SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-291
District Docket No. XIV-2024-0488E

In the Matter of Richard Harris Preston
An Attorney at Law

Decided
May 28, 2025

Certification of the Record

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Introduction

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6) and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).

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

Ethics History

Respondent earned admission to the New Jersey and New Hampshire bars in 2006. He has no prior discipline. He previously maintained a practice of law in New Brunswick, New Jersey.

Effective May 30, 2024, the Court temporarily suspended respondent for his failure to cooperate with the OAE investigation underlying this matter. In re Preston, 257 N.J. 485 (2024).

Respondent remains temporarily suspended to date.

Service of Process

Service of process was proper. On October 24, 2024, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record, with another copy sent by electronic mail to his e-mail address of record. According to the United States Postal Service (USPS) tracking, on October 29, 2024, the certified mail was "Delivered, Left with Individual" at respondent's address.[1] The regular mail was not returned to the OAE.

On November 19, 2024, the OAE sent a second letter, by certified and regular mail, to respondent's home address of record, with another copy sent by electronic 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 us for the imposition of discipline, and the complaint would be deemed amended to charge willful violations of RPC 8.1(b). Respondent signed and returned the certified mail receipt, indicating delivery on November 26, 2024.

As of December 5, 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.

[1] The certified return receipt card was returned to the OAE, unsigned.

On January 30, 2025, Chief Counsel to the Board sent a letter to respondent, by certified and regular mail, to his home address of record, with an additional copy sent by electronic mail to his e-mail address of record, informing him that this matter was scheduled before us on March 20, 2025, and that any motion to vacate the default (MVD) must be filed by February 17, 2025. According to USPS tracking, on February 10, 2025, the certified mail was delivered to an individual at respondent's address. The regular mail was not returned to the Office of Board Counsel (the OBC), and the OBC received a notification that delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Moreover, the OBC published a notice dated February 3, 2025 in the New Jersey Law Journal and on the New Jersey Courts website, stating that we would consider this matter on March 20, 2025. The notice informed respondent that, unless he filed a successful MVD by February 17, 2025, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

Respondent did not file an MVD.

Facts

We now turn to the allegations of the complaint.

On July 1, 2022, the OAE's random audit unit conducted an audit of respondent's financial books and records, which revealed numerous recordkeeping deficiencies, including: (1) failing to maintain separate ledger cards for attorney funds for bank charges, as R. 1:21-6(d) and 1:21-6(c)(1)(B) require; (2) failing to maintain separate attorney trust account (ATA) ledger cards for each client, as R. 1:21-6(c)(l)(B) requires; (3) failing to deposit all earned legal fees in an attorney business account (ABA), as R. 1:21-6(a)(2) requires; (4) failing to properly designate an ABA, as R. 1:21-6(a) requires; (5) failing to properly designate an ATA, as R. 1:21-6(a) requires; (6) failing to maintain ATA and ABA receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (10) failing to conduct monthly three-way reconciliations of ATA, as R. 1:21-6(c)(1)(H) requires; (11) failing to retain ATA and ABA records for seven years, as R. 1:21-6(c)(1) requires; and (13) conducting improper ATM or cash withdrawal from ATA, as R. 1:21-6(c)(2) prohibits.

On July 19, 2022, the OAE directed respondent to correct the identified recordkeeping deficiencies within forty-five days. On October 4, November 29, and December 21, 2022, the OAE sent respondent follow up letters, each time directing him to correct all deficiencies within ten days. On February 9, 2023, the OAE sent respondent a final request, via e-mail, seeking his compliance. Respondent failed to provide proof that he had cured any of the recordkeeping deficiencies identified in the random audit.

On March 23, 2023, following a referral from the random audit unit, the OAE initiated a disciplinary investigation.

On April 3, 2023, the OAE notified respondent that it had scheduled a demand interview for May 19, 2023 and directed him to produce his financial records by April 22, 2023. That same date, the OAE issued a subpoena to Provident Bank seeking respondent's financial records.

On April 5, 2023, respondent sent an e-mail to the OAE, inquiring whether the Microsoft Teams meeting link he had received was related to an audit interview.

On April 11, 2023, the OAE confirmed, by e-mail, an earlier telephone conversation with respondent during which the OAE reminded him of the deadline for the production of his financial records in advance of the demand audit scheduled for May 19, 2023. Nevertheless, respondent failed to provide the required records.

On May 3, 2023, the OAE sent an e-mail to respondent directing him to provide the required information by May 5, 2023. Respondent, again, failed to provide his financial records.

On May 12, 2023, respondent contacted the OAE to explain he was suffering from medical issues; consequently, the OAE rescheduled the demand audit to June 23, 2023. On May 16, 2023, the OAE directed respondent to provide the outstanding documents by May 19, 2023. Despite the OAE having reiterated the importance of his cooperation he, again, failed to provide the requested documents.

On June 21, 2023, the OAE followed up with respondent due to his failure to provide the requested documentation by the deadline. The OAE informed respondent that it would reschedule the demand audit and directed him to provide the documents by July 21, 2023.

On July 24, 2023, respondent provided incomplete records in response to the OAE's document request. Specifically, despite the OAE's specific request for financial records dating back to April 1, 2016, respondent submitted only bank records spanning from September 1, 2019 through June 30, 2023, and, further, failed to provide documents in response to the OAE's other eleven enumerated requests.

On September 14, 2023, the OAE sent a deficiency letter to respondent and directed him to cure the deficiencies by October 6, 2023. Respondent failed to cure the deficiencies.

On October 26, 2023, the OAE contacted respondent, by telephone, to discuss his failure to produce the requested documents. Following the telephone call, the OAE sent a copy of its September 14, 2023 deficiency letter, along with its Outline of Recordkeeping Requirements Under RPC 1.15 and R.1:21-6, to respondent. The OAE set a status update for October 30, 2023.

On November 8, 2023, the OAE sent an e-mail to respondent and again directed him to provide the requested documents. The OAE also informed respondent that his continued failure to cooperate with the OAE may result in an application for his temporary suspension from the practice of law and the filing of a complaint against him for lack of cooperation. The OAE received confirmation that the e-mail was delivered.

On December 5, 2023, respondent contacted the OAE, by telephone, requesting an extension, until December 15, 2023, of the deadline to provide his financial records. Following the telephone call, the OAE sent respondent an e-mail granting the extension and reminding him of the risk of being temporarily suspended from the practice of law and having a disciplinary complaint filed against him for lack of cooperation. Respondent, again, failed to provide the documentation by the deadline.

On January 11, 2024, the OAE informed respondent that it had rescheduled the demand interview for January 25, 2024 and directed him to provide the outstanding financial records at the time of the audit.

On January 25, 2024, the OAE conducted the demand audit. However, respondent failed to produce the outstanding financial records and participated from his vehicle.

On February 9, 2024, the OAE sent another deficiency letter to respondent and directed him to provide all outstanding documents by February 23, 2024. Respondent failed to provide the requested documents.

Between April 2023 and February 2024, the OAE either directed or reminded respondent to provide the requested financial records no fewer than ten times.[2] Despite the OAE's exhaustive efforts to accommodate respondent and to gain his cooperation, he failed to produce the requested documents and failed to provide proof that he had cured the recordkeeping deficiencies identified in both the initial random audit and the OAE's ensuing investigation.

On March 6, 2024, the OAE filed a petition with the Court seeking respondent's immediate temporary suspension from the practice of law.

On April 2, 2024, the Court issued an Order directing respondent to comply with all outstanding OAE requests within thirty days. Respondent failed to comply with the Court's Order; consequently, on May 30, 2024, the Court temporarily suspended him from the practice of law.

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[2] Specifically, the OAE directed respondent to provide the outstanding documents on April 11, 2023; May 3, 2023; May 16, 2023; June 21, 2023; September 14, 2023; October 26, 2023; November 8, 2023; December 5, 2023; January 11, 2024; and February 9, 2024.

Based on the foregoing facts, the formal ethics complaint charged respondent with having violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6, and RPC 8.1(b) by failing to cooperate with the OAE's requests to produce financial records in connection with the demand audit, pursuant to R. 1:20-3 and R. 1:21-6(j). Additionally, the formal ethics complaint was amended to charge him with having violated RPC 8.1(b) a second time by failing to file a verified answer to the complaint, thus, allowing this matter to proceed as a default.

Analysis and Discipline

Violations of the Rules of Professional Conduct

We find that the facts set forth in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, the record clearly and convincingly demonstrates that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in numerous respects. Specifically, he failed to comply with the recordkeeping requirements by: (1) failing to maintain separate ledger cards for attorney funds for bank charges, as R. 1:21-6(d) and 1:21-

6(c)(1)(B) require; (2) failing to maintain a separate ATA ledger card for each client, as R. 1:21-6(c)(l)(B) requires; (3) failing to deposit all earned legal fees in an ABA, as R. 1:21-6(a)(2) requires; (4) failing to properly designate an ABA, as R. 1:21-6(a) requires; (5) failing to property designate an ATA, as R. 1:21-6(a) requires; (6) failing to maintain ATA and BA receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (7) failing to conduct monthly three-way reconciliations of ATA, as R. 1:21-6(c)(1)(H) requires; (8) failing to retain ATA and ABA records for seven years, as R. 1:21-6(c)(1) requires; and (9) conducting improper ATM or cash withdrawals from ATA, as R. 1:21-6(c)(2) prohibits. Respondent's conduct, in respect of the above violations, constituted a violation of RPC 1.15(d).

In addition, RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." The complaint charged respondent with having violated RPC 8.1(b) by failing to cooperate with the OAE's lawful demands for financial records in connection with the demand audit. Notwithstanding the OAE's exhaustive efforts to compel his cooperation, respondent repeatedly failed to produce the requested financial records. Respondent further failed to comply with the Court's April 8, 2024 Order directing him to comply with the OAE's requests for his financial records.

It is well-settled that cooperation short of the full cooperation required by the Rules has resulted in the finding that the attorney violated RPC 8.1(b). See e.g., In re Sheller, 257 N.J. 495 (2024) (although the attorney timely replied to the OAE's correspondence, he admittedly failed to bring his financial records into compliance, despite the OAE's extensive efforts spanning fourteen months; indeed, on at least four occasions, the OAE provided the attorney with specific guidance on how to correct his records; notwithstanding the OAE's repeated good faith efforts to accommodate him, his submissions consistently remained deficient; we, thus, determined that the attorney violated RPC 8.1(b)); In re Higgins, 247 N.J. 20 (2021) (the attorney failed, for more than seventeen months, to comply with the OAE's numerous requests for information regarding the matters under investigation, necessitating his temporary suspension; although the attorney ultimately filed a reply to the ethics grievance, brought his records into compliance, and stipulated to his misconduct, we concluded that his lengthy period of non-compliance constituted a failure to cooperate); In re Palfy, 225 N.J. 611 (2016) (wherein we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate," noting that "partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion").

To date, respondent has not produced the requested financial records and, consequently, he remains temporarily suspended. 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.

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

Quantum of Discipline

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused the negligent misappropriation of client funds. The quantum of discipline is enhanced, however, if the attorney fails to cooperate with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documents. See, e.g., In re Sheller, 257 N.J. 495 (2024) (reprimand for an attorney after a random compliance audit revealed recordkeeping deficiencies that the OAE previously had identified in a random audit eight years earlier; the attorney failed to cooperate with the OAE's investigation, despite the passage of fourteen months and multiple prompts from the OAE; in mitigation, the attorney had no prior discipline and stipulated to his misconduct); In re Wachtel, 257 N.J. 359 (2024) (reprimand for an attorney who failed to provide the OAE with complete financial records and to correct his recordkeeping deficiencies, despite five extensions granted by the OAE; by the date of the parties' stipulation, the attorney still had not provided the OAE with records demonstrating that he had resolved these deficiencies; in mitigation, the attorney had no disciplinary history and his misconduct did not harm any client); In re Schlachter, 254 N.J. 375 (2023) (reprimand for an attorney who committed recordkeeping violations and, for almost a year, failed to comply with the OAE's numerous record requests; ultimately, the attorney provided only a portion of the requested records; although the OAE attempted to help the attorney take corrective action, he remained non-compliant with the recordkeeping Rules; in mitigation, the attorney's misconduct resulted in no harm to his clients and he had no disciplinary history in sixteen years at the bar).

Based upon the above disciplinary precedent, we conclude that the baseline discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, respondent still has not fully complied with the OAE's requests for information. Consequently, he remains temporarily suspended from the practice of law pending his compliance.

In further aggravation, respondent allowed this matter to proceed as a default. "[A] respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

In mitigation, this matter represents respondent's first brush with the disciplinary system in his nineteen years at the bar, a factor that we and Court typically accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). In further mitigation, we accord some weight to the medical issues respondent was experiencing during the relevant timeframe.

Conclusion

On balance, in view of compelling mitigation, including respondent's otherwise unblemished career in nineteen years at the bar balanced against the default status of this matter, we determine that enhanced discipline is unnecessary. Thus, we conclude that a reprimand is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

As conditions to his discipline, we recommend that respondent be required, within thirty days of the Court's disciplinary Order in this matter, to (1) attend a trust and business accounting class pre-approved by the OAE, and (2) provide proof to the OAE that he has corrected all deficiencies identified during the random audit. Additionally, we recommend that respondent be required to submit to the OAE, on a quarterly basis, his monthly three-way reconciliations, for a period of two years.

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 Richard Harris Preston
Docket No. DRB 24-291

Decided: May 28, 2025

Disposition: Reprimand

Members	Reprimand
Cuff	X
Boyer	X
Campelo	X
Hoberman	X
Menaker	X
Modu	X
Petrou	X
Rodriguez	X
Spencer	X
Total:	9

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