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March 5, 2024

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

Re: **In the Matter of Robert Wachtel**
Docket No. DRB 23-266
District Docket No. XIV-2022-0303E

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) 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 violations of RPC 1.15(d) and RPC 8.1(b).

According to the stipulation, in August 2022, the OAE directed respondent to provide (1) information regarding an attorney trust account (ATA) check that resulted in an overdraft, (2) his client ledgers, and (3) copies of his ATA statements for the last three months. In his reply letter, respondent explained that his overdraft resulted from his inadvertent issuance of a check to his girlfriend from his ATA rather than from his attorney business account (ABA). Respondent, however, failed to provide his ledger cards and copies of his ATA statements.

In December 2022, in advance of the OAE's demand audit, respondent failed to produce certain financial records necessary for the OAE to conduct its audit, including three-way ATA reconciliations. Moreover, during the audit, he admitted that he failed to maintain other "records such as checkbook[s], client ledger cards, receipt and disbursements journals, copies of cancelled checks, [and] deposit slips." Thereafter, the OAE directed respondent to provide proof that he had corrected his deficiencies, by January 15, 2023.

Following the January 2023 deadline, the OAE made several concerted efforts to educate respondent regarding his recordkeeping responsibilities and afforded him five extensions of its January 2023 deadline. However, by March 2023, respondents' recordkeeping deficiencies remained unresolved, including improper ATA and ABA designations, multiple R. 1:21-6(c)(1)(A) and (G) violations, and a failure to conduct three-way reconciliations. By December 15, 2023, the date of the parties' stipulation, respondent still had not provided the OAE with records demonstrating that these deficiencies had been resolved.

Based on the foregoing facts, the record clearly and convincingly demonstrates that respondent violated RPC 1.15(d) by engaging in numerous recordkeeping violations, including (1) maintaining improper ATA and ABA account designations, as R. 1:21-6(a)(2) prohibits; (2) failing to maintain receipts and disbursements journals, as R. 1:21-6(c)(1)(G) requires; (3) failing to conduct three-way ATA reconciliations, as R. 1:21-6(c)(1)(H) requires; (4) allowing non-lawyers to sign ATA checks and engaging in improper electronic transfers from his ATA, as R. 1:21-6(c)(1)(A) prohibits; (5) failing to maintain a running ATA checkbook balance, as R. 1:21-6(c)(1)(G) requires; and (6) failing to maintain pre-numbered ATA checks to be used in consecutive order, as R. 1:21-6(c)(1)(G) requires.

The record also clearly and convincingly demonstrates that respondent violated RPC 8.1(b) by failing to cooperate with the OAE's dogged efforts, spanning more than a year, to investigate his financial records. Specifically, between September 2022 and December 2023, the OAE granted respondent at least five extensions to provide the financial records it had requested. During that timeframe, respondent failed to reply to several OAE communications and, notwithstanding the OAE's repeated efforts to accommodate respondent, he failed to turn over his complete financial records and, thus, unnecessarily delayed the OAE's investigation in this matter.

Generally, as the OAE observed, recordkeeping irregularities will be met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See 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 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 more than twenty checks, issued to the Superior Court, being rejected 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).

However, the quantum of discipline can be enhanced to a reprimand when, as here, an attorney fails to resolve the recordkeeping deficiencies or fails to cooperate with the OAE's audit. See In re Leven, 245 N.J. 491 (2021) (the attorney committed numerous recordkeeping deficiencies, failed to resolve those deficiencies, and repeatedly provided incomplete records to the OAE, but had no prior discipline in more than forty-six years at the bar), and In re Abdellah, 241 N.J. 98 (2020) (the attorney failed to resolve recordkeeping deficiencies, despite being advised of those deficiencies in a prior audit, but had no prior discipline in twenty-four years at the bar).

A censure may result if an attorney fails to file an answer and allows their matter to proceed as a default. See In re Tobin, 249 N.J. 96 (2021) (censure for an attorney who, in a default matter, failed to comply with recordkeeping provisions of R. 1:21-6, failed to cooperate with disciplinary authorities, and previously had been censured).

Applying the foregoing precedent, the Board weighed, in aggravation, the fact that, unlike the attorney in Robinson, respondent failed to correct his recordkeeping deficiencies. Moreover, like the attorney in Leven, respondent repeatedly failed to fully cooperate with the OAE's record requests. However, the Board weighed, in mitigation, the fact that, like the attorney in Leven, respondent has no disciplinary history and his misconduct, fortunately, did not cause any harm to his clients. Finally, unlike the attorney in Tobin, respondent

participated in the disciplinary proceedings and did not allow this matter to proceed as a default.

On balance, consistent with disciplinary precedent, the Board determined that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Finally, in light of his ongoing recordkeeping deficiencies, the Board determined to require respondent to (1) within sixty days, complete a recordkeeping course pre-approved by the OAE; (2) immediately begin submitting monthly, three-way ATA reconciliations to the OAE, on a quarterly basis, for the next two years; and (3) within sixty days, satisfy all the OAE's outstanding financial document production requests or face potential temporary suspension.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 15, 2023.
2. Stipulation of discipline by consent, dated December 15, 2023.
3. Affidavit of consent, dated December 12, 2023.
4. Ethics history, dated March 5, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

c: See attached list
(w/o enclosures)

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