

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-296
District Docket Nos. XIV-2023-0040E and XIV-2024-0018E

In the Matter of Dwight Hugh Day
An Attorney at Law

Decided
June 4, 2025

Certification of the Record

Table of Contents

Introduction..... 1

Ethics History..... 2

Service of Process 2

Facts..... 6

 Count One – Recordkeeping Violations and Misrepresentations to the Court
 and to the OAE 6

 The OAE’s Petition for Respondent’s Temporary Suspension..... 13

 Material Misrepresentations to the Court and to the OAE 16

 Count Two - Respondent’s Failure to File an Affidavit of Compliance..... 20

Analysis and Discipline 22

 Violations of the Rules of Professional Conduct..... 22

 Commingling, Recordkeeping Deficiencies, and Failing to Cooperate ... 23

 Material Misrepresentations to the Court and to the OAE 26

 Failure to File R. 1:20-20 Affidavit 29

 Quantum of Discipline 30

Conclusion 38

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(a) (commingling funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 3.3(a)(1) (two instances – knowingly making a false statement of material fact or law to a tribunal); RPC 3.3(a)(5) (failing to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal); RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities); RPC 8.1(b) (three instances – failing to cooperate with disciplinary authorities);¹ RPC 8.4(c) (two instances – engaging in conduct involving fraud, deceit, dishonesty, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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 third charged violation of RPC 8.1(b).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2004. He previously maintained a practice of law in Newark, New Jersey.

On July 22, 2019, the Court censured respondent for his violation of RPC 1.15(a) (negligently misappropriating client funds); RPC 1.15(d); RPC 8.1(b); and RPC 8.4(c). In re Day, 239 N.J. 21 (2019) (Day I).

On October 19, 2023, the Court temporarily suspended respondent from the practice of law, effective immediately, based on his failure to cooperate with the OAE's investigation underlying the instant matter. In re Day, 255 N.J. 440 (2023). To date, he remains temporarily suspended.

Service of Process

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

office, billing (a Post Office box), and home addresses of record,² with an additional copy sent to respondent's e-mail address of record. That same date, the OAE received an e-mail indicating that the e-mail delivery was complete, but no delivery notification was sent by the destination server.

On October 8, 2024, the certified mail sent to respondent's billing address of record was delivered to his post office box. The regular mail sent to respondent's billing address was not returned to the OAE.

On October 21, 2024, the certified mail sent to respondent's office address of record was returned to the OAE marked "return to sender," "not deliverable as addressed," and "unable to forward."³ The regular mail sent to respondent's office address was returned to the OAE.

The certified mail sent to respondent's home address of record was returned to the OAE, marked "unclaimed," "unable to forward," and "return to sender." The regular mail was not returned to the OAE.

² On October 18, 2024, respondent sent two e-mails to the OAE, regarding a separate matter. Attached to the e-mails were two handwritten letters, wherein respondent listed his billing address. On November 13, 2024, respondent sent another e-mail to the OAE regarding that same matter. Respondent attached a typed letter, which again listed his billing address.

³ New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court records continue to reflect the home, office, and billing addresses used for service in this matter. Respondent indicated, in his communications with the OAE, that he had been living outside of the United States for an extended period, in various locations in Colombia. However, he continued to communicate with the OAE via his e-mail address of record and, further, on his written correspondence, continued to use his billing address of record.

On October 31, 2024, the OAE sent a second letter, by certified and regular mail, to respondent's office, billing, and home addresses, with a copy sent to respondent's e-mail address of record, 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 a willful violation of RPC 8.1(b) by reason of his failure to answer. That same date, the OAE received a delivery notification indicating that e-mail delivery of the second letter was complete although no delivery notification was sent by the destination server.

According to the United States Postal Service tracking, the certified mail that was sent to respondent's billing address of record was "available for pickup." The regular mail sent to respondent's billing address was not returned to the OAE.

On November 12, 2024, the certified mail sent to respondent's office address was returned to the OAE, marked "return to sender," "not deliverable as addressed," and "unable to forward." The regular mail sent to respondent's office address was returned to the OAE. The certified mail sent to respondent's home address was returned to the OAE as "unclaimed" and "unable to forward." The regular mail sent to respondent's home address was not returned to the OAE.

In addition to the foregoing letters, on November 1, 2024, and again on November 13, 2024, the OAE sent a copy of the complaint to respondent via his e-mail address of record. On November 13, 2024, respondent replied, stating “I am confused. I did not know there was another complaint.”

Less than an hour later, on November 13, 2024, the OAE replied and, again, provided respondent with a copy of the complaint, as well as its October 1 and October 31, 2024 letters. In its e-mail, the OAE stated “Mr. Day, thank you for acknowledging receipt of the OAE’s formal disciplinary complaint. Which I have attached again for your reference.” That same date, in an e-mail exchange regarding an unrelated matter, the OAE informed respondent that the instant matter may proceed as a default if he failed to file an answer.

As of December 11, 2024, respondent had not filed an answer to the complaint, and the time in which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

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, and 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. The certified mail was returned to the Office of Board Counsel (the OBC) marked “unclaimed” and

“unable to forward.” The regular mail was not returned to the OBC, and delivery of the e-mail was complete, but no delivery notification 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 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.

Count One – Recordkeeping Violations and Misrepresentations to the Court and to the OAE

In connection with his legal practice, respondent maintained an ATA at PNC Bank and attorney business accounts at PNC Bank (ABA1), Wells Fargo Bank (ABA2), and Capital One Bank (ABA3).

On August 31, 2022, the OAE conducted a random audit of respondent’s books and records. On September 12, 2022, the OAE informed respondent that

its audit revealed that his books and records were so deficient that he was operating in wholesale disregard of R. 1:21-6 and RPC 1.15(d). The OAE identified the following recordkeeping infractions and directed respondent to correct the deficiencies within forty-five days:

- Failing to maintain individual client ledger sheets (R. 1:21-6(c)(1)(B));
- Failing to properly designate ATA (R. 1:21-6(a)(2));
- Failing to maintain ABA receipts and disbursements journals (R. 1:21-6(c)(1)(A));
- Failing to conduct monthly three-way reconciliations (R. 1:21-6(c)(1)(H));
- Failing to maintain fully descriptive ATA receipts and disbursements journals (R. 1:21-6(c)(1)(A));
- Improper firm designation on ATA and ABA (R. 1:21-1B(c));
- Failing to maintain ATA and ABA records for seven years (R. 1:21-6(c)(1));
- Improper electronic transfers from ATA (R. 1:21-6(c)(1)(A)); and
- Failing to properly identify client or file number on ATA checks (R. 1:21-6(c)(1)(G)).

Additionally, the OAE directed respondent to produce the following records, for the period from May 2020 through September 2022: (1) ATA and ABA bank statements with cancelled checks; (2) monthly three-way ATA

reconciliations; (3) fully descriptive ATA receipts and disbursements journals; (4) ABA receipts and disbursements journals; and (5) client ledger cards for all clients for whom funds were held in his ATA.

On October 31, 2022, respondent requested a sixty-day extension, representing that he was “still out of the country.” The OAE granted the extension; however, on January 3, 2023, respondent requested an additional six-week extension to produce his corrected records. The OAE granted the extension to February 10, 2023. Respondent, however, failed to submit the records by the deadline.

On February 14, 2023, the OAE notified respondent, in writing, that his record production remained incomplete and that he had failed to submit proof that he had corrected the deficiencies identified in its September 12, 2022 letter. Thus, the OAE directed him to provide, no later than February 24, 2023, a written explanation for his failure to produce the records previously requested, as well as the following information, for the period May 2020 through February 2023: (1) a completed Attorney Bank Account Disclosure Form, (2) ATA and ABA receipts and disbursements journals with bank statements, and (3) monthly three-way ATA reconciliations, along with all client ledger cards and bank statements.

On February 24, 2023, respondent sent five e-mails to the OAE,

purportedly attaching all of the requested records for the period from May 2020 through June 2021. In his first e-mail, respondent asserted that he had been “trying to complete all the necessary documents to comply with the rules as [his] previous records were incomplete,” that he had “retained the services of an accounting firm as the auditor recommended,” and was “forwarding all the records that [were] fully complete.” He requested an additional forty-five-day extension to compile the remaining records (for the period July 2021 through February 2023) because he was “still outside of the country.” According to the OAE, the “limited records” that respondent had produced were incomplete.

On April 11, 2023, the OAE notified respondent that, because he had failed to produce all required records, the OAE scheduled a demand audit for May 3, 2023.

On May 2, 2023, the day before the scheduled audit, the OAE sent respondent an e-mail advising that it had not received all of the records requested in its February 14, 2023 letter and requesting that he confirm his availability for the demand audit.

On May 3, 2023, the demand audit took place. Following the audit, the OAE determined that respondent had failed to correct all of the deficiencies identified in its September 12, 2022 letter. Further, as of May 14, 2021, his ledger card for personal funds held in his ATA had a balance of \$754.91,

exceeding the \$250 amount permissible for bank charges.

The OAE’s review of respondent’s ATA records, obtained via subpoena, also revealed that, from July 17, 2019 through April 21, 2022, he had issued twenty-seven ATA checks, in various round dollar amounts and totaling \$59,900.00, payable to himself, with no client matter identified, in violation of R. 1:21-6(c)(1)(G). Specifically, respondent issued to himself the following ATA checks:

	Check No.	Amount	Date of Check
1	#2529	\$1,000	July 17, 2019
2	#2545	\$5,000	August 28, 2019
3	#2551	\$3,500	September 16, 2019
4	#2568	\$2,900	November 19, 2019
5	#2573	\$ 600	March 4, 2020
6	#2574	\$2,000	March 5, 2020
7	#2575	\$2,000	March 6, 2020
8	#2576	\$ 250	March 9, 2020
9	#2582	\$3,000	July 22, 2020
10	#2617	\$2,500	December 1, 2021
11	#2621	\$3,000	December 28, 2021
12	#2622	\$2,500	January 4, 2020 ⁴
13	#2623	\$1,750	January 7, 2022
14	#2624	\$2,000	January 19, 2022
15	#2625	\$1,000	January 21, 2022
16	#2626	\$2,500	January 24, 2022
17	#2629	\$3,500	January 31, 2022
18	#2630	\$3,000	February 3, 2022
19	#2633	\$2,500	February 25, 2022
20	#2634	\$3,000	March 3, 2022
21	#2635	\$1,000	March 3, 2022
22	#2638	\$1,900	April 6, 2022
23	#2640	\$2,000	April 20, 2022
24	#2641	\$2,000	April 20, 2022
25	#2643	\$1,000	April 20, 2022
26	#2644	\$1,000	April 20, 2022
27	#2645	\$3,500	April 21, 2022
	TOTAL	\$59,900	

⁴ This check was dated 2020 but most likely was issued in 2022.

Moreover, twenty-two of the twenty-seven checks listed above were deposited in accounts other than respondent's ABAs, contrary to R. 1:21-6(a)(1). Additionally, on at least two occasions (March 6, 2020 and April 20, 2022), respondent issued ATA checks (#2575 and #2641) to himself to correct overdrafts in his ABA.

On May 8, 2023, the OAE sent respondent a letter directing him to provide, no later than May 31, 2023, a written reply to concerns that were discussed during the May 3, 2023 demand audit, as well as his ABA and ATA records for the expanded period January 1, 2016 through May 31, 2023.

In its letter, the OAE also directed respondent to provide a detailed explanation as to why, in 2019, his counsel at the time had represented to the Court that he had hired a certified public accountant (CPA) to assist him with his attorney accounts when, in fact, he had not done so. Specifically, in connection with the Court's Order to Show Cause in Day I, respondent represented to the Court, via an undated brief submitted by his then counsel, that he had "hired a CPA to assist with his bookkeeping, completed an attorney trust and accounting legal education class, and implemented the accounting practices required for both his attorney trust account and attorney business account pursuant to the [Court Rules.]"

Further, because respondent had asserted, without documentation, that he

instead retained a bookkeeper, the OAE also directed him to provide the name and contact information of that bookkeeper, as well as any related retainer agreements, invoices, and billings. Respondent, however, failed to reply.

The OAE had determined to expand the audit period to seven years based upon the round dollar amount ATA checks respondent had issued to himself and his continued failure to explain those transactions.⁵

On May 31, 2023, respondent acknowledged receipt of the OAE's May 8, 2023 letter. He claimed, however, that he was unable to produce the requested records because he had been "out of the country since May 2022" and he could not return to the United States "until the issues with the IRS and the Department of State clear up." Further, he asserted that the OAE was "seeking to relitigate the past" and "requesting information that the OAE already ha[d] in its possession," in connection with his prior disciplinary matter.

On June 1, 2023, the OAE sent respondent an e-mail providing a detailed explanation of why the audit period had been expanded and advising him that

⁵ The OAE exercised its discretion to expand the initial audit period in significant part based on In the Matter of Robert Fortunato, DRB 15-199 (February 2, 2016), wherein the OAE investigating the attorney's financial misconduct had examined only two years of records and we required the attorney to provide records spanning a seven-year period to the OAE. Based on this precedent and the discretion afforded the Director of the OAE, under R. 1:20-2(f)(2), to investigate any information coming to the Director's attention, the OAE expanded the audit period to obtain a "full and complete picture" of the attorney's misconduct involving the issuance of round dollar amount checks to himself without any client reference, which "may constitute the knowing misappropriation of client funds."

the required records, which were due May 31, 2023, had become overdue. The next day, on June 2, 2023, respondent sent an e-mail to the OAE, claiming he had “issues with his passport and taxes” and, therefore, requested an extension of the “maximum allowable time” to produce the required records; he acknowledged that, if he did not receive the requested extension, he would be temporarily suspended. Ultimately, respondent failed to submit any of the requested records.

The OAE’s Petition for Respondent’s Temporary Suspension

On August 30, 2023, based on respondent’s ongoing failure to cooperate with the OAE’s investigation, the OAE filed with the Court a petition for respondent’s immediate temporary suspension from the practice of law.

On or around September 8, 2023, respondent filed an affidavit in opposition to the OAE’s motion, admitting the allegations set forth in the OAE’s supporting affidavit but disputing the OAE’s characterization of him as a threat to the legal profession.⁶

Further, respondent asserted in his affidavit that he “did not lie or misspeak” to the Court in connection with Day I, as the OAE had alleged in its

⁶ Neither the OAE’s affidavit in support of its petition nor its nineteen exhibits were included in the record before us.

motion, regarding his retention of a CPA. Specifically, he stated that he had “retained the services of a CPA, Tom McCann CPA, who was to deal with [his] personal and business matters.” However, after McCann began working on respondent’s personal taxes, McCann’s wife and assistant became ill, so McCann “never got to [respondent’s] business matter[s].” Respondent claimed that he, thereafter, consulted with another professional, but he did not retain her services because she was a “bookkeeper/tax prep professional.”

Further, respondent argued that the OAE’s expansion of the audit period to 2016, in conjunction with the OAE’s directive to produce the outstanding records by May 31, 2023, was “unreasonable.” In his view, the OAE was “already in possession of the earlier records” by virtue of the previous disciplinary matter, “which was investigated by this very auditor when the OAE sought [his] disbarment.” Respondent asserted that the OAE knew “that back then [he] did not have records that were computerized” because he “kept the books manually.” Thus, respondent asserted that the OAE was “trying to re-litigate a past matter having failed to have [him] disbarred.”

Respondent also stated that there was “no way” that he could have complied with “this new audit period,” because, at the time of his previous disciplinary matter, he had been “very upset” and did not keep copies of the records he submitted to the OAE. Additionally, he had been out of the country,

in Colombia, since May 2022, making it much more difficult to comply with the OAE's demands. He claimed that he had "retained the services of a CPA to assist [him] in complying to the demands of this audit" and that he had "produced half of the requested records" when the OAE "changed course and requested another [four] years [of records] be produced in [twenty-two] days." Respondent asserted that, given the OAE's "demand to go back to 2016," he was assigned "an impossible task even if [he] were not out of the country."

Respondent acknowledged the "need for oversight and compliance with the rules" and accepted full responsibility for not keeping his records in compliance with the Court Rules; however, he maintained that "going back to the past [was] an abuse of [the OAE's] authority," because records he produced in Day I already were "dealt with." He asserted that the Court already had "punished him" and that he had "moved on." Therefore, the temporary suspension was "akin to disbarment" because he "would never be able to comply."

On September 20, 2023, the OAE filed a supplemental affidavit in support of its petition, disputing respondent's assertion that it already possessed the earlier records. Specifically, the OAE clarified that, during the previous investigation underlying Day I, the OAE had issued a subpoena for respondent's ATA and ABA records for the period from January 1, 2014 through June 17,

2015. In the instant matter, the OAE sought records from January 2016 to present.

On October 19, 2023, the Court granted the OAE's petition and temporarily suspended respondent from the practice of law, effective immediately.

On November 21, 2023, the OAE sent respondent a letter advising him of the Court's Order and that the OAE would oppose any application for reinstatement until such time as he produced the required written explanations and financial records.

Material Misrepresentations to the Court and to the OAE

Respondent represented to the Court, via his counsel in connection with Day I, that he had hired a CPA and brought his records into compliance with the Court Rules. During the OAE's demand audit, respondent admitted that he had provided the information about hiring the CPA to his then counsel, thus permitting this false information to be conveyed to the Court. Also, contrary to his representation to the Court that he had hired a CPA to address his trust and business accounting, respondent asserted, in his September 8, 2023 affidavit in opposition to the OAE's motion for his temporary suspension, that, although he had hired McCann for his personal taxes and business matters, McCann never

reviewed his firm's financial records. When interviewed by the OAE, McCann confirmed that he worked on respondent's income tax returns, but he did not do any work associated with respondent's ATA.

In addition to his misrepresentations to the Court, respondent told the OAE that he had hired a bookkeeper. However, he thereafter failed to provide the name, address, or any other information regarding this bookkeeper, despite the OAE's specific directive that he do so.

During the course of the OAE's investigation, respondent failed to produce any ledgers, journals, or reconciliations prepared by a CPA, a bookkeeper, or even himself. Despite his representations to the Court that he had hired a CPA and implemented proper accounting practices, the OAE's investigation revealed that respondent had failed to implement any of the recordkeeping requirements of R. 1:21-6. Indeed, in his September 8, 2023 affidavit to the Court, respondent admitted that that a CPA never prepared his ATA records.

Respondent also falsely asserted, in his September 8, 2023 affidavit to the Court, that the reason he was unable to comply with the OAE's document requests was because the OAE was in possession of those very records. He repeated that assertion in a November 22, 2023 e-mail to the OAE.

Further, despite the fact that respondent appeared before the Court on July

9, 2019, and expressed to the Court that he had corrected his recordkeeping by way of a CPA,⁷ only ten days later, he issued to himself ATA check #2529, in the amount of \$1,000, without any reference to a client matter. Check #2529 was not listed on any client ledger; identified on any checkbook register, receipts, or disbursements journal; or included as part of any ATA reconciliation. Indeed, by the time the OAE filed its complaint on September 27, 2024, and nearly two years after the initial audit, respondent still had not provided a credible explanation for check #2529 or any of the subsequent, twenty-six ATA checks he issued to himself, which totaled more than \$59,000.

Ultimately, the OAE's review of respondent's ATA records, obtained via subpoena, did not yield sufficient information to determine whose money respondent was maintaining, at any given time, during the period from July 17, 2019 through April 21, 2022. Thus, the OAE was unable to reconcile respondent's ATA, without greater effort from him, to produce the records to fully account for all client funds in his ATA.⁸

Based on the foregoing, Count One of the formal ethics complaint charged

⁷ The record before us does not include a transcript from the Order to Show Cause.

⁸ In its complaint, the OAE affirmatively stated that, after a careful review of the matter, it determined not to charge respondent with knowing misappropriation, instead reserving its right, pursuant to R. 1:20-2(b)(1)(A), to docket a subsequent investigation if and when respondent cooperates with the OAE as part of any affirmative effort to return to the practice of law in New Jersey.

respondent with having violated RPC 1.15(a) by commingling personal and client funds by holding more than the permitted \$250 for bank charges in his ATA, and RPC 1.15(d) by failing to maintain his firm's financial records in compliance with R. 1:21-6, despite having a heightened awareness of his recordkeeping obligations by virtue of Day I. Next, the complaint charged respondent with having violated RPC 3.3(a)(1), RPC 3.3(a)(5), and RPC 8.4(c) by knowingly permitting his former counsel, in connection with Day I, to falsely represent to the Court that he had hired a CPA and corrected his financial records, despite knowing that he had not done so. The complaint charged respondent with having violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) by misrepresenting to the Court, in his September 8, 2023 affidavit, and restating to the OAE on November 27, 2023, that the reason he was unable to comply with the OAE's document requests was because the OAE was in possession of respondent's earlier ATA records from its investigation in Day I, despite knowing that statement was demonstrably false. Finally, Count One of the complaint alleged that respondent had violated RPC 8.1(b) by failing to cooperate with the OAE's ongoing efforts to obtain his financial books and records.

Count Two - Respondent's Failure to File an Affidavit of Compliance

As detailed above, effective October 19, 2023, the Court temporarily suspended respondent from the practice of law. He has not petitioned the Court for relief from that temporary suspension and, thus, remains temporarily suspended.

The Court's October 19, 2023 Order directed respondent to comply with R. 1:20-20, which required, among other obligations, that he, "within 30 days after the date of the order of suspension . . . file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Further, R. 1:20-20(c) expressly requires that the failure to file the affidavit of compliance constitutes a violation of RPC 8.1(b) and RPC 8.4(d).

Respondent failed to file the required affidavit of compliance. Consequently, on March 8, 2024, the OAE sent him a letter, by certified and regular mail, to his office, billing, and home addresses of record, reminding him of his obligation to file the affidavit, pursuant to R. 1:20-20, and directing that he file the affidavit by March 22, 2024. On March 22, 2024, respondent replied, via facsimile, acknowledging receipt of the OAE's March 8, 2024 letter.

On April 18, 2024, the OAE received a facsimile from respondent with a copy of a notarized R. 1:20-20 affidavit, without attachments. Respondent stated, in his cover letter, that he would send the original affidavit and attachments to the OAE the following week.

On June 14, 2024, the OAE sent an e-mail to respondent, via his e-mail address of record, informing him that the original affidavit with attachments had not been received, and that the affidavit submitted on April 18, 2024 was noncompliant because it failed to include the attachments required by R. 1:20-20. The OAE directed him to file a fully conforming affidavit by June 28, 2024.

On July 10, 2024, the OAE sent another letter, by certified and regular mail, to respondent's billing and home addresses of record, and by electronic mail to his e-mail address of record, directing him to file his affidavit by July 25, 2024.

As of September 27, 2024, the date of the formal ethics complaint, respondent had failed to file the required affidavit, a step required of all suspended or disbarred attorneys. Consequently, Count Two of the formal ethics complaint charged respondent with having violated RPC 8.1(b) and RPC 8.4(d) for his willful violation of the Court's suspension Order. Additionally, the formal ethics complaint was amended to charge him with having violated RPC

8.1(b) a third 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

Following our review of the record, we find that the facts set forth in the formal ethics complaint support most, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts to determine that unethical conduct has occurred. See In re Pena, 164 N.J. 222, 224 (2000) (the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethical violations found by [us] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct"). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the facts

within the certified record do not constitute clear and convincing evidence that the respondent violated a specific Rule. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132 (2017).

Here, we conclude that the facts recited in the formal ethics complaint support the allegations that respondent violated RPC 1.15(a); RPC 1.15(d); RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 8.1(a); RPC 8.1(b) (three instances); RPC 8.4(c); and RPC 8.4(d). We determine, however, that the evidence does not clearly and convincingly support the additional charged violations of RPC 3.3(a)(1) and RPC 8.4(c).

Commingling, Recordkeeping Deficiencies, and Failing to Cooperate

Specifically, respondent improperly commingled personal funds with client funds, in violation of RPC 1.15(a), by holding \$754.91 of personal funds

in his ATA, in excess of the \$250 permitted to cover bank charges.

Next, 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: (1) maintain individual ledger sheets for each client; (2) properly designate his ATA; (3) maintain ABA receipts and disbursements journals; (4) conduct monthly three-way reconciliations of his ATA; (5) maintain fully descriptive ATA receipts and disbursements journals; (6) properly designate his ATA and ABA bank accounts; (7) maintain ATA and ABA records for seven years; and (8) properly identify the client names or file numbers in the memo portion of ATA checks.

In addition, RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this Rule 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, he repeatedly failed to produce the requested financial records or bring his records into compliance with the Court Rules.

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.

Material Misrepresentations to the Court and to the OAE

Next, respondent violated RPC 3.3(a)(5), which prohibits an attorney from failing to disclose to the tribunal a material fact knowing the omission is reasonably certain to mislead the tribunal, by permitting his former counsel, in connection with the Order to Show Cause in Day I, to falsely represent to the Court that he had hired a CPA “to assist with his bookkeeping” and, further, that he had “implemented the accounting practices required” by R. 1:21-6, despite knowing that he had not done so. Indeed, respondent admitted to the OAE, in connection with its investigation underlying the current matter, that he had told his former counsel that both statements were true. However, as respondent conceded in his September 8, 2023 affidavit in opposition to the OAE’s motion for his temporary suspension, the CPA he had retained never reviewed his attorney trust account records.

By this same misconduct, the OAE also charged respondent with having violated RPC 3.3(a)(1) and RPC 8.4(c). RPC 3.3(a)(1), however, prohibits an attorney from making a false statement of material fact to a tribunal and is intended to address false statements that were made by the attorney themselves. By its express terms, the Rule does not apply to false statements made by others. Thus, absent evidence that respondent himself made the false statement in connection with the Order to Show Cause in Day I, either in the brief to the

Court or during oral argument, we are unable to conclude that he violated RPC 3.3(a)(1). Based on the same rationale, we are unable to conclude that respondent violated RPC 8.4(c). Thus, we determine to dismiss the charges that respondent violated RPC 3.3(a)(1) and RPC 8.4(c) in this respect.

Next, the record amply supports the finding that respondent violated RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c) by asserting to the Court, in his September 8, 2023 affidavit, and later via e-mail to the OAE, that the OAE already was in possession of the sought after financial records by virtue of its previous investigation underlying Day I.

Specifically, in the instant matter, the OAE initially directed respondent to produce his firm's financial records for the period spanning May 2020 through September 2022. However, given his ongoing failure to produce the required records, and his failure to provide any explanation for twenty-seven round dollar amount ATA disbursements to himself with no reference to client matters, the OAE properly expanded the audit period to cover the period January 2016 to May 2023. Respondent objected to this request, claiming it was an abuse of the OAE's authority. When the OAE clarified its reasoning, respondent asked for additional time to submit his reply. However, respondent failed to produce any additional documents.

Subsequently, in respondent's September 8, 2023 affidavit to the Court, he asserted that it was "unreasonable" for the OAE to expand its audit period because the OAE was "already in possession of the earlier records" he had produced in connection with Day I. In its supplemental affidavit in support of the petition for temporary suspension, the OAE clarified that, in the previous investigation, the OAE had obtained respondent's ABA and ATA records, via subpoena, for the period from January 1, 2014 through June 17, 2015. Thus, the OAE asserted that the subpoenas issued in Day I did not encompass the time frame in the instant matter (January 2016 through May 2023).

In Day I, respondent produced records for the period from July 2014 through July 2016, representing at best, a seven month overlap with the instant matter. However, as of the date of the formal ethics complaint in that matter (January 5, 2017), his production remained incomplete. In the Matter of Dwight Hugh Day, DRB 18-337 (April 8, 2019) at 9. Thus, even if his production in Day I overlapped, in part, with the instant investigation, this fact, standing alone, did not negate his obligation to produce records for the expanded audit period (January 2016 to May 2023). Therefore, respondent violated RPC 3.3(a)(1) by making the false statement to the Court that the OAE already possessed these records. Likewise, he violated RPC 8.1(a) by repeating the false statement in his November 22, 2023 e-mail to the OAE. Likewise, by virtue of this

misrepresentation, respondent violated RPC 8.4(c) by engaging in conduct that involved dishonesty, fraud, deceit, or misrepresentation.

Failure to File R. 1:20-20 Affidavit

R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the Court's Order of suspension, to "file with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this [R]ule and the Supreme Court's Order."

As the Appellate Division has observed, "the provisions of R. 1:20-20(b)(1) to (14) are designed to protect clients of the [suspended or] disbarred attorney, as well as any other individuals who might unknowingly seek to retain that attorney during the period of his suspension." Eichen, Levinson & Crutchlow, LLP v. Weiner, 397 N.J. Super. 588, 596 (App. Div. 2008). Non-compliance with R. 1:20-20 therefore obstructs one of the primary purposes of the disciplinary system, "to protect the public from an untrustworthy lawyer." See In re Rigolosi, 107 N.J. 192, 206 (1987) ("The purpose of a disciplinary proceeding, as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer.") (citing In re Pennica, 36 N.J. 401, 418-19 (1962)). Non-compliance with R.

1:20-20 may also cause “confusion among . . . clients and an administrative burden for the courts.” In re Kramer, 172 N.J. 609, 626 (2002).

For those reasons, and by operation of Rule, in the absence of an extension granted by the Director of the OAE, failure to file an affidavit of compliance pursuant to R. 1:20-20(b)(15) within the time prescribed “constitute[s] a violation of RPC 8.1(b) . . . and RPC 8.4(d).” R. 1:20-20(c).

Here, respondent willfully violated the Court’s suspension Order, filed on October 19, 2023, by failing to file the required affidavit, a step required of all suspended attorneys. Respondent, thus, violated R. 1:20-20 and, consequently, RPC 8.1(b) and RPC 8.4(d).

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(d); RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 8.1(a); RPC 8.1(b) (three instances); RPC 8.4(c) (one instance); and RPC 8.4(d). However, we determine to dismiss the additional charges, for lack of clear and convincing evidence, that respondent violated RPC 3.3(a)(1) and RPC 8.4(c). 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 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).

The discipline imposed on attorneys who make misrepresentations to a court or exhibit a lack of candor to a tribunal, or both, ranges from an admonition to a significant term of suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition for attorney who failed to notify his client and witnesses of a pending trial date; thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; significant mitigation); In re Vaccaro, 245 N.J. 492 (2021) (reprimand for an attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, claiming that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; violations of RPC 3.3(a)(1) and RPC 8.4(c)); In re Myerowitz, 235 N.J. 416 (2018) (censure for an attorney who lied to the court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers, thus, causing delays and wasting judicial resources; violations of RPC 3.3(a)(1) and RPC 8.4 (c) and (d); the attorney also failed to reply to an order to show cause, in violation of RPC 3.4(c) (disobeying the rules of a tribunal)); In re Gonzalez,

256 N.J. 509 (2024) (three-month suspension for an attorney who intentionally misrepresented to the District Ethics Committee, the OAE, and us that he had terminated his wife's employment at his law firm after blaming her for his firm's recordkeeping irregularities, knowing his omission would mislead disciplinary authorities; the attorney had prior discipline); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for an attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least \$500,000 of the escrow funds remain in reserve; violations of RPC 3.3(a)(1) and (2) (failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in an illegal, criminal, or fraudulent act); RPC 3.5(b) (engaging in ex parte communication); and RPC 8.4(c) and (d); two prior private reprimands (now admonitions)).

Here, respondent's material misrepresentations are most analogous to that of the attorney in Gonzalez, who received a three-month suspension. Like the attorney in Gonzalez, respondent made material misrepresentations to the Court, via his then counsel, and to the OAE. Although there is no evidence in the record before us that respondent, himself, lied to the Court about having hired a CPA

and curing his recordkeeping deficiencies, he nevertheless allowed the Court to make findings with that misapprehension. He also admittedly told his former counsel that he had hired a CPA. He subsequently conceded that the CPA only was able to work on his personal matters and, like Gonzalez, made no effort to correct the misleading statement made by his counsel in Day I. Further, his continued failure to comply with R. 1:21-6 and to produce his records for the OAE's review meant that his misconduct, for which we had recommended his disbarment in Day I, continued unabated.

To make matters worse, respondent subsequently made an affirmative and material misrepresentation to the OAE, and in his affidavit to the Court, that the OAE possessed records that he knew it did not. In this respect, his assertions exceeded the omissions that the attorney had made in Gonzalez and demonstrated a deliberate and knowing lack of candor. Finally, like the attorney in Gonzalez, respondent sought to preserve, as a potential mitigating factor, the continuing misapprehension that he had once and for all addressed his ongoing violations of RPC 1.15(d).

Thus, in our view, respondent's material misrepresentations to the Court and to the OAE, standing alone, could be met with a term of suspension.

However, respondent committed additional misconduct by failing to file the required R. 1:20-20 affidavit of compliance following his temporary

suspension from the practice of law. Generally, attorneys with less serious disciplinary histories have received reprimands, in default matters, for their failure to file the required R. 1:20-20 affidavit. See, e.g., In re Hildebrand, 260 N.J. 20 (2025) (the attorney failed to file the required affidavit following his six-month suspension in connection with his misconduct in a prior disciplinary matter); In re Ashton, 257 N.J. 225 (2024) (the attorney failed to file the required affidavit following his disciplinary suspension, in connection with a motion for reciprocal discipline; his disciplinary history consisted only of the prior two-year suspension); In re Cottee, 255 N.J. 439 (2023) (the attorney failed to file the required R. 1:20-20 affidavit of compliance, despite the OAE's specific requests that he do so; his disciplinary history consisted only of a prior three-month suspension, in a 2021 reciprocal discipline matter); In re Spielberg, 255 N.J. 469 (2022), and In re Stack, 255 N.J. 468 (2022) (the attorneys failed to file their respective affidavits of compliance following their 2020 temporary suspensions for failing to cooperate with separate OAE investigations; Spielberg had no prior final discipline and Stack had a prior 2019 admonition, in a non-default matter).

The quantum of discipline for failure to file an R. 1:20-20 affidavit is enhanced, however, if the attorney has a more serious disciplinary history or in the presence of other aggravating factors. See In re Smith, 258 N.J. 27 (2024)

(in a default matter, censure for an attorney who failed to file R. 1:20-20 affidavits of compliance following two suspensions – a one-year suspension based on misconduct in two client matters, and a consecutive six-month suspension, in a default matter, based on his gross mishandling of one client matter; in each disciplinary matter, the attorney ignored the Court’s Order of suspension, directing that he file the affidavit, and also failed to reply to the OAE’s communications attempting to ensure his compliance; we recommended a six-month suspension, reasoning that the attorney’s disregard of his obligations as a suspended attorney and his refusal to participate in the disciplinary process continued his trend of violating court orders and failing to cooperate with disciplinary authorities, which he had exhibited since he engaged in the misconduct at issue in the underlying disciplinary matters; the Court, however, disagreed and imposed a censure), and In re Ludwig, 252 N.J. 67 (2022) (in a default matter, censure for an attorney who, following his 2021 three-month suspension, failed to file the R. 1:20-20 affidavit of compliance, despite the OAE’s specific requests that he do so; in aggravation, the attorney’s failure to file the affidavit constituted his third disciplinary matter in five years; prior reprimand, in addition to the 2021 disciplinary suspension, in a default matter, that gave rise to his obligation to file the affidavit).

Based upon the above disciplinary precedent, Gonzalez in particular, we conclude that the baseline discipline for the totality of respondent's misconduct is a three-month suspension. To craft the appropriate discipline in this case, however, we also consider mitigating and aggravating factors.

There are no mitigating factors to consider.

In aggravation, respondent was well aware of his recordkeeping obligations, given his completion of a recordkeeping course and his prior discipline in 2019, in connection with Day I, for substantially similar recordkeeping infractions. Yet, for the better part of a decade, respondent has failed to maintain his records in accordance with the recordkeeping provisions of R. 1:21-6. To date, he still has not fully complied with the OAE's requests for information or brought his records into compliance with the Court Rules. 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).

Conclusion

On balance, in view of serious aggravating factors, including the default status of this matter, we determine that enhanced discipline is necessary. Thus, we conclude that a six-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

As conditions precedent to his reinstatement to the practice of law, we recommend that respondent be required to (1) complete a trust and business accounting course approved by the OAE, and (2) submit to the OAE the outstanding financial records that were requested as part of the OAE's underlying investigation of this matter.

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 Dwight Hugh Day
Docket No. DRB24-296

Decided: June 4, 2025

Disposition: Six-month suspension

<i>Members</i>	Six-month suspension
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