SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket Nos. DRB 24-162 and DRB 24-189
District Docket Nos. VB-2022-0006E and XIV-2023-0156E

In the Matters of Nathaniel Martin Davis
An Attorney at Law

Argued
September 19, 2024

Decided
January 14, 2025

Scott E. Reiser appeared on behalf of the
District VB Ethics Committee in DRB 24-162

John McGill, III appeared on behalf of
respondent in DRB 24-162

Certification of the Record for DRB 24-189

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Introduction

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

We consolidated these matters for our review. On September 19, 2024, DRB 24-162 was before us on a recommendation for a three-month suspension, with conditions, filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.2(a) (failing to abide by the client's decisions concerning the scope and objectives of the representation); RPC 1.3 (lacking diligence); RPC 1.4(b) (two instances – failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 4.1(a)(1) (making a false statement of fact or law to a third person); and RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

On November 21, 2024, we reviewed DRB 24-189 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(a) (negligently misappropriating client funds); RPC 1.15(b) (failing to timely disburse funds to clients or third parties); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (engaging in

the unauthorized practice of law); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).[1]

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

Ethics History

Respondent earned admission to the New Jersey bar in 1996 and to the Pennsylvania bar in 1995. At the relevant times, he maintained a practice of law in Maplewood, New Jersey. He has significant prior discipline in New Jersey.

Davis I

On September 14, 2007, in connection with a motion for reciprocal discipline, the Court reprimanded respondent for his violation of RPC 1.16(a)(1) (failing to withdraw from representation where the representation would result in violation of the Rules of Professional Conduct); RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal); RPC 4.1(a); RPC 5.5(a) and (b); RPC 7.1(a) (making a false or misleading statement about the lawyer's

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

designation); RPC 8.4(b) (committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness, or fitness to practice law); RPC 8.4(c); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In re Davis, 194 N.J. 555 (2007) (Davis I).

In that matter, for three years, respondent engaged in the unauthorized practice of law in Pennsylvania. He previously had filed with the Pennsylvania Continuing Legal Education (CLE) Board a Non-Resident Active Status form in which he indicated that he did not practice law in Pennsylvania and did not represent any Pennsylvania clients. In fact, respondent represented one client in Pennsylvania.

When respondent received notice that he was going to be transferred to inactive status in Pennsylvania for his failure to comply with CLE requirements, "he attempted to avoid the transfer by fraudulently continuing his Non-Resident Active status by making false statements to the CLE Board." When opposing counsel confronted him about his inactive status, respondent denied that he was aware of it, despite the numerous notices to him regarding the inactive status. He also made false statements to the trial court about his inactive status. The trial court eventually issued an order to show cause as to why respondent should not be removed from the case; respondent, however, failed to appear for the hearing.

Davis II

On February 10, 2012, the Court reprimanded respondent for his violation of RPC 1.16(d) (failing to promptly turn over a client file upon termination of the representation). In re Davis, 209 N.J. 90 (2012) (Davis II). In that matter, although a client had terminated respondent's representation in favor of new counsel, respondent failed to relinquish the file to the new attorney for six months. The new attorney requested the file six separate times before respondent finally turned it over. In mitigation, we considered the fact that the client was not prejudiced by respondent's misconduct. In aggravation, we weighed his prior discipline.

Davis III

On June 4, 2020, the Court censured respondent for his violation of RPC 1.15(a) (failing to safeguard client funds), RPC 1.15(d), and RPC 8.1(b). In re Davis, 242 N.J. 141 (2020) (Davis III). Relevant to the instant matter, the Court also ordered respondent to provide to the OAE monthly three-way reconciliations of his attorney trust account (ATA) for two years; resolve all inactive client balances in his ATA; return identified client funds to the owners; and deposit any unidentified funds with the Superior Court Trust Fund Unit (the SCTFU) within sixty days.

In that matter, on February 16, 2017, the OAE conducted a demand audit of respondent's financial books and records which revealed recordkeeping deficiencies. Respondent hired three separate accountants to reconstruct and reconcile his records – to no avail. Ultimately, he admitted to his recordkeeping violations.

In determining to impose a censure, we considered, in aggravation, respondent's ethics history. Furthermore, we found that he appeared unrepentant at the DEC hearing, blaming his bookkeeper and accountants for his predicament, and had failed to cooperate with the OAE for two years.

In mitigation, we considered that, in December 2016, respondent's wife was diagnosed with cancer. She did not reveal the extent of preexisting illnesses, and it caused marital discord. Her condition worsened following an August 2017 surgery and, after she was hospitalized in November 2018, respondent learned the full extent of her medical condition. On December 26, 2018, she succumbed to her illness. At the time, their children were twelve and fifteen years of age. We noted that, during the same time, respondent was helping to care for his mother, who suffered from dementia.

Administrative Ineligibility

Effective June 24, 2024, the Court declared respondent ineligible to practice law in New Jersey for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. On July 29, 2024, he cured his ineligibility and was reinstated to the practice of law.

Effective September 9, 2024, the Court again declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts registration, pursuant to R. 1:28A-2(d). On October 24, 2024, he cured his ineligibility and was reinstated to the practice of law.

Facts

The Jeter Matter (DRB 24-162)

On October 15, 2015, Ronald J. Jeter injured his lower back while working at the Pequannock Water Treatment Plant (the Plant). The City of Newark (Newark) owns the Plant and was Jeter's employer. Due to his injuries, Jeter retained respondent to file a workers' compensation claim on his behalf. Respondent admitted he did not provide Jeter with a written retainer agreement

but testified that he had accepted the representation on a contingent fee basis and would have earned twenty percent of any settlement proceeds.[2]

Four years later, two physicians from Sall/Myers Medical Associates issued their reports concerning Jeter's injuries.[3] On November 17, 2021, two-and-a-half years after receiving the medical reports, respondent asked Jeter to come to his law office to sign documents.

Jeter appeared and signed an Affidavit of Petitioner (Affidavit 1). Affidavit 1, captioned as Ronald D. Jeter vs. Pequannock Water Treatment Plant, indicated that there was a proposed settlement offer of seven-and-a-half percent for Jeter's back injury, and that the proposed settlement represented forty-five weeks of employment at $245 per week, for a total of $11,070. Paragraph six of Affidavit 1 referred to Jeter's leg injury and his "foot condition." It also referenced a report prepared by Sall/Myers Medical Associates, dated June 18, 2019.

The third page of Affidavit 1 contained a space for a New Jersey attorney to notarize the document in the year 2021. Jeter's signature appears on Affidavit

[2] The DEC did not charge respondent with having violated RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee). During the ethics hearing, respondent objected to the presenter amending the ethics complaint to add the RPC 1.5(b) charge.

[3] The reports are not contained in the record before, so it is unclear on what date the doctors evaluated Jeter.

1; although Jeter signed Affidavit 1 in respondent's office, and respondent witnessed his signature, respondent failed to notarize the document.

Thereafter, in early 2022, respondent and Kyana Woolridge, Esq., counsel for Newark, appeared before the Honorable David H. Lande for a settlement conference. Respondent did not inform Jeter that the settlement conference was scheduled, or that he attended the conference. During the conference, Judge Lande recommended a fifteen percent settlement of the matter. Consequently, on April 5, 2022, Newark gave authority to settle Jeter's claim for fifteen percent of the partial total. Thereafter, Woolridge sent respondent an e-mail informing him of Newark's acceptance of Judge Lande's recommended settlement and instructing him to prepare an Affidavit of Petitioner, along with a proposed court order, for Judge Lande's signature.

On May 1, 2022, respondent notarized an updated Affidavit of Petitioner (Affidavit 2). In Affidavit 2, respondent modified the caption of the case to Ronald D. Jeter vs. City of Newark. Respondent also wrote that the settlement offer was ten percent of the lumbar spine, representing sixty weeks of employment at a rate of $228 per week, for a gross total of $13,680. Paragraph six of Affidavit 2 still referred to the disability in Jeter's leg and his foot condition. Respondent also changed the date of the Sall/Myers report to reflect

that they were dated May 28, 2019.[4] Jeter's purported signature appears on the third page of Affidavit 2.

At some point between the execution of Affidavit 2 on May 1, 2022, and May 10, 2022, respondent provided Affidavit 2 to Woolridge. On May 10, 2022, Woolridge's firm sent an e-mail to respondent requesting that he "review the affidavit [he] submitted and kindly make the necessary corrections to the agreed upon settlement amount, the alleged injured body parts, and resubmit for [Woolridge's] signature."

When respondent failed to correct Affidavit 2, Woolridge sent follow-up e-mails on June 3, October 4, and October 25, 2022, requesting the affidavit. In the October 25, 2022 e-mail, Woolridge's firm notified respondent that if he failed to provide a corrected Affidavit 2, it would file a motion to dismiss Jeter's claim. Respondent did not reply to Woolridge's e-mails and did not provide a corrected Affidavit 2 documenting the agreed-upon settlement terms.

In the interim, in his ethics grievance dated May 17, 2022, Jeter alleged that respondent had him "come to his office in January to sign to settle the case for $11,070. It [sic] been 5 months I haven't received anything, when I call his office I cannot speak with him. His secretary take[s] the message but no return

[4] It is not clear from the record before us whether the June 18, 2019 report is the same as the May 28, 2019 report.

phone call." Jeter referred to and appended Affidavit 1 to his ethics grievance. Notably, Jeter but did not mention Affidavit 2 or its increased proposed settlement terms.

Jeter testified that the first time he saw Affidavit 2 was when the DEC provided him with a copy. He vehemently denied signing Affidavit 2 and explained that the only document he had received from respondent, or signed, was Affidavit 1.

On August 5, 2022, in reply to Jeter's grievance, respondent sent a letter to the DEC investigator explaining that the matter was "supposed to settle but there was an impediment. I had to correct the proposed order to reflect 15% of partial total and resend it to [Newark] for review and signature." Respondent stated that he was unable to provide a corrected affidavit because he "subsequently suffered some health setbacks." He explained that he would send any funds received directly to Jeter, but that he had not yet received any settlement funds.[5] Respondent again explained that he "suffered a mild heart attack and a mild stroke and was hospitalized twice." He did not provide a timeframe for his heart attack or stroke.

[5] Due to his admitted failure to provide a corrected affidavit to Newark, Jeter's workers' compensation matter remained unresolved and there were no settlement funds to disburse. Additionally, as noted below, respondent ceased communicating with Jeter following the ethics grievance and, thus, it is unclear how he determined there would be settlement funds in the future.

On September 26, 2022, the DEC investigator provided the documents she had received from respondent to Jeter for his review. She directed Jeter's attention to the signatures on Affidavit 2 and the proposed order and asked Jeter whether he had signed those documents. Jeter replied that he had reviewed the documents and "confirm[ed] that I did not sign them. The signature is not of my own." Additionally, in his reply, Jeter attached pictures that he had taken on November 17, 2021, when he was present in respondent's office and had signed Affidavit 1 proposing an $11,070 settlement.

In a letter dated December 8, 2022, the DEC investigator asked respondent to answer a series of questions. Specifically, the investigator asked respondent to (1) explain why Affidavit 1 and Affidavit 2 were both signed by Jeter, but contained different captions and different settlement amounts; (2) whether he submitted both affidavits to Woolridge; (3) whether he advised Jeter of the proposed settlement offer before he signed Affidavit 2, and if so, how that information was conveyed; (4) whether he provided Jeter with copies of Affidavit 2; (5) the date on which Jeter purportedly signed the proposed order accompanying Affidavit 2; (6) whether respondent signed Affidavit 2 and the proposed order with Jeter's authorization; and (7) whether he informed Jeter of the trial date that the court had scheduled. The DEC investigator also directed

respondent to provide documentation to support his answers no later than December 16, 2022. Respondent failed to reply.

In an undated letter received by the DEC on November 19, 2022, Jeter explained that respondent had treated him with disregard and had done no work on the matter while Jeter went about his life in pain. Jeter stated that respondent:

> made me feel like I was bothering him and evaded me every time I tried to speak to him for a status of my claim. Then to make matters worse not only did he lead me to believe there had been a settlement closing soon, he then ceased all communication again, only to contact me with a forged document demanding I appear to his office again to sign another document in which he refused to inform me what it was.
>
> [Ex.16.][6]

Jeter signed the letter.

In another undated, signed letter from Jeter, he explained that, on September 26, 2022, the DEC informed him that it had received a $13,680 settlement agreement signed by Jeter. Jeter stated that he "immediately noticed that the signature on the document was not signed by me, but forged" and that it was not the $11,070 settlement agreement he had signed in November 2021. Jeter also explained that respondent contacted him to request that he visit

[6] "Ex." refers to the exhibits admitted into evidence during the ethics proceeding.
"2T" refers to the transcript of the ethics hearing dated February 28, 2024.
"HPR" refers to the DEC hearing panel report, dated June 18, 2024.

respondent's office, but Jeter "felt very uncomfortable" and, instead, "asked if he could email me the documents that he wanted me to review and sign." However, respondent refused and again requested that Jeter appear at his office. Jeter stated that he had not spoken with respondent since October 2022.

The Ethics Hearing

During the February 27, 2024 ethics hearing, Jeter testified that, after retaining respondent, "years [went] by" and that he spoke with respondent "maybe twice," but that respondent never had information about his case.

At some point, respondent's secretary spoke with Jeter and informed him that he needed to be examined by physicians; however, Jeter never spoke with respondent about those necessary evaluations.

The next time Jeter spoke with respondent was in November 2021, when he asked Jeter to appear in his office to sign some documents. Jeter recalled that, when he met with respondent, he had moved his law office from Newark, New Jersey to Maplewood, New Jersey. While at respondent's office signing Affidavit 1, Jeter took photographs because he became suspicious when respondent's secretary returned from making copies of Affidavit 1 without the third page – the signature page.

Jeter was not sure what the documents were, but because respondent did not explain the documents, Jeter assumed it was paperwork to "get the case over and done with." Jeter denied signing any other document in respondent's presence. Jeter also denied that respondent informed him what the next steps in the workers' compensation case were after signing Affidavit 1, or when he could expect to receive the $11,070 settlement. Indeed, Jeter testified that, when he called respondent's office, he was able to speak only with the secretary, but even she did not regularly answer Jeter's telephone calls. Additionally, Jeter testified he "showed up" at respondent's Maplewood office several times but respondent was never there.

After Jeter filed an ethics grievance, respondent contacted Jeter to request that he appear in respondent's office to sign documents. Jeter testified that he declined the offer and told respondent "I'll see you in court." Even though respondent requested that Jeter sign additional documents, Jeter denied that respondent told him the proposed settlement amount had increased.

Ultimately, Jeter hired another attorney to settle his workers' compensation claim and, in 2023, he received an approximately $18,000 settlement.

On cross-examination, Jeter testified that, although he met with respondent on November 17, 2021, he was not sure why his pictures of the

meeting were dated November 18, 2021. However, Jeter testified that whether he met with respondent on November 17 or November 18, 2021, he only met with respondent one time in November 2021. Furthermore, he testified that, in his ethics grievance, he mistakenly wrote that he had met with respondent in January 2022, confirming that he only met with respondent in November 2021.

Woolridge also testified at the ethics hearing. She explained that, in a workers' compensation case, once the parties establish the settlement amount, the petitioner's attorney speaks with their client and drafts an affidavit, along with a court order, and attaches any medical evaluations that the client may have attended. She emphasized that the affidavit must be notarized. Thereafter, the attorney sends the documents to Woolridge, who reviews them for mistakes and, once she approves them, the petitioner's attorney files the documents with the court. Thereafter, the court will list the matter for a hearing, which is typically held without counsel present, and the judge reads the documents into the record, signs the proposed court order, and uploads the order to the workers' compensation portal. On occasion, the court will notify the parties that an order has been signed, but, typically, the parties know to log in to the portal a few days after the scheduled hearing to obtain the court's order. After the judge signs the order, the employer (Newark, in this case) has sixty days to process the

settlement payment; thus, Woolridge prepares a settlement letter to the adjuster, attaches a copy of the order, and the adjuster then processes the payment.

Woolridge testified that, when respondent originally filed Jeter's claim, he filed it against the Plant, which was incorrect. Additionally, Woolridge testified that, when she reviewed Affidavit 2, she observed it incorrectly listed a ten-percent settlement amount, which was not the agreed-upon figure. Affidavit 2 was the only affidavit respondent provided to Woolridge.

Respondent also testified during the ethics hearing. He testified that he has been at his Maplewood office for approximately two-and-a-half years.[7] According to respondent, Jeter signed Affidavit 2 in his presence at his Maplewood office and, further, that he had signed Affidavit 2 as a notary. Respondent also disputed Jeter's assertion that he failed to communicate with him and testified that he called Jeter about every three weeks during the litigation.

Respondent conceded that he did not prepare a written retainer agreement to memorialize his representation of Jeter. Furthermore, he did not keep notes documenting any meetings he had with Jeter and, because his fee was

[7] According to the OAE's database, on November 29, 2017, respondent updated his law office practice to reflect the Maplewood address.

contingent, he did not keep any record of the time he spent working on the matter or any of the work completed.

When asked why Affidavit 1 lacked his signature as a notary, respondent testified that he could not explain its absence, except "maybe because I got distracted by doing something else in the office and I – I didn't have the time and my secretary put it in the file and – and put the file away and I forgot to sign it." However, he testified that he remembered receiving Woolridge's request to correct Affidavit 2 and believed he had made the requested changes.[8]

Although respondent asserted that he communicated with Jeter, he testified that, after Jeter filed an ethics grievance against him, he was not sure whether there was a Court Rule prohibiting communication after a client files a grievance. He, thus, ceased communication with Jeter to avoid the appearance of impropriety. Respondent conceded, however, that he did not research whether there was a prohibition on client contact in this respect.

Respondent testified that he did not inform Jeter that the court had scheduled a settlement conference. Respondent also did not inform Jeter of the fifteen percent settlement figure before he had requested that Jeter appear in his office to sign the settlement paperwork.

[8] In his August 5, 2022 letter to the DEC, respondent admitted that he was "unable to correct" Affidavit 2 due to his health issues.

When a hearing panel member asked respondent in hindsight, what he would do differently in Jeter's case, he testified that he would not have accepted Jeter as a client. He explained that some clients have:

> egos and they think they your boss, this is the first time they have ever been – have some authority over someone so they get – they get – they get a little carried away. I should have – I should have been more conscious of that, maybe I should have contacted him more. That's – that's about it.
>
> [2T25.]

Respondent added that he believed Jeter was:

> very angry at me for some reason and he – he – when he filed a grievance he was looking to get my license snatched forever. But for – for whatever reason I think he has – I think he had an ego problem with me. I'm not sure where it was, but he took my actions as a personal affront to his ego.
>
> [2T28-29.]

Finally, he testified that it had never occurred to him to send written correspondence so that he had documentation of his conversations with Jeter despite his belief that Jeter was a problematic client.

During the hearing, respondent's counsel explained that he was not submitting medical evidence as "a justification or excuse," but rather, toward mitigation. Respondent testified that his wife passed away in December 2020, but his counsel corrected him to state that she had passed away in 2018. At the

time of his wife's passing, he testified one of his children was nine years old and his other child was twelve or thirteen.[9] Further, respondent testified that, because he was now a single parent, he assumed the parenting responsibilities his wife usually handled. Respondent experienced another loss, in 2019, when his mother, whom he had been caring for, passed away.

Respondent testified that, also in 2019, he suffered a stroke; however, his counsel corrected him to state that respondent's stroke occurred in 2021. Thereafter, respondent had a heart attack in June or July 2022, and another heart attack in June 2023.

Respondent denied that his medical issues caused memory loss. Furthermore, he testified that, although he thinks he suffered from minor depression following his wife's passing, and suffered from his own health issues, he always replied to clients – including Jeter. However, he also testified that his stressors impacted his ability to practice law because they required him to divert his attention in a way that he did not have to when his wife was alive.

[9] In his summation to the Hearing Panel, respondent's counsel stated that respondent's children were twelve and fifteen-years-old at the time of respondent's wife's passing.

The Parties' Summations to the Hearing Panel

In his summation to the DEC hearing panel, the presenter argued that respondent violated RPC 1.3 and RPC 1.4(b) by failing to communicate with Jeter – for six years – about the status of his workers' compensation case. He violated RPC 8.4(c) by drafting Affidavit 1 for Jeter's signature because Newark had not agreed to a settlement in November 2021. Furthermore, according to the presenter, respondent violated RPC 1.2(a) by failing to communicate to Jeter Judge Lande's fifteen percent settlement recommendation and his acceptance of the recommendation. The presenter also argued that respondent violated RPC 4.1(a) by preparing Affidavit 2 – a forged document – and providing it to Woolridge. The presenter asserted that respondent violated RPC 8.4(c) a second time when he forged (or allowed to be forged) Jeter's signature on Affidavit 2. Consequently, the presenter argued that a three-month suspension was the appropriate quantum of discipline for respondent's unethical conduct.

The presenter asserted that, with respect to respondent's RPC 1.3 and RPC 1.4(b) violations, even if communication was adequate at the outset of the representation, "during the critical juncture, when an alleged settlement had been reached, communication either broke down or was misleading." The presenter also contended that "it strain[ed] credulity" that respondent contacted

Jeter every three weeks during the representation – which lasted more than six years.

The presenter reiterated that respondent violated RPC 8.4(c) in several respects. First, he prepared and presented a false affidavit to Jeter in November 2021 because Newark had not yet approved a settlement figure. Furthermore, when respondent provided Affidavit 2 to Newark, he attempted to induce Newark's reliance on the "deceitful affidavit which did not truly have [Jeter's] authority."

Second, the presenter contended that respondent's forgery of Jeter's signature on Affidavit 2 violated RPC 8.4(c). The presenter asserted that "the two Affidavits contain clearly distinct signatures. This analysis does not require the testimony of a handwriting expert. [. . .] The signatures are noticeably different."

Furthermore, the presenter argued that the chronology of events highlighted respondent's misrepresentations. On May 20, 2022, Jeter filed his ethics grievance and referred to the $11,070 he expected to receive after signing Affidavit 1; however, the presenter noted the ethics grievance came nineteen days after Jeter purportedly signed Affidavit 2 for a $13,680 settlement. Furthermore, respondent failed to keep any records or notes during his representation of Jeter to corroborate what he had communicated to client and

when. Finally, the presenter noted that respondent failed to offer any testimony beyond his own. Therefore, in the absence of documentation to memorialize the dates and content of the purported conversations, the presenter argued all that remained was a credibility determination between Jeter's assertion that he did not sign Affidavit 2 and had never seen the document prior to the DEC providing it to him, and respondent's assertion that he notarized Affidavit 2 because Jeter signed it in his office on May 1, 2022.

The presenter contended that the facts failed to support respondent's version of events. Rather, the presenter noted that Jeter had no financial incentive to file an ethics grievance against respondent and had testified "directly, honestly, and candidly, and did not back away from any perceived questions regarding his testimony." Respondent, on the other hand, "could not affirmatively recall the details of certain key facts" and expressed "disdain for certain of his clients," including Jeter.

The presenter argued that respondent's violation of RPC 1.2(a) deprived Jeter of the opportunity to consider whether to settle his workers' compensation case because "whether a claim is worth one dollar or a million dollars, the decision to settle belongs solely to the client, not the attorney." When he failed to inform Jeter that, following the settlement conference with Judge Lande, the settlement amount had increased from the ten percent indicated on Affidavit 1,

respondent "precluded [Jeter] from making an informed decision" to settle the matter – particularly egregious, according to the presenter, considering Jeter's new counsel eventually settled the claim for more money.

The presenter asserted that respondent violated RPC 4.1(a)(1) when he sent Affidavit 2 to Woolridge – a forged document intended to induce settlement.

In response to respondent's proffered mitigation, the presenter maintained that, although the DEC was sensitive to respondent's hardships and medical issues, respondent had failed to offer any evidence to support his hospitalization in 2021 and 2022, and to tie his hospitalizations to any unethical act in this matter.[10]

In aggravation, the presenter emphasized that this was respondent's fourth disciplinary matter. The presenter asserted that, even if respondent's prior matters did not result in serious discipline, "a troubling pattern has emerged."

[10] Respondent testified (with corrections from his counsel) that he was hospitalized in 2021 and 2022 and suffered his stroke and heart attack in those years. By failing to offer specificity regarding the timing of his hospitalizations, we are unable to conclude his health is a mitigating factor under In re Jacob, 95 N.J. 132 (1984) (a demonstration by competent medical proofs that the attorney "suffered a loss of competency or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful"). For example, if respondent was hospitalized in January 2021, we have nothing in the record demonstrating that respondent's ability to practice law was affected in November 2021 – when he prepared Affidavit 1. Alternatively, if his 2022 hospitalization post-dated his preparation of Affidavit 2, it would not be a mitigating factor for our consideration. Nevertheless, respondent testified that he did not permit his life stressors and health to negatively impact his practice of law.

According to the presenter, respondent's disdain for his clients made the troubling pattern worse because "attorneys have obligations under the Rules of Professional Conduct [sic] to communicate with clients, regardless of whether they think they are the attorney's 'boss' or not."

Also in aggravation, the presenter argued that respondent admitted he violated RPC 1.5(b) in connection with Jeter's representation.

In urging the imposition of a three-month suspension, the presenter noted that, based on respondent's prior history, and his unethical conduct in the instant matter, anything less than a term of suspension would be insufficient to prevent potential harm to the public.

In his summation to the hearing panel, respondent admitted that he violated RPC 1.4(b) by failing to inform Jeter about the settlement conference with Judge Lande. In his view, however, his misconduct was minor, pursuant to R. 1:20-3(i)(2)(A), [11] did not result in financial harm to Jeter, and warranted an admonition. He requested that the remainder of the charged RPC violations be dismissed for lack of clear and convincing evidence.

[11] R. 1:20-3(i)(2)(A) defines minor unethical conduct as "conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply: [. . .] (iii) the respondent has been disciplined in the previous five years; (iv) the unethical conduct involves dishonesty, fraud or deceit." Just over four years ago, on June 4, 2020, the Court censured respondent in Davis III.

Respondent argued that Jeter's testimony was not credible. Specifically, he alleged that Jeter made "false allegations" to the DEC by claiming that respondent had contacted him with a "forged document demanding [Jeter] appear to [respondent's] office again to sign another document in which [respondent] refused to inform [Jeter] what it was." Respondent asserted that, on cross-examination, Jeter admitted that respondent did not contact him with a forged document. Respondent also contended that Jeter's testimony was inconsistent because he stated he had met with respondent only one time but offered three separate dates – November 17, 2021, November 18, 2021, and January 2022. He claimed that Jeter's "testimony and demeanor demonstrated a propensity for unreasonable speculation and suspicion" and, further, that Jeter baselessly relied on information contained on the internet about respondent to conjure a belief that respondent may do something illegal with Jeter's signature.

Respondent noted that, in mitigation, during 2017 and 2018, he successfully defended himself against "similar false and unsubstantiated allegations of unethical conduct regarding the alleged improper influence of a grievant, in connection with two separate ethics proceedings." Thus, his cessation of communication with Jeter following the ethics grievance was not unreasonable.

Additionally, respondent disputed that there was a delay in Jeter obtaining his workers' compensation settlement funds, citing the lack of expert or "competent objective" evidence presented demonstrating what would constitute a delay. Therefore, respondent argued there was no evidence he violated RPC 1.3 or RPC 1.4(b).

Next, respondent denied having violated RPC 1.2(a) and, instead, pointed to his testimony that he communicated the increased settlement offer to Jeter. Furthermore, he argued that there was "no evidence that [he] acted outside any implied authority contained within RPC 1.2(a)."

Finally, regarding Affidavit 2, respondent maintained that there were:

> two possibilities [that] can be reasonably inferred from the facts produced. One, that Respondent is lying. And, two, that Jeter is lying. Simply put, it is Jeter's word against Respondent's word. However, Jeter's word is not entitled to deference over that of Respondent, merely because Jeter is a grievant. There is no objective, scientific and/or expert evidence admitted to tip the scales between Jeter and Respondent as to authenticity.
>
> [RS9.]

Consequently, he asserted that, because the testimony was in "equipoise," there was insufficient evidence to sustain the RPC 4.1(a)(1) and RPC 8.4(c) allegations.

In mitigation, respondent cited his physical and mental health stressors. Asserting facts not contained within the record,[12] respondent explained in his summation to the hearing panel that, in December 2016, his wife was diagnosed with cancer, but already suffered from another illness. Because she did not reveal the extent of her illness to respondent, there was marital strife. She underwent surgery in August 2017 and, unbeknownst to respondent, her condition worsened. However, during 2018, "as a result of the stress caused by his wife's illnesses, which were, to an extent, being concealed from [r]espondent, they began arguing more and more, which led to them physically separating." After her November 2018 hospitalization, she revealed her full condition; however, by that point, she was placed in critical care and passed away on December 26, 2018. During the progression of his wife's illness, and following her passing, their two children increasingly relied upon respondent for support.

Finally, respondent argued that the stress and expense he sustained in 2017 and 2018, when he defended himself against two separate "false and unsubstantiated allegations of unethical conduct" was an unfair burden that should be considered a mitigating factor.

[12] Counsel for respondent appears to have relied on the mitigating factors we found in Davis III.

Regarding his admission that he failed to provide Jeter with a written fee agreement, respondent argued that the formal ethics complaint did not charge him with an RPC 1.5(b) violation and, thus, he could not be found to have violated the Rule.

With respect to his prior discipline, respondent maintained that the same mitigating factors we found in Davis III are relevant in the instant matter. Specifically, he argued that "his personal suffering may have contributed to any difficulties Jeter may have experienced in communicating with [him] and, "[u]nder these circumstances, [his] prior disciplinary history should not enhance [his] admitted minor violation of RPC 1.4(b) from an admonition to a reprimand."

The Hearing Panel's Findings

The DEC hearing panel found, by clear and convincing evidence, that respondent violated RPC 1.2(a); RPC 1.3; RPC 1.4(b); RPC 4.1(a)(1); and RPC 8.4(c).

Specifically, the hearing panel found that Jeter "repeatedly evidenced respect for telling the truth." Conversely, the hearing panel found respondent's "testimony on direct was surprisingly short and extremely limited, consisting

primarily of the assertion [Affidavit 2] was signed by [Jeter] in [r]espondent's office in front of [r]espondent," as well as the assertion of mitigating factors.

The hearing panel noted that respondent's answer to its question of whether he would do anything different in hindsight "evidence[d] a shocking ignorance of the requirements of the Rules of Professional Conduct [sic] or a cavalier disdain for their application."

The hearing panel explained that, due to the "complete lack of documents in [r]espondents' files," its decision rested on credibility determinations. To that end, the panel found that Jeter was "highly credible. Respondent was not."

Consequently, the panel found that respondent knowingly engaged in deception in his representation of Jeter. It concluded that respondent initially attempted to withhold Jeter's signature page from Affidavit 1; failed to notarize Affidavit 1 despite Jeter signing it in his presence; sent Affidavit 2 to Woolridge, which Jeter claimed not to have signed despite it having been notarized by respondent; and failed to provide a copy of Affidavit 2 to Jeter. The hearing panel found that Jeter's testimony, along with the documentary evidence, supported its finding that respondent knowingly engaged in deception. It also noted that respondent had more than one opportunity to present evidence to corroborate his testimony but failed to do so.

The hearing panel found that respondent violated RPC 1.3 because, despite having been retained in 2015, as of October 2022, Jeter's matter remained unresolved and "virtually nothing exists reflecting any work having been done" by respondent.

Similarly, the panel found that respondent violated RPC 1.4(b) because he "engaged in virtually no provable communications with [Jeter] respecting any substantive aspect of [Jeter's] workers' compensation case." Its determination was based on the credibility determinations it made weighing Jeter's testimony that respondent failed to communicate with him against respondent's testimony that he spoke with Jeter approximately every three weeks for the duration of the litigation.[13]

Relatedly, the panel found respondent violated RPC 1.2(a) when he kept Jeter:

> entirely in the dark regarding the procedure for liquidation of a workers' compensation claim, the status of communications with the City of Newark, any need to appear in court, the scheduling and conduct of a settlement conference, and the timing within which any settlement should be expected to be received.
>
> [HPR13.]

[13] Once every three weeks throughout the more than six years of litigation would be 102 times.

Finally, the hearing panel concluded that respondent violated RPC 4.1(a)(1) when he sent Affidavit 2 to Woolridge because, in the panel's view, Jeter credibly testified that he never signed the document and was unaware of its existence until the DEC provided it to him. Consequently, the panel determined that Affidavit 2 was notarized improperly by respondent. The panel did not, however, make a determination as to who affixed Jeter's signature on Affidavit 2.

The hearing panel found that nearly all of respondent's proffered mitigating factors were temporally removed from his unethical conduct. Specifically, the panel noted that the mitigating factors occurred in 2018 and 2019, whereas the unethical conduct in Jeter's matter occurred from November 2021 through May 2022.[14]

In aggravation, the panel accepted respondent's admission that he failed to provide Jeter with a written fee agreement. Additionally, it accorded significant weight to respondent's ethics history because it involved dishonesty and ignoring a third party making multiple requests for information.

[14] Respondent's misconduct occurred through October 2022 because he ignored Woolridge's multiple requests to provide a corrected affidavit pursuant to Judge Lande's recommended settlement and admittedly ceased communicating with Jeter following the May 2022 ethics grievance.

Ultimately, the hearing panel determined that a three-month suspension was the appropriate quantum of discipline:

> given the seriousness of the ethical breaches which result from the Panel's conclusion as to the credibility of [Jeter's] testimony and the presentation of only general, unsupported denials by respondent determined not to be credible, together with [r]espondent's apparent lack of understanding or disdain for the Rules of Professional Conduct [sic].
>
> [HPR15.]

Further, the panel recommended that, prior to reinstatement, respondent complete twelve hours of an OAE-approved continuing legal education (CLE) course in legal ethics; submit a written plan to the OAE as to what changes he will implement in his practice to ensure compliance with the RPCs; and, upon reinstatement, practice under the supervision of an attorney approved by the OAE for a period of six months.

The Parties' Positions to the Board

During oral argument, and in his written submission to us, the presenter agreed with the hearing panel's findings and recommendation for a three-month suspension, with conditions. The presenter reiterated that respondent demonstrated no remorse for his misconduct. Further, the presenter disputed respondent's arguments that Jeter was not credible at the ethics hearing, noting

that the hearing panel heard testimony from Jeter and respondent and, ultimately, found that respondent lacked credibility.

The presenter argued that the DEC had no obligation to present expert testimony with respect to Jeter's signature because Jeter himself presented strong testimony that he did not sign Affidavit 2; thus, there was no need to prove the elements of forgery.

Respondent, on the other hand, argued that an admonition was the appropriate quantum of discipline for his unethical conduct. He maintained that the hearing panel erred in finding that respondent's testimony was "not credible as to all material factual issues in dispute, without any evidence in the record demonstrating that [r]espondent testified falsely intending to deceive the trier-of-fact." He accused Jeter of "attempt[ing] to deceive the Ethics Committee" and urged us to reject the panel's "erroneous credibility findings in their entirety."

Respondent disputed the panel's characterization that his mitigating factors began after Jeter had retained him; rather, he argued those factors were "temporally relevant" to the conduct underlying Jeter's ethics grievance and which we had already credited.

Respondent also argued that the evidence in the record demonstrated that Affidavit 2 was not forged, but was signed by Jeter, albeit containing a "mere mistake," as Woolridge testified.

Although he disputed the RPC 1.2(a) allegation before the hearing panel, in his brief to us, respondent accepted the panel's finding that "his efforts to consult with Jeter about the means to pursue the client's objectives in the representation fell short of the high expectations placed upon" him by RPC 1.2(a).

Additionally, respondent asserted that the hearing panel improperly shifted the burden of proof to him because the presenter failed to produce any expert testimony regarding the authenticity of Jeter's signature on Affidavit 2. Consequently, respondent asked that we find Jeter's testimony that he did not sign Affidavit 2 "unreliable and not worthy of belief." Respondent argued the "false about one fact false about all" theory demonstrated the "clear and convincing evidence in the record that [Jeter] intended to deceive the disciplinary process but no such evidence that [r]espondent intended to deceive the trier-of-fact with respect to a material matter." Conversely, he argued that his failure to produce written documents into evidence "supports his credibility" because, as a result, there was no evidence he fabricated documents.

When we questioned whether respondent's argument was that a hearing panel could never find a grievant credible based on testimony alone, respondent argued that there was no evidence in the record to support Jeter's testimony and that there are dishonest people in every profession everywhere. Thus, because the evidence was in equipoise, respondent contended we could not find, by clear and convincing evidence, that he forged Jeter's signature and executed a false jurat. Respondent conceded that we may consider his uncharged RPC 1.5 violation in aggravation.

Ultimately, respondent's position before us echoed the position he took before the hearing panel – that his testimony was in equipoise with Jeter's, and therefore fell short of the clear and convincing standard. Thus, he urged us to reject the hearing panel's findings, with the exception of RPC 1.2(a) and RPC 1.4(b).

The Recordkeeping Matter (DRB 24-189)

Service of Process

Service of process was proper. On July 1, 2024, the OAE sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's office

address in Maplewood, New Jersey, as well as to his e-mail address of record.[15] The same date, the OAE received a relayed receipt indicating delivery to respondent's e-mail address was complete. The OAE received a certified mail receipt that appeared to be signed by respondent.[16] The regular mail was not returned to the OAE.

On July 29, 2024, the OAE sent a second letter to respondent's home and office addresses of record, by regular and certified mail, as well as via e-mail, informing him that, unless 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 the us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The same date, the OAE received a relayed receipt indicating that delivery to respondent's e-mail address was complete. The OAE received a signed certified mail receipt indicating delivery to respondent's home was successful, although the signature is illegible. The United States Postal Service tracking indicated that delivery to respondent's Maplewood office was

[15] "C" refers to the Complaint dated June 24, 2024.
"Ex." refers to the exhibits to the Complaint (1- 15).

[16] According to United States Postal Service tracking, the complaint was delivered to respondent's Maplewood office on July 5, 2024. At the time, he was ineligible to practice law. The OAE did not charge respondent with engaging in the unauthorized practice law, in violation of RPC 5.5 in that regard.

unsuccessful "because the business was closed." However, the regular mail was not returned to the OAE.

As of August 26, 2024, 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 30, 2024, Chief Counsel to the Board sent a letter to respondent, to his home address of record, by certified and regular mail, with an additional copy sent by electronic mail, informing him that the matter was scheduled before us on November 21, 2024, and that any motion to vacate the default (MVD) must be filed by October 21, 2024. On October 8, 2024, the signed certified mail receipt was returned to the Office of Board Counsel (the OBC) bearing an illegible signature. The regular mail was not returned to the OBC.

Moreover, on October 9, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 21, 2024. The notice informed respondent that, unless he filed a successful MVD by October 21, 2024, his prior failure to answer the complaint would remain deemed an admission of the allegations contained in the complaint.

Respondent did not file an MVD.

Allegations of the Complaint

On June 4, 2020, in connection with Davis III, the Court adopted our recommendation and ordered respondent to submit to the OAE monthly three-way reconciliations of his ATA, on a schedule to be determined by the OAE,[17] for two years and until further Order of the Court (the ongoing compliance matter). In re Davis, 242 N.J. 141 (2020). The Court also ordered respondent to resolve all inactive client balances in his ATA, return funds to the owners of identified funds, and deposit any unidentified funds with the SCTFU within sixty days of its Order. The Court has not entered any further Orders vacating respondent's monitoring obligations.

Turning to the allegations of the complaint, respondent maintained an ATA and attorney business account (ABA) at Bank of America. Since 2002, his firm has been registered with the Court as Nathaniel M. Davis, P.C.

On January 19, 2023, the respondent's firm was selected for a mail-in random audit. The same date, the OAE sent respondent a letter directing him, within thirty days, to submit copies of his ATA and ABA records for the prior twelve months. He failed to produce any records.

[17] A footnote in an October 12, 2023 letter from the OAE to respondent references a submission that he had provided to the OAE on April 28, 2022 wherein "clients [sic] ledger cards reflected the same inactive balances when records were provided on 04/28/2022," which suggests that respondent had been non-compliant in the ongoing compliance matter for at least three quarters.

Consequently, on March 29, 2023, the OAE sent a follow-up letter demanding production of the requested records within ten days. On April 12, 2023, respondent contacted the OAE, via telephone, and asked for additional time to provide the requested records, which the OAE granted to April 26, 2023.

On April 27, 2023, after respondent had failed to produce any records, notwithstanding his request for an extension of time, the OAE docketed the matter for investigation (the investigation). On May 8, 2023, the OAE sent respondent a letter informing him it had docketed the matter for an investigation and demanded that he produce his ATA and ABA records from April 2022 through April 2023, no later than May 22, 2023. Respondent failed to produce the requested records.

However, on May 30, 2023, respondent's accountant, Thomas Kuligowski, CPA, provided records in partial satisfaction of the OAE's April 12, 2023 letter concerning the ongoing compliance matter stemming from Davis III. The records also were partially responsive to the investigation.

The records "revealed numerous inactive balances in the ATA, nine of which the OAE had previously reported to [r]espondent as part of his compliance monitoring,"[18] as reflected in the following chart:

[18] It is not clear when and how the OAE communicated information regarding the inactive balances to respondent.

Client	Last Activity Date	Amount	Previously Reported
Fuller, Jerome	4/8/2020	$15,000	X
Brown, Patricia	8/29/2020	$50,000	X
Dills, Tyesha	9/1/2020	$5,000	X
Barksdale, William	9/16/2020	$493.80	X
Graham, Erick	12/31/2020	$250	X
Kelly, Robert	1/25/2021	$1,810	X
Cunningham, Titianna	4/16/2021	$2,150	X
Perry, Paul	7/2/2021	$724.96	X
Smith, Randy	7/27/2021	$6,799.30	X
Crump, Eric	8/24/2021	$447.63	
Horgrave, Marjorie	8/24/2021	$200	
Spencer, Margarita	8/24/2021	$180	
Wendell, Stacey	8/31/2021	$304.61	
Flores, Angel	1/26/2022	$5,500	
Johnson, Allan	2/17/2022	$26,080.46	

Additionally, the records demonstrated that respondent had maintained a negative $512.73 balance in the Tommea Benson matter since June 2022. On June 1, 2022, respondent deposited $7,500 in his ATA on behalf of Benson. Five days later, respondent issued two checks, totaling $8,012.73 ($4,206.04 to Benson and $3,806.69 to himself). During his August 16, 2023 demand audit, respondent informed the OAE that he mistakenly over-disbursed the Benson funds which caused the shortage.[19] Respondent's mistake in disbursing funds in

[19] The record does not contain information as to whether respondent or Benson was the beneficiary of the $512.73 over-disbursement; however, on December 4, 2023, respondent deposited $512.73 to correct his purported mathematical error from eighteen months earlier.

the Benson matter resulted in the invasion of funds he held in his ATA from June 2022 through December 2023 in seventeen other client matters.

The May 30, 2023 records also demonstrated that, on April 15, 2022, respondent maintained a negative $3,000 balance for Everina Powell; however, he deposited $3,000 in his ATA that day, bringing the balance to $0. Respondent told the OAE that he made an error on a settlement sheet and over-disbursed the Powell funds. It is unclear from the record when he over-disbursed the $3,000 in the Powell matter and whether he or Powell benefitted from the over-disbursement.

Furthermore, the records demonstrate that, with respect to his client, Eric Crump, since August 24, 2021, he maintained an inactive balance of $447.63. For reasons not clear in the record, on August 24, 2021, from three separate client matters (Horgrave, Spencer, and Wendell), respondent issued checks to Crump totaling $684.61, which was not the Crump balance reflected in respondent's three-way reconciliations.

Because his production was not fully responsive to the OAE's demands in the investigation, on July 18, 2023, the OAE sent him a letter, via e-mail, directing him to provide the outstanding financial records no later than July 28, 2023. In the same letter, the OAE also scheduled respondent for a demand audit on August 10, 2023. Respondent failed to provide the outstanding financial

records and failed to attend the demand audit. Therefore, on August 10, 2023, the OAE rescheduled the demand audit to occur virtually on August 16, 2023.

Respondent attended the August 16, 2023 demand audit and, during the interview, admitted that he had failed to renew his required liability insurance because the premiums were too high. However, he represented that he was in the process of finding new insurance.[20] It is not clear from the record when respondent failed to renew his liability insurance.

Also during the interview, the OAE asked respondent about the inactive balances in his ATA. With respect to the Barksdale matter, respondent informed the OAE that he had not done work for Barksdale in approximately three years and confirmed that the nearly three-year-old $493.80 inactive balance was due to Barksdale. Although he initially claimed that he had prepared a check for Barksdale, who did not pick it up, when the OAE asked him why the pending check did not appear in his three-way reconciliations, respondent admitted that, in fact, he had not written the check.[21]

[20] During the interview, respondent told the OAE that his firm was a single-member Limited Liability Corporation. However, on July 22, 1998, he incorporated his firm as a professional corporation.

[21] The OAE did not charge respondent with having violated RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities). However, we may consider uncharged unethical conduct in aggravation. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

On August 25, 2023, following the interview and after reviewing respondent's records, the OAE sent him a letter detailing "deficiencies and outstanding items . . . that require corrective action to strengthen the accounting and recordkeeping procedures of [his] trust and business accounts." The OAE directed him to submit conforming records no later than September 25, 2023. The OAE also provided a copy of its Outline of the Recordkeeping Requirements under RPC 1.15 and R. 1:21-6. Respondent, however, failed to produce his records.

Accordingly, on September 28, 2023, the OAE sent respondent a follow-up letter, reminding him that he had failed to provide the requested records. The OAE directed him to submit:

> 1. Proof of corrective action for any negative balances for client ledger cards;
>
> 2. Proof of corrective action for any inactive balances in his ATA;
>
> 3. ABA receipts and disbursements journals;
>
> 4. Confirmation that his insurance certificate was on file with the Clerk of the Supreme Court;
>
> 5. Completed and signed ABA disclosure form;
>
> 6. Settlement statements for clients with negative and/or inactive balances in his ATA.
>
> [Ex.10.]

Respondent again failed to provide his records.

On October 12, 2023, the OAE sent respondent a letter concerning the ongoing compliance monitoring matter and identified three deficiencies: (1) respondent's ongoing failure to correct the $512.73 over-disbursement in the Benson matter; (2) respondent's failure to explain or resolve inactive balances for fifteen clients that had been dormant since April 2020; and (3) the need to include client identification on ATA checks. The also OAE noted that on two sequentially numbered ATA checks respondent issued to himself on November 1, 2022, totaling $15,265.63, he had failed to provide any client identification.[22]

Six days later, on October 18, 2023, as a part of the investigation, the OAE sent respondent another letter detailing the "serious deficiencies which [he had] failed to correct despite [its] repeated requests." The OAE informed respondent that it determined respondent's records were "incomplete and not in accordance with R. 1:21-6 and RPC 1.15. In fact, it appears that you have operated your accounts in disregard of the Supreme Court rules in that you have failed to maintain the records required by R. 1:21-6." The OAE warned respondent that, if he continued to disregard its directives, it would file a formal ethics complaint

[22] Respondent's accountant identified the two checks in his May 20, 2023 submission in the compliance monitoring matter. The two separate $9,734.37 checks pertained to the Denise Hardware and Tamika Hardware matters. The financial information for the two matters is identical in respondent's records.

charging him with an RPC 8.1(b) violation. Respondent failed to produce his records by November 17, 2023.

However, on December 11, 2023, Kuligowski, on respondent's behalf, provided the OAE with some of the outstanding records in the compliance monitoring matter; however, he failed to produce all of the records that the OAE requested as a part of the investigation. The records reflected the same inactive client balances the OAE had identified in its October 12, 2023 letter, and included an additional inactive client balance, Flory Donefsky.

Client	Last Activity Date	Amount	Previously Reported
Fuller, Jerome	4/8/2020	$15,000	X
Brown, Patricia	8/29/2020	$50,000	X
Dills, Tyesha	9/1/2020	$5,000	X
Barksdale, William	9/16/2020	$493.80	X
Graham, Erick	12/31/2020	$250	X
Kelly, Robert	1/25/2021	$1,810	X
Cunningham, Titianna	4/16/2021	$2,150	X
Perry, Paul	7/2/2021	$724.96	X
Smith, Randy	7/27/2021	$6,799.30	X
Crump, Eric	8/24/2021	$447.63	X
Horgrave, Marjorie	8/24/2021	$200	X
Spencer, Margarita	8/24/2021	$180	X
Wendell, Stacey	8/31/2021	$304.61	X
Flores, Angel	1/26/2022	$5,500	X
Johnson, Allan	2/17/2022	$26,080.46	X
Donefsky, Flory	7/1/2022	$15,265.63	

Respondent's December 2023 submission also revealed that he had failed to correct the $512.73 shortage that he carried in his ATA for the Benson matter since June 6, 2022. The records also demonstrated that, on October 4, 2023, he made a $100 cash withdrawal from his ATA.[23]

On January 25, 2024, the OAE sent respondent a letter acknowledging his December 11, 2023 submission but noting his continued failure to replenish the Benson overdraft and to resolve inactive client balances. The OAE also directed respondent to explain why he withdrew $100 in cash from his ATA on October 4, 2023. The letter was the first time the OAE warned respondent, in connection with the ongoing compliance monitoring matter, that his "failure to provide the required explanations and resolutions outlined above could result in [the OAE] moving for your Temporary Suspension from the Practice of Law without further notice to you."

Later, on April 30, 2024, Kuligowski provided the OAE with some ATA records pursuant to the compliance monitoring matter. The records did not fully satisfy the demands of the OAE's October 18, 2023 letter pursuant to the investigation. The records also revealed that respondent had failed to resolve the

[23] According to respondent's monthly balance sheets, he maintained $183.38 in his ATA for Nathaniel Davis, Esq. Although respondent withdrew $100 in cash from his ATA on October 1, 2023, his monthly balance sheet maintained that he held $183.38 in his ATA for himself until the March 31, 2024 balance sheet, when he updated it to reflect that he held $83.38 in his ATA for himself. However, respondent recorded the withdrawal on his "Open Balance Client Ledger Cards" document.

sixteen inactive balances that the OAE reported to him on January 24, 2024. However, the ATA records indicated that, on December 4, 2023, respondent deposited $512.73 in his ATA to resolve the Benson negative balance.

With respect to the investigation, the OAE reviewed respondent's partial submissions from May 30, 2023, December 11, 2023, and April 30, 2024, as part of the compliance monitoring matter, as well as records it obtained via subpoena, and determined respondent violated the following recordkeeping Rules:

> 1. $100 cash withdrawal from his ATA, in violation of R. 1:21-6(c)(2);
>
> 2. Inactive ATA ledger balances for an extended period of time, in violation of R. 1:21-6(d);[24] and
>
> 3. No ABA receipts or disbursements journals, in violation of R. 1:21-6(c)(1)(A).
>
> [C¶53.]

As of June 24, 2024, respondent failed to fully cooperate with the OAE's requests for financial records and to conform his books to R. 1:21-6. Further, the OAE noted that "at least since August 2023" (which was the month it

[24] In Davis III, the OAE explained that it used ten months as a measure of ATA inactivity because it "left some leeway after the six-month period of time within which checks must be negotiated." See also In re Anderson, 254 N.J. 268 (2021) (inactive balances left in the attorney's ATA for at least six months violated R. 1:21-6(d)).

conducted its demand interview with respondent) he failed to maintain required liability insurance, in violation of RPC 5.5(a)(1).

The OAE contended that respondent was "acutely aware of his recordkeeping responsibilities due to prior contacts with the OAE, including a prior censure in 2020 for recordkeeping violations and subsequent ongoing compliance monitoring requirements."

Based on the foregoing, the OAE alleged that respondent violated RPC 1.15(a) by negligently misappropriating client funds in the Benson and Powell matters; RPC 1.15(b) by failing to timely disburse funds in the Barksdale matter;[25] RPC 1.15(d) by failing to maintain his books and records in compliance with R. 1:21-6;[26] RPC 5.5(a)(1) by failing to maintain liability insurance for his law practice, in violation of R. 1:21-1A; and RPC 8.1(b) by failing to fully comply with the OAE's demands for records and failing to make his records available for the OAE's inspection as required by R. 1:21-6(h).

[25] Although the OAE charged respondent only with having failed to timely disburse funds in the Barksdale matter, the record clearly reflects that, based on the OAE's measure of ten months as constituting an inactive balance, respondent failed to timely disburse funds in fifteen additional client matters.

[26] The OAE did not charge respondent with having violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) despite his failure to comply with the Court's June 4, 2020 Order requiring him to return identified inactive client balances to identified clients and to deposit unidentified client funds with the SCTFU within sixty days.

Analysis and Discipline

Violations of the Rules of Professional Conduct

The Jeter Matter (DRB-162)

Following our de novo review of the record (DRB 24-162), we are satisfied that the hearing panel's determination that respondent violated RPC 1.2(a); RPC 1.3; RPC 1.4(b) (two instances); RPC 4.1(a)(1); and RPC 8.4(c) (two instances) is supported by clear and convincing evidence.

There is no question that, from Jeter's perspective, in November 2021, he signed a settlement agreement awarding him $11,070 for his workplace injuries. More than five months later, however, he still had not received his settlement funds and, thus, filed an ethics grievance that incorporated the settlement figure from the affidavit he had signed. Specifically, the basis for his ethics grievance was that five months had lapsed and he had not yet received his $11,070 settlement. Clearly, if Jeter had signed a second settlement agreement for $13,680, he would have written in his ethics grievance that it had been sixteen days and he still had not received the $13,680. It defies logic to accept that, if Jeter knew he was entitled to a $13,680 settlement, he would have demanded satisfaction of a nullified $11,070 settlement.

Separately, and unbeknownst to Jeter, almost seven years after Jeter had retained him, respondent took some action to move his workers' compensation

claim forward. He prepared Affidavit 2, forged (or allowed to be forged) Jeter's signature, affixed a false jurat, and submitted the document to Woolridge as if it were legitimate – in one fell swoop, violations of RPC 1.2(a); RPC 1.3; RPC 1.4(b); RPC 4.1(a)(1); and RPC 8.4(c). He admittedly failed to inform Jeter that the court had scheduled a settlement conference. Thereafter, he failed to communicate Judge Lande's recommendation to Jeter. Worse, despite withholding the settlement proposal from Jeter, respondent proceeded as if he had spoken with his client, and that the client accepted the settlement offer, by preparing settlement documents to include the falsified Affidavit 2.

Although it is true that our determination that respondent engaged in unethical conduct turns on credibility determinations, we have no trouble accepting the hearing panel's sound determination that Jeter's testimony was more credible than respondent's testimony. The documents admitted into evidence clearly corroborate Jeter's version of events. Moreover, Woolridge's testimony and e-mails corroborate that, as of November 2021, when Jeter signed Affidavit 1, there was no valid settlement offer.

Conversely, although he had the opportunity to do so, respondent failed to produce any documents to support his testimony and, indeed, failed to answer the DEC investigator's specific questions regarding the two affidavits. Instead, he offered evasive, vague, and self-serving testimony.

Even respondent's testimony in mitigation raised doubts regarding his truthfulness. He could not recall key facts about his own life – such as when his wife passed away, how old his children were at the time of her passing, when he moved law offices, when he suffered his strokes and heart attack, or when he was hospitalized – even though some of those events are public record by virtue of our decision in Davis III. Respondent's inability to be candid about the mitigating evidence he offered casts a large shadow on his ability to be truthful about events for which he maintained no records.

Furthermore, the record contains three signatures from Jeter and the only signature that differs is the one that appears on Affidavit 2 – the document that Jeter testified he was unaware of and did not mention in his grievance. Worse, respondent notarized Affidavit 2 as if Jeter had signed the document in his presence when, in fact, he did not. Respondent's testimony that Jeter signed Affidavit 2 is simply not believable. Even more egregious, despite knowing the document was forged and that his client was unaware of the settlement Newark had accepted, respondent sent Affidavit 2 to Woolridge and failed to advise her of its falsity. When she noted the document contained incorrect settlement information, respondent ignored her completely and, thereafter, neglected the matter altogether.

Additionally, respondent's testimony that he did not understand why Jeter would be upset that his workers' compensation remained unresolved after six years demonstrates his inability to take accountability for his actions in the case. Furthermore, in our view, accusing Jeter's ego of being the problem in the case evidences a shocking lack of remorse.

As a final matter, we reject respondent's argument that the lack of expert testimony concerning his six-year delay in handling Jeter's case precludes a finding that he lacked diligence. To the contrary, there was no evidence that Jeter's case was extraordinarily complex such that it would take more than six years of attention to finalize. Furthermore, although Jeter retained him in 2015, it was not until four years later that he even attempted to obtain a medical report concerning Jeter's injuries.

The Recordkeeping Matter (DRB 24-189)

We next turn to DRB 24-189. Following our review of the record in that matter, we find that the facts set forth in the formal ethics complaint support 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).

Here, we conclude that the facts recited in the complaint fully support the allegations that respondent violated RPC 1.15(a); RPC 1.15(b); RPC 1.15(d); RPC 5.5(a)(1); and RPC 8.1(b) (two instances).

Specifically, there is no question respondent negligently misappropriated client funds in violation of RPC 1.15(a). He over-disbursed $512.73 in the Benson matter and carried a negative $3,000 balance in the Powell matter for an unknown amount of time, both of which invaded funds belonging to the other clients respondent held in his ATA. For eighteen months, despite the OAE's repeated requests, respondent failed to correct the Benson shortage and offered no explanation for his refusal to do so.

Next, respondent violated RPC 1.15(b) which requires attorneys "to promptly deliver to the client or third person any funds . . . that the client or third person is entitled to receive." By respondent's own admission during the demand audit, he had not done work in the Barksdale matter for three years, yet, refused to deliver the $493.80 he held in his ATA to Barksdale. More egregiously, he attempted to deflect his own failure by falsely asserting to the OAE that Barksdale had never picked up the check. However, when confronted with the absence of an outstanding check in his reconciliations, respondent conceded that he never wrote the check.

Moreover, as of June 24, 2024, respondent held funds for sixteen clients in his ATA; the most recent date of last activity was July 1, 2022, and the oldest was April 8, 2020 (which preceded the Court's June 4, 2020 Order and would have been subsumed in its directive that respondent return, within sixty days, the funds of identified clients). Thus, as in Davis III, respondent failed to promptly deliver client funds. Given his sloppy recordkeeping – including his repeated mistakes in disbursing funds and carrying unexplained negative client balances – we are extremely troubled by respondent's refusal to conform his recordkeeping practices, particularly in the face of ongoing compliance monitoring. This is especially troublesome based on his inexplicable movement of $684.61 from three separate client matters for the benefit of Crump's funds in his ATA.

RPC 1.15(d) requires attorneys to "comply with the provisions of R. 1:21-6." Although respondent previously was disciplined for recordkeeping deficiencies – and the Court ordered him to submit monthly three-way reconciliations for two years – he has failed to correct his books and records. After he was selected for a random audit, the OAE identified the following infractions based on the limited records respondent provided:

1. $100 cash withdrawal from his ATA, in violation of R. 1:21-6(c)(2);

2. Inactive ATA ledger balances for an extended period of time, in violation of R. 1:21-6(d); and

3. No ABA receipts or disbursements journals, in violation of R. 1:21-6(c)(1)(A).

Notably, in Davis III, the Court disciplined respondent for his recordkeeping violations (including maintaining inactive client balances), and his failure to safeguard client funds and to cooperate with the OAE's investigation for two years.

Additionally, respondent violated RPC 5.5(a)(1) by failing, since at least August 2023, to maintain professional liability insurance in connection with the operation of his practice of law. R. 1:21-1A(a)(3) requires a professional corporation to obtain and maintain, in good standing, one or more policies of lawyers' professional liability insurance. The Court Rule provides, in relevant part that:

> The professional corporation shall obtain and maintain in good standing one or more policies of lawyers' professional liability insurance which shall insure the corporation against liability imposed upon it by law for damages resulting from any claim made against the corporation by its clients arising out of the performance of professional services by attorneys employed by the corporation in their capacities as attorneys.
>
> [R. 1:21-1A(a)(3).]

Further, R. 1:21-1A(a)(3) requires a professional corporation formed to engage in the practice of law to file with the Clerk of the Court a certificate of insurance,

within thirty days of filing its certificate formation. The Court Rule also requires the professional corporation to file with the Clerk any amendments to or renewals of the certificate of insurance within thirty days of the effective date of the amendment or renewal.

Here, respondent was required, by Court Rule, to maintain professional liability insurance and to file certificates of insurance with the Clerk. Respondent, however, admitted to the OAE, in August 2023, that he had determined the premiums were too high to renew his insurance policy. Even though the duration of respondent's practice of law without carrying a liability insurance policy is unclear, there is no question that he has engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1). See In re Klamo, 231 N.J. 395 (2018) (finding that the failure to file a certificate of insurance is a separate violation of RPC 5.5(a) from the failure to maintain insurance). Respondent's decision to place his own financial concerns over his duty to his clients, in the face of his conscious disregard of his recordkeeping obligations, is worrisome, especially in light of his refusal to comply with the Court's June 4, 2020 Order in Davis III.

It is equally clear that respondent violated RPC 8.1(b) by failing to respond to the OAE's lawful demands for information, failing to produce records during the OAE's investigation, and failing to provide all the records

required in the ongoing compliance monitoring matter. To date, respondent has neither produced the requested financial records nor the explanations. Respondent violated RPC 8.1(b) a second time by failing to file an answer to the formal ethics complaint and allowing this matter to proceed as a default. We are troubled by respondent's flagrant disregard of his obligation to cooperate with disciplinary authorities, particularly considering he was disciplined for the same misconduct less than five years ago.

Moreover, we reject respondent's argument that we should consider his success in defending against two prior disciplinary actions as a mitigating factor. By his own admission, he has had continuous contact with the disciplinary system since at least 2016 yet has chosen to ignore his duty to cooperate with ethics authorities in this matter. For more than eighteen months, he failed to fully cooperate with the OAE's investigation and failed to file a verified answer to the formal ethics complaint, both violations of RPC 8.1(b). In our view, respondent's conduct demonstrates an alarming disdain for the disciplinary process.

In sum, in DRB 24-162, we find that respondent RPC 1.2(a); RPC 1.3; RPC 1.4(b) (two instances); RPC 4.1(a)(1); and RPC 8.4(c) (two instances). In DRB 24-189, we find that respondent violated RPC 1.15(a); RPC 1.15(b); RPC

1.15(d); RPC 5.5(a)(1); and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for his misconduct.

Quantum of Discipline

An attorney's failure to abide by the client's decisions concerning the scope and objectives of the representation typically results in an admonition. See In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (the attorney settled a matter without the client's authorization and failed to set forth in writing the basis or rate of the legal fee), and In the Matter of Cynthia A. Matheke, DRB 13-353 (July 17, 2014) (the attorney failed to advise her client about "virtually every important event" in the client's malpractice case between 2006 and 2010, including the dismissal of her complaint).

Similarly, an attorney's failure to communicate with a client is met with an admonition, even when accompanied by other non-serious offenses. See In the Matter of Sarah Ruth Barnwell, DRB 21-270 (June 20, 2022), so ordered, __ N.J. __ (2022) (the attorney undertook to represent a client in a child custody matter and, thereafter, ignored most of the client's communications; the attorney also failed to take any affirmative step to advance the client's matter and ultimately terminated the six-month representation without providing an explanation, invoice, or refund; violations of RPC 1.1(a) (gross neglect); RPC

1.2(a); RPC 1.3; RPC 1.4(b); and RPC 1.16(d) (failing to refund the unearned portion of the fee to client upon termination of the representation); the attorney had an unblemished thirteen years at the bar), and In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (the attorney promised to take action to remit his client's payment toward an owed inheritance tax; despite the attorney's assurances that he would act, he failed to remit the payment until two years later; the attorney also failed to return his client's telephone calls or to reply to correspondence; violations of RPC 1.3 and RPC 1.4(b); we considered, in mitigation, the attorney's unblemished career in more than twenty-five years at the bar).

A censure may be appropriate in cases where an attorney's gross neglect (a charge not present here), lack of diligence, and failure to communicate are accompanied by serious aggravating factors, such as the presence of additional, serious ethics infractions, an egregious disciplinary history, severe prejudice to the client, or a lack of contrition. See In re Jaffe, 230 N.J. 456 (2017) (censure for an attorney who, in consolidated client matters, violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d) (failing to protect client's interests upon termination of representation); RPC 8.1(b); and RPC 8.4(c) and (d); in the first client matter, the attorney failed to file an expungement petition for his client, despite his client's numerous attempts to obtain information regarding his case;

following the client's termination of the representation, the attorney immediately filed with the court a deficient expungement petition, without his client's knowledge, that mispresented to the court that he still represented his client; in the second client matter, the attorney failed to diligently defend his client in a criminal matter, ignored numerous requests for information regarding the case, and failed to provide his client or replacement counsel with the client file; in aggravation, the attorney failed to cooperate with disciplinary authorities in the first client matter, repeatedly engaged in dismissive treatment toward his clients, and previously had been reprimanded twice – the first time for gross neglect, lack of diligence, failure to communicate, and failure to cooperate with disciplinary authorities, and the second time for lack of candor to the tribunal).

The Court has long held that the requirements for the execution of jurats and the taking of acknowledgements must be met in all respects.[27] In re Surgent, 79 N.J. 529, 532 (1979). See, e.g., In re Coughlin, 91 N.J. 374 (1982) (reprimand for an attorney who executed a jurat and completed an acknowledgment on a deed without the presence of the grantor; violations of DR 1-102(A)(4) (conduct

[27] Five steps are involved in notarizing documents: (1) the personal appearance by the party before the attorney; (2) the identification of the party; (3) the assurance by the party signing that they are is aware of the contents of the documents; (4) the administration of the oath or acknowledgment by the attorney; and (5) execution of the jurat or certificate of acknowledgment by the attorney in presence of the party. In re Friedman, 106 N.J. 1, 7-8 (1987).

involving dishonesty, fraud, deceit, or misrepresentation) and DR 7-102(A)(5) (false statement of material fact or law to a tribunal); In re Rinaldo, 86 N.J. 640 (1981) (reprimand for an attorney who permitted his secretaries to sign two affidavits and a certification in lieu of oath); In re Conti, 75 N.J. 114 (1977) ("severe public reprimand" imposed on attorney who directed his secretary to sign the grantors' names; the attorney then signed his name as a witness and completed the acknowledgment).

Attorneys who have taken improper jurats, or signed the names of others, even with authorization, are guilty of misrepresentation, in violation of RPC 8.4(c). See In re Hock, 172 N.J. 349 (2002). Ordinarily, the sanction for the improper execution of jurats is either an admonition or a reprimand. However, admonitions usually are reserved for matters in which the attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but the document is signed by the proper party or the attorney reasonably believes it has been signed by the proper party. See, e.g., In the Matter of Nicholas V. DePalma, DRB 12-004 (February 17, 2012) (as a favor to another lawyer, the attorney signed a deed as the preparer, although the other lawyer had prepared it; he also affixed his jurat to the deed and affidavit of title outside the presence of the sellers and in the absence of their signatures; the sellers later signed the affidavit of title; violation of RPC 8.4(c); we took into consideration that the attorney had

expressed remorse for his misconduct; that his actions were not born of venality but were, rather, a favor for a friend; that he had neither obtained personal gain nor received a fee; that no harm resulted to the sellers; that, at the time of the misconduct, he had been practicing law for twenty-four years, without incident; and that, since his misconduct, another thirteen years had passed before his retirement for medical reasons); In the Matter of Gregory J. Spadea, DRB 10-151 (June 30, 2010) (attorney affixed his jurat to several living will documents that had been signed outside of his presence); In the Matter of William J. Begley, DRB 09-279 (December 1, 2009) (as a favor to an acquaintance, the attorney witnessed and notarized a real estate deed and affidavit of seller's consideration that already had been signed, trusting the acquaintance's story that the signatures were those of his parents, who were too infirm to attend the closing; the son actually was perpetrating a fraud on his sickly parents at the time; the attorney, who received no fee, had no prior discipline in thirty-five years at the bar).

Knowingly making a false statement of material fact to a third person ordinarily requires a reprimand. See, e.g., In re Lundy, 249 N.J. 101 (2021) (reprimand for an attorney who backdated power of attorney documents and presented them to a third party, violations of RPC 4.1(a)(1) and RPC 8.4(c); we found that the attorney did not backdate the documents to cover up a mistake or gain an improper advantage for himself or his client, rather, he drafted and

presented the documents to comply with a demand for proof that his client had been authorized to execute an agreement of sale for a property; in mitigation, we found that the attorney had an otherwise unblemished record in forty-five years at the bar and had promptly admitted his wrongdoing); In re LeVan, 238 N.J. 474 (2019) (attorney misrepresented to the United States District Court for the District of New Jersey and to her adversary that the fee agreement between her and her client, which she produced in response to her adversary's motion to compel production of the agreement, was the original; instead, the document had been recreated, backdated, and signed after the motion was filed, because the attorney could not locate the original following her agreement to produce it; violations of RPC 8.4(a) and (c); compelling mitigation considered); In re Walcott, 217 N.J. 367 (2014) (the attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violation of RPC 4.1(a)(1) and RPC 8.4(c)).

Generally, a reprimand is the appropriate discipline for negligent misappropriation caused by poor recordkeeping practices. See In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices resulted in the negligent invasion of, and failure to safeguard, funds owed to clients and others in connection with real estate transactions; his inability to conform his recordkeeping practices, despite multiple opportunities to do so, also violated

RPC 8.1(b); in mitigation, the attorney had no prior discipline and stipulated to his misconduct), and In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); in mitigation, the attorney had no prior discipline in a thirty-five-year legal career). But see In the Matter of Daniel B. Zonies, DRB 19-312 (November 27, 2019) (in a motion for discipline by consent, three-month suspension for an attorney whose egregious recordkeeping resulted in commingling funds and negligently misappropriating client funds; we found that respondent's "continuous and complete failure" to comply with his recordkeeping obligations warranted greater discipline; the matter was the attorney's fifth matter, which included two prior orders of final discipline addressing recordkeeping infractions).

Even in the absence of a negligent misappropriation, however, greater discipline 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 Alsobrook, 258 N.J. 404 (2024) (censure for an attorney who failed to learn from a prior random audit and continued to negligently invade funds for many years, despite heightened awareness of her recordkeeping obligations; the attorney had previously been the subject of a random audit which revealed multiple deficiencies, although she was not disciplined for her violations; the attorney

also practiced law without maintaining liability insurance), and In re Abdellah, 241 N.J. 98 (2020) (reprimand for attorney who should have been mindful 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).

Typically, cases involving attorneys who fail to promptly deliver funds to clients or third parties have resulted in admonitions or reprimands, depending on the existence of other ethics infractions and prior disciplinary history. See In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition for an attorney who, in three personal injury matters, failed to promptly notify his clients of his receipt of settlement funds and to disburse the clients' share of the funds; the attorney also failed to communicate with clients; no prior disciplinary history), and In re Anderson, __ N.J. __ (2021), 2021 N.J. LEXIS 1327 (reprimand for an attorney who failed to deliver $24,575 in escrow funds promptly; attorney also failed to safeguard funds, negligently misappropriated client funds, and had numerous recordkeeping deficiencies; no prior disciplinary history).

The baseline level of discipline for practicing law without maintaining the required professional liability insurance is an admonition. See In re Lindner, 239 N.J. 528 (2019) (in a default matter, for a three-year period, the attorney

practiced law via a limited liability company without maintaining professional liability insurance; no prior discipline).

However, if the misconduct is accompanied by other violations or aggravating factors, greater discipline may be warranted. See In re Killen, 245 N.J. 381 (2021) (reprimand for attorney who knowingly failed to maintain professional liability insurance for four years; specifically, the attorney made a conscious decision not to renew his professional liability insurance policy based on financial considerations, demonstrating that his own monetary interests were more important than the interests of his clients; the attorney also violated RPC 8.1(b) by refusing to reply to the OAE's communications regarding his conduct and by failing to appear for a demand interview; no prior discipline in his more than thirty-year legal career), and In re Coleman, 245 N.J. 264 (2019) (censure for attorney who, in two consolidated matters, failed to maintain liability insurance while practicing law via a professional corporation; the attorney also negligently misappropriated client funds, violated the recordkeeping Rules, and, for nearly eight years, advertised as a professional corporation despite his corporate status having been revoked; in aggravation, we weighed the default status of one matter and, in the second matter, the prolonged shortage in the attorney's ATA; no prior discipline).

When an attorney fails to cooperate with an arm of the disciplinary system such as the OAE, which uncovers recordkeeping improprieties and requests additional documentation, reprimands typically are imposed. 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 that he 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 cooperate with the OAE; however, we imposed a reprimand, noting 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 on precedent, respondent's utter failure to advance his client's interests in the Jeter matter, in conjunction with his subsequent

submission of a forged affidavit to his adversary, warrants at least a three-month suspension. His additional misconduct – namely, his ongoing failure to rectify recordkeeping violations, despite the Court's Order in Davis III imposing a censure and monitoring conditions – also warrants the imposition of a term of suspension. To craft the appropriate discipline, however, we must consider both mitigating and aggravating factors applicable in both matters.

We accord minimal weight to the mitigating factors respondent offered. At the time of his wife's passing, Jeter's workers' compensation matter had already lingered for three years and his misconduct surrounding Affidavit 1 and Affidavit 2 occurred more than three years thereafter. Respondent failed to produce any evidence that the personal events in his life impacted his ability to practice law; to the contrary, in his testimony, he insisted they did not. Furthermore, because of his vague testimony surrounding his medical conditions and hospitalizations, we have no information as to when those occurred and, thus, cannot determine their impact on Jeter's matter.

There are numerous, profound, aggravating factors. First, we accord significant weight to respondent's failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment

of clients and repeated failure to cooperate with the disciplinary system). These consolidated matters represent respondent fourth and fifth disciplinary matter before us. In 2007, in Davis I, respondent received a reprimand, on a motion for reciprocal discipline, for practicing law while ineligible and for making misrepresentations to the court, his adversary, and the Pennsylvania – misconduct remarkably similar to the instant matter. In 2012, in connection with Davis II, he received a second reprimand for failing to promptly turnover a client file following the termination of the representation. And, in 2020, in Davis III, he was censured for recordkeeping violations and failing to cooperate with the OAE's investigation – conduct similar to the instant misconduct.

Clearly, respondent has not learned from his past contacts with the disciplinary system, nor used those prior experiences as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, respondent has continued to display disregard, indeed contempt, for our disciplinary rules and our ethics system).

Indeed, it is hard to imagine a more textbook case of an attorney's failure to learn from prior misconduct than this matter – a respondent who comes before us for many of the same RPC violations for which he already has been disciplined. Further, just over four years ago in Davis III, the Court disciplined him for recordkeeping deficiencies, ordered ongoing monitoring, and for four

years, he has doggedly refused to conform his books to R. 1:21-6. Making matters worse, the dishonest conduct that was present in Davis I continued in in the matters currently before us.

Respondent has demonstrated an inclination to keep financial records that do not comport with the recordkeeping Rules, despite his acute awareness of his obligations under R. 1:21-6. His deficient books enabled him to carry negative balances for two client matters due to his "mistaken" over-disbursements. He also has held $114,940.76 in inactive client funds in his ATA, despite the Court having ordered him to return inactive balances to his clients. Further, after ten months of failing to cooperate with the OAE's investigation, respondent had the audacity to withdraw $100 in cash from his ATA, failed to record the withdrawal on his monthly three-way reconciliations for five months, and refused to provide the OAE with an explanation for the withdrawal, conduct which is unconceivable for an attorney who is under Court-ordered monitoring for prior violations of the recordkeeping Rule.

Respondent has a heightened awareness of his obligation to cooperate with disciplinary authorities, given our January 10, 2020 decision and the Court's accompanying June 2020 Order in Davis III. Nevertheless, he failed to cooperate with the OAE's investigation and failed to bring his records into compliance.

In further aggravation, we consider the default status of the Recordkeeping matter. An attorney'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).

Moreover, although the OAE did not charge respondent with having violated RPC 1.5(b) (in the Jeter matter), or RPC 3.4(c), RPC 8.1(a), or RPC 8.4(d) (in the Recordkeeping matter), we may consider that unethical conduct in aggravation. See Steiert, 201 N.J. 119. Just as this is not the first time respondent comes before us for recordkeeping violations, it is not the first time he has engaged in dishonesty. In fact, this is the second time he is before us having engaged in dishonest conduct, having lied to the OAE to cover up his recordkeeping infractions and having falsifying Affidavit 2.

Conclusion

On balance, when considering the totality of respondent's misconduct across both matters, along with the presence of serious aggravating factors, we determine that a one-year suspension is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Additionally, prior to his reinstatement to the practice of law, respondent should be required to comply with all previous conditions imposed by the Court and to provide the OAE with full financial records from June 6, 2020 through the present. Respondent's readmission to the practice of law should be conditioned upon the OAE's submission of a detailed certification to the Court reporting his compliance with the Court's prior Order and R. 1:21-6. See In re Anderson, 258 N.J. 513 (2024).

Member Rodriguez 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. 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 Nathaniel Martin Davis
Docket No. DRB 24-162 and DRB 24-189

Argued: September 19, 2024 (DRB 24-162 only)

Decided: January 14, 2025

Disposition: One-Year Suspension

Members	One-Year Suspension	Absent
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