Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-057
District Docket Nos. XIV-2019-0106E
and XI-2020-0901E

In the Matter of

Matthew J. Trella

An Attorney at Law

Decision

Argued: June 16, 2022

Decided: September 16, 2022

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Richard S. Mazawey appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.1(a) (two instances – gross neglect); RPC 1.3 (two instances – lack of diligence); RPC 1.4(b) (failure to keep a client

reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.5(a) (two instances – fee overreaching); RPC 1.5(b) (three instances – failure to set forth in writing the basis or rate of the legal fee); RPC 1.8(a) (improper business transaction with a client); RPC 1.15(a) (negligent misappropriation of escrow funds); RPC 1.15(b) (two instances – failure to promptly deliver funds to the client or a third party); RPC 8.1(a) (false statement of material fact in a disciplinary matter); and RPC 8.4(c) (three instances – conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1970 and has no disciplinary history. At all relevant times, he maintained a practice of law in Clifton, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated April 25, 2022, which sets forth the following facts in support of respondent's admitted ethics violations in three client matters.

Respondent's legal practice consists primarily of estate and real estate matters. He admitted that he seldom would enter into written fee agreements with his clients, despite the requirements of RPC 1.5(b). He stated that, generally, when his client was the executor of an estate, his legal fee was

commensurate with the executor's commission. Respondent calculated his fee in this fashion because he was performing the executor's duties on his client's behalf.[1]

During the relevant period, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at Wells Fargo Bank (formerly Wachovia Bank), and a personal money market account at Kearny Bank (formerly Clifton Savings Bank).

The Margaret Yagins Matter

Margaret Yagins retained respondent to handle the estates of her deceased siblings, Jerome Gallagher and Irene Golick (the Gallagher Estate and the Golick Estate, respectively). Respondent did not enter into a written fee agreement with Yagins, despite having not previously represented her.

Yagins's mother, Mary Gallagher, had passed away on February 24, 1999, bequeathing her estate to her three children – Yagins, Gallagher, and Golick. Golick was permitted to live in Mrs. Gallagher's residence, located in Clifton,

---

[1] N.J.S.A. 3B:18-6 permits an attorney to simultaneously serve as the executor and attorney to an estate and to be paid for work performed in both capacities. Importantly, however, the attorney may not charge a legal fee for work performed in their capacity as executor for which they already are compensated by virtue of the executor's commission, or for work that should have been performed in that capacity. Ibid. Further, the attorney's fees are subject to the reasonableness factors set forth in RPC 1.5(a).

New Jersey (the Clifton Property), until Golick's death. Upon Golick's death, the home was to be sold and the proceeds distributed to Mrs. Gallagher's then-living children.

On September 6, 2006, Gallagher died and, on July 24, 2014, Golick died, leaving Yagins as the sole surviving beneficiary to Mrs. Gallagher's estate.

On September 2, 2015, the Clifton Property was sold for $175,000. Yagins was entitled to $117,555.30 of the sales proceeds.[2] Respondent also was required, according to the settlement statement, to hold $37,000 in escrow for death tax liabilities: $15,000 on behalf of the Gallagher Estate and $22,000 on behalf of the Golick Estate.

On June 18, 2015, prior to the sale of the Clifton Property, respondent deposited $10,000 in his ATA from the buyer of the property. Following the sale, on September 2, 2015, respondent made three additional deposits in his ATA, in the amounts of $15,000, $22,000, and $117,555.30, via checks payable to "Matthew Trella – Attorney Trust Account." Thus, according to the parties,

---

[2] The record did not include the settlement sheet or otherwise indicate how the total due to Yagins was calculated. Although the stipulation was, overall, scant on detail, it provided sufficient facts to allow us to determine, by clear and convincing evidence, that respondent's admitted conduct violated the Rules of Professional Conduct.

respondent had deposited in his ATA a total of $165,555.30[3] on behalf of Yagins. A portion of those funds belonged to Yagins directly, as the remaining beneficiary of Mrs. Gallagher's estate, and indirectly, as the executrix/administratrix for the Gallagher and Golick Estates.

On September 8, 2015, respondent paid himself $18,258 in legal fees, via ATA check number 8984.[4] The next day, on September 9, 2015, respondent disbursed $109,297.30 to Yagins, via ATA check number 8993, which included a notation linking the distribution to the sales proceeds for the Clifton Property. Following both disbursements, respondent still held $37,000 in his ATA on Yagins's behalf, consisting of $15,000 for the Gallagher Estate escrow and $22,000 for the Golick Estate escrow.

On September 9, 2015, respondent paid himself an additional $2,000 in legal fees, via ATA check number 8994, thereby invading the remaining $37,000 in funds that he held in escrow on behalf of the Gallagher and Golick Estates.

---

[3] Although the OAE stipulation states that respondent had deposited $165,555.30 in his ATA, the correct sum is $164,555.30 ($117,555.30 + $15,000 + $22,000 + $10,000 = 164,555.30).

[4] The stipulation does not state how respondent calculated his legal fees. However, based upon his stipulated practice of paying himself legal fees equivalent to an executor's commission, this fee ($18,258) far exceeded what was allowable pursuant to N.J.S.A. 3B:18-14, governing executor commissions. For instance, assuming respondent was entitled to a five-percent commission of the total real estate sale proceeds ($175,000), his fee should have been $8,750, far less than the $18,258 legal fee he disbursed to himself.

On September 14, 2015, respondent paid the inheritance tax for the Gallagher Estate, in the amount of $2,312, via ATA check number 9002, and for the Golick Estate, in the amount of $11,304, via ATA check number 9003. On October 13, 2015, the State refunded $453.17 to respondent on behalf of the Golick Estate. Respondent deposited the refund in his ATA, thereby bringing the escrow balance to $21,837.71. On January 27, 2016, respondent paid $391.42 to Altor Abstract Company, Inc., via ATA check number 9252.

Between October 20, 2015 and April 8, 2016, respondent disbursed to himself for legal fees the remaining escrow balance of $21,446.29, via four separate ATA checks in the amounts of $1,500, $9,000, $8,400, and $2,546.29.

On April 7, 2016, Yagins passed away. Prior to her death, respondent requested a valuation from the New Jersey Division of Taxation, Transfer Inheritance Branch, regarding the Gallagher Estate's interest in the Clifton Property. On June 9, 2016, the Division of Taxation notified respondent that the total tax assessment for the Gallagher Estate, as of August 3, 2015, was $3,864.63. However, with penalties and interest, the balance due was $5,306.61. This balance reflected a credit for the $2,312 payment respondent previously had made on September 14, 2015. Respondent failed to pay the balance owed, explaining he "let it slip."

On November 7, 2016, respondent was again notified by the Division of Taxation that outstanding taxes were due from the Gallagher Estate, now totaling $5,468.61. Respondent, however, failed to pay the Gallagher Estate's tax liability on behalf of Yagins.

Nearly a year after her death, on March 31, 2017, the Division of Taxation sent a letter to Yagins's former address notifying her that she would be personally liable for the balance, now totaling $5,596.73, for outstanding taxes owed by the Gallagher Estate. Yagins's executrix, Kathleen Kroh, notified the attorney handling Yagins's estate, Daniel Olszak, Esq. On May 3, 2017, Olszak asked respondent for an accounting regarding the Clifton Property.

Shortly thereafter, on May 22, 2017, respondent deposited $5,625.35 in his ATA, via ABA check number 56725. On the same date, respondent mailed a $5,625.35 ATA check, payable to the State of New Jersey Inheritance Tax Bureau, with the notation "ESTATE OF JEROME GALLAGHER."

On June 21, 2017, Olszak asked respondent to provide him Yagins's client ledger card, a copy of the real estate file for the Clifton Property, and a copy of any inheritance tax returns for the Gallagher Estate.

On June 29, 2017, respondent replied to Olszak and provided him with a copy of the settlement statement and explained he had held $37,000 in escrow to cover the inheritance taxes for the Gallagher and Golick Estates, which had

since been paid, plus interest and penalties. Respondent also enclosed with his letter an ATA check in the amount of $31,374.65, which he stated represented the escrow balance he held on Yagins's behalf ($37,000 less the $5,625.35 payment to the State). Respondent also enclosed an ABA check in the amount of $1,760.72, representing the interest and penalties assessed by the State as a result of his failure to pay the $3,864.63 tax liability in a timely fashion. Both checks were payable to the "Estate of Margaret Yagins."

Respondent did not provide Olszak with Yagins's client ledger card.

On July 7, 2017, Kroh filed an ethics grievance against respondent asserting, in part, that he improperly had held escrow funds that belonged to Yagins for more than one year.

In the course of its financial investigation, the OAE reviewed respondent's bank records. The OAE located a check dated June 29, 2017, which had been drawn from respondent's personal money market account on the same date respondent mailed his ATA check to Olszak. Respondent had deposited that $31,374.65 check in his ATA on the same date.

Respondent explained that the legal fees he had disbursed to himself from the escrow balance were for legal fees he had earned performing other legal

services for Yagins.[5] Respondent asserted that Yagins had authorized him to take these legal fees from the escrow funds, resulting in the zeroing out of the balance. Respondent did not provide his legal bills to the OAE, despite his promise to do so. When the OAE asked why he refunded those earned legal fees, respondent maintained he had made a business decision to waive his fees out of concern for his professional reputation. Further, he acknowledged that he never explained to Olszak that he had paid himself earned legal fees from the escrow funds, or that he had deposited personal funds to reimburse the account.

In the stipulation, the OAE stated that it had investigated this matter as a knowing misappropriation but, based upon respondent's claim that his legal fees were earned and approved by the client, along with the OAE's inability to question Yagins, who had passed away, it lacked sufficient evidence to prove that respondent had knowingly misappropriated attorney trust funds.

The parties stipulated that respondent had failed to promptly pay inheritance taxes for the Gallagher Estate, and to promptly distribute the $37,000 funds held in escrow on behalf of the Gallagher and Golick Estates, in violation of RPC 1.1(a) and RPC 1.3; charged an excessive fee, in violation of RPC

---

[5] Respondent disbursed to himself $23,446.29 in legal fees from the funds he held in escrow. Previously, respondent had disbursed to himself $18,258 in fees, for a total disbursement of $41,704.29 in legal fees.

1.5(a); failed to communicate the basis for his legal fee in writing, in violation of RPC 1.5(b); negligently misappropriated funds of a client or third person (the taxes owed by the Gallagher Estate), between April 8, 2016 and March 23, 2017, in violation of RPC 1.15(a); and failed to promptly deliver funds to a client or third person, in violation of RPC 1.15(b). The parties also stipulated that respondent's misconduct in the Yagins matter violated RPC 8.4(c), although the stipulation lacks a theory or factual basis for this charge.

The Wanda Marut Matter

The OAE's review of respondent's attorney financial records revealed, in a second client matter, a questionable $5,000 deposit in respondent's ATA, via a check drawn on his personal money market account. Respondent explained that he deposited personal funds in his ATA because he had advanced funds to his client, Wanda Marut, for "real estate taxes or whatever," while he was administering the estate of her husband, Edward Marut. As of the OAE's July 18, 2019 audit, Mrs. Marut recently had passed away. Respondent had yet been repaid those funds but stated that he anticipated being repaid upon her heirs' sale of her home.

Previously, in response to the OAE's audit questionnaire, respondent denied having loaned funds to a client. When confronted, however, respondent acknowledged that he had loaned $5,000 to Marut.

According to respondent's client ledger card for Edward Marut, as of January 10, 2014, respondent held $100,016.23 on his behalf. By March 25, 2014, the balance was zero. Nearly fifteen months later, on June 11, 2015, respondent deposited in his ATA the $5,000 check from his personal money market account. Five days later, on June 16, 2015, respondent issued an ATA check in the amount of $147, payable to "Wanda Kietlinski DPM," leaving a balance of $4,854 held on Marut's behalf. On October 29, 2015, respondent paid himself $4,000 in legal fees, via ATA check number 9120, leaving a balance of $854.

Respondent subsequently produced an updated client ledger, in response to the OAE's request, that revealed that he had deposited additional personal funds in his ATA on Marut's behalf. Specifically, on November 30, 2016, respondent deposited in his ATA $1,400 in cash, with "Marut" noted on the deposit slip and "MJ TRELLA CA" noted on the client ledger. Subsequently, on March 9, 2017, respondent deposited in his ATA a $6,500 check from his personal money market account, dated March 8, 2017, with "Marut" noted on the deposit slip. The OAE's review of respondent's personal money market

account bank statements, however, did not reveal a corresponding $6,500 withdrawal.

In respect of his representation of Marut, the parties stipulated that respondent had failed to communicate the basis of his fee in writing, in violation of RPC 1.5(b); entered into an improper business transaction with a client by loaning her money without the required consent and disclosures, in violation of RPC 1.8(a); and knowingly had made a false statement of material fact to the disciplinary authorities by stating on his audit questionnaire that he had not loaned a client money, in violation of RPC 8.1(a) and RPC 8.4(c).

The Estate of John D'Orazio Matter

The OAE's review of respondent's attorney financial records also revealed a questionable ATA deposit, on June 26, 2017, in the amount of $17,300, comprising funds drawn from respondent's personal money market account. Respondent explained to the OAE that this deposit represented a refund of legal fees for work he had performed on the Estate of John D'Orazio (the D'Orazio Estate).

In or around June 2014, respondent assumed representation of the D'Orazio Estate following the death of Otto Blazsek, Esq., who previously had represented the estate. Respondent, having undertaken the representation,

projected that his legal fees would be $17,000 and deposited those funds in his ABA.[6] Respondent, however, was not the executor of the D'Orazio Estate. Further, he could not identify to the OAE what assets he had marshalled that would justify a $17,000 commission or legal fee. Respondent also admitted that the executor had done the bulk of marshalling the assets and paying off liabilities. In fact, respondent recalled that the only work he had performed on behalf of the D'Orazio Estate was completing the estate tax return and paying the tax liability.

At the outset of the representation, Nicholas A. D'Orazio, the executor of the D'Orazio Estate, gave respondent two personal checks: one check in the amount of $4,500 for respondent's legal fees for the representation, and one check in the amount of $8,000 for payment of the D'Orazio Estate's outstanding tax liability. On June 24, 2014, respondent deposited both checks in his ATA.

On July 22, 2014, respondent disbursed two checks from his ATA: the first check was payable to the Treasurer, State of New Jersey, in the amount of $7,533, for tax liability owed by the D'Orazio Estate, and the second check was payable to respondent, in the amount of $467.

---

[6] The stipulation does not indicate the value of the D'Orazio Estate, how much respondent held in his ATA on behalf of the D'Orazio Estate, or how respondent calculated his $17,000 legal fee, other than his general statement that he believed himself entitled to a fee commensurate with an executor's commission.

Thereafter, respondent ignored tax assessment notices from the State indicating that the D'Orazio Estate owed additional taxes. Specifically, on February 11, 2016, respondent was notified by the State that the D'Orazio Estate's total tax liability had been $21,161.25. With penalties and interest, the D'Orazio Estate still owed $15,539.94 (with a credit for the July 22, 2014 payment in the amount of $7,533). On April 28, 2016, respondent received a second notice informing him that those taxes were still owed, and that the liability had increased to $15,767.70. On July 25, 2016, respondent received a third notice informing him that the taxes owed by the D'Orazio Estate had increased to $16,111.21 and were due on August 20, 2016. This third notice was addressed to D'Orazio, as executor of the estate, but mailed to respondent's law office. On January 20, 2017, the State notified D'Orazio that a certificate of debt would be filed against him if the unpaid inheritance taxes, now totaling $16,798.22, were not paid by February 20, 2017. In April 2017, the State again sent to respondent its prior correspondence relating to the unpaid inheritance taxes owed by the D'Orazio Estate.

D'Orazio subsequently sought legal assistance from Paul Sant'Ambrogio, Esq., who contacted respondent. On June 26, 2017, respondent paid the outstanding taxes, totaling $17,300, via ATA check number 10074.

Respondent admitted he ignored the tax delinquency notices and only paid the outstanding taxes when confronted by Sant'Ambrogio. Respondent told the OAE he determined to refund the entirety of his legal fees ($17,000), which he applied toward the outstanding tax liability, because he wanted to close the matter and any connection to Blazsek's practice. Respondent was unable, however, to provide proof to the OAE of the initial $17,000 deposit to his ABA or personal money market account.

The parties stipulated that, as a result of the foregoing misconduct, respondent had failed to promptly pay inheritance taxes for the D'Orazio Estate, in violation of RPC 1.1(a) and RPC 1.3; charged an excessive fee, in violation of RPC 1.5(a); failed to communicate the basis for his legal fee in writing, in violation of RPC 1.5(b); failed to promptly deliver funds to a client or third person, in violation of RPC 1.15(b). The parties also stipulated that respondent violated RPC 1.4(b)[7] and RPC 8.4(c).

In mitigation, the parties stipulated that respondent had no prior discipline; had admitted to his wrongdoing; and had cooperated with the

---

[7] The stipulation does not explicitly address the RPC 1.4(b) charge. However, we are comfortable in our deduction that this charge was predicated upon respondent's failure to inform D'Orazio of the outstanding tax liability, having received numerous notices from the State regarding the balance owed, including one notice that was addressed to D'Orazio but mailed to respondent's law office. By contrast, the stipulation lacks any theory or factual basis tying respondent's misconduct in the D'Orazio matter to the RPC 8.4(c) charge.

disciplinary authorities by entering into the stipulation, thereby avoiding a two-day formal ethics hearing. The parties also stipulated that there were no aggravating factors to consider.

Citing disciplinary precedent discussed in detail below, the OAE asserted both in its written submission to us and during oral argument that a censure was the baseline discipline for respondent's misconduct across three matters. The OAE contended, however, that the presence of substantial mitigation including respondent's lack of prior discipline and his stipulation to the misconduct, justified a downward departure to a reprimand.

On May 18, 2022, respondent, through his attorney, Richard S. Mazawey, Esq., submitted to us a letter brief in which he agreed that a reprimand was the proper quantum of discipline for his admitted misconduct. In support, respondent cited to the lack of any aggravating factors; his unblemished legal career; his cooperation with the OAE; that no funds were misappropriated; and that all legal services were ultimately completed.

During oral argument before us, respondent's counsel highlighted respondent's unblemished legal career, spanning decades. Respondent claimed that his lengthy legal career allowed him to represent generations of the same families and, although not offered as an excuse for the misconduct, explained that such familiarity often led to informal attorney-client relationships and the

lack of written fee agreements. Respondent also asserted, in mitigation, the lack of any tangible loss to his clients, since he eventually paid all outstanding tax liabilities and refunded any owed money to the estates. Further, respondent represented that, following the OAE's investigation, he took remedial steps to ensure his firm's compliance with the Rules.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.1(a) (two instances); RPC 1.3 (two instances); RPC 1.4(b); RPC 1.5(a) (two instances); RPC 1.5(b) (three instances); RPC 1.8(a); RPC 1.15(a); RPC 1.15(b) (two instances); RPC 8.1(a); and RPC 8.4(c) (the Marut matter only). For the reasons set forth below, however, we determine to dismiss the charge that respondent violated RPC 8.4(c) in the Yagins and D'Orazio matters.

Specifically, in the Yagins matter, for nearly two years, respondent failed to pay outstanding taxes due on the Gallagher Estate, despite having received notices from the Division of Taxation, resulting in the assessment of interest and penalties against his client. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.15(b). Further, respondent failed to memorialize the basis or rate of his fee with Yagins in his representation of her in the Gallagher and Golick Estate matters, or the subsequent legal services he claimed to have provided her, thus, violating RPC 1.5(b). Moreover, respondent's initial disbursement of $18,258

in legal fees far exceeded what he would have received if he had disbursed fees commensurate with an executor's commission, his admitted standard practice, thereby violating RPC 1.5(a). Respondent also negligently misappropriated escrow funds when, by April 8, 2016, he had zeroed out the escrow balance, despite his knowledge that taxes were still owed on behalf of the Gallagher Estate, thereby violating RPC 1.15(b). Although the OAE concluded it could not prove knowing misappropriation in connection with respondent's mishandling of these funds, due to his claim that Yagins consented to the disbursements and her subsequent death, the evidence clearly and convincingly proves that respondent negligently misappropriated funds that were escrowed to pay outstanding taxes.

In the Marut matter, respondent stipulated that he did not have a written fee agreement, in violation of RPC 1.5(b). Further, respondent loaned money to his client without the required consent or disclosures, despite previously having denied doing so on the OAE's audit questionnaire, thereby violating RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c).

Regarding the D'Orazio matter, respondent was paid $4,500 to handle the estate and $8,000 to pay outstanding taxes. In July 2014, respondent paid the taxes. Despite already having been paid $4,500 in fees, respondent disbursed to himself an additional $17,000 in legal fees, despite his acknowledgment that he

was not the executor or performing any executor's duties, in violation of RPC 1.5(a). Further, respondent failed to pay additional taxes owed to the State, despite repeated notice of same, and failed to inform the executor regarding his receipt of the delinquency notices, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.15(b). Three years later, respondent eventually paid the outstanding taxes, using the $17,000 in legal fees he previously had disbursed to himself. Moreover, respondent stipulated that he did not have a written fee agreement with D'Orazio, in violation of RPC 1.5(b).

Finally, we determine that there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 8.4(c) in the Yagins and D'Orazio matters. RPC 8.4(c) provides that "[i]t is misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]" A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, respondent was charged with violating RPC 8.4(c) for his mishandling of the Yagins and D'Orazio matters and the excessive fees that he charged. Although respondent admitted that his misconduct was in violation of this Rule, this record does not clearly and convincingly establish that respondent fabricated evidence, fraudulently billed the estates for work that he did not perform, or intentionally acted contrary to the clients' express instructions. Accordingly, we determine to

dismiss the RPC 8.4(c) violations charged in the Yagins and D'Orazio client matters.

In sum, we find that respondent violated RPC 1.1(a) (Yagins and D'Orazio); RPC 1.3 (Yagins and D'Orazio); RPC 1.4(b) (D'Orazio); RPC 1.5(a) (Yagins and D'Orazio); RPC 1.5(b) (all three client matters); RPC 1.8(a) (Marut); RPC 1.15(a) (Yagins); RPC 1.15(b) (Yagins and D'Orazio); RPC 8.1(a) (Marut); and RPC 8.4(c) (Marut only). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct was his neglectful handling of the Yagins and D'Orazio matters, the excessive fees he charged, and his misrepresentation to the OAE in connection with the Marut matter.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients in estate matters has been met with discipline ranging from a reprimand to a term of suspension, depending on the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See, e.g., In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the

attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Ludwig, 233 N.J. 99 (2018) (reprimand for an attorney who lacked diligence in an estate matter, failed to communicate with beneficiaries of the estate, and failed to cooperate with ethics authorities, violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b)); In re Finkelstein, 248 N.J. 573 (2010) (censure for attorney who was grossly negligent (RPC 1.1(a)), lacked diligence (RPC 1.3), and failed to communicate with client (RPC 1.4(b)); attorney also failed to safeguard client funds (RPC 1.15(a)), violated recordkeeping Rules (RPC 1.15(d)), and had a prior admonition and reprimand; the financial harm to elderly beneficiaries outweighed mitigating factors, including the attorney's ready admission to his wrongdoing, his contrition and efforts to resolve the estate, and his offer to make the beneficiaries whole); In re Goldsmith, 190 N.J. 196 (2007) (censure for attorney who ignored an estate for almost two years with no disbursements of $500,000 of available funds; the attorney also knowingly disobeyed a court order; prior private reprimand and an admonition); In re Avery, 194 N.J. 183

(2008) (three-month suspension for attorney who, in two default matters, had mishandled four estates, grossly neglected the estates; failed to disburse funds; and failed to turn over accounting records, resulting in financial harm of $160,000 in penalties and interest to one estate; the attorney also failed to cooperate with disciplinary authorities); In re Rodgers, 177 N.J. 501 (2003) (three-month suspension for attorney-administrator of estate who committed gross neglect, lacked diligence, failed to communicate, and failed to disburse funds; the successor-administrator obtained judgment against the attorney for $70,000, which had not been paid as of the date of the ethics hearing; no prior discipline; in aggravation, we weighed the economic harm to the estate and the fact that the misconduct spanned six years); In re Cubberley, 171 N.J. 32 (2002) (three-month suspension for attorney who, in a default matter, failed to reply to requests from the beneficiary and failed to cooperate with disciplinary authorities; prior discipline included an admonition, two reprimands, and a temporary suspension).[8]

---

[8] The additional cases cited by the OAE are in accord. See In re Weiss, 173 N.J. 323 (2002) (reprimand for attorney who failed to file fiduciary income tax return for more than four years, failed to prepare an estate accounting, refunding bonds, or releases for the estate, violative of RPC 1.1(a), RPC 1.1(b), and RPC 1.3), and In re Morris, 152 N.J. 155 (1998) (reprimand for attorney who grossly neglected an estate for eleven years; the attorney ultimately made restitution for losses totaling more than $8,000; prior admonition for gross neglect of an estate).

Charging an unreasonable fee ordinarily warrants an admonition, if it is limited to one incident. See, e.g., In the Matter of Raymond L. Hamlin, DRB 09-051 (June 11, 2009); In the Matter of Angelo R. Bisceglie, Jr., DRB 98-129 (September 24, 1998); In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997).

Where, however, the attorney's fees are so excessive as to evidence an intent to overreach the client, a reprimand is required. See, e.g., In re Doria, 230 N.J. 47 (2017) (the attorney refused to return any portion of a $35,000 retainer after the client terminated the representation; we upheld a fee arbitration determination awarding the client the return of $34,100 of the $35,000 retainer; we determined that the fee was so excessive as to evidence an intent to overreach; thereafter, the attorney promptly returned the $34,100 to the client); In re Rihacek, 230 N.J. 458 (2017) (attorney found guilty of negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in more than thirty years at the bar); In re Read, 170 N.J. 319 (2002) (attorney charged grossly excessive fees in two estate matters and presented inflated time records to justify the high fees; strong mitigating factors considered).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on

the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and to a client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority, failed to keep a client reasonably informed about the status of the matter, charged an unreasonable fee, failed to promptly turn over funds, failed to segregate disputed funds; failed to comply with the recordkeeping rule, and failed to cooperate with disciplinary authorities).

Generally, a reprimand is the appropriate discipline for negligent misappropriation. See, e.g., In re Osterbye, 243 N.J. 340 (2020) (attorney reprimanded when his poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, funds owed to clients and others as a result of real

estate transactions, in violation of RPC 1.15(a); his inability to conform his recordkeeping practices, despite multiple opportunities to do so, also violated RPC 8.1(b) (failure to cooperate with disciplinary authorities)); In re Mitnick, 231 N.J. 133 (2017) (attorney reprimanded for violations of RPC 1.15(a) and (d) (failure to comply with the recordkeeping requirements of R. 1:21-6); as the result of poor recordkeeping practices, the attorney negligently misappropriated more than $40,000 in client funds held in his trust account; the attorney had an unblemished disciplinary record in a thirty-five-year legal career); In re Weinberg, 198 N.J. 380 (2009) (attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account, because he failed to regularly reconcile his trust account records; his mistake went undetected until an overdraft occurred; the attorney had no disciplinary history).[9]

Respondent's remaining violations of RPC 1.5(b); RPC 1.8(a); and RPC 1.15(b) would each merit an admonition. See, e.g., In the Matter of Peter M.

---

[9] Although respondent was not charged with recordkeeping violations, pursuant to RPC 1.15(d), an apt comparison can be made from the facts of the instant matter, wherein respondent failed to take reasonable steps to pay the outstanding Gallagher Estate tax liability prior to his disbursement of the remaining escrow funds to himself. Respondent admittedly "let it slip." Although respondent asserted that he earned the legal fees and had Yagins's consent to disburse those payments to himself, respondent was nonetheless required to hold those funds until the taxes had been paid. His failure to do so resulted in the negligent misappropriation of those entrusted funds.

Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; violations of RPC 1.5(b) and RPC 1.2(a); no prior discipline); In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he lent the client $16,000, in monthly increments of $1,000, to enable him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained an impermissible mortgage from the client on his share of the marital home; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)); In the Matter of Jeffrey S. Lender, 11-368 (January 30, 2012) (admonition for attorney who failed to promptly deliver funds to a client or third party, in violation of RPC 1.15(b)).

Here, respondent's grossly negligent handling of the Yagins and D'Orazio matters is most similar to that of the attorney in Finkelstein, who was censured

for mishandling an estate. In Finkelstein, the attorney failed to conclude the estate for nine years, failed to timely file the New Jersey inheritance tax return, failed to obtain the necessary tax waiver, and permitted a certificate of debt to be filed against the estate. Finkelstein did not file the required tax returns until the OAE had commenced its investigation. Finkelstein also failed to communicate with his client. Further, as a result of his recordkeeping irregularities, Finkelstein negligently misappropriated the estate's funds. As a result of his gross neglect, Finkelstein deprived the two elderly beneficiaries of the estate of approximately $117,000. For his misconduct, we determined that Finkelstein violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.15(a); and RPC 1.15(d).

In determining that a censure was the appropriate sanction for Finkelstein's misconduct, we considered, in mitigation, that: his misconduct spanned just one client matter, he readily admitted his wrongdoing, he offered to make the estate beneficiaries whole, and he retained an accountant. We concluded, however, that any mitigation was outweighed by the aggravating factors, including the financial harm Finkelstein caused to the elderly beneficiaries by depriving them of needed funds for a prolonged period of time. We also weighed Finkelstein's prior discipline, which consisted of an admonition and reprimand, both of which were for his neglectful handling of

client matters. In the Matter of Terry J. Finkelstein, DRB 09-264 (December 8, 2009), at 15-16.

Respondent, like Finkelstein, failed to timely administer estates on behalf of his clients. Specifically, respondent failed to promptly pay State taxes in both the Yagins and D'Orazio matters, for two and three years, respectively. Further, in Yagins, respondent negligently misappropriated funds that should have been held in escrow for tax liability. Unlike Finkelstein, however, respondent's misconduct occurred in three separate client matters, and included fee overreaching in the Yagins and D'Orazio matters. Moreover, unlike Finkelstein, in connection with the Marut matter, respondent engaged in a conflict of interest by loaning funds to his client, and also made misrepresentations to the OAE. In these respects, respondent's misconduct is more egregious than the misconduct in Finkelstein. On the other hand, Finkelstein's misconduct spanned nine years and deprived elderly beneficiaries of more than $117,000 for an extended period of time – circumstances not present here. Importantly, too, attorneys who were more severely disciplined than Finkelstein for their neglectful handling of estate matters had caused severe prejudice to their client, had defaulted, or had extensive disciplinary histories, factors not present here. See, e.g., Avery, Rodgers, and Cubberley, detailed above.

Based upon the above-cited precedent, and Finkelstein in particular, the totality of respondent's misconduct could be met with a censure. In crafting the appropriate discipline, we also consider the impact of any mitigating and aggravating factors.

In mitigation, respondent has an unblemished record in more than fifty years at the bar, a factor we accord considerable weight. In re Convery, 166 N.J. 298, 308 (2001). Respondent also readily admitted his misconduct by entering into this disciplinary stipulation, thereby conserving disciplinary resources.

In aggravation, respondent failed to pay the outstanding taxes in the Yagins and D'Orazio matters, resulting in the accrual of unnecessary fees and interest, thereby causing harm to the clients. Although respondent eventually paid all of the outstanding tax liabilities, including fees and interest, and paid to the Yagins Estate the remaining escrow funds, he did so years after they were due and only upon prompting by other counsel.

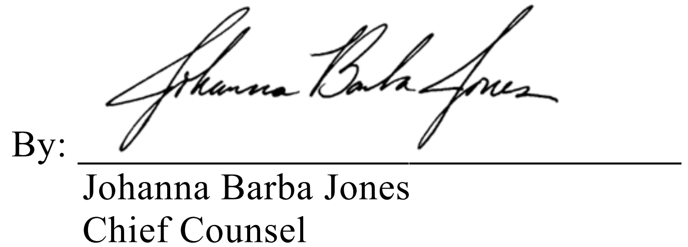
Finally, though uncharged, we would be remiss if we did not consider, in aggravation, that respondent admitted that he rarely entered into written fee agreements with his clients. Thus, his violation of the Rule in this regard was not limited to the three client matters giving rise to this disciplinary matter, but instead spanned years and many client matters. See In the Matter of Kevin Michael Regan, DRB 20-134 (March 22, 2021) (in aggravation, we considered

the attorney's improper attempt to persuade the grievant to withdraw the grievance, a per se RPC 8.4(d) violation; although the attorney was not charged for his misconduct in this respect, we observed that uncharged conduct may serve as an aggravating factor and, as a result, imposed an enhanced sanction of a censure), so ordered, 249 N.J. 17 (2021); see also In re Spina, 121 N.J. 378, 385 (1990) (in aggravation, the Court considered the attorney's admitted misuse of other client funds for which he had not been charged).

Despite respondent's unblemished disciplinary history, the totality of his misconduct across three client matters and his admitted misconduct in uncounted additional client matters in which he failed to obtain a written fee agreement, was significant. Thus, we do not view the mitigation as sufficiently compelling enough to justify a downward departure from the baseline quantum of discipline. Further, as an attorney with five decades at the bar, respondent is expected to have a superior understanding of his responsibilities pursuant to the Rules of Professional Conduct. On balance, we, therefore, determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair



By: ______________________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Matthew J. Trella
Docket No. DRB 22-057

Argued: June 16, 2022

Decided: September 16, 2022

Disposition: Censure

Members	Censure
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Singer	X
Total:	9

Johanna Barba Jones
Chief Counsel