

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 23-196  
District Docket No. XIV-2022-0329E

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In the Matter of Raymond Charles Osterbye  
An Attorney at Law

Decided  
February 22, 2024

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Certification of the Record

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## **Introduction**

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 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities);<sup>1</sup> and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 2013 and to the New York bar in 2002. At the relevant times, he maintained a practice of law in Keansburg, New Jersey.

In 2020, respondent received a reprimand, in connection with a motion for discipline by consent, for having violated RPC 1.15(a) (engaging in negligent misappropriation of client funds and commingling); RPC 1.15(b)

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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.

(failing to promptly disburse funds to a client or third party); RPC 1.15(d); RPC 7.1(a) (making false or misleading communications about the lawyer’s services); RPC 7.5(e) (engaging in false or misleading advertisement); and RPC 8.1(b). In re Osterbye, 243 N.J. 340 (2020) (Osterbye I).

Specifically, due to his poor recordkeeping practices (more than twenty deficiencies), respondent negligently misappropriated client funds in four matters; commingled client funds in another four matters; failed to safeguard client and third-party funds; and failed to promptly disburse funds. In the Matter of Raymond Charles Osterbye, DRB 20-057 (July 30, 2020) at 2.<sup>2</sup> Respondent stipulated that his “sporadic, untimely, and incomplete replies” to the OAE’s numerous communications, which spanned from January 2016 through February 2018, constituted a failure to cooperate with disciplinary authorities. Id. at 1. Additionally, on his law firm letterhead, respondent improperly characterized his firm as “Legal Service Center, LLC,” without informing clients that his firm was not affiliated with a public, quasi-public, or charitable organization, in violation of RPC 7.1(a) and RPC 7.5(e). Id. at 2.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in aggravation, respondent’s ongoing failure to comply

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<sup>2</sup> We transmitted our decision to the Court on June 23, 2020 and issued a corrected letter on July 30, 2020.

with the recordkeeping requirements. In turn, we weighed, in mitigation, respondent's then lack of prior discipline, his admission to his misconduct, and the fact that he had revised his improper letterhead. Id. at 3.

The Court agreed with our recommended discipline and further required respondent to: (1) practice law under the supervision of a practicing attorney, (2) provide monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, until further Order of the Court, and (3) successfully complete a course in trust and business accounting approved by the OAE. Osterbye, 243 N.J. 340.

In 2022, respondent received a second reprimand, in a default matter, for having violated RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee) and RPC 8.1(b). In re Osterbye, \_\_ N.J. \_\_ (2022); 2022 N.J. LEXIS 659 (Osterbye II). Specifically, respondent failed to set forth, in writing, the basis or rate of his legal fee, as RPC 1.5(b) requires, in connection with his 2018 representation of two new clients in the Superior Court of New Jersey, Special Civil Part. In the Matter of Raymond Charles Osterbye, DRB 21-092 (Sept. 27, 2021) at 4.

In determining that a reprimand was the appropriate quantum of discipline, we weighed, in aggravation, the default status of the matter and the fact that the matter represented respondent's second disciplinary proceeding in

four years. Id. at 8. We observed that, because he had participated in the Osterbye I disciplinary proceedings, respondent had a heightened awareness of his obligations to comply with the RPCs. Ibid. The Court agreed with our recommended discipline and again required respondent to comply with the same conditions imposed in Osterbye I.

### **Service of Process**

Service of process was proper. On June 6, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record, with another copy sent, by electronic mail, to his e-mail address of record. Neither the certified nor the regular mail were returned to the OAE. However, the next morning, on June 7, 2023, respondent confirmed that he had received the OAE's e-mail.

Respondent failed to file an answer by June 28, 2023, as R. 1:20-4(e) requires. Consequently, on August 9, 2023, the OAE sent a second letter to respondent, by certified and regular mail, to his office address of record, with another copy by e-mail, informing him that, unless he filed a verified answer to the complaint by August 14, 2023, the charges 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). The regular and certified mail were not returned to the OAE.

On August 16, 2023, respondent sent the OAE an e-mail, requesting a seven-day extension to file his answer based on his claim that he had trials scheduled “for two different matters.” The next day, on August 17, 2023, the OAE sent respondent a reply e-mail, granting him an extension until August 25, 2023 to file his answer (fifty-eight days after the initial deadline) and advising him that no further extensions would be granted.

As of August 31, 2023, 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 September 25, 2023, then Acting Chief Counsel to the Board sent respondent a letter, by certified and regular mail, with another copy by e-mail, informing him that this matter was scheduled before us on November 16, 2023, and that any motion to vacate must be filed by October 16, 2023. As of the date of this decision, none of the mail has been returned to the Office of Board Counsel (the OBC).

Finally, on October 2, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 16, 2023. The notice informed respondent that, unless he filed a successful

motion to vacate the default by October 16, 2023, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

## **Facts**

We now turn to the allegations of the complaint.

### *Violations of the Court's Orders*

On August 4, 2020, the OAE sent respondent a letter, via e-mail, requiring him to submit (1) the name of his proposed supervising attorney by August 18, and (2) his first quarterly reconciliations of his attorney accounts by November 30, as required by the Court's July 30, 2020 Order in Osterbye I. Enclosed with its letter, the OAE provided respondent (1) a copy of the Attorney's Monthly Case Listing Report (which the OAE directed that he provide to his supervisor on a monthly basis), (2) a Supervisor's Quarterly report (which the OAE required the supervisor to file with the OAE on a quarterly basis), and (3) the OAE Random Audit Compliance Program reference manual (the RAP manual), which outlines the recordkeeping requirements of R. 1:21-6, to assist him in preparing his attorney account reconciliations. Finally, the OAE advised respondent of an OAE-sponsored



Trust and Business Accounting class, which he could attend at no cost, on September 15, if he registered by August 18, 2020.

Respondent failed to reply by August 18, 2020 and, thus, on August 28, 2020, the OAE sent him a second letter, via regular mail and e-mail, requiring him to provide the name of his attorney supervisor by September 9, 2020. Respondent replied, via e-mail, on September 8, 2020, requesting a list of available attorney supervisors and more time to secure one because he “did not understand that [he] had to find [his] own supervisor.” Two days later, on September 10, 2020, the OAE sent respondent a reply e-mail reiterating that he was responsible for obtaining his own attorney supervisor but granting him another extension, until September 25, 2020, to obtain one. The OAE recommended that respondent “reach out to [his] local or state bar association” for assistance with his search. Although respondent sent the OAE another e-mail, on September 11, stating, “I will contact the Monmouth County Bar Association,” he did not submit a proposed attorney supervisor by the September 25 deadline.

On November 9, 2020, the OAE sent respondent a third letter, via e-mail only, requiring that he submit the name of his proposed attorney supervisor and information about which trust and business accounting course(s) he planned to attend by November 20, 2020. The OAE also

reminded respondent that his first quarterly monthly reconciliations were due by November 30, 2020. Respondent, however, failed to reply.

On January 29, 2021, the OAE sent respondent another e-mail directing him to advise “immediately of any steps [he had] taken to comply with the Supreme Court’s July 30, 2020 order.” The OAE also advised that, if respondent had not yet found an attorney supervisor, the OAE would contact the Assignment Judge in the vicinage where he primarily practiced and request that one be assigned. Finally, the OAE directed that he confirm receipt of its e-mail and emphasized that, if he did not comply with the conditions of the Court’s Osterbye I Order by February 5, 2021, the OAE could move for his immediate temporary suspension without further notice.

On February 11, 2021, following his failure to reply, the OAE sent respondent an additional e-mail, advising that it had “reluctantly agreed to postpone” its motion for his temporary suspension until February 18, 2021. Further, the OAE advised respondent that it would file with the Court a petition to compel his compliance on February 18, 2021 if he did not provide, by February 17, 2021, (1) the name of his proposed attorney supervisor, (2) information about the trust and business accounting course(s) he planned to attend, and (3) three-way attorney trust account (ATA) reconciliations with supporting documents (including bank

statements, client ledger cards, receipts, and disbursement journals, among other materials) for the timeframe of August 2020 through December 2020.

### Response and Partial Compliance

More than five months after he was required to do so, on February 17, 2021, respondent finally replied to the OAE's numerous communications and provided some of the required information. Specifically, he provided the name and contact information of his proposed supervisor, Michael Hanus, Esq., and indicated that he planned to "take two online courses instead of one," because he "could not find a joint course." Moreover, he planned to attend the "Accounting for Lawyers" course, provided by the New York City Bar, and "Trust Accounting," provided by Garden State CLE. Additionally, although respondent provided his purported attorney account bank statements, he conceded that he needed to "change the names on the accounts" because some of the statements referred to his "Legal Service Center," an improper firm name for which he previously had been disciplined in Osterbye I.

The OAE replied to respondent's e-mail on February 18, 2021. In that e-mail, the OAE noted that it had approved Hanus as respondent's supervisor and that it would send Hanus a letter to advise him "of his duties

as a proctor.” The OAE indicated that respondent could attend either of the CLE courses he had proposed, but that he would need to send proof that he had “successfully attended a course” by March 22, 2021. Additionally, although the OAE acknowledged receipt of respondent’s bank statements, it emphasized that he “must also provide [his] [three]-way reconciliations, client ledger cards, receipts, and disbursement journals along with check images BEFORE [it] could conduct a review of [his] trust accounting.” Once again, the OAE provided the RAP manual to assist respondent in “preparing proper [three]-way trust reconciliations” and required him to provide “full [and] complete reconciliations by March 22, 2021.” (Emphasis in original). Finally, the OAE requested that respondent explain whether certain checking account statements were associated with his attorney business account (ABA).

That same day, the OAE sent a letter to Hanus advising him of his obligations as a supervising attorney. Under R. 1:20-18, Hanus was required to hold weekly meetings with respondent and to submit certified monthly reports and quarterly reports. The OAE included the Attorney’s Monthly Case Listing Report form, Supervisor’s Quarterly Report form, and an Acknowledgment of Proctor form, which the OAE directed that Hanus file by May 20, 2021.

On May 13, 2021, after nearly three months with no response from Hanus, the OAE sent him another letter affording him an additional week to submit the Acknowledgment of Proctor form and directing him to file the Supervisor's Quarterly Report (covering February, March, and April 2021) by June 21, 2021. The OAE reminded Hanus of his duties as a supervising attorney, under R. 1:20-18, and directed that he notify the OAE "immediately" if he could not serve as respondent's supervisor.

That same day, the OAE sent respondent another letter in light of his failure to provide his three-way ATA reconciliations; client ledger cards; receipts and disbursements journals; and proof that he had attended a trust and business account course. The OAE included another copy of the RAP manual to assist him and required that he produce the required reconciliations and proof that he had attended a trust and business accounting course by June 30, 2021. The OAE again cautioned respondent that, if it did not receive the required documents by June 30, 2021, it "retain[ed] the option to petition the Supreme Court for [his] immediate temporary suspension . . . without further notice to [him]."

On May 19, 2021, Hanus sent the OAE an e-mail, claiming that he had "just found" the OAE's May 13, 2021 e-mail in his "junk filter," and that he had not received any other e-mails. Additionally, Hanus claimed that

he had not yet “spoken or met with” respondent because he did not get the paperwork. The next morning, the OAE sent Hanus all prior e-mails regarding his status as a supervising attorney for respondent.

Two months later, on July 14, 2021, the OAE sent respondent another letter noting that it still had not received his “complete three-way reconciliations” for the period spanning August 2020 through April 2021, or proof that he had attended a course in trust and business accounting. The OAE advised respondent to provide such documentary proof by July 30, 2021, and once again warned him that if it did not receive the required documents “by July 30, 2021, [it] retain[ed] the option to petition the Supreme Court for [his] immediate temporary suspension” without further notice to him. (Emphasis in original). The OAE also required that respondent’s three-way ATA reconciliations would be due “on or before August 30, 2021.” (Emphasis on original).

On July 14, 2021, nearly one year after the effective date of the Court’s Order in Osterbye I, the OAE sent Hanus another letter requiring him to return the Acknowledgment of Proctor form by July 28, 2021, if he indeed had agreed to become respondent’s supervisor. The OAE reminded Hanus to (1) file his first Supervisor’s Quarterly Report by July 30, 2021,

(2) hold weekly meetings with respondent, as R. 1:20-18 requires, and (3) to file certified reports on a monthly and quarterly basis.

On August 13, 2021, the OAE sent respondent an e-mail, once again advising him that his ATA reconciliations were due by August 30, 2021. Because he still had not filed proof that he had attended a trust and business accounting course, the OAE notified him that it was offering another course, on September 15, 2021, via Zoom, at no cost. Finally, the OAE stated that, if it did not receive the required documents “by August 30, 2021, [it] retain[ed] the option to petition the Supreme Court for [his] immediate temporary suspension” without further notice. (Emphasis in original).

Also on August 13, 2021, the OAE sent Hanus another letter requiring that he sign and return the Acknowledgement of Proctor form and submit his Supervisor’s Quarterly Report to the OAE by September 30, 2021, if he had agreed to supervise respondent. Nearly two weeks later, on August 25, 2021, Hanus replied to the OAE and stated that, “for whatever reason[,]” he was not receiving messages from the OAE. Additionally, he explained that “after giving it some thought,” he could not “commit to the time requirements necessary to serve as [respondent’s] proctor” because “the weekly in person meetings [were] just not something that [he could] do” at that time. Hanus apologized for the delays but asked the OAE to give

respondent “some additional time to find a qualified proctor.” The OAE replied to Hanus the next day, advising that the “in-person meeting requirement ha[d] been relaxed” due to the COVID-19 pandemic, so that he could meet “most weeks” with respondent “over the phone or Zoom” or other remote media. Hanus replied, via e-mail, on August 27, 2021, stating that he could not commit to being respondent’s supervisor because he “only discovered the full extent of the time commitment” recently.

Having received that decision from Hanus, the OAE sent respondent another letter, via e-mail, on August 31, 2021, advising that Hanus could not serve as his supervisor, reiterating the requirements of a supervising attorney under R. 1:20-18, and requiring respondent to identify another proposed supervisor “no later than September 14, 2021.” (Emphasis in original).

### *The OAE’s Petition to Compel Compliance*

On December 6, 2021, the OAE left respondent a voicemail message directing that he return its telephone call immediately; respondent, however, failed to reply. Two days later, on December 8, 2021, the OAE filed with the Court a petition to compel respondent’s compliance with the Court’s Order in Osterbye I. In its petition, the OAE requested that respondent be temporarily



suspended for his prolonged failure to cooperate. The next day, on December 9, 2021, the OAE sent respondent a copy of its petition, via e-mail, at his request. Then, on December 10, 2021, respondent provided the OAE with certificates demonstrating that he had completed the required continuing legal education courses, in August 2021.

After another month had passed, respondent still had not proposed a new supervisor or filed the required financial records. Instead, on January 19, 2022, respondent sent the OAE an e-mail, claiming that he had “been very sick the last three weeks” and that he was “[g]etting [his] records ready.”

Four months later, on May 24, 2022, the OAE sent an e-mail to the Supreme Court Clerk’s Office, with a copy to respondent, inquiring about the status of its petition, advising that respondent was not in compliance with the Court’s Order in Osterbye I, and claiming that the OAE did “not have any recent updates from [respondent].” Within two minutes of that e-mail, respondent replied, “I was asked to submit proof of Classes, which I did. I can submit additional bank statements, if asked.” One hour later, the OAE replied to respondent, stressing that he had not filed a formal answer to its petition or provided the name of a supervising attorney. Although it acknowledged that respondent did complete the mandated trust accounting

courses, it expressed “concern for the public[,] given the fact that [he was still] un-proctored and” never submitted his three-way ATA reconciliations. Later that day, the Clerk’s Office replied to both the OAE and respondent and required that respondent file an answer to the OAE’s petition, by way of a letter and a detailed certification, by June 3, 2022.

The next day, respondent initially replied, “Thank you. Will do.” However, just minutes later, he sent another e-mail to the Clerk’s Office requesting an additional week to file his answer, representing that he was handling two divorces and a child support matter that week. The Clerk’s Office granted his request for a one-week extension, until June 10, 2022.

On June 10, 2022, respondent submitted a certification, without the required letter, in reply to the OAE’s petition; however, he failed to address each of the OAE’s allegations. Respondent also argued that his violations of RPC 1.15(a); RPC 1.15(d); RPC 7.1(a); and RPC 7.5(e) underlying Osterbye I were “minor errors of calculation and not made with any conscious intention to defraud any client.” Respondent maintained that he had cooperated with the OAE because was “told to take an accounting class and an attorney trust class” and to “submit documents regarding [his] bank accounts.” However, respondent conceded that he did not submit all the OAE’s requested documents or provide the “weekly lists of new cases.”

Respondent attributed his lack of compliance with the OAE to his “many” personal “obstacles,” including the COVID-19 pandemic and diminished business. In his view, as a solo practitioner, he “[had] to do a lot of jobs . . . that do not really deal with legal work.” Respondent claimed that he did not “willfully . . . disregard” the OAE’s “directives” and that he intended to “comply with all directives going forward.” Respondent requested, however, that such “directives be streamlined” because he had a small business and “being assigned extra charts and graphs can sometimes be very time consuming.” He argued that he should not be suspended from the practice of law because he represented an underserved population “who otherwise would not be able to afford any attorney.” Respondent claimed that he had taken steps to “rectify” his “problems with real estate closing calculations and advertising [his] services.” Finally, he vowed to “comply going forward with any disciplinary requests for accounting charts or list[s] of new clients.”

On June 15, 2022, the OAE filed its reply to respondent’s answer to the enforcement petition. In its reply, the OAE emphasized that respondent had failed to address the OAE’s “fundamental question” regarding “why he ha[d] not yet provided the name of a willing proctor or financial three-way reconciliations when the Court’s Order directed him to do so in July 2020.”

Because respondent had not filed any three-way reconciliations, obtained a proctor, or even prepared monthly case listing reports, his claim that he was willing to “comply with all directives going forward [was] belied by the fact that the OAE [had] been trying to get him to comply since August 4, 2020, with virtually no success.” Further, because respondent’s answer did not “fully correlate” with the allegations against him, it was “virtually impossible” for the OAE to reply more fully. Although respondent submitted proof that he had attended two courses in attorney accounting, in August 2021, the OAE “question[ed] the utility of the courses,” because respondent still had not provided “even one financial reconciliation.” Respondent’s recordkeeping deficiencies remained, after almost two years, even though the OAE had provided him with clear examples of what was required in connection with the Court’s financial monitoring conditions. The OAE concluded that respondent’s “failure to provide financial reconciliations, despite nearly two years of polite and consistent prompting by the OAE, is an example of his blatant and long-standing disrespect for the Court’s Order, and the OAE’s responsibility to enforce same.”

### *The Court's 2022 Order and Continued Minimal Compliance*

As a result of the OAE's petition, on July 15, 2022, the Court issued an Order requiring respondent to provide the OAE with the name of a supervising attorney and "all outstanding financial reports and records required" by the Order in Osterbye I by September 1, 2022. That same day, the OAE sent respondent a letter summarizing the Court's Order, explaining exactly what documents it required, and enclosing yet another copy of the RAP manual.

Respondent again failed to comply. Consequently, on October 13, 2022, the OAE notified respondent that he was required to attend a November 18, 2022 demand audit. The OAE advised that the audit would cover the period spanning from August 2020 through October 2022 and directed that respondent produce the following ATA materials by November 14, 2022: (1) bank statements, cancelled checks, wire transfer authorizations, checkbooks stubs and deposit slips; (2) ledgers for those clients whose funds were maintained in his ATA during the audit period; (3) three-way monthly reconciliations, including schedules of client balances; and (4) cash receipts and disbursements journals. Additionally, the OAE required that respondent produce his ABA receipts and disbursements journals and bank statements, cancelled checks, checkbook stubs, and deposit slips. Finally, the OAE

required that respondent submit an Attorney Bank Account Disclosure Form. The OAE advised respondent that, if he failed to cooperate with the investigation, it could move for his immediate temporary suspension, without further notice, and further could charge him with violating RPC 8.1(b).

The next month, on November 9, 2022, the OAE sent respondent another e-mail reminding him to submit the required records by November 14 and to appear for the November 18 demand interview at 10:00 a.m. It also sought confirmation that respondent had received its October 13 letter.

By November 14, 2022, respondent still had not replied or submitted any of the required documents; consequently, on November 15, the OAE sent respondent yet another e-mail seeking confirmation that he would attend the audit. Respondent replied that day, requesting a one-week adjournment, claiming that he had two court matters scheduled the same day as the audit. The OAE replied that day, via e-mail, denying respondent's request for additional time to submit the required records, but granting him a single continuance of the demand audit, which was rescheduled to November 28, 2022, at 10:00 a.m. One week later, on November 22, 2022, the OAE sent respondent another e-mail, directing that he confirm his appearance at the

rescheduled demand audit and reminding him of the need to submit the required documents prior to that date. Respondent failed to reply.

*Eleventh-Hour Participation in the OAE's Demand Audit*

On the evening of November 27, 2022, the night before the demand audit, respondent sent the OAE an e-mail claiming that he was “still in the process of gathering” the required records. The next morning, the OAE sent respondent an e-mail informing him that his failure to have complete records would not excuse his attendance from the in-person audit. Just nine minutes before the audit was scheduled to begin, respondent sent the OAE another e-mail, claiming that he would be there “by 11:00 am” (an hour late). However, respondent did not arrive until approximately 1:15 p.m.

During the demand audit, respondent provided the OAE with limited ATA and ABA statements<sup>3</sup> that encompassed only part of the period beginning on August 1, 2020. Additionally, respondent failed to provide any of the required ATA reconciliations. By the end of the audit, the OAE provided respondent with a copy of a recordkeeping manual and R. 1:21-6 and advised that it would follow up on his recordkeeping deficiencies.

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<sup>3</sup> Respondent provided ATA statements from Columbia bank (for the period spanning from August 23, 2021, through September 30, 2022) and ABA statements for two PNC bank accounts (for the period spanning from March 3 through September 30, 2022, and another spanning from August 23 through September 30, 2021).

*The OAE's Continued Efforts to Help Remediate Respondent's Issues*

On December 1, 2022, the OAE sent respondent a letter, via regular mail and e-mail, regarding the demand audit. The OAE made clear that the records respondent submitted were incomplete and “therefore insufficient for the OAE to complete a proper review of [his] books and records.” Once again, the OAE provided a list of the documents necessary to “move ahead with a proper demand audit,” including the (1) Attorney Bank Disclosure form; (2) information about his accountants or bookkeepers; (3) confirmation of overdraft protection; and (4) additional information about his ATA and ABA accounts (bank statements, receipts, disbursement journals, deposit slips, wire transfer authorizations, checkbook stubs, three-way reconciliations, and client ledgers). The OAE afforded respondent until January 6, 2023 to produce these documents.

On January 12, 2023, given respondent's ongoing failure to cooperate, the OAE sent him a follow-up deficiency letter demanding that he produce the documents and advising him that, if he did not comply, the OAE would move for his temporary suspension for his failure to cooperate.



### The OAE's Formal Ethics Complaint

Despite the passage of another six months, respondent still had not submitted any of the missing information or required documents; consequently, on June 6, 2023, the OAE filed the formal ethics complaint underlying this matter. Based on the foregoing facts, the formal ethics complaint charged respondent with having violated RPC 1.15(d) by committing numerous recordkeeping deficiencies. Specifically, respondent failed to provide (1) ATA reconciliations with client ledgers, checkbooks, and receipts and disbursements journals, as R. 1:21-6(c)(1)(H) requires; (2) a client trust ledger book, as R. 1:21-6(c)(1)(B) requires; (3) checkbooks with running balances and check stubs, as R. 1:21-6(c)(1)(G) requires; (4) deposit slips, as R. 1:21-6(c)(1)(G) requires; and (5) complete ATA and ABA bank statements, as R. 1:21-6 requires.

In addition, because respondent failed to submit complete financial records and to practice law under the supervision of a practicing attorney approved by the OAE, as required by two Court Orders, the complaint charged him with having violating RPC 8.1(b) and RPC 8.4(d).

## **Analysis and Discipline**

Following a review of the record, we determine that the facts recited in the formal ethics complaint support all the charges of unethical conduct 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).

### *Violations of the Rules of Professional Conduct*

Specifically, the record clearly and convincingly demonstrates that respondent violated RPC 1.15(d) by failing to perform monthly three-way ATA reconciliations for the period spanning from August 2020 until the date of the complaint; failing to maintain ATA and ABA receipts and disbursements journals; failing to maintain client trust ledgers; failing to maintain checkbooks with running balances; and failing to maintain deposit slips or complete ATA and ABA bank statements, as R. 1:21-6(c)(1)(A), (B), (G), and (H) requires.

Likewise, the record clearly and convincingly demonstrates respondent's failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b). R. 1:20-3(g)(3) requires a lawyer to cooperate in a disciplinary investigation and to reply, in writing, within ten days of receiving 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.

As the complaint correctly alleged, since 2018, respondent has established a pattern of “sporadic, untimely, and incomplete replies” with the OAE. Specifically, respondent would go weeks, or even months, without communicating with the OAE. However, just minutes after the OAE had filed its December 2021 petition to compel his compliance with the Court’s Osterbye I Order, respondent replied to the OAE (and the Clerk’s Office), via e-mail, disputing the allegations against him. Still, he did not file any type of formal response until June 2022, when the Clerk’s Office expressly required him to do so. Even then, it was mislabeled, and failed to fully reply, paragraph-by-paragraph, to the OAE’s petition. Thus, the OAE was limited in its ability to reply.

Respondent’s “answer” to the OAE’s petition was wholly inadequate, and by that time – two years after the Court’s Order in Osterbye I – he had made no attempt to submit his three-way ATA reconciliations, much less any other required financial record. Accordingly, his pledge to “comply with all [of the OAE’s] directives moving forward” rings hollow, given that the OAE could not determine whether he had rectified his recordkeeping deficiencies based on his prolonged failure to submit the necessary documents.

Following the issuance of the Court's July 2022 Order, on October 13 and November 9 and 13, 2022, the OAE repeatedly directed respondent to appear for a November 18, 2022 demand audit. Respondent, however, failed to reply to the OAE's notices until just three days before the scheduled audit, when he requested an adjournment. The OAE denied his request for an extension to submit his records but rescheduled the in-person audit for two weeks later. Despite constant reminders, he did not communicate with the OAE until minutes before the rescheduled November 28 audit, promising to be there by 11:00 a.m. (an hour later), and then arrived more than three hours late, without the required documents. Nevertheless, OAE attempted, in good faith, to work with respondent and gave him until January 2023 to comply.

Unfortunately, little has changed since 2018. Consistent with his cursory attempts to comply with the Court's Orders, and despite the OAE's relentless efforts to help him, respondent failed to answer the formal ethics complaint and allowed this matter as a default. This constitutes his second RPC 8.1(b) violation in this proceeding.

Further, respondent violated RPC 8.4(d) by flagrantly disregarding his obligations to comply with the Court's Order in Osterbye I, as supplemented by the Court's July 2022 Order, both of which required that he comply with the OAE's financial audit. Respondent's failure to comply with the Court's Orders

resulted in a waste of disciplinary resources, given that he repeatedly refused any meaningful cooperation with the OAE's good faith attempts to compel his compliance with those Orders.

Specifically, between August 2020 and February 2021, the OAE attempted, unsuccessfully, to obtain respondent's financial records. As a result of his failure to comply, in July 2022, the Court, once again, ordered respondent to comply with the OAE's audit. Nevertheless, respondent's noncompliance has continued, unabated, for three years. See In the Matter of Lawrence A. Leven, DRB 20-002 (Dec. 7, 2020) (sustaining an RPC 8.4(d) charge for an attorney who disobeyed two Court Orders by failing to provide the OAE with required financial records, despite repeatedly promising to do so), so ordered, 245 N.J. 491 (2021).

Respondent only managed to comply with one of the conditions of the Court's Orders, completing two courses in business and trust accounting. However, as the OAE observed, the utility of those courses is questionable, because he never once even attempted to provide his ATA reconciliations.

Although the OAE provided respondent the RAP manual, five times, and granted him at least six extensions, he failed to provide any of the required ATA reconciliations, let alone the other financial records requested by the OAE. Rather than comply with the OAE's investigation, respondent submitted mere

printouts of insufficient bank statements. Despite numerous, specific requests by the OAE to comply with its investigation, respondent unquestionably has failed, for more than two years, to attempt any meaningful cooperation with the OAE.

It is well-settled that partial compliance with a disciplinary authority's lawful demands for information does not satisfy an attorney's obligations. 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, the 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 5-193 (March 30, 2016) at 48 (describing the attorney's "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 on a piecemeal and disjointed fashion"), so ordered, 225 N.J. 611 (2016). Here, respondent's limited and belated attempts to cooperate certainly are not the "full, candid, and complete disclosure" contemplated by the Rules and disciplinary precedent. See In re Gavel, 22 N.J. 248, 263 (1956).

In sum, we find that respondent violated RPC 1.15(d), RPC 8.1(b) (two instances), and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

### Quantum of Discipline

Recordkeeping irregularities ordinarily are met with an admonition where 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 an ATA overdraft, the OAE conducted a demand interview and discovered that the attorney failed to maintain ATA or ABA reconciliations and proper ATA and ABA check images; the attorney responded to each of the OAE’s requests for additional documentation, but his three-way ATA reconciliations were still not in compliance when he appeared for 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).

Given respondent’s failure to cooperate – specifically, his failure to conduct and produce three-way reconciliations of his ATA – there is no way of knowing whether he committed negligent misappropriation. Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that had been brought to his or her attention previously. See In re Abdellah, 241 N.J. 98 (2020) (reprimand for attorney who had a heightened awareness of his recordkeeping obligations based on a “prior interaction” with the OAE in connection with his recordkeeping practices that had not led to an allegation of unethical conduct).



Here, unlike the attorney in Robinson, respondent did not correct his recordkeeping deficiencies or take remedial measures to decrease the likelihood of future recordkeeping errors. Although the OAE provided respondent the RAP manual, five times, and twice offered CLE courses, at no cost to him, he made little to no attempt to comply with the OAE's requests. Unlike the admonished attorney in Newman, respondent did not even attempt to submit three-way reconciliations, even after he was granted six extensions. Moreover, unlike both Robinson and Newman, who both had no disciplinary histories, respondent has a 2020 reprimand, in Osterbye I, for engaging in similar misconduct. Indeed, respondent has continued to ignore the conditions set forth in the Court's Order in Osterbye I by failing, for more than two years, to correct recordkeeping deficiencies the OAE repeatedly has brought to his attention.

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 documents. See In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two random audits, repeatedly failed to comply with the OAE's

request for his law firm's financial records; he also failed to comply with two Court Orders directing him to cooperate; 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 determined that a reprimand was the appropriate discipline based, in substantial part, on the attorney's lack of prior discipline in nearly forty-seven years at the bar), and 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, 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).

Here, respondent's prolonged noncompliance with the OAE's repeated record requests parallels the noncompliance encountered in Leven and Tobin. Respondent already has received two reprimands, and he has demonstrated no

behavior that convinces us that his conduct is likely to change.

Accordingly, we determine that a censure 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 and second consecutive default within the past four years. The misconduct that gave rise to the Court's 2020 and 2022 Orders stemmed from respondent's lack of cooperation with OAE. Consequently, respondent clearly has failed to learn from his past mistakes or to use his experiences with the disciplinary system as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) (“[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system”). Indeed, respondent's multiple encounters with the disciplinary system gave him a heightened awareness of his obligations to cooperate with disciplinary authorities. Nevertheless, his failure to adhere to the Rules of Professional Conduct has continued, unabated. There are no mitigating factors to consider.

In our view, respondent's conduct will continue unless or until he faces elevated consequences. Such conduct diminishes the public's trust, and it must be remedied. See In re Gallo, 178 N.J. 115, 122 (2003) (holding “the purpose

of the disciplinary review process is to protect the public from unfit lawyers and promote public confidence in our legal system”); In re Harris, 182 N.J. 594, 609 (2005) (noting that “[a]nother goal of the process is to spur a disciplined attorney, who is redeemable, to comply with the high standards that our profession demands”).

Finally, we consider the default status of this matter. “[A] respondent’s default or failure to cooperate with the investigative authorities operates 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).

## **Conclusion**

In conclusion, consistent with applicable disciplinary precedent and principles of progressive discipline, we determine that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. In addition, considering respondent’s demonstrated failure to comply with the recordkeeping Rules, we determine that, as conditions precedent to his reinstatement, he must (1) fully comply with the Court’s Order in Osterbye I, (2) complete a recordkeeping course pre-approved by the OAE, and (3) submit to the OAE all outstanding, previously required financial records.

Member Joseph voted to impose a three-month suspension, with the same conditions.

Member Menaker voted to impose a one-year suspension, with the same conditions.

Chair Gallipoli and Members Hoberman and Rodriguez were 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  
Peter J. Boyer, Esq.  
Vice-Chair

By: /s/ Timothy M. Ellis  
Timothy M. Ellis  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Raymond Charles Osterbye  
Docket No. DRB 23-196

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Decided: February 22, 2024

Disposition: Six-month suspension

<i>Members</i>	Three-Month Suspension	Six-Month Suspension	One-Year Suspension	Absent
Gallipoli				X
Boyer		X		
Campelo		X		
Hoberman				X
Joseph	X			
Menaker			X	
Petrou		X		
Rivera		X		
Rodriguez				X
Total:	1	4	1	3

/s/ Timothy M. Ellis

Timothy M. Ellis  
Chief Counsel