation reports of his ATA from April to December 2020;

(ii) Client ledger cards for ATA funds held from April to December 2020;

(iii) Contact information for John Okuszki, the administrator of the Estate of Dorothy Okuszki;

(iv) Contact information for the executrix of the Estate of Thomas Santaguida, and an explanation for a deposit, on this estate's behalf, from the Estate of Reutilio L. Santaguida, in respondent's ATA; and

(v) A copy of disbursement checks and R. 1:21-6(j) affidavit for funds from six inactive client matters.

Respondent confirmed that he would provide these five items. Following the demand interview, on January 7, 2021, the OAE sent respondent a letter requiring him to provide the requested items, including proof that he had disbursed the funds remaining in his six inactive client matters, by January 22, 2021. The letter was sent to respondent by both e-mail and regular mail.

On January 13, 2021, respondent informed the OAE, by e-mail, that he could not issue ATA checks in connection with his six inactive client matters because his "secretary was diagnosed with COVID . . . and w[ould] be unable to go into the office where [his] computer and Trust Checks [were] located until" the end of the week. On January 28, 2021, respondent stated that his secretary had picked up the checks, and that they would be issued the next day.[5] By e-mail on the same day, the OAE again attached its January 7, 2021 letter and reminded respondent that it expected to receive all items listed, not just copies of the checks.

On January 29, 2021, respondent replied to the OAE's e-mail, stating that he had never seen the OAE's January 7, 2021 letter. The OAE responded that the letter had been sent to respondent's home and that, in any event, it only memorialized the items respondent had promised to provide during the audit.

---

[5] Respondent did not clarify why his secretary was necessary in connection with the issuance of his ATA checks.

Respondent's secretary then replied to the OAE, via e-mail, claiming that she had "missed" the OAE's January 7, 2021 letter. She explained that the day the letter was sent to respondent by e-mail was the day she was diagnosed with COVID and, due to her condition, she did not notice that the letter was attached. The OAE responded that, although the secretary might have "missed" the attachment, respondent should have seen it, because his e-mail of January 13, 2021 was a reply to the e-mail that attached the letter. The secretary then explained that respondent had dictated the January 13, 2021 e-mail to her and had not sent it himself.

On February 3, 2021, respondent sent the OAE an e-mail, stating that his driveway would be cleared "today" and that he would then be able to "access his files and work on providing the additional information." On February 5, 2021, respondent sent the OAE an e-mail attaching a copy of "the monthly bank statements of his [ATA], a list of checks disbursed from his trust account, a copy of said checks, and a list of clients/balances in his trust account for the period" from April to December 2020. Respondent also stated in the e-mail that he was "working on finishing the other items."

On February 16, 2021, respondent sent an e-mail to the OAE, attaching "photos of five client checks to be disbursed" and "advised he was going through his files to obtain information for affidavits to send . . . with corresponding

checks." In response, the OAE asked when respondent intended to provide "the other information/documents." Respondent did not answer that inquiry.

On February 22, 2021, respondent sent the OAE an e-mail, stating "[w]e are finishing paperwork tomorrow and will be going to South Plainfield . . . to sign affidavits." In reply, the OAE stated that the checks and affidavits only addressed the last of the five items specified in the January 7, 2021 letter and asked when the remaining items would be provided. Respondent then stated "[e]verything will be sent to you at the end of the week."

On March 2, 2021, respondent sent an e-mail to the OAE, apologizing for not having provided "the rest of the information." Respondent explained that his assistant had started a new job and would work on his materials from home in the evening, and that he expected to meet with her "to sign and notarize everything" in two days. On March 9, 2021, respondent "provided a copy of unsigned affidavits and trust account checks . . . along with an unsigned cover letter to the Superior Court Clerk." He also promised that "additional information [would] follow." However, he never followed up with any information, and the OAE never received "the requested three-way reconciliation reports . . . client ledger cards . . . contact information for the administrator of the Estate of Okuszki, contact information for the executrix of the Estate of Santaguida" or "fully executed Rule 1:21-6(f) affidavits."

Consequently, on April 5, 2021, the OAE notified respondent that it was concluding its investigation of his financial records and treating his failure to cooperate as a violation of RPC 8.1(b).

From the documents respondent provided, the OAE was able to ascertain that, as of December 31, 2020, "there remained a balance of $66,859.94 for six inactive client matters." The OAE asserted that this inactive balance in respondent's ATA demonstrated that respondent had misrepresented, in his May 22, 2019 letter to the OAE, that he had rectified all the inactive balances in his ATA.

After respondent stopped cooperating, the OAE was able to verify with the Superior Court Trust Fund Unit that respondent had deposited $31,064.39 in connection with four client matters. Nonetheless, when the OAE reviewed respondent's records, on April 30, 2021, it found that respondent had "failed to disburse the balances of $25,897 for the Estate of Okuszki and $9,898.55 for the Estate of Santaguida."[6] Furthermore, the auditor "determined that two checks still remained outstanding as they had not yet been negotiated against respondent's ATA: #7306, in the amount of $231.35 issued in 2019 payable to

---

[6] It appears that the amount held on behalf of these two estates (collectively, $35,795.55) was what remained in respondent's ATA following the four deposits with the Superior Court Trust Fund, as the sum of this amount and the total of the four deposits makes up respondent's ATA balance as of December 31, 2020 ($35,795.55 + $31,064.39 = $66,859.94).

the Estate of Villavieja and #7365 in the amount of $5000 dated October 6, 2020, payable to Margaret Drumgould."

In addition to respondent's recordkeeping violations and his failure to cooperate, the OAE also detailed in the complaint respondent's conduct with respect to several specific matters.

In connection with the Estate of Vincent DeAndrea, Esq., respondent was appointed attorney-trustee upon DeAndrea's death. On May 9, 2011, respondent deposited in his ATA $62,751.08 belonging to DeAndrea's clients. On May 18, 2022, respondent deposited in his ATA $21,250, representing the proceeds from the sale of DeAndrea's home. Respondent then disbursed some of the funds he had received, but ultimately failed to disburse $23,969.24. He had no explanation for this failure, other than that the matter had "fallen into a rut." By April 7, 2021, respondent had deposited the balance of DeAndrea's funds with the Superior Court Trust Fund Unit.

In July 2012, in connection with the Estate of Claudia Green, respondent received $5,511.48 on behalf of the estate. This amount was intended to establish a trust for Green's disabled daughter. However, respondent believed that the trust was never established, and he was not successful in contacting the trustee. Respondent stated, during the January 7, 2021 OAE interview, that he was holding on to the funds in case the trustee reached out to him. By April 7,

2021, respondent had deposited the funds with the Superior Court Trust Fund Unit.

In April 2014, in connection with the Estate of Joseph Nowakowski, respondent obtained a total of $6,157.41 from the Unclaimed Property Administration on behalf of the estate. He paid himself $576 in legal fees and set out to disburse the remaining $5,581.41 to three beneficiaries. However, he could not find the third beneficiary and, as a result, allowed that beneficiary's share, in the amount of $1,860.47, to languish in his ATA. That amount remained in his ATA at the time of the random audit, but respondent ultimately deposited it with the Superior Court Trust Fund Unit at some point on or before April 14, 2021.

Respondent represented a client, Quinteros, in the purchase of real estate from a seller, Cales; he also served as settlement agent for the transaction.[7] On April 14, 2011, in his capacity as settlement agent, respondent issued a $1,223.20 check to the Township of Piscataway. Respondent subsequently canceled the check because the Township of Piscataway was not the correct recipient. However, he never reissued the check to the correct recipient. At the January 2021 demand audit, respondent admitted that, due to the passage of

[7] The complaint provides only last names for this matter.

time, he "could not locate his client file to determine to whom the funds belonged." Respondent deposited the funds with the Superior Court Trust Fund Unit at some point on or prior to April 7, 2021.

In connection with the Estate of Dorothy Okuszki, respondent was hired by John Okuszki to "represent the estate in the sale of realty and to wrap up the estate." Although he completed all work in connection with this estate in 2016, respondent "just let the matter sit" and neglected to obtain an insurance bond release. This forced the estate to continue paying insurance bonds from 2017 to 2020, at the rate of $463 per annum, totaling $1,852. Additionally, the OAE's investigation demonstrated that, as of April 30, 2021, the sum of $25,987 belonging to this estate remained in respondent's ATA. Although respondent promised to provide the OAE with John Okuszki's contact information, he failed to do so.

Through its own research, the OAE obtained two addresses for someone named John Okuszki, but received no response to letters sent to either address. Ultimately, the OAE learned from Rose Vail, another client of respondent, that respondent had dropped off his files with a New Jersey attorney named Andrew Ullrich, Esq. In June 2021, the OAE contacted Ullrich, who confirmed that respondent had dropped off a box of old wills and two client files at his office. When he "review[ed] the files with [the OAE] over the telephone, Ullrich

advised he found an [ATA] check payable to Rose Vail in the amount of $9,898.55 and a check payable to John Okuszki in the amount of $25,897." Ullrich also stated that he did not know if additional work needed to be completed on the files. However, he knew John Okuszki's family and would be reaching out to them.

On July 27, 2021, Ullrich informed the OAE that his effort to reach respondent had proven fruitless. Although respondent had left a message stating that he would soon undergo surgery, "Ullrich ha[d] seen [Facebook] postings that respondent [was] traveling around New England." On March 23, 2022, Ullrich informed the OAE that he had to refer John Okuszki to an estate administration attorney, because John Okuszki "had questions he could not answer." He further stated that John Okuszki had received the check payable to him. However, in July 2022, the OAE subpoenaed respondent's banking records and discovered that the check was "practicably non-negotiable" because, on January 5, 2022, TD bank had closed respondent's ATA due to "suspicion of money laundering."[8] Following the closing, TD Bank issued a check in the amount of the account's balance to respondent. However, as of August 9, 2022, that check remained outstanding.

---

[8] Two additional checks, made out to the Estates of Maura Villavieja and Margaret Drumgould, also were outstanding at the time the account was closed. (C¶145).

On May 18, 2015, respondent had deposited in his ATA the sum of $208,722.50 on behalf of the Estate of Thomas Santaguida.[9] Respondent then made several disbursements and, in March 2016, he paid final estate taxes, reducing the balance to $49,515.98. From 2016 to 2018, respondent paid a yearly insurance bond in the amount of $384.35 but did not otherwise perform any work in connection with this matter. Following the random audit, on March 20, 2019, respondent issued five checks, totaling $40,000, to five beneficiaries, reducing the balance of the estate's funds to $8,362.93. Thereafter, respondent paid the yearly insurance bond, and in October 2019, he deposited a check from the Estate of Reutilio in the amount of $2,304.31, thereby increasing the balance to $10,282.89.

When asked to explain the check from the Estate of Reutilio, respondent stated that he had no information regarding what it represented. He further stated that he could not recall the name of the executrix for the estate. However, he promised to provide her contact information once he had reviewed his client file.

---

[9] Respondent's relationship with this estate is not entirely clear from the record. According to the complaint, in 2015, Rose Vail hired respondent to handle the Estate of Reutilio Santaguida, Thomas Santaguida's brother. Reutilio died in May 2015 and Thomas died in 1999. Following Reutilio's death, a house owned by Thomas, Vail, and Reutilio was sold and the proceeds of the sale, which amounted to $208,722.50, were deposited in respondent's ATA. There is no allegation that Vail hired respondent to administer Thomas' estate in addition to that of Reutilio.

Respondent did not follow through with his promise. Nonetheless, the OAE sent a letter to the preprinted address on the check from the Estate of Reutilio and was able to reach Vail. On May 24, 2021, Vail contacted the OAE and stated that, in 2015, she had hired respondent to handle the Estate of Reutilio. Thereafter, a house owned by Reutilio, Thomas, and Vail was sold, and the proceeds were deposited in respondent's ATA. "Respondent then disbursed the assets and paid taxes, so Vail did not know why respondent did not finalize the estate in 2016 as the surety bond had to be paid every year." Each time Vail received an insurance bill, she called respondent's office and was instructed to drop the bill off so that it could be paid. Vail also stated that "respondent had been very difficult to get a hold of the last few years and would not return calls . . . . he never contacted her to resolve the estate." Additionally, respondent closed his office without finishing Vail's matter or advising her on how to proceed. Vail discovered that the office was closed when she drove by and saw that it was vacant.[10]

On June 7, 2021, Vail informed the OAE that, on June 2, 2021, respondent had called her, stating that he had dropped her file off with Ullrich because "medical issues" prevented him from completing her matter. On August 24,

---

[10] The complaint did not charge respondent with client abandonment.

2021, Ullrich advised the OAE that Vail had "picked up respondent's check payable to her." Records subpoenaed from TD Bank show that, on August 25, 2021, Vail deposited the check, reducing respondent's ATA balance to $31,128.35.[11]

In the complaint, the OAE asserted that respondent's handling of these client matters, in conjunction with his recordkeeping deficiencies and failure to cooperate with the investigation, constituted violations of: RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.15(b), RPC 1.15(d), RPC 1.16(d), RPC 5.3(c)(3), RPC 8.1(a), and RPC 8.4(c). With respect to RPC 1.15(d), the OAE alleged that respondent violated the following provisions of Rule 1:21-6:

i. Rule 1:21-6(c)(1)(B) – client ledgers were not maintained for each individual client;

ii. Rule 1:21-6(a)(2) – the designation of the attorney trust account was not proper;

iii. Rule 1:21-6(c)(1)(H) – a schedule of client balances was not reconciled monthly to the trust account bank statements and ledgers;

iv. Rule 1:21-6(c)(1) – all trust and business account records were not

[11] It is not clear what check is being referenced. The only check payable to Vail that the complaint has mentioned is the one discovered by Ullrich, which was in the amount of $9,898.55. But if this check was the one Vail cashed, the ATA balance should have been reduced to roughly $25,000, as earlier allegations in the complaint suggest that the account contained $35,795.55 on April 30, 2021. (C¶¶68-72).

maintained for seven years; and

v. Rule 1:21-6(a)(1) – funds for fiduciary matters were not maintained separately from the attorney trust account.

With respect to RPC 1.4(c), the OAE cited the text of the Rule and inserted "payment of insurance bonds" in parentheses. The OAE did not explain the factual basis for the remaining alleged violations.

Following a review of the record, we determine that the facts recited in the formal ethics complaint support most of 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 of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

Pursuant to RPC 1.1(a), "[a] lawyer shall not . . . [h]andle or neglect a matter entrusted to the lawyer in such a manner that the lawyer's conduct constitutes gross negligence." Respondent violated this RPC because he failed, for years, to perform any work in connection with the DeAndrea; Quinteros; Okusaki; and Santaguida client matters, leaving those matters unfinished and causing financial harm to at least two clients. Although the harm in the DeAndrea and Quinteros matters cannot be ascertained on this record, the clients

in the Okusaki and Santaguida matters were forced to pay annual insurance bonds because of respondent's inaction. Worse, after neglecting the Okusaki and Santaguida matters for years, respondent could not be troubled to ensure that the clients received their final disbursements from his ATA. Specifically, he wrote two checks to Okusaki and Vail but failed to deliver them to the clients.

In the same vein, respondent violated RPC 1.3, which requires lawyers to act "with reasonable diligence and promptness in representing a client." Respondent did not act with reasonable diligence and promptness in connection with DeAndrea; Quinteros; Okusaki; and Santaguida matters. However, only allegations pertaining to the Quinteros, Okusaki, and Santaguida client matters can support a violation of RPC 1.3, because respondent was not "representing a client" in connection with the DeAndrea matter. Rather, he was acting as attorney-trustee in that matter.

Because respondent neglected more than three client matters, he also violated RPC 1.1(b), which prohibits lawyers from "exhibit[ing] a pattern of negligence or neglect in the lawyer's handling of legal matters generally." See In re Donald M. Rohan, DRB 05-062 (June 8, 2005) at 12-16 (holding that a violation of RPC 1.1(b) requires three instances of neglect in three distinct client matters).

Although the extent of respondent's communication with most clients is unknown, respondent's communication with Vail fell short of the standards set forth in RPC 1.4(b) and (c). RPC 1.4(b) requires lawyers to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." RPC 1.4(c) states that lawyers "shall explain a matter to the extent reasonably necessary to permit the client to make informed decision regarding the representation." Respondent violated these RPCs by failing to return Vail's calls and left her in the dark as to why he would not finalize her matter. See In the Matter of Robert A. Wills, DRB 22-138 (October 24, 2022) (finding violations of RPC 1.4(b) and (c) based, in part, on the attorney's failure to disclose lack of meaningful progress over course of the representation). He further violated RPC 1.4(b) and RPC 1.16(d) by closing his office without notifying her in a timely manner, leaving her with no means by which to contact him. Although this same conduct could support a violation of RPC 1.4(c), the OAE has specifically limited the factual basis for that charge to allegations regarding "payment of insurance bonds." As such, respondent's failure to notify Vail of his office closure cannot be found to be an additional violation of RPC 1.4(c). See R. 1:20-4(b) ("[T]he complaint shall [. . .] set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct[.]").

Respondent violated RPC 1.15(b) in the Quinteros, Okuszki, and Santaguida client matters by failing to timely deliver funds to a client or a third party in these matters. In the Quinteros matter, he was duty-bound to deliver $1,223.20 to the correct recipient as the settlement agent, but he failed to do so and, ultimately, due to the passage of time, could no longer determine the correct recipient. In the Okuszki and Santaguida matters, he completed almost all the required work but allowed client funds to linger in his ATA for years. In fact, Okuszki's check was still outstanding at the time of the filing of the complaint underlying this matter.

Respondent repeatedly violated the recordkeeping provisions of RPC 1.15(d). He failed to maintain a ledger for at least one client (Maura Villavieja) and admittedly allowed an incorrect designation of his ATA. He additionally failed to reconcile client balances and did not maintain images of ATA checks. He also deposited estate funds in his ATA, in violation of R. 1:21-6(a)(1).

Respondent also violated RPC 1.16(d), which states that a lawyer must "take steps to the extent reasonably practicable to protect a client's interests" upon termination of representation. Respondent did not take any such steps. He did not notify John Okuszki of his office closure and, although he provided Vail with some notice, the notice was untimely. Despite knowing that both these clients were entitled to funds from his ATA, he did not send them their checks.

Further, he dropped their files off with Ullrich, but was not available to answer Ullrich's questions.

Lastly, respondent repeatedly failed to respond to the OAE's lawful demands for information, in violation of RPC 8.1(b). Specifically, despite the OAE's dogged efforts, respondent failed to comply with several deadlines for submitting financial records. After March 9, 2021, respondent ceased communicating with the OAE altogether, despite knowing that he had not provided all the required documents. Once a complaint was filed, respondent violated RPC 8.1(b) again by failing to answer the complaint and allowing this matter to proceed as a default.

However, the charged violations of RPC 5.3(c)(2), RPC 8.1(a), and RPC 8.4(c) are not supported by the facts set forth in the record. RPC 5.3(c)(3) states that a lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the RPCs. Here, the only nonlawyer at issue is respondent's secretary, and the secretary did not engage in any conduct violative of the RPCs. Although she failed to review an attachment sent by the OAE when she was sick with COVID-19, this conduct, by itself, does not demonstrate a violation of any RPC.

RPC 8.1(a) prohibits lawyers from making knowingly false statement in connection with a disciplinary matter, and RPC 8.4(c) proscribes "conduct

involving dishonesty, fraud, deceit or misrepresentation." It is well-settled that a violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011).

Because "a balance of $65,821.18 from seven inactive matters remained" in respondent's ATA as of June 30, 2019, the OAE asserted that respondent made a false statement when he wrote on May 22, 2019 that "he had corrected the deficiencies noted during his audit." However, respondent's communication of May 22, 2019 does not contain any such statement. To the contrary, respondent made clear that he was still in the process of "issuing checks to be sent" to the Superior Court Trust Fund. Thus, the fact that funds remained in his ATA one month later does not prove that he had been untruthful. This is so even though respondent's communication suggested that he had issued checks to all clients with whom he was in contact, and Okuszki and Vail's checks remained in their files until Ullrich found them. Respondent may have genuinely believed that he had sent these checks. Accordingly, based on these facts, we find that the record lacks clear and convincing evidence to show that his statement was knowingly false.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.8(b); RPC 1.15(b); RPC 1.15(d); RPC 1.16(d); and RPC 8.1(b) (two instances). We dismiss the charges that respondent

further violated RPC 5.3(c)(2), RPC 8.1(a), and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Attorneys who mishandle a significant number of matters generally receive suspensions ranging from three months to one year. See, e.g., In re Pinnock, 236 N.J. 96 (2018) (three-month suspension for attorney who was found guilty of misconduct in ten client matters: gross neglect, lack of diligence, and failure to communicate with the client in nine matters; and pattern of neglect and conduct involving dishonesty, fraud, deceit, or misrepresentation in four matters; in aggravation, he caused significant harm to his clients; in mitigation, the attorney suffered from serious physical and mental health issues; prior reprimand); In re Gruber, 248 N.J. 205 (2021) (six-month suspension for attorney who committed misconduct in six matters, including five that he grossly neglected; prior censure for similar misconduct in two matters from the same period; the attorney suffered from mental health issues and was actively pursuing treatment); In re Tunney, 185 N.J. 398 (2005) (six-month suspension for misconduct in three client matters, where the attorney previously had mishandled eleven matters; the violations included gross neglect, lack of diligence, failure to communicate with clients, and failure to withdraw from the representation when the attorney's physical or mental condition materially

impaired his ability to represent clients; in mitigation, the attorney suffered from serious depression; prior reprimand and six-month suspension); In re Lawnick, 162 N.J. 113 (1999) (in a default matter, one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and to cooperate with the investigation of the ethics grievances).

However, censures have been imposed in recent cases where the attorney's pattern of neglect pertained to relatively few matters. See, e.g., In re Frishberg, 241 N.J. 523, 524 (2020) (censure for attorney who grossly neglected an appeal, causing the appeal to be dismissed; the attorney also failed to keep the client informed; the attorney previously had neglected two other matters; violations of RPC 1.1(a), RPC 1.1(b), and RPC 1.4(b)); In re Bakhos, 239 N.J. 526 (2019) (censure for attorney who committed gross neglect in three matters; in the first matter, the attorney falsely told the client that the matter was still in early stages of discovery when, in reality, trial was imminent; the attorney failed to notify the client of the trial date, showed up for trial unprepared, and sought to avoid the trial by misrepresenting to the judge that the client had agreed to binding arbitration; in the second matter, the attorney failed to inform the client of an order requiring the client to produce a witness for a deposition – a failure that caused client's answer to be stricken and resulted in monetary sanctions; in

the third matter, the attorney failed to comply with discovery deadlines, causing the client's answer to be stricken, and made a false statement to the court; the attorney failed to communicate with clients in all three matters; violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.16(a)(2), RPC 3.3(a)(5), RPC 3.4(c), RPC 4.1(a)(1), RPC 8.4(c), and RPC 8.4(d); the baseline discipline, a three-month suspension, reduced to censure due to mental illness and acknowledgment of wrongdoing); In re Dusinberre, 228 N.J. 459, 459 (2017) (censure for attorney who grossly neglected four real estate matters; the attorney did not file proper documents in these matters but represented to clients that he had done so; in some instances, the attorney also fabricated documents to provide to clients; violations of RPC 1.1(a), RPC 1.1(b), RPC 1.4(b), and RPC 1.4(c); significant mitigation included cooperation with the OAE, long, unblemished disciplinary history, and mental health diagnosis).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not directly caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (attorney commingled and committed several recordkeeping violations, including failure to perform three-way reconciliations, improper account designation, and failure to preserve images of processed checks); In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (the attorney failed

to maintain attorney trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (following an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney (1) did not maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain an attorney business account, in violation of RPC 1.15(d) and R. 1:21-6).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities if the attorney does not have an ethics history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (attorney failed to cooperate with disciplinary authorities and did not adequately communicate with client, among other infractions); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)).

However, a reprimand may result if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See, e.g., In the Matter of David M. Schlachter, DRB 22-040 (September 13, 2022) (reprimand for attorney who committed recordkeeping violations and failed to comply with the OAE's numerous record requests); In re Picker, 218 N.J. 388 (2014) (reprimand; an OAE demand audit, prompted by a $240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses; violation of RPC 1.15(a); in addition, the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit; violations of RPC 8.1(b); the attorney explained 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; although the attorney had a prior three-month suspension and was temporarily suspended at the time of the decision in this matter, we noted that the conduct underlying those matters was unrelated to the conduct at hand); In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed

to file an answer to the complaint).

Here, it is instructive to compare respondent's misconduct to that of the censured attorney in Bakhos. Like that attorney, respondent grossly neglected multiple client matters. However, the extent of respondent's neglect was less severe than that of Bakhos. Although respondent was dilatory in disbursing funds, he did not cause multiple matters to be dismissed or show up for trial unprepared, as was the case in Bakhos. Additionally, respondent's recordkeeping violations and failure to cooperate with the OAE are much less serious than Bakhos' repeated attempts to deceive courts and his own client. Thus, we determine the baseline level of discipline in this case to be a censure – less severe than the baseline, three-month suspension in Bakhos, which we reduced to a censure due to significant mitigating factors. In crafting the appropriate discipline in this matter, however, we also consider mitigating and aggravating circumstances.

In mitigation, we accord significant weight to respondent's unblemished history in forty-seven years at the bar.

In aggravation, however, we weigh 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. at 342

(citations omitted).

On balance, we conclude that the mitigating and aggravating factors are in equipoise and, thus, appropriate quantum of discipline remains a censure.

We further require respondent to: (1) complete a recordkeeping course pre-approved by the OAE within sixty days of the issuance of the Court's disciplinary Order; (2) open and maintain an ATA, pursuant to R. 1:21-6(a), within sixty days of the issuance of the Court's disciplinary Order; (3) provide to the OAE monthly reconciliations of his accounts, on a quarterly basis, for a two-year period; and (4) provide documentary proof of the release of all unclaimed trust account funds to their intended beneficiaries, or to the Superior Court Trust Fund Unit, as R. 1:21-6(j) requires, within sixty days of the issuance of the Court's disciplinary Order. Should respondent not comply with these conditions, the OAE should promptly move for his temporary suspension.

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 Walter K. Abrams
Docket No. DRB 22-198

Decided: April 28, 2023

Disposition: Censure

Members	Censure	Did not participate	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez		X	
Total:	7	1	1

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