Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-039
District Docket Nos. XIV-2019-0556E and
XB-2022-0900E

In the Matter of	:
David E. Gray	:
An Attorney at Law	:

Decision

Argued: April 20, 2023

Decided: July 28, 2023

Corsica D. Smith appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle 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 recommendation for a censure filed by the District XB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter); RPC 1.15(a) (two instances – failing to

safeguard client funds and engaging in negligent misappropriation of client funds); RPC 1.15(b) (two instances – failing to promptly notify a client of receipt of funds in which the client has an interest and failing to promptly deliver funds to a client); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-(6)); RPC 1.17(c)(3) (engaging in the improper purchase of a law office); RPC 5.3 (a) and (b) (failing to supervise a nonlawyer assistant); and RPC 5.3(c)(2) (rendering a lawyer responsible for the conduct of a nonlawyer assistant that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer under certain circumstances).

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

Respondent earned admission to the New Jersey bar in 2003 and to the New York bar in 2005. He has no disciplinary history in New Jersey.

At the relevant times, respondent maintained two separate practices of law. First, since 2003, respondent has served as the managing partner of Gray Law Group, LLC, which maintains an office in Jefferson, New Jersey. Second, between September 2016 and January 2020, respondent served as the sole member of David E. Gray, Attorney at Law, LLC, which maintained an office in East Hanover, New Jersey.

The facts of this matter are undisputed. Bertin Engineering Associates, Inc., (Bertin) provided engineering services and loaned money to Manhar Patel. Patel failed to repay Bertin's loan. Consequently, on March 28, 2013, Bertin filed a complaint for contractual damages against Patel and his corporate entities, in the Superior Court of New Jersey, Bergen County. On September 14, 2014, the Superior Court granted Bertin's unopposed motion for summary judgment and, on October 21, 2014, issued a $179,461.49 judgment in favor of Bertin. As a result of the judgment, Bertin perfected a lien on property Patel owned in Newark, New Jersey.

On April 6, 2015, Gary S. Lewis, Esq., who maintained a substantial debt collection practice, substituted as counsel for Bertin.

On October 27, 2015, Patel closed on the sale of his Newark property. However, because of Bertin's lien on the property, the closing agent held back $188,823.17 from the sale proceeds, in escrow, on behalf of Bertin.

Almost seven months later, on May 12, 2016, one of Patel's corporate entities filed a motion to vacate the October 2014 judgment, which motion the Superior Court denied, on August 12, 2016, citing the entity's prior failure to diligently defend itself.[1] On September 12, 2016, Patel's corporate entity

[1] Public court records demonstrate that Lewis secured substitute counsel, Jae Lee, Esq., to represent Bertin in connection with its opposition to the motion to vacate.

appealed the order denying its motion to vacate the judgment and moved, before the Appellate Division, to transfer the $188,823.17 escrow balance to the "Court."[2] On October 24, 2016, the Appellate Division denied the motion.

Meanwhile, on or around September 16, 2016, Lewis sold a portion his law practice to respondent in exchange for respondent's promise to pay Lewis's medical and malpractice insurance costs for two years following the sale. Respondent, however, failed to publish a notice announcing his purchase of Lewis's practice in the New Jersey Law Journal (the NJLJ) and the New Jersey Lawyer (the NJL), a professional journal associated with the New Jersey Bar Association, at least 30 days before the effective date of the purchase, as RPC 1.17(c)(3) requires.[3] Moreover, respondent failed to notify Bertin that he had assumed responsibility for its matter.

During the ethics hearing and in his verified answer, respondent noted that he did not purchase Lewis's "entire practice outright;" rather, he asserted that he "assumed responsibility" for approximately 158 of Lewis's more than 1,000 active debt collection matters, with the understanding that "Lewis's staff would

[2] Lewis also referred the appellate matter to Lee.

[3] On February 18, 2022, we issued a letter decision imposing an admonition on Lewis for his failure to notify his clients of the sale of his law practice, in violation of RPC 1.16(d) (failing to protect a client's interests upon termination of the representation) and RPC 1.17(c) (engaging in the improper sale of a law practice). In the Matter of Gary S. Lewis, DRB 21-247 (Feb. 18, 2022).

have responsibility for working on those files." Respondent claimed that the debt collection matters he had acquired from Lewis "had some attorney involvement" and that his intention was to keep Lewis's "operation going forward." Additionally, although respondent met with Lewis prior to the purchase of his law practice and discussed the relevant client files, respondent claimed that the Bertin matter was "hidden" from him at the time he acquired Lewis's practice.

Following respondent's purchase of Lewis's law practice, respondent hired (1) Michael Arcaro, Lewis's former information technology (IT) employee, (2) Christina Mogan, Lewis's former paralegal, and (3) Todd Geiger, Lewis's former office manager. Arcaro, Mogan, and Geiger each worked remotely, from separate locations.

On September 6, 2016, days prior to his acquisition of Lewis's law firm, respondent formed a new law firm, David E. Gray, Attorney at Law, LLC, which he maintained as a separate law practice from the Gray Law Group, LLC. Respondent testified that he created the David E. Gray law firm for the sole purpose of "handling" Lewis's debt collection matters and to "insulate" the Gray Law Group from those matters.

On September 27, 2016, respondent opened separate attorney trust and business accounts for his new David E. Gray law firm (ATA2 and ABA2).

Respondent authorized both himself and Geiger to serve as authorized signatories of those accounts, in violation of R. 1:21-6(c)(1)(A) (providing that only a licensed New Jersey attorney can serve as the authorized signatory of an ATA).

Meanwhile, on November 14, 2016, the closing agent for Patel's Newark property notified Patel; Bertin's appellate attorney; and Arcaro, Lewis's former IT employee, who had since begun to work for Gray, of its intention to satisfy Bertin's lien on the property, unless the closing agent received a valid objection by November 22, 2016. On November 28, 2016, having received no objection, the closing agent issued a $189,130.69[4] check, made payable to Lewis, which was deposited in respondent's ATA2.[5] Respondent, however, failed to notify Bertin of his receipt of those funds, as RPC 1.15(b) requires.

On November 6, 2017, the Appellate Division issued an opinion affirming the Superior Court's order denying Patel's corporate entity's motion to vacate the October 2014 judgment in favor of Bertin. Following the Appellate Division's opinion, respondent failed to disburse, from his ATA2, the

[4] The difference between the original $188.823.17 lien and the $189,130.69 issued by the closing agent was the result of accrued interest.

[5] The record does not reveal who deposited the $189,130.69 check in respondent's ATA2. As noted above, both respondent and Geiger were authorized signatories on that account. Moreover, the OAE did not admit into evidence a copy of the $189,130.69 check as part of its presentation before the DEC.

$189,130.69 in judgment funds owed to Bertin. Rather, unbeknownst to respondent, Geiger withdrew more than $100,000 of Bertin's funds, without Bertin's permission, which Geiger converted to his own personal use.

In December 2018, Geiger, using the alias Bill Goldman, began communicating with Bertin regarding its outstanding judgment funds. On January 16, 2019, Bertin's owner sent "Goldman" an e-mail, requesting an update on the status of Bertin's funds.

On January 18, 2019, Geiger, again using the alias Bill Goldman, spoke with Bertin's owner, via telephone, and falsely advised the owner: (1) that the closing agent for Patel's Newark property was "under sanction" by the New Jersey Department of Banking and Insurance; (2) that the closing agent owed money to eight entities besides Bertin; and (3) that a "Special Coun[se]l" was "handling the case for the government." Geiger also falsely informed Bertin's owner that each of the entities purportedly owed money by the closing agent had agreed to a 38.7% "settlement" of their respective amounts due, and that "it would be better to cash in now" because the closing agent "may be in deeper problems in the near future."

On January 28, 2019, Bertin's owner sent "Goldman" an e-mail, requesting the name of the "Special Coun[se]l" and an update on Bertin's

outstanding judgment funds, which Bertin was willing to accept, "even if at a loss (if you believe that is the best option)."

On January 30, 2019, Geiger, again using the alias Bill Goldman, spoke with Bertin's owner, via telephone, and claimed that respondent's firm was "in a position to write a check." Later that same date, Bertin's owner sent "Goldman" an e-mail, requesting that respondent's firm provide "some documentation" regarding the purported 38.7% "settlement" in light of the fact that he was "giving up" more than $120,000 in judgment funds. The record is unclear whether Geiger sent Bertin's owner any documents in connection with the fictitious "settlement." However, on February 1, 2019, Geiger issued a $62,451.60 ATA2 check, made payable to Bertin, and, on February 7, 2019, Bertin successfully negotiated the check.

On February 11, 2019, Bertin's vice president of operations contacted the New Jersey Lawyers' Fund for Client Protection stating that Bertin had received only $62,451.60 of its $189,130.69 in judgment funds.

On June 7, 2019, during the OAE's investigation of Lewis in connection with the improper sale of his law office, the OAE called respondent's law office and spoke with an individual who identified himself as respondent. Respondent, however, never spoke with the OAE on that date, and the OAE suspected that Geiger was falsely identifying himself as respondent. The OAE based its

suspicion on the fact that Geiger was "running" the debt collection portion of respondent's law practice and issuing the firm's ATA2 and ABA2 checks.

Three days later, on June 10, 2019, Geiger sent a $100,000 check to Bertin; he drew those funds from his personal Charles Schwab investment account. Thereafter, between June 25 and September 30, 2019, Geiger issued four $8,150 ATA2 checks, each made payable to Bertin, and totaling $32,600. By September 30, 2019, Geiger had reimbursed Bertin a total of $195,051.60, which constituted the entire $189,130.69 judgment amount plus $5,920.91 in accrued interest.

On October 11, 2019, the OAE commenced its investigation of respondent and requested that he provide "an analysis" of his ATA2 and ABA2. Respondent conducted the required analysis and informed the OAE that he had discovered that Geiger had transferred $100,000 of Bertin's judgment funds from his ATA2 to his ABA2. Thereafter, Geiger disbursed, via ABA2 checks made payable to himself, Bertin's $100,000 in judgments funds.

During the investigation, the OAE discovered that Geiger and Arcaro managed all of respondent's debt collection client files and ATA2 records via a debt collection software program. Geiger and Arcaro also maintained respondent's ABA2 records using a handwritten checkbook, which tracked the account's running balance. Geiger and Arcaro, however, did not perform three-

way ATA2 reconciliations, as R. 1:21-6(c)(1)(H) requires, nor did they reconcile the financial information on the debt collection software program against respondent's ATA2 bank statements. As noted above, the OAE's investigation also revealed that Geiger improperly was issuing respondent's ATA2 checks.

During the ethics hearing, the OAE investigator testified that respondent "was very cooperative" in connection with its investigation, appropriately communicated with the OAE, and provided the OAE all relevant materials.

In his verified answer and through his testimony at the ethics hearing, respondent admitted that his conduct violated all the charged RPCs.

Specifically, respondent conceded that he failed to publish the required notices in connection with his purchase of Lewis's law practice, in violation of RPC 1.17(c)(3), and that he failed to notify Bertin that he had assumed the representation of its matter, in violation of RPC 1.4(b). Additionally, respondent admitted that he failed to promptly notify Bertin of his November 2016 receipt of its judgment funds, in violation of RPC 1.4(b) and RPC 1.15(b).

Moreover, respondent conceded that he failed to perform three-way ATA2 reconciliations, as R. 1:21-6(c)(1)(H) requires, in violation of RPC 1.15(d). Respondent noted that his recordkeeping was limited to discussing the David E. Gray law firm's finances with Geiger and Arcaro and reviewing the firm's monthly bank statements only to ensure that no checks were overdrawn and that

money remained in the accounts. In that vein, respondent conceded that he had relinquished complete control of his recordkeeping responsibilities to Geiger, whom respondent believed was using a signature stamp, with respondent's name, to issue ATA2 checks. Respondent, thus, admitted that he violated RPC 1.15(d) and R. 1:21-6(c)(1)(A) by allowing Geiger to serve as an authorized signatory of his ATA2, an account which respondent conceded he "had no control over."

Respondent also conceded that he violated RPC 5.3(a) and (b) by failing to ensure that Geiger's conduct was compatible with the professional obligations of a lawyer. Similarly, respondent acknowledged that he had direct supervisory authority over Geiger, in accordance with RPC 5.3(c)(2). In that capacity, respondent admitted that he was responsible for Geiger's conduct because he knew that Geiger had signatory authority of his ATA2; yet, he failed to take any reasonable remedial action to prevent any misappropriation.

Finally, respondent conceded that he failed to promptly provide Bertin with its judgment funds, in violation of RPC 1.15(b), failed to appropriately safeguard Bertin's judgment funds, in violation of RPC 1.15(a), and, as a result of Geiger's misappropriation, negligently misappropriated Bertin's judgment funds, in violation of RPC 1.15(a). Specifically, respondent conceded that, between January 31, 2017 and September 30, 2019, when Geiger finally

reimbursed Bertin for the total amount of its judgment funds, plus accrued interest, respondent's ATA2 balance routinely fell below the required amount respondent should have been holding, inviolate, on Bertin's behalf.

During the ethics hearing, respondent claimed that, at the time he acquired Lewis's debt collection practice, he believed that the practice "was running appropriately." However, respondent acknowledged that he later discovered that "many things were hidden from [him]" and that he was "asleep at the wheel" while Lewis's former employees oversaw his newly acquired debt collection practice. Additionally, respondent noted that he took "full responsibility" for his actions, claimed that he has become "keenly aware of the responsibilities of maintaining a trust account," and stressed that, going forward, he will not allow third parties to gain access to trust account funds. Moreover, respondent claimed that he has since hired an experienced bookkeeper and an accountant to ensure that his recordkeeping entries, including weekly account reconciliations, are completed properly. Respondent also emphasized that, when the OAE first contacted him in connection with its investigation, he obtained the relevant bank statements, "piece[d] together what had" occurred in connection with Bertin's funds, and terminated Geiger, who has since been incarcerated for his actions.

Respondent urged, as mitigation, his unblemished disciplinary history; his complete cooperation with disciplinary authorities; the lack of any ultimate

harm to Bertin; the fact this misconduct was not for personal gain and is unlikely to recur; and his good reputation in the community, including his commitment to providing pro bono legal services to a homeless shelter, to victims of domestic violence, and to religious institutions. Although respondent did not urge the DEC to recommend a specific quantum of discipline, he requested that the DEC afford him "leniency."

In the OAE's December 21, 2022 brief to the DEC, it urged the imposition of discipline in the form of a censure or short term of suspension, emphasizing respondent's complete abdication of his non-delegable fiduciary duties, which allowed Geiger to knowingly misappropriate Bertin's entrusted client funds. The OAE analogized respondent's conduct to the attorneys in In re Stransky, 130 N.J. 38 (1992), and In re Shtindler, 227 N.J. 457 (2017), who, as detailed below, both received one-year suspensions for their complete abdication of their fiduciary responsibilities to their nonlawyer assistants, whom the attorneys granted signatory authority of their ATAs, which enabled the nonlawyer assistants to misappropriate significant sums of entrusted funds.

Like Stranksy and Shtindler, the OAE argued that respondent improperly and recklessly delegated his fiduciary responsibilities to Geiger and improperly allowed him to serve as an authorized signatory of his ATA2, which permitted Geiger unrestricted access to client funds and enabled him to misappropriate at

least $100,000 of Bertin's entrusted funds. Additionally, the OAE emphasized respondent's total failure to supervise Geiger and his testimony that he was "asleep at the wheel" in connection with his oversight of his debt collection practice. Moreover, despite respondent's testimony that he was unaware of Bertin's client file at the time he had acquired Lewis's practice, the OAE argued that, had respondent properly performed his recordkeeping duties, he would not only have become aware of Bertin's funds, but also would promptly have detected Geiger's misappropriation.

However, the OAE argued that, despite respondent's unacceptable and reckless behavior in connection with the operation of his debt collection practice, a one-year suspension would be inappropriate, given respondent's "extensive mitigation." Specifically, the OAE urged the consideration of respondent's good character and stellar reputation in his community, factors which were not present in Stransky, and the absence of additional serious ethics violations, which were present in Shtindler.

Although the DEC did not conduct an independent analysis of how respondent violated the charged RPCs, it noted its concurrence with the OAE's characterization of respondent's ethics infractions. Specifically, the DEC noted that respondent relinquished complete control of his fiduciary duties in connection with his ATA2 to Geiger, who, as an improper, authorized signatory

on that account, had the opportunity to misappropriate Bertin's funds without respondent's detection. The DEC observed that respondent appeared to know very little about the debt collection practice that he had acquired from Lewis and simply assumed that it could be operated without his involvement. Moreover, the DEC noted that, had respondent performed the required three-way reconciliations of his ATA2, Geiger's "embezzlement would have been promptly detected."

In determining the appropriate quantum of discipline, the DEC cautioned that a censure "may be insufficient to protect public confidence" in the bar, given that attorneys must never surrender signatory authority of their trust accounts to nonlawyers. Nevertheless, based on respondent's good reputation and character, the DEC recommended the imposition of a censure.

The DEC also urged us to require that respondent complete an OAE approved course in trust account management and to submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period.

At oral argument and in his submission to us, respondent noted that a term of suspension would be appropriate for a different attorney who committed the same misconduct. However, respondent urged the imposition of a reprimand or a censure based on his otherwise unblemished disciplinary record, his genuine

remorse and contrition, and his excellent reputation within his community. Respondent conceded that he purchased a "poisoned part" of Lewis's former debt collection practice and improperly allowed Geiger to serve as an authorized signatory of his ATA2. Moreover, respondent acknowledged that appropriate recordkeeping "was non-existent" in connection with the operation of his debt collection practice. However, respondent noted that he has since gained an extensive understanding of the Rules governing recordkeeping and trust account management.

At oral argument before us, the OAE urged the imposition of a censure or a short term of suspension based on respondent's total lack of oversight of his debt collection practice. Specifically, the OAE emphasized that respondent intentionally relinquished complete control of his debt collection practice to Lewis's former employees, including Geiger, whom respondent granted signatory authority of his ATA2. The OAE also stressed that respondent's lack of meaningful oversight of Lewis's former employees allowed Geiger to easily misappropriate Bertin's funds without detection. Nevertheless, the OAE urged, as mitigation, respondent's complete cooperation with disciplinary authorities, his excellent reputation in the community, and his lack of prior discipline in his twenty-year career at the bar.

Following our de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

First, RPC 1.17(c)(3) requires the purchaser of a law firm to publish notices, in both the NJLJ and the NJL, announcing the purchase of the law firm at least thirty days prior to the effective date of the sale. Here, as respondent admitted, he violated that Rule by altogether failing to publish the required notices announcing his purchase of at least a portion Lewis's debt collection law firm.

Next, following his acquisition of Lewis's firm, respondent violated RPC 1.4(b) by failing to notify Bertin that his new firm had assumed the representation of its debt collection matter. Respondent claimed, during the ethics hearing, that the Bertin matter was "hidden" from him at the time he had acquired Lewis's firm. However, respondent acknowledged, in his verified answer, that he had acquired Lewis's firm with the understanding that Lewis's staff would be responsible for Lewis's former client matters. Respondent further acknowledged, during the ethics hearing, that he was "asleep at the wheel" while Lewis's employees oversaw his newly acquired debt collection practice.

As the DEC correctly observed, respondent appeared to know very little about the debt collection practice he had acquired and simply allowed Lewis's

former employees to operate the practice without his involvement. Had respondent conducted the required due diligence in connection with his acquisition of Lewis's law firm, he would have discovered Bertin's matter and could have informed Bertin that he had assumed its representation. However, as respondent admitted, he abdicated his responsibilities in connection with Lewis's law firm to his nonlawyer assistants and failed to notify Bertin that it was no longer represented by Lewis.

Further, respondent violated RPC 1.4(b) and RPC 1.15(b) by failing to promptly notify Bertin of his firm's November 28, 2016 receipt of its $189,130.69 in judgment funds. Although the record is unclear whether respondent himself deposited Bertin's funds in his ATA2, the fact remains that the deposit of those funds was reflected in his November 2016 ATA2 bank statement. However, respondent engaged in cursory reviews of his ATA2 bank statements, seeking only to ensure that no checks were overdrawn and that money remained in that account. Moreover, respondent relinquished complete control of his recordkeeping responsibilities to Geiger, whom respondent knowingly granted improper signatory authority of his ATA2. Had respondent not abandoned his fiduciary obligations in connection with Bertin's entrusted ATA2 funds, respondent would have detected Bertin's judgment funds and could have advised Bertin of same.

Additionally, respondent violated RPC 5.3(a) and (b) by failing to make any reasonable efforts to ensure that Geiger, his nonlawyer direct subordinate, conformed his conduct with the professional obligations of a lawyer. Specifically, as respondent conceded, he improperly delegated his recordkeeping responsibilities in connection with his newly acquired debt collection practice to Geiger, whom respondent improperly granted signatory authority of his ATA2 and ABA2, and whom respondent "believed" was using a signature stamp, with respondent's name, to issue ATA2 checks. Respondent's total lack of control of his ATA2 and ABA2 allowed Geiger, whom respondent left unsupervised, unfettered access to Bertin's client funds, which Geiger brazenly stole without detection by respondent.

Moreover, respondent's total lack of supervision of Geiger allowed him to engage in an egregious act of deception towards Bertin. Specifically, between December 2018 and January 2019, Geiger, while using a fictitious name, falsely advised Bertin that the closing agent for Patel's Newark property was "under sanction" by the New Jersey Department of Banking and Insurance. To achieve his scheme to acquire at least $100,000 of Bertin's judgment funds, Geiger falsely informed Bertin that the entities owed money by the closing agent each had agreed to a 38.7% "settlement" of their respective amounts due, and that it would be better for Bertin "to cash in now." Bertin appeared to have followed

Geiger's "advice" and authorized Geiger to issue a $62,451.60 ATA2 check in partial satisfaction of its judgment. Had respondent attempted to conduct any meaningful oversight of Geiger, he could have prevented Geiger from engaging in his deception and from stealing Bertin's funds.

Similarly, respondent failed to safeguard Bertin's entrusted client funds, in violation of RPC 1.15(a), by allowing Geiger to assume complete, unsupervised control of his ATA2. As a result of respondent's total failure to conduct the required oversight of his ATA2, respondent also engaged in negligent misappropriation of Bertin's funds, in violation of RPC 1.15(a), by creating an environment in which Geiger could easily misappropriate at least $100,000 of Bertin's funds.

Moreover, respondent violated RPC 1.15(b) by failing to promptly provide Bertin with its entitled judgment funds. Specifically, despite the Appellate Division's November 6, 2017 opinion affirming the order denying Patel's motion to vacate the judgment in favor of Bertin, it was not until the OAE independently spoke with Geiger, in June 2019, that Geiger finally began to reimburse Bertin for the funds he had misappropriated. Indeed, Geiger failed to fully reimburse Bertin for the full amount of its judgment funds until September 2019, nearly two years after the Appellate Division's November 2017 opinion concluding the debt collection litigation. Respondent's total

inattention to his debt collection practice, thus, resulted in a significant delay in Bertin's receipt of its entitled judgment funds.

Finally, respondent violated RPC 1.15(d) by failing to perform three-way ATA2 reconciliations, as R. 1:21-6(c)(1)(H) requires, and by allowing Geiger to serve as an authorized signatory of his ATA2, as R. 1:21-6(c)(1)(A) prohibits.

However, we determine to dismiss the RPC 5.3(c)(2) charge. RPC 5.3(c)(2) provides that:

> a lawyer shall be responsible for the conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer if . . . the lawyer has direct supervisory authority over the person and knows of the conduct at time when its consequences can be avoided or mitigated but fails to take reasonable remedial action[.]

Here, although respondent had direct supervisory authority over Geiger and knowingly allowed him to serve as an improper, authorized signatory of his ATA2, respondent was unaware of the fact that Geiger had stolen Bertin's judgment funds until the OAE had contacted him, in or around October 2019, in connection with its investigation. After the OAE contacted respondent and requested that he analyze the transactions in his ATA2 and ABA2, respondent discovered Geiger's misappropriation and promptly terminated his employment. Despite respondent's reckless abdication of his non-delegable fiduciary duties, respondent did not know of Geiger's misappropriation until the OAE

specifically notified him of that possibility. Consequently, because respondent did not knowingly allow Geiger to misappropriate Bertin's client funds, we determine to dismiss the RPC 5.3(c)(2) charge.

In sum, we find that respondent violated RPC 1.4(b); RPC 1.15(a) (two instances); RPC 1.15(b) (two instances); RPC 1.15(d); RPC 1.17(c)(3); and RPC 5.3 (a) and (b). We dismiss the charge that respondent further violated RPC 5.3(c)(2). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

The crux of respondent's misconduct was his reckless and improper abdication of his fiduciary duties, which resulted in the misappropriation of Bertin's entrusted client funds. Generally, an admonition or a reprimand is imposed when an attorney's failure to supervise his or her nonlawyer staff results in the misappropriation of entrusted funds. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition for attorney whose long-term secretary stole more than $149,000 in client funds during an eight-year period; the attorney's abdication of his recordkeeping obligations, particularly his failure to reconcile his ATA and to review cancelled ATA checks, created the environment within which the secretary could operate, undetected; although the secretary did not appear to have signatory authority of the attorney's ATA, the secretary presented the attorney with "stacks" of ATA

checks, which the attorney would sign, without reviewing, because of his trust in her; in mitigation, we found that the secretary's theft was carefully hidden from the attorney, who, upon discovering her theft, promptly terminated her employment and contacted disciplinary authorities); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who delegated responsibility of his firm's accounts to his paralegal/wife, whom he failed to supervise; the attorney did not independently review his firm's ATA bank statements; the attorney's failure to oversee the paralegal's activity allowed her to negotiate thirty-eight ATA checks, made payable to herself, and issued to her by forging the attorney's signature or using a signature stamp; in mitigation, upon discovering the paralegal's conduct, the attorney immediately demanded the return of the $14,000 in stolen funds and replenished the ATA); In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (reprimand for attorneys, in companion cases, whose failure to supervise their trusted bookkeeper/office manager resulted in her embezzling almost $360,000 from the firm's ATA, ABA, and a guardianship account; although the attorneys delegated their recordkeeping responsibilities to the bookkeeper and failed to contemporaneously review their bank statements, they did not authorize their bookkeeper to sign ATA checks; rather, the bookkeeper either forged their names or obtained their signatures under false pretenses; the attorneys

cooperated with the OAE, hired an accountant to reconstruct their attorney accounts, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

The quantum of discipline is enhanced, however, when attorneys fail to conduct reasonable oversight of their financial records, which could easily have uncovered employee misconduct, or when attorneys have reason to suspect that their nonlawyer employees have engaged in misconduct but fail to take any reasonable remedial action. See, e.g., In re Brown, 218 N.J. 387 (2014) (censure for attorney whose failure to reconcile his ATA and to supervise his long-term paralegal/bookkeeper resulted in the bookkeeper forging checks and misappropriating ATA funds, without his knowledge; the bookkeeper/paralegal also was conducting real estate closings, without the attorney's knowledge, in furtherance of a mortgage fraud scheme to which she eventually pleaded guilty; in imposing a censure, we noted that the bookkeeper's conduct could have been detected had the attorney paid close attention to his accounting responsibilities); In re Falzone, 209 N.J. 420 (2012) (censure for attorney whose reckless ATA and ABA practices allowed his wife/bookkeeper to repeatedly transfer funds from his ATA to his ABA, and then from the ABA to her personal account, resulting in the theft of almost $279,000 in entrusted funds during a four-year period; although the wife purportedly was not authorized to issue ATA or ABA

checks, the attorney discovered transfer slips demonstrating that his wife conducted excessive account transfers from his ABA to her personal account; the attorney, however, failed to take any reasonable remedial action to prevent further thefts; the attorney also lied to the OAE regarding the whereabouts of financial records and failed to cooperate with the OAE's investigation; we observed that, were it not for the attorney's otherwise unblemished twenty-seven year career at the bar, more severe discipline may have been warranted); In re Gonzalez, 241 N.J. 526 (2020) (three-month suspension for attorney who committed multiple ethics infractions, including recordkeeping violations, negligent misappropriation, and failure to supervise nonlawyer staff; the attorney's paralegal/wife forged the attorney's signature on ATA checks, fabricated ATA deposit slips, prepared false ATA ledger sheets, and hid important information from the attorney; even after the attorney learned of his wife's improper conduct, the attorney maintained her employment at the firm and claimed that he was "transitioning" her out of his law office; in imposing a three-month suspension, the Court ordered the attorney to provide the OAE with proof that he had terminated his wife's employment at the firm).

Finally, in In re Shtindler, 227 N.J. 457 (2017), and In re Stransky, 130 N.J. 38 (1992), the attorneys received one-year suspensions based, in part, on their complete abdication of their non-delegable fiduciary duties to their

nonlawyer assistants, whom the attorneys granted signatory authority of their trust or escrow accounts.

In Shtindler, the attorney improperly gave her paralegal signatory authority of an escrow account, earmarked for real estate transactions, in order to allow the paralegal to attend real estate closings in her place. In the Matter of Yana Shtindler, DRB 16-029 (Sept. 29, 2016) at 4-5, 20. The attorney failed to reconcile the escrow account or to maintain appropriate entries in the account concurrent with the transactions. Id. at 5. Unbeknownst to the attorney, the paralegal stole approximately $25,000 from the escrow account. Ibid. When the property owner to whom the funds belonged inquired about the release of his funds and filed a lawsuit against the attorney, the attorney ignored the owner's lawsuit because, in her view, the owner had sued the wrong entity and, in any event, her name had been misspelled on the complaint. Id. at 20.

The attorney was not spurred into action until the property owner filed an ethics grievance against her, following which she finally discovered her paralegal's theft. Ibid. The attorney, however, did not report the theft to law enforcement because her paralegal had a child and a spouse who was very ill. Id. at 5. Compounding matters, the attorney misrepresented to the property owner, another lawyer, and New York disciplinary authorities that she had explained to the property owner the reason for the delay in releasing his funds.

Id. at 20. Additionally, the attorney attempted to condition any repayment to the property owner on his agreement to provide proof that he had withdrawn his ethics grievance. Ibid. Finally, at the time of the New York disciplinary proceeding, the paralegal had repaid the property owner only a portion of his stolen funds. Id. at 5.

In determining that a one-year suspension was the appropriate quantum of discipline, we observed that "[t]his was not a situation where the attorney was duped by a staff member[,]" given that the attorney had allowed her paralegal complete authority to issue escrow account checks. Id. at 21.

In Stransky, the attorney's wife/bookkeeper misappropriated $32,341 in entrusted client funds, for her own personal use, "over a period of years." In the Matter of Joseph C. Stransky, DRB 91-364 (April 20, 1992) at 1-2. The wife was able to conceal her misappropriation from the attorney because "he trusted her completely" and failed to conduct proper oversight of his attorney accounts. Id. at 2. When the OAE learned that the attorney's ATA was overdrawn, the attorney failed to appear for two scheduled demand audits. Ibid. The attorney's wife, who handled the mail and telephone calls, had diverted the disciplinary authorities' efforts to communicate with him. Ibid. The attorney learned of his wife's misappropriation and of his temporary suspension only after two OAE investigators appeared at his office. Ibid.

We found that the attorney improperly delegated signatory authority of his ATA to his wife; failed to exercise supervision and control of his attorney accounts; failed to maintain required ATA receipts and disbursements journals and to reconcile his ATA; failed to supervise a nonlawyer employee; and negligently misappropriated client funds as a result of his other improprieties. Ibid. In determining that a one-year suspension was the appropriate quantum of discipline, we found that the attorney:

> was completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients for at least an entire year . . . . . As an attorney, such conduct cannot be tolerated. The attorney's fiduciary responsibility for client trust funds is a non-delegable duty. In turning over his attorney trust account to his wife without any attempt to supervise the disposition of client trust funds, respondent violated that duty. Moreover, his actions set up the scenario through which his wife was able to steal client funds. It is merely fortuitous that he was subsequently able to make his clients whole and avoid even greater consequences.
>
> [Id. at 44.]

Here, like the attorney in Shtindler, who allowed her paralegal signatory authority of an escrow account to permit the paralegal to attend real estate closings, respondent knowingly allowed Geiger signatory authority of his ATA2 and ABA2 to permit Geiger to operate Lewis's former debt collection practice without his involvement. Also like Shtindler, who reviewed only the limited

information contained in disbursement sheets and journals prepared by her paralegal, respondent completely abdicated his recordkeeping responsibilities to Geiger and conducted only limited oversight of his firm's financial affairs. Specifically, respondent would merely discuss his firm's finances with Geiger and Arcaro and conduct cursory reviews of his firm's bank statements only to ensure that money remained in his accounts and that no checks were overdrawn.

Unlike the admonished attorney in Verdiramo and the reprimanded attorneys in Bergman and Barrett, whose trusted, nonlawyer employees obtained their signatures on ATA checks under false pretenses or by forgery, respondent knowingly and almost immediately permitted Geiger, Lewis's former office manager, unrestricted access to his attorney accounts and free reign to operate his newly acquired debt collection practice. Although respondent was unaware that Geiger was engaging in any financial improprieties, as occurred in Falzone, respondent's total lack of oversight of Geiger allowed him to easily embezzle at least $100,000 of Bertin's judgment funds, without detection. Indeed, respondent's absence from his debt collection firm allowed Geiger, using a fictitious employee name and a bogus cover story regarding a "special coun[se]l," to attempt to deceive Bertin to relinquish at least $120,000 of its funds.

Nevertheless, after the OAE contacted respondent in connection with its investigation, he immediately cooperated with the OAE; conducted an analysis of his attorney accounts; discovered Geiger's theft; and promptly terminated Geiger. By contrast, the attorney in Shtindler, who received a one-year suspension, refused to reply to the property owner's inquiries regarding his outstanding funds, forcing the property owner to file a lawsuit against the attorney, which she ignored, in part, because her name had been misspelled in the complaint. Indeed, it was not until Shtindler received an ethics grievance that she was finally motivated to discover her paralegal's theft. However, even after her discovery, Shtindler refused to report her paralegal to law enforcement, engaged in deception towards the property owner, his attorney, and New York disciplinary authorities, and attempted to condition the repayment of the stolen funds on the property owner's withdrawal of his ethics grievance. Finally, unlike the property owner in Shtindler, whom the attorney's paralegal repaid only a portion of the funds she had stolen, Geiger, fortunately, fully reimbursed Bertin in the months after the OAE had contacted him in connection with its investigation of Lewis.

Although respondent's actions following the OAE's intervention were far more appropriate than that of Sthindler, the fact remains that the instant matter is not a situation where an attorney was simply "duped" by a staff member.

Indeed, respondent was, in his own words, "asleep at the wheel" in connection with his operation of his newly acquired debt collection practice, which he allowed his newly hired nonlawyer employees to manage without any meaningful oversight. As we observed in Stransky, an attorney's complete abdication of their fiduciary responsibilities to their clients, as occurred here, cannot be tolerated.

Accordingly, consistent with disciplinary precedent, and weighing respondent's otherwise unblemished twenty-year career at the bar, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, in light of respondent's serious recordkeeping violations, we determine that, prior to reinstatement, respondent complete a recordkeeping course pre-approved by the OAE and, following his reinstatement, provide monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period.

Chair Gallipoli and Member Joseph voted for a six-month suspension, with the same conditions.

Member Menaker voted for a censure, with the same conditions.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David E. Gray
Docket No. DRB 23-039

Argued: April 20, 2023

Decided: July 28, 2023

Disposition: Three-month suspension

Members	Three-month suspension	Censure	Six-Month Suspension
Gallipoli			X
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker		X	
Petrou	X		
Rivera	X		
Rodriquez	X		
Total:	6	1	2

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