

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
Docket No. DRB 23-232  
District Docket No. XIV-2021-0386E

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In the Matter of Francis X. St. John  
An Attorney at Law

Argued  
January 18, 2024

Decided  
March 27, 2024

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Leighann Reilly appeared on behalf of the  
Office of Attorney Ethics.

Robert E. Ramsey appeared on behalf of respondent.

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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 pursuant to R. 1:20-6(c)(1).<sup>1</sup> The formal ethics complaint charged respondent with having violated RPC 1.15(a) (failing to safeguard client funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey bar in 1972. At all relevant times, he maintained a practice of law in Trenton, New Jersey.

Effective June 20, 2023, the Court temporarily suspended respondent from the practice of law for his failure to cooperate in the investigation underlying this matter. In re St John, 254 N.J. 269 (2023).

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<sup>1</sup> That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request to be heard in aggravation.

## **Facts**

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

On August 12, 2021, respondent issued an ATA check, in the amount of \$31,306.15, payable to himself. Those funds represented the entire balance of his ATA. The next day, respondent deposited that ATA check in his personal savings account at Investor's Bank.

On November 9, 2021, Santander Bank notified the OAE that respondent's ATA had been overdrawn in the amount of \$600. Specifically, respondent had issued an ATA check, dated July 6, 2021, in the amount of \$600 and payable to Dr. Leon Waller. On November 16, 2021, the OAE directed respondent to submit a written explanation for the overdraft, no later than December 17, 2021. Respondent failed to reply.

On January 20, 2022, the OAE again directed respondent to submit a written explanation for the overdraft, no later than January 27, 2022. Further, the OAE informed respondent that, if he failed to reply, it would file a motion with the Court seeking his immediate temporary suspension. Respondent failed to reply.

On February 14, 2022, the OAE sent a third letter to respondent, this time directing him to produce, by March 4, 2022, all his firm's financial records for

the period November 1, 2019 to February 14, 2022, as well as his still-outstanding explanation for the ATA overdraft. The OAE also scheduled a demand audit for March 9, 2022.

On February 24, 2022, the OAE received respondent's banking records from Santander Bank (presumably, via subpoena), which revealed an additional overdraft of respondent's ATA. Specifically, on September 30, 2021, ATA check #6082, payable to Benjamin Roman in the amount of \$10,000, was presented for payment against insufficient funds.

On March 8, 2022, the OAE called respondent's office to inquire about the letters sent to him and to advise him of the scheduled demand audit on March 9, 2022, but was unable to reach him.

On March 9, 2022, respondent returned the OAE's telephone call and informed the OAE that he had not received the letters and was unaware of the scheduled audit. Respondent stated that he had closed his office, in September of 2021, with the intention of retiring, but conceded that he had not yet formally done so. Accordingly, he had arranged for his office mail to be forwarded to his home address but claimed that the mail was arriving slower than usual.

Respondent also represented to the OAE that, in August 2021, he had gone to Santander Bank to close a personal account but, in error, Santander Bank had closed his ATA. In response, the OAE pointed out that respondent's ATA had

remained open until January 4, 2022. Regardless, respondent admitted that he had deposited the balance of his ATA in his personal savings account at Investors Bank. Regarding the second overdraft, respondent told the OAE that he would investigate further and provide the OAE with an explanation.

The OAE reminded respondent of his obligation to comply with their requests for documents and information. Further, the OAE stated that it would send him another copy of the February 14, 2022 letter, via e-mail, enumerating the financial records he was required to submit. Respondent informed the OAE that he had an upcoming eye surgery and expressed concern regarding his ability to timely gather all the documents. The OAE instructed him to request an extension, in writing, as needed.

Respondent also requested that the OAE send all future correspondence to his home address and, likewise, that any telephone calls be made to his home telephone number. Respondent also provided the OAE with his e-mail address.

That same date, the OAE sent to respondent, via e-mail, a copy of its February 14, 2022 letter and directed him to produce the requested records and written explanations for the overdrafts by April 1, 2022. Respondent, however, failed to submit the requested information by that date and, further, failed to request an extension.

On May 25, 2022, during a telephone call initiated by the OAE, respondent claimed that he was still recovering from his April 20 eye surgery but had retrieved most of the requested documents. On May 30, 2022, respondent produced some, but not all, of his financial records. Specifically, respondent failed to produce monthly three-way reconciliations; client trust ledgers; receipts and disbursements journals; or a written explanation for the ATA overdrafts.

On June 27, 2022, following up on a telephone call of the same date, the OAE sent respondent a letter, directing him to produce the outstanding records by July 8, 2022 and emphasizing that no further extensions would be granted. Respondent failed to submit the outstanding records by the requested date.

On August 2, 2022, the OAE called respondent, on his home telephone, and left a message with his wife.

On August 4, 2022, the OAE sent respondent another letter, directing him to submit his written explanation for the \$10,000 overdraft by August 18, 2022. Further, the OAE expanded the audit period from November 1, 2019 to August 4, 2022, and scheduled respondent's demand interview for August 29, 2022.

On August 10, 2022, respondent provided the OAE with the outstanding Santander Bank statements. On August 26, 2022, respondent requested an adjournment of the demand audit, to "resolve a trust account issue," which the

OAE denied.

On August 29, 2022, the demand audit took place. The OAE questioned respondent regarding a previous incident in which Santander Bank erroneously deposited approximately \$18,000 related to his client, the Estate of Sabella, in an unknown account. After further investigation, it was determined that Santander Bank was at fault and, consequently, respondent's ATA was credited \$18,793.65. Respondent, however, failed to provide proof to the OAE that he disbursed those funds to the Estate of Sabella after receiving the credit from Santander Bank. Further, respondent failed to provide an accounting of the Estate of Sabella. In his verified answer, however, respondent claimed that the inheritance and tax assessment for the Estate of Sabella had been paid in full, including interest and penalties, in the amount of \$22,585.68.

Following the demand audit, the OAE sent respondent a follow-up letter requesting statements from Investors Bank where, on August 13, 2021, he had deposited the funds from his ATA. The letter also notified respondent that the OAE had scheduled a continuation of the audit for September 12, 2022. On September 9, 2022, respondent provided the OAE with his Investors Bank statements, which confirmed a \$31,306.15 deposit, on August 13, 2021.



During the September 12, 2022 demand audit, the OAE directed respondent to open a new ATA and to deposit therein any remaining funds from his former Santander Bank ATA.

On September 15, 2022, the OAE sent respondent a follow-up letter, directing him to submit all outstanding financial records; proof that he opened a new ATA and deposited funds from Investors Bank therein; proof that Roman received the entitled funds; proof that Waller received the entitled funds; information regarding the Estate of Sabella; and documentation regarding the additional funds previously held in respondent's ATA not attributable to the above matters.

Respondent failed to provide any of the requested records or information to the OAE.

On March 7, 2023, in response to the OAE's motion for his temporary suspension, the Court entered an Order requiring respondent to "comply fully with all outstanding requests of the [OAE] for information and documents within thirty days after the filing date of this Order" or, alternatively, face suspension.

On March 14, 2023, the OAE sent respondent a letter, via certified mail, and also by electronic mail, directing him to answer its September 15, 2022 letter. To date, respondent has neither replied to the OAE's letter nor complied fully with the OAE's outstanding requests for information and documents.

As noted above, effective June 20, 2023, the Court temporarily suspended respondent for his failure to comply with the OAE's outstanding requests.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.15(a) by failing to properly safeguard funds – specifically, by depositing ATA funds in his personal savings account; RPC 1.5(d) by failing to maintain the financial books and records R. 1:21-6 requires; and RPC 8.1(d) by failing to cooperate with the OAE's investigation and failing to maintain required financial books and records.

The OAE further noted that, given respondent's failure to cooperate with the investigation, it had not yet reached a conclusion regarding whether respondent "misappropriated funds and if so whether it was done negligently or knowingly."

In his verified answer, respondent admitted the material facts underlying the allegations of the formal ethics complaint but denied that he had violated the Rules of Professional Conduct.

## **Analysis and Discipline**

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

Following a review of the record, we determine that the material facts recited in the formal ethics complaint, as admitted by respondent in his answer,

clearly and convincingly support the finding that he violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b) (two instances).

Specifically, respondent violated RPC 1.15(a) by depositing ATA funds – which constituted entrusted client funds – in his personal savings account on August 13, 2021. Although respondent blamed Santander Bank, claiming the bank had erroneously closed his ATA, his conduct constituted a per se violation of RPC 1.15(a), which requires attorneys to hold property of clients in connection with representation separate from the attorney’s own personal property. Respondent failed to safeguard his client’s property by depositing the ATA funds in his personal savings account. Worse, if we were to give his representation to the OAE full credit, he did not even realize that he had done so.

Next, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Specifically, R. 1:21-6(h) requires attorneys to make required records available, upon request, for review and audit by the OAE. Repeatedly, the OAE directed respondent to provide proof that he: conducted monthly three-way reconciliations; maintained individual client ledger cards; maintained cash receipts and disbursements journals; maintained a ledger card identifying attorney’s funds for bank charges; and maintained an ATA. Despite the OAE’s extensive efforts, respondent failed to comply,

ultimately resulting in his temporary suspension. Further, respondent failed to submit proof that he opened a new ATA for the remaining client funds, despite the OAE's specific request that he do so.

Pursuant to R. 1:21-6(i), an attorney who fails to comply with the requirements of the Rule "in respect of the maintenance, availability and preservation of accounts or records," or who "fails to produce or to respond completely to questions regarding such records shall be deemed to have violated RPC 1.15(d) and RPC 8.1(b)." Thus, respondent violated RPC 1.15(d) and RPC 8.1(b).

Moreover, respondent separately violated RPC 8.1(b) via his repeated failure to reply to the OAE's requests for outstanding documents and to otherwise cooperate in the investigation. To date, respondent has not produced the requested financial records and remains temporarily suspended, pending his compliance and Court action.

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

### Quantum of Discipline

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a known 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; we found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing only an admonition, we credited 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) (failing to communicate with a client), 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) (failing to protect client's interests upon termination of

representation), 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)).

The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative \$50,200.35 balance, repeatedly failed, for more than three months, to comply with the OAE's requests for his law firm's financial records, including trust account reconciliations, client ledger cards, disbursements journals, and two specific client files; thereafter, although the attorney, for more than eight months, repeatedly assured the OAE that he would provide the required records, he failed to do so, despite two Court Orders requiring 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 imposed a reprimand in light of the lack of injury

to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar).

In our view, based upon the foregoing precedent, the baseline discipline for respondent's misconduct is a reprimand. Like the attorney in Leven, who received a reprimand, respondent repeatedly failed to comply with the OAE's requests for information and failed to make records available during the OAE's investigation. In crafting the appropriate discipline, however, we also consider mitigating and aggravating circumstances.

In mitigation, respondent has submitted some of the required records to the OAE and has no prior formal discipline in his fifty-one years at the bar. In re Convery, 166 N.J. 298, 308 (2001).

In aggravation, respondent still has not fully complied with the OAE's requests for information and, consequently, remains temporarily suspended from the practice of law.

### **Conclusion**

In our view, respondent's continued disregard of the Court's Order directing his compliance in the OAE investigation warrants discipline greater than a reprimand. Thus, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose an admonition.

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 Francis X. St. John  
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Argued: January 18, 2024

Decided: March 27, 2024

Disposition: Censure

<i>Members</i>	Censure	Admonition	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera			X
Rodriquez	X		
Total:	7	1	1

/s/ Timothy M. Ellis

Timothy M. Ellis  
Chief Counsel