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May 26, 2023

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

Re: In the Matter of Douglas Clay Anton

Docket No. DRB 23-068

District Docket Nos. XIV-2019-0600E, XIV-2019-0637E, XIV-2020-0040E, XII-2021-0905E, XII-2021-0906E, and XII-2021-0907E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined that a censure is the appropriate quantum of discipline for respondent's violation of RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation); RPC 1.15(a) (commingling of funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The Board determined to dismiss the charge that respondent violated RPC 1.8(a) (engaging in an improper business transaction with a client).

The stipulated facts are as follows. In 2014, respondent filed a personal injury action on behalf of Peter Moses, his friend and long-term client. In 2016, while respondent was discussing settlement with the defendant in the personal injury suit, Moses found himself in financial straits and was unable to pay rent. As a result, respondent provided Moses with a \$1,000 loan, to be repaid from future settlement proceeds. In entering into this transaction with Moses, respondent admittedly did not observe the safeguards required by RPC 1.8(a).

In a separate matter, respondent submitted a certification to a trial court purportedly from his legal secretary, Carol Medina, in opposition to a summary judgment motion filed against his client. The summary judgment motion alleged respondent had failed to answer requests for admissions, pursuant to R. 4:22-1. The certification respondent submitted stated that Medina had timely transmitted answers to the requests for admissions and bore Medina's electronic signature.

The parties' stipulation did not address whether the content of the certification was false, or whether Medina had directed respondent to affix her signature to the certification. However, respondent stipulated that he did not have Medina review the certification before affixing her signature to it.

Additionally, on December 3, 2018, the OAE conducted a random audit of respondent's financial books and records and discovered the following deficiencies: (1) incomplete descriptions on client ledgers; (2) debit balances on client ledgers; (3) failure to prepare attorney trust account (ATA) receipts journal; (4) inactive trust ledger balances in the ATA; (5) failure to maintain a separate ledger for each client; (6) unidentified funds of at least \$181,561.30; (7) old outstanding checks in the ATA; (8) earned fees languishing in the ATA constituting commingling; (9) failure to prepare attorney business account (ABA) receipts journal; (10) failure to prepare ATA reconciliations; and (11) failure to maintain ATA and ABA records for seven years.

Prior to the December 3, 2018 audit, respondent had "under[gone] random audits in 1997 and 2008." Following the 2008 random audit, respondent was "notified of the deficiencies enumerated in paragraph [4] . . . and paragraph [6]." The inactive balances uncovered in the audit on December 3, 2018 included "[t]hirty-six . . . balances totaling \$66,474.17[.]" which "would have been considered inactive following [the] 2008 . . . audit."

Subsequently, the OAE discovered that, as of July 31, 2019, “a total of \$308,806.93 for 135 inactive client matters remained in [r]espondent’s ATA from 2000 through 2018.”

Respondent eventually corrected all the recordkeeping deficiencies. However, he was dilatory in doing so. For about two years following the December 2018 audits, respondent failed to adhere to numerous deadlines set by the OAE, including deadlines that he himself had proposed. On November 30, 2020, due to respondent’s continued non-compliance, the OAE filed a motion with the Court, seeking respondent’s temporary suspension, pursuant to R. 1:20-3(g)(4) and R. 1:20-11. According to the record “[r]espondent did not provide the outstanding requested information in its entirety until July 2021.” On July 20, 2021, the OAE sent a letter to the Court, withdrawing its motion.

Based on the foregoing facts, the parties stipulated that respondent violated: (1) RPC 1.8(a) and RPC 1.8(e) by loaning funds to Moses; (2) RPC 1.15(a) by failing to timely remove his earned fees from his ATA; (3) RPC 1.15(d) by committing numerous recordkeeping infractions; RPC 8.1(b) by failing to cooperate with the OAE; and RPC 8.4(c) by failing to verify the certification’s content with Medina prior to filing with the trial court.

The Board found that all the charges were supported by clear and convincing evidence, with the exception of the charged violation of RPC 1.8(a), which the Board viewed as duplicative of the RPC 1.8(e) charge. See In the Matter of Anthony F. Malanga, Jr., DRB 15-336 (August 3, 2016) at 75 (dismissing a charged violation of RPC 1.8(a) as duplicative where the attorney loaned money to a client and was charged with having violated RPC 1.8(e)), so ordered, 227 N.J. 2 (2016).

Attorneys who improperly provide financial assistance to clients typically receive an admonition. See In the Matter of Craig Joseph Kobrin, DRB 15-320 (February 2, 2016) (the attorney advanced \$1,500 to a client out of altruism without requiring interest).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients’ funds. See, e.g., In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney commingled and committed several recordkeeping violations, including failure to perform three-way reconciliations, improper account

designation, and failure to preserve images of processed checks); In the Matter of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (following a demand audit, the OAE uncovered multiple recordkeeping deficiencies, including the fact that the attorney (1) did not properly designate the trust account, (2) did not maintain trust account ledger cards for bank charges, (3) allowed an inactive balance to remain in the trust account, and (4) did not maintain business receipts or disbursements journals; the attorney's recordkeeping deficiencies resulted in the return of more than twenty checks, issued to the Superior Court, for insufficient funds; the Board found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing an admonition, the Board weighed the fact that the attorney corrected his recordkeeping errors, took remedial measures to decrease the likelihood of a future recordkeeping violation, had no disciplinary history, and did not injure any client through his misconduct).

Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that had been brought to his or her attention previously. See In re Spielberg, ___ N.J. ___ (2022); 2022 N.J. LEXIS 666 (in a default matter, reprimand for the attorney who failed to correct recordkeeping infractions identified in a previous audit; the attorney also failed to communicate in one client matter, did not promptly return property to clients; and failed to cooperate with the OAE's investigation; despite default status, the baseline of reprimand was not enhanced to censure because of the attorney's unblemished nearly forty-five-year career at the bar), and In re Abdallah, 241 N.J. 98 (2020) (reprimand for attorney who should have been mindful of his recordkeeping obligations based on a "prior interaction" with the OAE in connection with his recordkeeping practices that had not led to an allegation of unethical conduct; unblemished disciplinary record of twenty-four years).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney's ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documentation. See In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative

\$50,200.35 balance, repeatedly failed, for more than three months, to comply with the OAE's requests for his law firm's financial records, including trust account reconciliations, client ledger cards, disbursements journals, and two specific client files; thereafter, although the attorney, for more than eight months, repeatedly assured the OAE that he would provide the required records, he failed to do so, despite two Court Orders directing him to cooperate; the attorney, however, provided some of the required financial records; the Board found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate with the OAE; however, the Board imposed a reprimand in light of the lack of injury to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar).

Generally, the discipline imposed on attorneys who make misrepresentations to a court, or who exhibit a lack of candor to a tribunal, or both, ranges from an admonition to a long-term suspension. See, e.g., In the Matter of William T. Haggerty, DRB 18-067 (May 24, 2018) (admonition for a municipal court prosecutor who violated RPC 3.3(a)(5) (failing to disclose material fact knowing that tribunal may be misled) by failing to disclose his relationship to an officer of the complainant company to the court); In re Vaccaro, 245 N.J. 492 (2021) (reprimand for attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, 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 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) (conduct prejudicial to the administration of justice); 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 Alexander, 243 N.J. 288 (2020) (three-month suspension for attorney who gave false testimony before a hearing officer and a Superior Court judge in connection with a domestic violence matter; the attorney filed a false domestic violence complaint against his live-in girlfriend, leading to the issuance of a temporary restraining order in the attorney's favor; thereafter, during a two-day Superior Court hearing, the attorney's girlfriend presented an audio recording of the alleged incident, which contradicted the attorney's testimony; although the judge allowed the attorney the opportunity to review the

evidence and withdraw his false testimony, the attorney refused to do so; instead, the attorney presented an audio-visual recording of the incident, which again contradicted his version of events; the attorney also misrepresented the nature of his testimony to the OAE; violations of RPC 3.1 (engaging in frivolous litigation), RPC 3.3(a)(1), RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter), RPC 8.4(c), and RPC 8.4(d), among other RPCs; the attorney had no prior discipline in his twelve-year career at the bar); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for 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)).

Given respondent's diverse ethics violations, the Board concluded that the baseline level of discipline for the totality of his misconduct is a censure. In crafting the appropriate discipline, however, the Board also considered mitigating and aggravating circumstances.

In aggravation, respondent allowed a substantial sum – \$308,806.93 – to linger in his account due to his failure to resolve inactive balances. See In re Lueddeke, ___ N.J. ___ (2002), 2022 N.J. LEXIS 456 (censure for the attorney who had over \$400,000 in client and third-party funds languishing in his ATA, even though that same amount had been brought to his attention roughly nine years earlier in a random audit; the attorney entered into a stipulation and corrected all deficiencies; however, he had one previous admonition, albeit for dissimilar conduct). Here, respondent also took more than two years to correct his records.

In mitigation, respondent has no prior discipline in his nearly thirty years at the bar, a factor to which the Board assigned considerable weight. In re Grimes, ___ N.J. ___ (2022), N.J. LEXIS 1165 (according significant weight to the attorney's unblemished disciplinary history of more than thirty years at the bar). Additionally, respondent ultimately brought his records into compliance, admitted to his misconduct, and entered into a disciplinary stipulation.

On balance, the Board found that the aggravating and mitigating factors were in equipoise and determined that a censure is the appropriate quantum of discipline for respondent's misconduct. As a condition, given respondent's demonstrated recordkeeping deficiencies, the Court should require that respondent provide the OAE with monthly reconciliations of his accounts, on a quarterly basis, for a two-year period, following the Court's issuance of a disciplinary Order in this case.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 15, 2023.
2. Stipulation of discipline by consent, dated March 7, 2023.
3. Affidavit of consent, dated March 6, 2023.
4. Ethics history, dated May 26, 2023.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/res
Enclosures

c: (w/o enclosures)
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