

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-090
District Docket Nos. XIV-2018-0566E and VIII-2020-0900E

In the Matter of Spencer B. Robbins
An Attorney at Law

Argued
June 20, 2024

Decided
September 19, 2024

Jennifer L. Iseman appeared on behalf of
the Office of Attorney Ethics.

Spencer B. Robbins appeared pro se.

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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 recommendation for a reprimand or a censure filed by the District VIII Ethics Committee (the DEC). 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) and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Ethics History

Respondent earned admission to the New Jersey and New York bars in 1981. At the relevant time, he maintained a practice of law in Woodbridge, New Jersey.

On November 19, 2004, respondent received an admonition for failing to timely comply with a DEC investigator's requests for information concerning a grievance filed against him, in violation of RPC 8.1(b). In the Matter of Spencer B. Robbins, DRB 04-339 (November 19, 2004). (Robbins I).

On February 25, 2015, respondent again received an admonition for failing to reply to a DEC investigator's multiple letters requesting information concerning a grievance filed against him, in violation of RPC 8.1(b). In the Matter of Spencer B. Robbins, DRB 14-315 (February 25, 2015). (Robbins II).

Facts

Respondent maintained the following attorney trust accounts (ATA) and attorney business account (ABA) in connection with his legal practice:

- BCB Community Bank ATA, ending in 2895;
- BCB Community Bank ATA, ending in 3592;
- BCB Community Bank ATA, ending in 0023;
- BCB Community Bank ATA, ending in 1253;
- Santander Bank ATA, ending in 7388; and
- BCB Community Bank ABA, ending in 0186.

On July 25, 2017, the Office of Attorney Ethics (the OAE) conducted a random compliance audit of respondent's financial records. That audit continued on December 6, 2017 and March 29, 2018 and, ultimately, revealed the following recordkeeping deficiencies:

- 1) Client ledger cards with debit balances, in violation of R. 1:21-6(d);

- 2) Inactive trust ledger balances remained in ATA for an extended period of time, in violation of R. 1:21-6(d);
- 3) Failure to maintain a separate ledger sheet for each client, in violation of R. 1:21-6(c)(1)(B);
- 4) An unidentified balance of \$51,752.05 maintained in ATA, in violation of R. 1:21-6(d);
- 5) Failure to resolve old, outstanding ATA checks, in violation of R. 1:21-6(d);
- 6) Failure to maintain ATA receipts and disbursements journals, in violation of R. 1:21-6(c)(1)(A);
- 7) Failure to maintain monthly three-way ATA reconciliations, in violation of R. 1:21-6(c)(1)(H);
- 8) Improperly imaged ATA and ABA checks, in violation of R. 1:21-6(b);
- 9) Electronic transfers made without proper authorization, in violation of R. 1:21-6(C)(1)(A); and
- 10) ATA checks lacked proper client identification, in violation of R. 1:21-6(c)(G).

On May 3, 2018, the OAE notified respondent of its audit results and directed him to take corrective action to cure each deficiency and to provide the OAE a written reply within forty-five days. Respondent failed to reply.

On August 7, August 28, and September 17, 2018, the OAE sent additional letters to respondent, reminding him that his reply to the OAE's May 3, 2018

letter remained outstanding and directing him to produce the requested information within ten days. In its September 17, 2018 letter, the OAE warned respondent that, if he failed to comply, the OAE would file a formal ethics complaint against him. Respondent, however, failed to reply.

On October 23, 2018, the OAE docketed the matter for investigation and, thereafter, issued subpoenas for respondent's bank records.

On January 16, 2019, the OAE informed respondent that it would conduct a demand audit of his financial books and records on February 26, 2019, and directed him to produce the following financial records for the audit period spanning January 1, 2015 to January 16, 2019:

- 1) ATA bank statements and canceled checks, wire transfers, checkbook stubs, and deposit slips;
- 2) Client ledgers for those clients whose funds were maintained in any ATA during the audit period;
- 3) Monthly three-way ATA reconciliations;
- 4) ATA cash receipts and disbursements journals;
- 5) ABA cash receipts and disbursements journals;
- 6) ABA bank statements, canceled checks, checkbook stubs and deposit slips;
- 7) A detailed explanation of why he failed to reply to the OAE's May 3, August 7, August 28, and September 17, 2018 letters; and

- 8) Proof that he corrected the twelve recordkeeping deficiencies revealed by the random audit.

On February 26, 2019, respondent appeared for the demand audit and provided the OAE with his ATA bank statements and canceled ATA checks. However, he produced his ATA reconciliations for 2018 only and altogether failed to provide any ATA or ABA records for the period January 2015 through December 2017.

On March 1, 2019, the OAE directed respondent to produce all outstanding financial records and information by April 15, 2019 and, further, to produce his completed bank account disclosure form by March 8, 2019. Additionally, the OAE informed respondent that, if he failed to produce the requested information, he may be subject to a petition to the Court seeking his immediate temporary suspension from the practice of law. Again, respondent failed to produce the requested records to the OAE.

On April 9, 2019, the OAE again directed respondent to provide his bank account disclosure form. Respondent failed to comply with the OAE's directive.

On April 12, 2019, respondent's newly retained certified public accountant, Michael Mazur, notified the OAE, in writing, that he had been retained to "clear any issues dealing with [respondent's] account." In that letter, Mazur confirmed that respondent had provided him with the necessary

information and, further, that he had commenced his review but required additional time to complete his analysis.

According to the OAE, despite several telephone calls with Mazur, he could not provide a proposed completion date.

On July 1, 2019, the OAE, having not received a completion date from Mazur, directed respondent to produce all outstanding documents and information to the OAE by July 26, 2019. Respondent failed to provide the documents.

Consequently, on August 28, 2019, the OAE filed a petition with the Court, seeking respondent's temporary suspension from the practice of law for his failure to comply with the OAE's requests.

On September 9, 2019, respondent opposed the OAE's petition and, in his supporting certification, represented that "there [were] no monies being held for his clients that were not accounted for," and maintained that the excess monies in his ATA were "funds [he] should have taken for fees but due to bookkeeping errors [he has] not." Respondent also attached, for the Court's consideration, his ATA records, and outlined the steps he had taken to correct his deficiencies.

On October 7 and October 23, 2019, respondent provided the OAE with additional updates regarding the status of his records. Specifically, as it related to the excess funds held in his ATA, respondent stated that his accountant and

his staff had reviewed transactions from approximately ten to twenty years ago and identified “approximately \$41,000.00 [as] legal fees that should have been taken many years ago.” Respondent also claimed that he was working diligently to fully respond to the OAE’s inquiries and would provide the OAE with additional information following a meeting with Mazur.

Notwithstanding respondent’s October 7 and October 23, 2019 update, he ultimately failed to provide the OAE with the financial records and information requested in its May 3, 2018 letter. Respondent also failed to provide explanations for each of the improper electronic transfers from his ATA to his ABA, which the bank had described as transfers requested by respondent to cover overdrafts of his ABA.

The OAE’s review of the ATA records respondent provided to the Court, in response to its petition for his temporary suspension, revealed the following:

- 1) As of December 13, 2014, he maintained the following funds in his BCB Community Bank ATA #3592 that were either reduced by service charges issued by BCB Community Bank, transferred to respondent’s ABA, or transferred to unknowing accounts:
 - a. Christofis Kontos - \$3.67
 - b. Estate of Edward Wojciechoswski - \$0.04
 - c. Richard Lopera - \$7,199.56
 - d. Robbins & Robbins - \$1,160.06
 - e. Robbins & Robbins Trust Account - \$6.82
 - f. Splashdown, LLC - \$891.44

- 2) He maintained BCB Community Bank ATA #0023, related to the Estate of Barbara Ann Rustick. According to the OAE, Carlos Lao MD was the executor of that estate, and those funds should be maintained in an estate account, not an ATA. Respondent, in his answer, admitted he was holding those funds for his client at his client's request.

- 3) On February 26, 2016, he deposited two checks totaling \$1,819,118.39 in his BCB Community Bank ATA #1253. The payor of the checks was DFRX Holdings, LLC. Respondent disbursed funds to an account for Commercial Lubricants, LLC, who appeared to be a joint owner with Gary Stetz; disbursed checks payable to cash; disbursed funds relating to a loan to Francisco Dillon; and made transfers to unknown accounts.

On November 20, 2019, the Court, in response to the OAE's petition, sought an update from the OAE regarding respondent's progress in the matter.

On November 27, 2019, replying to the Court, respondent stated that Mazur had been able to review his records and was "able to reconcile almost all of the transactions." Respondent also stated that he would like to arrange for the OAE's auditor to meet with Mazur to review the reconciliation.

In a December 3, 2019 submission to the Court, the OAE maintained that respondent's documents continued to be non-responsive to the OAE's requests. The OAE urged that respondent be temporarily suspended or, alternatively, ordered to produce the previously requested materials.

On December 9, 2019, respondent represented to the Court, in reply to the OAE's letter, that he was working diligently to complete his reconciliation and that he was in the position "to present the reconciliation;" he, thus, requested that he not be suspended.

On December 12, 2019, the OAE directed respondent to produce, immediately, the overdue financial records in view of his representation to the Court, in his December 9 letter, that he was prepared to present the reconciliation.

On January 7, 2020, respondent replied to the OAE's letter and provided an explanation of his attempts to bring his records into compliance. Specifically, respondent explained that Mazur confirmed that his ATA surplus monies were mostly legal fees earned and not taken from years ago, when his father was responsible for the maintenance of the firm's financial records. Additionally, regarding his lack of response to the OAE random audit program, respondent maintained that he did not see the OAE's letters, claiming that his paralegal at the time "just filed the letters in a folder and were not marked for [him] to read." Respondent also stated that he asked Mazur to produce the information requested in the OAE's March 1, 2019 letter and it was his understanding that he produced the records and was further producing the remaining records to Justin Mendyk, the OAE's senior random compliance auditor.

In response, on January 17, 2020, the OAE informed respondent that his production remained deficient, again directing him to produce the following documents for the period January 2015 through January 2020:

- 1) ATA and ABA bank statements;
- 2) Client ledgers for those clients whose funds were maintained in his ATA during the audit period;
- 3) Monthly three-way ATA reconciliations;
- 4) ATA receipts and disbursements journals;
- 5) Copies of Mazur's spreadsheets that he showed during the OAE's January 2, 2020 meeting;
- 6) A written explanation for each of the impermissible electronic transfers from the ATA to the ABA to cover overdrafts in the ABA, as well as proof respondent was entitled to these funds; and
- 7) Respondent's completed bank account disclosure form.

On January 17, 2020, respondent produced most, but not all, of the requested records and information to the OAE. Respondent also informed the OAE that Mazur would send the requested documents to the OAE on January 21, 2020.

Following its review of respondent's records, along with the subpoenaed bank records, the OAE determined that respondent had failed to provide

explanations for various electronic transfers from his ATA between 2015 and 2018.

In his November 25, 2020 amended answer to the formal ethics complaint, respondent admitted that checks, totaling \$1,819,118.39, were deposited in his ATA. Respondent stated that:

[t]hese were funds that were provided to Spencer B. Robbins for liquidation of his interest in a company called Dental Fix RX, LLC. When the money was sent, the bookkeeper deposited the funds into a separate firm account as additional monies were being held. The monies were later disbursed appropriately.

[AA¶30.]¹

Respondent additionally stated that:

[a]s part of the liquidation of his interest in Dental Fix, monies had previously been loaned from Dental Fix to Commercial Lubricants and monies were owed from Commercial Lubricants. Respondent's wife was a shareholder in Commercial Lubricants at the time. Monies were disbursed as respondent requested as they were personal funds.

[AA¶31.]

According to the OAE, as of December 8, 2022, respondent's financial records remained deficient. Specifically:

- 1) He failed to provide his March 2021 ATA #2985 bank statement;

¹ "AA" refers to respondent's amended answer, dated November 25, 2020. "RS" refers to respondent's April 20, 2023 written summation.

- 2) His March 2021 reconciliation did not reconcile, which included \$6,972.81 of unidentified funds remaining in respondent's ATA; and
- 3) He had not fully explained and provided substantiating documentation related to the impermissible electronic transfers from his ATA.

Based on the foregoing, the OAE charged respondent with having 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 produce the requested financial books and records, despite multiple opportunities to do so, pursuant to R. 1:20-3 and R. 1:21-6(j).

The Ethics Proceeding

On March 21, 2022, prior to the commencement of the ethics hearing in this matter, the OAE filed with the hearing panel chair a motion for sanctions, requesting that respondent's answer be stricken, his defenses be barred, and any evidence submitted in substantial violation of the case management conference order be barred. On October 23, 2022, the hearing panel chair ordered that the respondent's pleadings would not be suppressed but, rather, respondent would be precluded from presenting at the hearing any evidence not already produced to the OAE.

The ethics hearing commenced on January 26, 2023 and continued on January 27 and March 16, 2023. On the second day of the hearing, respondent stipulated that he had failed to properly maintain his financial records, in violation of RPC 1.15(d), and, further, that he had failed to timely respond or produce documents to the OAE, in violation of RPC 8.1(b). As such, the remainder of the hearing focused solely on mitigation.

Respondent, on his own behalf, testified that he had not misappropriated client funds, notwithstanding having not been charged with such misconduct. Respondent emphasized that he complied with the OAE's initial random audit. He testified that he met with the OAE auditor and knew what changes needed to be made. Respondent further testified that the auditor reviewed all his records from 2015, 2016, and 2017, and that the OAE's letter did not require him to produce anything further except to correct the deficiencies that previously had been identified, which he claimed that he had done.

Respondent further testified that he met with the OAE's auditor in February 2019 and admittedly only brought records from 2018 because he already had produced the records from 2015 through 2017. Respondent testified that, after he met with the auditor, he hired Mazur, whom he thought would keep the OAE up to date. However, at the time, he was not aware that Mazur did not have access to all the information that the OAE had requested.

Ultimately, respondent admitted that he should have done more to comply with the OAE's requests, but again claimed that he did not respond to the various letters sent from the OAE because he never saw them. According to respondent, a former employee filed them away without alerting him. However, respondent maintained that, once he did see the letters, he had his staff get involved to make sure all deficiencies were addressed. Respondent further emphasized that he was not trying to hide anything from the OAE and wanted to comply with their requests, which was why he took the step of hiring an accountant.

Respondent additionally testified that, sometime during 2018, his wife was diagnosed with a serious medical issue, which required significant testing and medical treatment. He further testified that he was diagnosed with his own medical issue in early 2020, which required him to go through treatment and caused him to be hospitalized. Moreover, respondent explained that he was unable to return to his office until November 2020, which caused him to fall behind. Respondent emphasized that he was not sharing that information to gain sympathy, but rather to shed light on the fact that the timing of the aforementioned events distracted him from doing things to which he should have given more attention.

Last, respondent presented the testimony of Shannon Lipari, his office manager and bookkeeper. Lipari testified that, during the course of her

employment with respondent, no clients had complained about respondent's handling of their money. not receiving their money or that their money was not accounted for. She testified, generally, regarding her efforts to collect the records sought by Mendyk in order to comply with the OAE's requests. Additionally, she conceded that the office had received letters from the OAE that were not brought to her or to respondent's attention. Last, Lipari testified that those letters were only brought to the attention of a former employee who was no longer with respondent's firm and, further, that Lipari had not learned of the above-referenced letters until "way after the fact."

The Parties' Post Hearing Submissions

In his April 20, 2023 written summation, respondent reiterated that he accepted responsibility for not "completely fulfilling [his] obligations to maintain better records of [his] trust account and to not fully providing information for the production of records." In mitigation, respondent provided an explanation why he failed to comply with the Rules.

Specifically, respondent maintained that he always had employed a bookkeeper over the span of his forty-year career and previously had been audited without issue. He explained that, once his bookkeeper of the previous ten years retired, he hired another bookkeeper. Respondent stated he then began

to notice discrepancies in his accounts and, specifically, that he held excess funds in his ATA. Further, respondent stated that, to remedy what he perceived as an issue, he hired a certified public accountant to review his financial records. According to respondent, “the discrepancies in [his] trust account came about after [his firm] made a transition to employ Shannon Lipari, as [his] office manager and [his] bookkeeper and to convert to be fully computerized.”

Respondent emphasized both he and Lipari were involved in the prior presentation to the OAE auditor, and that he made all financial records available to them at the time of the audit. Respondent reiterated that there never has been a complaint by any client against him for misappropriation of any funds due to a client.

Respondent additionally stated that Lipari met with the OAE auditor several times and reviewed the changes that were suggested. However, Lipari still needed to resolve the issue of the excess funds. Moreover, respondent hired Mazur to further ensure his accounts were properly maintained. Respondent explained that Mazur took several approaches to review respondent’s ATA and, in particular, to resolve the issue with the excess fees. Mazur began to contact the OAE’s auditor to resolve respondent’s recordkeeping issues, but he now understands that Mazur had incorrectly believed he could simply meet with the auditor to go through the audit with him.

In closing, respondent emphasized that:

[t]here were approximately 77 different transactions that were questioned and we provided a valid proper explanation for each and every questioned transaction and again nothing was deemed wrong or inappropriate. In addition to the explanation, we provided copies of the retainer agreements, invoices or other documents verifying the payments or transfers To further provide information to [the OAE's auditor] I appeared and was deposed and a transcript is provided of my explanation of the event that have occurred I have been very cooperative with the Ethics committee. I have taken responsibility that I should have acted more diligently in working with the auditor. As testified at the time, I was occupied with medical issues of my wife and I and delegated assignments and I should have been more involved. I thought Mr. Mazur's approach of reconciling the accounts and his attempts to meet with [the auditor] were appropriate actions to take. In retrospect and realizing what I have witnessed now, practically all of this secondary audit by [the auditor] would have been avoided. I would have saved valuable time for my staff and I . . . would not have expended the substantial sums I did to reconcile my accounts.

[RSpp.4-5.]

Respondent did not specify the quantum of discipline he believed to be appropriate but sought leniency in any findings.

In its May 19, 2023 written summation, the OAE asserted that the appropriate quantum of discipline for respondent's misconduct was a reprimand or a censure, based on the presence of aggravating factors. Specifically, the OAE maintained that respondent's disciplinary history; his failure to rectify his

recordkeeping deficiencies over the span of five years; his continued holding of unidentified funds in his ATA; and his failure to acknowledge his violations until the second day of the hearing all contributed to its recommendation that he be reprimanded or censured. Further, the OAE emphasized that respondent had two prior admonitions, both of which stemmed from his failure to cooperate with disciplinary authorities. In further aggravation, the OAE highlighted that respondent failed to remediate his records, despite multiple opportunities to do so, and asserted that respondent lacked remorse by abdicating his responsibilities to his accountant and his support staff.

Last, the OAE urged the panel to afford minimal weight to the mitigating circumstances submitted by respondent. Specifically, the OAE asserted that respondent's and his wife's medical battles, along with his service to his clients, were self-serving and supported only by respondent's own testimony and the statements of "his paid employees." Additionally, the OAE maintained that, although no client was harmed or identified as being impacted by respondent's recordkeeping practices, this factor should also be given nominal weight.

The Hearing Panel's Findings

The hearing panel found, by clear and convincing evidence, that respondent violated RPC 1.15(d) and RPC 8.1(b).

As a preliminary matter, the hearing panel confirmed there was no allegation that respondent had misappropriated client funds. Rather, the panel described the allegations against respondent as twofold: first, “his record keeping was poor, resulting in an unaccounted-for surplus of funds” and, second, “he was generally non-compliant and non-cooperative with the OAE and its investigation.”

The hearing panel also determined that, although respondent eventually stipulated to having violated the Rules, “there was a general sense of indignation which pervaded respondent’s testimony, and his examination of other witnesses, that because he complied somewhat with the OAE, that should have been good enough.” Specifically, the panel emphasized that respondent “seemed to intimate that because he provided a lot of records, therefore he did not have to provide all the records” which, in the panel’s view, did not reflect well on respondent. Moreover, the panel emphasized that it was not respondent’s responsibility to decide what the OAE needed vis-à-vis its investigation. Rather, it was respondent’s responsibility to comply with the OAE’s directives to respond comprehensively, which respondent admittedly failed to do.

The hearing panel concluded, however, that respondent was entitled to the benefit of the doubt that certain arguments made and questions asked during the hearing were advocacy and trial strategy rather than a “revealing of his own

conscience.” Additionally, the panel recognized the obvious stressors caused by the illnesses suffered by respondent and his wife and, further, noted that respondent maintained a good reputation in the community for more than forty years.

The hearing panel concluded that a reprimand was the appropriate quantum of discipline for respondent’s conduct. In reaching its conclusion, the panel emphasized that respondent previously had been admonished for similar misconduct. The panel concluded, however, that a censure would be too severe given the fact that respondent stipulated to the charges against him, no client was harmed, and considering the impact of the numerous health issues suffered by respondent and his wife during the relevant period.

The Parties’ Submissions to the Board

On May 8, 2024, the OAE submitted a letter brief to us, stating it would rely on its summation brief to the hearing panel and that it agreed with the panel’s findings.

On May 31, 2024, respondent submitted, for our consideration, his April 20, 2024 written summation brief.

At oral argument before us, respondent largely reiterated the arguments that he had asserted before the hearing panel. Specifically, respondent

maintained that he has always employed a bookkeeper over the span of his forty-year career, previously had been audited without issue, and that there has never been a complaint by any client against him for misappropriation of any funds due to a client.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the hearing panel's conclusion that respondent violated RPC 1.15(d) and RPC 8.1(b) is supported by clear and convincing evidence.

Respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in numerous respects. Specifically, as the OAE's audit and investigation revealed, and as respondent ultimately conceded during the ethics hearing, he (1) maintained client ledger cards with debit balances, in violation of R. 1:21-6(d); (2) held inactive client balances in his ATA, in violation of R. 1:21-6(d); (3) failed to maintain individual client ledger cards, in violation of R. 1:21-6(c)(1)(B); (4) held an unidentified balance in his ATA, in violation of R. 1:21-6(d); (5) failed to resolve old, outstanding ATA checks, in violation of R. 1:21-6(d); (6) failed to maintain ATA receipts or disbursements journals, in violation of R. 1:21-6(c)(1)(A); failed to conduct

or maintain three-way reconciliations, in violation of R. 1:21-6(c)(1)(H); maintained improperly imaged ATA and ABA checks, in violation of R. 1:21-6(b); made improper electronic transfers from an ATA, in violation of R. 1:21-6(c)(1)(A); and had improper clients identified on ATA checks, in violation of R. 1:21-6(c)(1)(G). Further, respondent's March 2021 reconciliation failed to reconcile, which included \$6,972.81 of unidentified funds remaining in respondent's ATA. Thus, respondent violated RPC 1.15(d).

An attorney who fails to comply with the requirements of R. 1:21-6 in respect of the maintenance, availability, and preservation of records, or fails to produce or respond completely to questions regarding such records "shall be deemed to be in violation RPC 1.15(d) and RPC 8.1(b)." R. 1:21-6(i). Here, despite respondent's partial efforts to comply with the OAE, he admittedly failed, over a prolonged period of time, to bring his financial records into compliance with R. 1:21-6. Specifically, following the 2017 random audit, respondent was notified of the above-described recordkeeping violations. Indeed, on no less than three occasions, the OAE informed respondent of his deficiencies and directed him to correct same.

Notwithstanding the OAE's numerous attempts, respondent failed to bring his records into compliance. Although he eventually complied with the OAE's document requests once the matter was converted to a disciplinary investigation,

he still failed to provide his March 2021 ATA #2895 bank statement and to fully explain and provide substantiating documentation related to the improper electronic transfers from his ATA. As such, respondent failed to fully comply with the OAE's requests for records, thereby failing to cooperate in violation of RPC 8.1(b).

It is well-settled that cooperation short of the full cooperation required by the Rules has resulted in the finding that the attorney violated RPC 8.1(b). See In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48 (wherein we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate[,]” noting that “partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion”) so ordered, 225 N.J. 611 (2016); In re Tobin, 249 N.J. 96 (2021) (the attorney, 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 failed to cooperate); In re Higgins, 247 N.J. 20 (2021) (the attorney failed, for more than seventeen months, to comply with the OAE's numerous requests for information and written responses to the matters under investigation, necessitating his temporary suspension; although the attorney ultimately filed a reply to the ethics grievance, brought his

recordkeeping deficiencies into compliance, and stipulated to his misconduct, we concluded that his lengthy period of non-compliance constituted a failure to cooperate).

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b). 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, as here, they have not caused the negligent misappropriation of client funds. However, a reprimand is imposed if the attorney has failed to correct recordkeeping deficiencies that previously were brought to the attorney's attention. See In re Polcari, 255 N.J. 403 (2023) (reprimand for an attorney who had a heightened awareness of her recordkeeping obligations, having previously been the subject of a random compliance audit; no prior discipline in thirty-seven years at the bar), and In re Abdellah, 241 N.J. 98 (2020) (reprimand for an attorney who had a heightened awareness of his recordkeeping obligations based on a prior interaction with the OAE regarding his recordkeeping practices; no prior discipline in thirty-six years at the bar).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney's ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See, e.g., In re Crook, 255 N.J. 357 (2023) (in a default matter, reprimand for an attorney who committed multiple recordkeeping violations, including permitting inactive balances and old outstanding checks in his ATA; the attorney also failed to attend a demand interview and only partially complied, after many months' delay, with the OAE's record requests; in compelling mitigation, the attorney had no disciplinary history in almost forty years at the bar; in aggravation, he failed to bring his records into compliance and permitted the matter to proceed as a default); In re Schlachter, 254 N.J. 375, 376 (2023) (reprimand for an attorney who committed recordkeeping violations, including failure to maintain adequately descriptive receipts and disbursements journals, ledger cards, and checkbooks with running balances; the attorney also failed to properly designate his attorney trust account and to retain checks for seven years; the attorney repeatedly failed, for almost a year, to comply with the OAE's numerous record requests and ultimately provided only a portion of the

requested records; although the OAE attempted to help the attorney take corrective action, he remained non-compliant with recordkeeping Rules; in mitigation, his misconduct resulted in no harm to his clients and he had no disciplinary history in sixteen years at the bar); 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); In re Tobin, 249 N.J. 96 (2021) (in a default matter, censure for an attorney who, following an OAE random audit that uncovered several recordkeeping deficiencies (including more than \$800,000 in negative client balances), failed to provide documents requested by the OAE in multiple letters and telephone calls; in aggravation, the attorney had a prior reprimand for recordkeeping violations; in mitigation, the attorney had been practicing law for sixty-three years and suffered serious health problems prior to the continuation date of the random audit).

Pursuant to the above disciplinary precedent, and Schlacter and Leven in particular, we conclude that the baseline quantum of discipline for respondent's misconduct is a reprimand. To craft the appropriate quantum of discipline, however, we also consider relevant mitigating and aggravating factors.

In aggravation, respondent's financial books and records remain noncompliant with the Rules, despite having been given multiple opportunities to correct the deficiencies. In re Silber, 100 N.J. 517 (1985) (considering, in aggravation, the attorney's failure to remediate conduct despite opportunities to do so).

In further aggravation, this matter represents respondent's third disciplinary matter, including two prior admonitions for failing to cooperate in Robbins I and Robbins II. In our view, it is apparent that he has failed to learn from his past mistakes. His prior encounters with the disciplinary system should have engendered heightened awareness of his obligations.

We respectfully part ways with the DEC's conclusion that a censure would be too severe. Although respondent did eventually stipulate to the charges against him, that stipulation came on the second day of the ethics hearing. Further, we cannot be confident that no client was harmed, considering that respondent has failed to fully explain and provide substantiating documentation related to the improper electronic transfers from his ATA. Although we

sympathize with respondent that he and his wife were dealing with personal medical issues, that does not absolve him of his obligation to adhere to the Rules, especially given his heightened awareness due to his previous discipline matters.

Conclusion

On balance, we determine that the aggravating factors outweigh the mitigating factors, and that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Further, in light of his ongoing recordkeeping deficiencies, we recommend that respondent be required to submit proof to the OAE, within sixty days of the Court's issuance of its disciplinary Order in this case, that he has corrected the recordkeeping infractions identified during its audit and investigation.

Member Rodriguez did not participate.

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. Mary Catherine Cuff, P.J.A.D. (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 Spencer B. Robbins
Docket No. DRB 24-090

Argued: June 20, 2024

Decided: September 19, 2024

Disposition: Censure

<i>Members</i>	Censure	Did Not Participate
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez		X
Spencer	X	
Total:	8	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel