

DISCIPLINARY REVIEW BOARD
OF THE
SUPREME COURT OF NEW JERSEY

HON. MAURICE J. GALLIPOLI, A.J.S.C. (RET.), CHAIR
PETER J. BOYER, ESQ., VICE-CHAIR
JORGE A. CAMPELO
THOMAS J. HOBERMAN
REGINA WAYNES JOSEPH, ESQ.
STEVEN MENAKER, ESQ.
PETER PETROU, ESQ.
EILEEN RIVERA
LISA J. RODRIGUEZ, ESQ.



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

TIMOTHY M. ELLIS
CHIEF COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL
NICOLE M. ACCHIONE
FRANCES L. BOWDRE
SALIMA ELIZABETH BURKE
NICHOLAS LOGOTHETIS
ASSISTANT COUNSEL
Amy Melissa Young
ASSOCIATE COUNSEL

October 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 William Frederick Henning**
Docket No. DRB 23-181
District Docket No. XIV-2022-0039E

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 R. 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).

The stipulated facts are as follows. On July 21, 2020, the OAE notified respondent that he had been selected for a random audit and directed him to produce his firm's financial records to the OAE for the period January 1, 2020 to July 21, 2021. At the time, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at PNC Bank. Respondent failed to reply to the OAE's directive.

On February 24, 2021, the OAE sent an e-mail to respondent, recapping their telephone conversation and directing him to produce the previously requested financial records. The OAE also informed him that his audit interview would take place on March 10, 2021. Respondent produced some, but not all, of the requested documents. On March 12, 2021, following his interview, the OAE directed respondent to produce the outstanding records, as well as additional records. Further, the OAE expanded the audit period to March 12, 2021. On April 2, May 11, and May 13, 2021, respondent produced additional documents to the OAE.

The random audit revealed numerous deficiencies, including respondent's failure to: maintain separate, descriptive client ledger cards (R. 1:21-6(c)(1)(B)); conduct monthly, three-way ATA reconciliations (R. 1:21-6(c)(1)(H)); maintain ABA receipts or disbursements journals (R. 1:21-6(c)(1)(A)); maintain fully descriptive ATA receipts or disbursements journals (R. 1:21-6(c)(1)(A)); maintain ATA and ABA records for seven years (R. 1:21-6(c)(1)); and maintain a running ATA cash balance (R. 1:21-6(c)(1)(G)). Respondent also improperly held fiduciary funds and his own funds in his ATA and failed to maintain original client ledger cards with his accounting records.

By letter dated June 17, 2021, the OAE informed respondent of these preliminary findings, directed him to cure the deficiencies, and requested his written response.

On August 4, 2021, respondent replied to the OAE; however, his submission remained deficient and, despite the OAE's repeated efforts to assist him in correcting the recordkeeping deficiencies, respondent's submissions remained incomplete. Consequently, on March 18, 2022, the OAE notified him that it had docketed the matter for disciplinary investigation.

The OAE's audit and subsequent investigation revealed that, in addition to the above recordkeeping deficiencies, respondent held unidentified and inactive funds in his ATA for an extended period of time, contrary to R. 1:21-6(c)(1)(B). Accordingly, because he was unable to locate the owners of the inactive funds, on April 1, 2022, respondent remitted to the Superior Court Trust Fund Unit (the SCTFU) \$11,991.41 on behalf of one client, and \$3,718.01 on behalf of a second client. Further, at the OAE's direction, on May 13 and September 29, 2022, respondent remitted additional unidentified funds, totaling \$1,426.14, to the SCTFU.

The OAE's investigation also revealed that, as a result of his inept recordkeeping practices, respondent had created ATA shortages in eight client matters, ranging from \$.05 to \$2,661.74, and totaling \$4,666.05. Respondent, thus, failed to safeguard funds he was entrusted to hold, inviolate, in violation of RPC 1.15(a). Respondent's ATA shortages and resulting negligent invasion of unrelated client trust funds persisted for years until the OAE directed respondent to correct the shortages. In fact, in one client matter, the shortage persisted for nearly ten years before respondent replenished the shortfall.

Based on the above facts, the parties stipulated that respondent violated RPC 1.15(a) and RPC 1.15(d).

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support the charges that respondent violated RPC 1.15(a) and RPC 1.15(d). Specifically, respondent violated RPC 1.15(a) by negligently invading client funds, in eight client matters, that he was required to hold, inviolate. Further, respondent violated RPC 1.15(d), in numerous respects, by failing to conform his recordkeeping practices to the requirements of R. 1:21-6. Most significantly, this misconduct resulted in his maintenance of inactive and unidentified funds for an extended period. Respondent replenished all shortages, corrected all the identified deficiencies in his recordkeeping, and brought his books and records into compliance with R. 1:21-6.

Generally, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Steinmetz, 251 N.J. 216 (2022) (attorney committed numerous recordkeeping violations, negligently misappropriated over \$60,000, and commingled personal funds in his ATA; the attorney failed to correct his records; in mitigation, the attorney had no prior discipline in sixteen years at the bar, hired an accountant to assist with his records, and no clients were harmed by his misconduct); In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices caused the negligent invasion of funds owed to clients and others in connection with real estate transactions; 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, the attorney had no prior discipline and stipulated to his misconduct); In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney

negligently misappropriated more than \$40,000 in client funds held in his trust account; no prior discipline in thirty-five-years at the bar).

Based on the foregoing disciplinary precedent, the baseline discipline for respondent's misconduct is a reprimand. In crafting the appropriate discipline, however, the Board also considered mitigating and aggravating factors.

In mitigation, respondent has no prior formal discipline in his thirty years at the bar. In re Convery, 166 N.J. 298, 308 (2001). Further, he stipulated to his misconduct.

In aggravation, respondent was dilatory in resolving his recordkeeping deficiencies, despite numerous opportunities to do so. In re Silber, 100 N.J. 517 (1985). Additionally, respondent had an acute awareness of his recordkeeping obligations, having participated in a prior OAE audit, in 2005, in which recordkeeping deficiencies were identified and brought to his attention.

On balance, weighing both aggravating and mitigating factors, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 3, 2023.
2. Stipulation of discipline by consent, dated July 20, 2023.
3. Certification of consent, dated July 19, 2023.

4. Ethics history, dated October 26, 2023.

Very truly yours,

Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/res
Enclosures

- c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (via e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (via e-mail and inter-office mail)
Jennifer L. Iseman, Deputy Ethics Counsel
Office of Attorney Ethics (via e-mail)
William F. Henning, Respondent (via e-mail and regular mail)