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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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February 22, 2023

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

**Re: In the Matter of Annmarie P. Smits**  
Docket No. DRB 22-211  
District Docket Nos. XIV-2020-0299E and XI-2022-0900E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to Rule 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.15(a) (negligent misappropriation of client funds) and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

On August 21, 2019, the OAE conducted a random compliance audit of respondent's financial books and records. The random audit revealed that three attorney trust account (ATA) ledger cards reflected debit balances totaling \$10,464.13, and that nine inactive trust ledger balances totaling \$173,051.27 had remained in respondent's ATA for an extended period. The audit further revealed one old, outstanding check for \$1,000; one ATA check for \$1,000

disbursed against uncollected funds, in violation of Advisory Committee on Professional Ethics Opinion 454, 105 N.J.L.J. 441 (May 15, 1980), as amended by 114 N.J.L.J. 110 (August 2, 1984); improperly designated attorney business account (ABA) and ATA; an ATA receipts journal that was not fully descriptive; and improperly formatted digital check images. In addition, the audit identified an issue related to obtaining or maintaining professional liability insurance for respondent's law firm (a limited liability company (LLC)), as required by Rule 1:21-1B(a)(4).

By letter dated August 31, 2020, the OAE informed respondent of these preliminary findings and requested her response.

By letter dated September 18, 2020, respondent replied to the OAE, explaining the causes and resolutions of the three ledger deficits. Specifically, in the D'Amico matter, a \$333.13 shortage resulted from miscalculating costs, and, in the Washburn matter, a \$10,033 shortage resulted from issuing checks from the main ATA rather than from the client's subaccount. Respondent subsequently replenished both clients' trust subaccounts with funds from her ABA. In addition, respondent addressed a \$98 debit for unreimbursed bank charges by depositing \$250 of personal funds in her ATA.

In the same letter, respondent stated she addressed one of the nine inactive trust ledger balances by sending "the check for \$163,556.68 for . . . Rodas" to payee Beck. Moreover, she corrected the designation of her ABA, opened a new, properly designated ATA, and addressed the other, technical recordkeeping violations. Finally, she provided to the OAE a certificate of liability insurance, which showed that her LLC had been covered by a professional liability policy.

Between May and September 2021, respondent addressed the remaining inactive ledger balances. She issued ATA checks to clients Bellofatto (\$249.02); Kubala (\$2,329.60); Schulman (\$853.15); Lucas (\$200.30); and Eli (\$492.96). She deposited with the Superior Court Trust Fund the balances from the Matthew account (\$400) and the Dipietro account (\$3,937.50).

Based on the above facts, the parties stipulated that respondent violated RPC 1.15(a) and RPC 1.15(d). Specifically, in violation of RPC 1.15(a), respondent negligently misappropriated \$10,033 in connection with payments from her main ATA for the Washburn matter; over-disbursed \$333.13 based on miscalculated expenses in the D'Amico matter; and failed to hold funds

sufficient to cover bank charges, causing a \$98 shortage in her ATA. Further, she violated RPC 1.15(d), in numerous respects, by failing to conform her recordkeeping practices to the requirements of Rule 1:21-6. Most significantly, this misconduct resulted in her maintaining inactive balances totaling \$173,051.27, in nine matters, for an extended period. She also had one old, unresolved check; one check disbursed against uncollected funds; incorrectly designated ABA and ATA accounts; an inadequate ATA receipts journal; an issue with the professional liability insurance policy for her LLC; and technical recordkeeping violations.

Generally, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds. 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, 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 mitigation, attorney had no prior discipline and stipulated to his misconduct); In re Mitnick, 231 N.J. 133 (2017) (attorney reprimanded for violations of RPC 1.15(a) and (d); 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 aggravation, respondent was previously censured, in 2021, for misconduct occurring in February 2018. However, the misconduct that gave rise to the censure did not stem from recordkeeping deficiencies and, thus, it cannot be said that respondent failed to learn from her past mistakes. Importantly, respondent's misconduct in the instant case was diverse from the misconduct underpinning her 2021 censure. Thus, although the misconduct at issue here both predated and continued at the time of the conduct that resulted in the 2021 censure, In the Board's view, that censure would not have served as a global sanction for her misconduct, had the matters been consolidated for review.

In mitigation, respondent expressed remorse and promptly addressed the ATA ledger card debits, inactive trust account balances, and recordkeeping deficiencies.

On balance, weighing both aggravating and mitigating factors, the Board determined that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 15, 2022.
2. Stipulation of discipline by consent, dated November 9, 2022.
3. Affidavit of consent, dated November 4, 2022.
4. Ethics history dated February 22, 2023.

Very truly yours,  
*/s/ Timothy M. Ellis*  
Timothy M. Ellis  
Acting Chief Counsel

TME/lg  
Enclosures

c: (w/o enclosures)  
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