

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 23-219  
District Docket Nos. XIV-2023-0307E  
and XIV-2023-0308E

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In the Matter of Andrew G. Bitar  
An Attorney at Law

Decided  
March 12, 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 5.5(a)(1) (two instances – engaging in the unauthorized practice of law by practicing law while ineligible); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).<sup>1</sup>

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

Respondent earned admission to the New Jersey bar in 2016. At the relevant time, he maintained a practice of law in East Brunswick, New Jersey. He has no prior discipline.

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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.

Effective June 27, 2022, the Court declared respondent administratively ineligible to practice law for his failure to pay the required annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund), as R. 1:28A-2(b) requires. Respondent remained ineligible for twenty-seven days, until he cured the deficiency, on August 23, 2022.

Effective September 12, 2022, the Court declared respondent administratively ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers' Trust Accounts (IOLTA), pursuant to R. 1:28A-2(d). Respondent's ineligibility period continued for four days, until he cured it, on September 16, 2022.

Effective October 16, 2023, the Court declared respondent administratively ineligible to practice law for his failure to comply with continuing legal education requirements. To date, he remains administratively ineligible on this basis.

### **Service of Process**

Service of process was proper. On August 1, 2023, the Office of Board Counsel (the OBC) sent an e-mail to respondent, seeking to confirm his correct

address for service.<sup>2</sup> On August 9, 2023, respondent replied to the OBC's e-mail, confirming his new office and e-mail addresses, and his personal e-mail address.<sup>3</sup> Further, he confirmed that he was receiving mail and e-mail at his new office address.

On August 17, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's current office address of record, with another copy by electronic mail to both his office and personal e-mail addresses.

That same date, the OAE received a notification indicating that delivery to both of respondent's e-mail addresses was complete. According to the United States Postal Service (USPS) tracking, the certified mail was delivered on August 21, 2023. The regular mail was not returned to the OAE.

On September 18, 2023, the OAE sent a letter to respondent, by certified and regular mail, to his office address of record, with another copy by electronic mail to both his office and personal e-mail addresses, informing him that, unless

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<sup>2</sup> The OBC's inquiry was prompted by the OAE's then pending certification of the record, filed on July 20, 2023. On August 2, 2023, the OAE withdrew its certification of the record due to issues with service.

<sup>3</sup> According to the Court's attorney database, respondent's registered billing and law office address, as well as his office and personal e-mail addresses, are the same addresses he confirmed to the OBC.

he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, 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).

Delivery to respondent's personal e-mail address was complete, although no delivery notification was sent by the destination server. Electronic delivery to respondent's office e-mail address was unsuccessful. The certified mail receipt was returned to the OAE, signed by an individual other than respondent and indicating a delivery date of September 22, 2023. The regular mail was not returned.

As of October 3, 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 November 27, 2023, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his office address, with another copy via e-mail, informing him that this matter was scheduled before us on January 18, 2024, and that any motion to vacate must be filed by December 18, 2023. The certified and regular mail was returned to the OBC as undeliverable. Further, electronic delivery to respondent's office e-mail address was unsuccessful.

On December 4, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on January 18, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by December 18, 2023, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

On December 5, 2023, the OAE sent an e-mail to Chief Counsel to the Board, notifying him that respondent's employment with his then law firm had terminated on August 31, 2023, and that the copy of the OAE's certification sent to respondent on October 5, 2023, was returned as undeliverable. The OAE noted that the certification also had been sent to respondent via his personal e-mail address, through which the OAE successfully had communicated with respondent on prior dates.

That same date, Chief Counsel to the Board sent respondent a corrected scheduling letter, by certified and regular mail, to his home address of record, with an additional copy sent via electronic mail to his personal e-mail address, informing him that this matter was scheduled before us on January 18, 2024, and that any motion to vacate must be filed by December 18, 2023. According to the USPS tracking, the certified mail was delivered on December 8, 2024. The

regular mail was not returned to the OBC and delivery to his personal e-mail was complete.

Respondent did not file a motion to vacate the default.

## **Facts**

We now turn to the allegations of the complaint.

### *Practicing Law While Administratively Ineligible*

As noted above, effective June 27, 2022, the Court declared respondent administratively ineligible to practice law for his failure to pay the required annual assessment to the Fund.

During his period of ineligibility, respondent represented a juvenile in a criminal matter pending before the Honorable Phillip J. Degnan, J.S.C. Specifically, on July 5, 2022, respondent advised Judge Degnan's chambers that "he had recently discovered an issue with his license that prevented him from appearing that date," and requested an adjournment, which Judge Degnan granted. On July 13, 2022, respondent requested another adjournment in the same matter, which also was granted.



During a July 21, 2022 conference call before Judge Degnan, respondent entered an appearance in the juvenile matter, despite his administrative ineligibility. During that conference, Judge Degnan asked respondent whether the issues with his license had been resolved. According to the complaint, respondent represented that his “licensing issues either had been resolved or were going to be resolved in short order.” Respondent then requested another adjournment.

That same date, Judge Degnan confirmed that respondent remained ineligible to practice law and advised respondent’s client of the same.

On August 23, 2022, respondent regained his eligibility to practice law after making a payment to the Fund. However, on September 12, 2022, the Court again declared respondent administratively ineligible to practice law for his failure to register his IOLTA account.

On October 6, 2022, the Family Division manager, on behalf of Judge Degnan, referred the matter to the OAE.

On November 23, 2022, respondent submitted a written reply to the OAE’s inquiry regarding his unauthorized practice of law while ineligible. Specifically, respondent explained personal hardships he experienced during his period of Fund ineligibility, including the death of his father. Respondent

acknowledged his July 21, 2022 appearance before Judge Degnan in the juvenile matter but claimed that he believed, at the time, his eligibility had been restored.

On September 16, 2022, respondent regained his eligibility to practice law after registering his IOLTA account.

Based on the foregoing, the OAE alleged that respondent violated RPC 5.5(a)(1).

#### Recordkeeping Deficiencies and Failure to Cooperate

In connection with his private practice of law, respondent maintained an attorney business account (ABA) and attorney trust account (ATA) at PNC Bank.

On August 10, 2022, PNC Bank notified the OAE that respondent's ATA had been overdrawn, on August 2, 2022, by \$131.83. On August 11, 2022, the OAE directed respondent to submit a written explanation for the overdraft, no later than September 9, 2022. On September 8, 2022, respondent requested an extension, via voicemail message, explaining to the OAE that his father recently had passed away and that he was out of town.

On September 9, 2022, the OAE granted respondent an extension to September 19, 2022. However, on September 16, 2022, respondent requested a

second extension, for an additional two weeks, claiming that the relevant PNC Bank representative was out of the office and unable to provide a letter explaining the overdraft. In response, the OAE instructed respondent to submit what he could, and to supplement his response when he received more information from the PNC Bank representative. Respondent replied, “[Okay] will do.” Respondent, however, failed to submit any response, despite his promise to do so.

Thereafter, the OAE sent respondent an e-mail setting a new due date of September 26, 2022. That same date, respondent sent an e-mail to the OAE, requesting another extension due to a recent illness. The OAE granted respondent’s request, extending the deadline to October 3, 2022. However, respondent failed to provide a response by that date.

In October 2022, respondent began working for Evan F. Nappen, Attorney at Law, PC (the Nappen Firm), and updated his attorney registration to include that firm’s financial information.

On October 28, 2022, the OAE sent respondent an e-mail in follow-up to its August 11, 2022 letter. Respondent failed to reply.

On October 31, 2022, the OAE sent respondent a letter directing him to produce, by November 16, 2022, all of his firm’s financial records for the period

September 1, 2020 to October 31, 2022, and scheduling a demand audit for December 2, 2022.

On November 2, 2022, respondent replied to the OAE seeking clarification of what documents he was required to produce. In that same e-mail, respondent acknowledged that he had “caused [the investigation] to be delayed more than enough.” The following day, the OAE notified respondent that he would receive another letter identifying the information and documents he was required to produce.

On November 10, 2022, the OAE sent to respondent, via e-mail, a copy of its Outline of Record Keeping Requirements under RPC 1.15 and R. 1:21-6. That same date, respondent sent an e-mail to the OAE, explaining that his IOLTA had “never been used for anything whatsoever. . .” and that the overdraft “was simply a bank error.”

On November 14, 2022, the OAE reminded respondent, via telephone, that his financial records and written explanation for the overdraft remained outstanding and were due November 16, 2022. Respondent requested an extension until November 22, 2022, which the OAE granted.

On November 22, 2022, respondent sent an e-mail to the OAE asking for yet another extension – until noon the following day – which was granted. The

next day, respondent submitted his written response addressing the bank overdraft. Respondent also produced bank statements for his ATA and ABA, for September and October 2022, and a completed bank disclosure form for the period September to October 2022.

That same date, the OAE sent respondent a deficiency letter, explaining that he had produced the wrong documents, emphasizing that the audit period began in September 2020, not September 2022, and directing that respondent submit the outstanding documents by November 29, 2022. Respondent failed to submit the outstanding records by that date.

Thereafter, on December 2, 2022, the OAE conducted respondent's demand interview, during which respondent admitted that he had not been maintaining some of the records required by R. 1:21-6.

On December 7, 2022, the OAE sent respondent a letter outlining the recordkeeping deficiencies it identified during the audit, including his failure to: (1) maintain ATA receipts and disbursement journals; (2) maintain a client ledger card for funds held in the ATA for bank charges; (3) maintain monthly, three-way reconciliations of his ATA; (4) maintain a running checkbook balance for his ATA; and (5) maintain ABA receipts and disbursement journals.

The OAE directed respondent to produce all outstanding records by January 4, 2023. The OAE also requested an updated bank disclosure form and a summary of respondent's employment history from September 2020 to the present, by December 14, 2022.

On December 14, 2022, respondent requested an extension to submit his employment history and bank disclosure form. The OAE granted respondent's request, but for those two items only, until December 16, 2022. However, respondent failed to submit those items by the requested date.

In response, on December 19, 2022, the OAE sent respondent another letter stating the documents were overdue and reminding him that the additional documents were due by January 4, 2023. Respondent failed to provide the requested documents.

As a final attempt to obtain respondent's cooperation, on January 17, 2023, the OAE sent respondent a letter stating that all outstanding documents were due by February 16, 2023, and that if respondent failed to produce the required documents, a complaint would be filed against him alleging a violation of RPC 8.1(b).

On January 21, 2023, respondent sent an e-mail to the OAE requesting another extension, citing health reasons. On January 24, 2023, the OAE denied

respondent's request, reiterating that all documents were due by February 16, 2023. Alternatively, the OAE offered respondent the option of disability inactive status, but he declined.

Respondent did not provide the required documents by February 16, 2023.

On February 22, 2023, respondent requested another extension from the OAE. On February 27, 2023, the OAE denied respondent's request, indicating that they were proceeding with its investigation and that he was welcome to submit a late response.

Respondent failed to produce the outstanding documents.

Previously, on October 31, 2022, the OAE issued a subpoena to PNC Bank for respondent's attorney business account (ABA) and attorney trust account (ATA) records for the period September 1, 2020 through October 2022. On November 28, 2022, the OAE received the bank records for the period July 13 through October 31, 2022. Those bank records revealed that respondent's ABA and ATA were not opened until July 13, 2022 and, therefore, respondent failed to maintain an ATA or ABA, in connection with his practice of law, from April 2022 to July 12, 2022. Respondent's ATA statements confirmed that no client funds were ever held in the account.

Further, on August 23, 2022, respondent electronically transferred funds from his ABA to his ATA with no accompanying deposit slip identifying the nature of the funds. None of respondent's ABA bank statements, deposit slips, or withdrawal slips contained required account designations. Respondent also received a wire transfer of \$25,000 to his ABA.

On December 2, 2022, during the OAE's demand interview, respondent confirmed that, in March or April of 2022, he had left his prior firm and opened his own practice of law. He also stated that the \$25,000 ABA wire constituted personal funds given to him by his mother. Additionally, respondent indicated that most of the deposits or transfers to his ABA were personal funds provided by his family.

Based on the foregoing, the OAE alleged that respondent violated RPC 1.15(d), by failing to comply with the recordkeeping requirements of R. 1:21-6, and RPC 8.1(b), by failing to cooperate with the OAE's investigation.

#### *Failure to Update Financial Account Information*

In April 2023, respondent left the Nappen Firm.

On April 4, 2023, he updated his registered law office to "Andrew Bitar LLC." However, he failed to update his financial institution information,



including his ABA and ATA account numbers, within thirty days of his disassociation from the Nappen firm, as R. 1:20-1(c) requires.

As of the date of the complaint in this matter, respondent had not complied with R. 1:20-1(c) in connection with his new firm, Andrew Bitar, LLC. Consequently, respondent's Court records continued to inaccurately reference the financial accounts associated with the Nappen Firm.

Based on these facts, the OAE alleged that respondent violated RPC 5.5(a)(1).

### **Analysis and Discipline**

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

Following a review of the record, we find that the facts set forth in the complaint support most, but not all, of the charges of unethical conduct. 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.

The record clearly and convincingly demonstrates that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in numerous respects. Specifically, the OAE's audit revealed that respondent failed to; (2) properly designate his ATA and ABA; (3) maintain ATA and ABA receipts and disbursement journals; (4) maintain a client ledger card identifying law firm funds for bank charges; (5) maintain monthly, three-way reconciliations and running checkbook balance; and (6) maintain ATA and ABA records for a period of seven years. Further, respondent made improper, electronic transfers to his ATA. Moreover, between April and July 12, 2022, in connection with his law practice, respondent failed to maintain an ATA and ABA.

Next, respondent violated RPC 5.5(a)(1), which provides that "a lawyer shall not practice law in a jurisdiction, where doing so violates the regulation of the legal profession in that jurisdiction." Respondent violated this Rule, on July 21, 2022, by entering his appearance during a telephonic conference before Judge Degnan, despite knowing that he was administratively ineligible to practice law.

The OAE alleged that respondent separately violated RPC 5.5(a)(1) by failing to update his financial institution information within thirty days

following his departure from the Nappen Firm, as R. 1:20-1(c) requires. This Rule, however, has not been applied to attorneys who merely fail to update their financial account information and, thus, we determine to dismiss the second instance of the charge.

Last, the record clearly and convincingly demonstrates that respondent violated RPC 8.1(b), by failing to cooperate with the OAE, despite its extensive efforts, which spanned seven months and included the granting of numerous extensions at respondent's request. Specifically, from August 2022 to February 2023, the OAE repeatedly directed respondent to provide an explanation for the overdraft of his PNC Bank ATA, and to produce his financial records for the audit period spanning September 1, 2020 to October 2022, an updated bank disclosure form, and a summary of his employment history since September 2020. Respondent produced some of the requested records, however, his production was wholly deficient because it was limited to bank records for two months (September and October 2022), rather than the OAE's two-year audit period.

Further, despite the OAE's constant reminders, respondent failed to submit the bank disclosure form or his employment history. In fact, the OAE provided respondent with a final letter, reminding him that his records were past

due, identifying the still-outstanding documents, and offering him the option transferring to disability inactive status, to which the respondent declined. Consequently, respondent inexcusably hindered the OAE's audit and investigation in this matter. Thus, respondent violated RPC 8.1(b) by his repeated failure to reply to the OAE's request for outstanding documents and to otherwise cooperate in the investigation. Additionally, respondent failed to file an answer to the complaint and, thus, violated RPC 8.1(b) a second time.

In sum, we find that respondent violated RPC 1.15(d), RPC 5.5(a)(1), and RPC 8.1(b) (two instances). We determine to dismiss the second charge pursuant to RPC 5.5(a)(1).

### Quantum of Discipline

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused the negligent misappropriation of clients' funds. See In the Matters of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (an OAE demand audit 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 more than twenty dishonored checks, issued to the Superior Court, for insufficient funds; we found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing only an admonition, we weighed the fact that the attorney corrected his recordkeeping errors and took remedial measures to decrease the likelihood of a future recordkeeping violation).

Likewise, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no ethics history. See In the Matter of Giovanni De Pierro, DRB 21-190 (January 24, 2022) (the attorney failed to respond to letters from the investigator in the underlying ethics investigation, in violation of RPC 8.1(b); the attorney also violated RPC 1.4(b), RPC 1.5(c) (failing to set forth in writing the basis or rate of the attorney's fee in a contingent fee case – two instances), and RPC 1.16(d)), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the 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, in violation of RPC 8.1(b)).

However, when an attorney practices law while ineligible, and is aware of the ineligibility, ordinarily a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See In re Mordas, 246 N.J. 461 (2021) (reprimand for an attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection his client’s criminal matter; the attorney’s ATA records also revealed that he had engaged in the unauthorized practice of law through a minimum of five ATA transactions in connection with three client matters; in mitigation, the attorney stipulated to his misconduct and had a remote disciplinary history), and In re Freda, \_\_\_ N.J. \_\_\_ (2022) (censure for an attorney, in a default matter, who knowingly practiced law while ineligible in connection with seven client matters; the attorney’s ABA bank statements demonstrated that, for more than one year, the attorney continued to provide unauthorized legal services; the attorney also failed to cooperate with the disciplinary investigation, committed recordkeeping violations, and improperly designated his law firm as “Freda Law Group, L.L.C.,” despite his status as a solo practitioner; the attorney had no prior discipline in his nearly thirty-year career at the bar).

Based upon the foregoing precedent, we determine that the totality of respondent’s misconduct could be met with a reprimand or censure. Like the

disciplined attorneys in Mordas and Freda, respondent knowingly practiced law during a period of ineligibility. However, unlike the attorneys in Mordas and Freda, who both practiced law while ineligible on multiple occasions, respondent appeared for only one matter while he was administratively ineligible to do so. Additionally, respondent has no prior discipline history in seven years at the bar.

In aggravation, respondent failed to file an answer to the complaint and allowed this matter to proceed as a default. “[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**

On balance, consistent with disciplinary precedent and considering that respondent allowed this matter to proceed as a default, we conclude that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Further, we recommend that the Court impose the conditions that respondent submit proof to the OAE, within thirty days of the Court’s

disciplinary Order, that he (1) corrected his recordkeeping deficiencies, and (2) updated his firm's financial institution information.

Members Campelo and Joseph voted to impose a reprimand, with the same conditions.

Member Rivera 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  
Chief Counsel



SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Andrew G. Bitar  
Docket No. DRB 23-219

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Decided: March 12, 2024

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Absent
Gallipoli	X		
Boyer	X		
Campelo		X	
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera			X
Rodriguez	X		
Total:	6	2	1

/s/ Timothy M. Ellis

Timothy M. Ellis  
Chief Counsel