

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-006
District Docket Nos. VB-2023-0900E
And XIV-2020-0077E

In the Matter of Athena Dulice Alsobrook
An Attorney at Law

Argued
February 15, 2024

Decided
May 31, 2024

HoeChin Kim appeared on behalf of the
Office of Attorney Ethics

Respondent waived appearance for oral argument.

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Introduction

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 reprimand filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(a) (two instances – commingling and negligently misappropriating client funds), RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-(6)), and RPC 5.5(a)(1) (engaging in the unauthorized practice of law – failing to maintain liability insurance while practicing law via a limited liability company, as R. 1:21-1B(a)(4) requires).

For the reasons set forth below, we determine that a censure, with conditions, is the appropriate quantum of discipline for respondent’s misconduct.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1987. During the relevant timeframe, she maintained a practice of law in East Orange, New Jersey.

On February 7, 2006, the Court censured respondent in connection with her misconduct underlying a real estate transaction. In re Alsobrook, 186 N.J. 65 (2006) (Alsobrook I). Specifically, in 1999, while serving as counsel to the

buyers of a residential property, respondent allowed the sale to close without having obtained a signed deed from the seller's spouse, who had an interest in the property as a joint tenant. In the Matter of Athena Dulice Alsobrook, DRB 05-237 (December 21, 2005) at 2, 22. Rather than ensure that the spouse executed the deed, as the lender had instructed, respondent merely relied on the seller's assurance that his spouse would sign the deed, despite their pending divorce. Id. at 23-24. Respondent utilized the sale proceeds to satisfy an existing mortgage on the property and, thereafter, disbursed the remainder only to the seller. Id. at 7-8. Following the closing, respondent was unable to record the transaction because the spouse had not executed the deed. Id. at 23. Consequently, respondent's clients never acquired the property. Id. at 23-24.

We determined that respondent's conduct was "marked by appalling recklessness" and constituted a breach of fiduciary duty to her clients (the buyers), the title company, and the lender. Id. at 24-25. In determining that a three-month suspension was the appropriate quantum of discipline, we weighed, in aggravation, respondent's refusal to accept any responsibility for her misconduct, which left her clients without the property that they had intended to acquire. Id. at 31-32. However, in mitigation, following the ultimate sale of the property to a third party, the seller's spouse received the funds to which she was entitled. Id. at 15, 32. Moreover, the record contained no evidence that the

mortgage lender failed to recover the funds it had advanced to respondent. Id. at 32. Following its review, the Court disagreed with our recommended discipline and imposed a censure.

Facts

In 2004, the Office of Attorney Ethics (the OAE) conducted a random audit of respondent's attorney accounts. Following the audit, the OAE determined that respondent (1) failed to conduct three-way reconciliations of her attorney trust account (ATA), as R. 1:21-6(c)(1)(H) requires; (2) failed to maintain a separate ledger for attorney funds held for bank charges, as R. 1:21-6(d) requires; (3) maintained inactive and unidentified funds in her ATA, as R. 1:21-6(d) prohibits; (4) maintained client ledgers with negative balances, as R. 1:21-6(d) prohibits; and (5) maintained improper imaged-processed attorney business account (ABA) checks, as R. 1:21-6(b) prohibits. As a result of her recordkeeping infractions, the OAE instructed respondent on how to conduct proper ATA reconciliations.

Recordkeeping Violations

Fifteen years later, on September 25, 2019, the OAE conducted another random audit of respondent's attorney accounts, the results of which provided

the foundation for the charges of unethical conduct in this matter.

Stipulated Recordkeeping Violations

Following the audit, the OAE determined that respondent (1) maintained client ledger cards with “debit balances,” as R. 1:21-6(d) prohibits; (2) failed to maintain separate ledger cards for clients and for law firm funds held for bank charges, as R. 1:21-6(c)(1)(B) and (d) require; (3) maintained “old,” unresolved checks, as R. 1:21-6(d) prohibits; (4) maintained, “for an extended period,” inactive ledger balances in her ATA, as R. 1:21-6(d) prohibits; (5) maintained improper account designations on her ATA and ABA, as R. 1:21-6(a)(2) prohibits; (6) failed to conduct proper three-way reconciliations of her ATA, as R. 1:21-6(c)(1)(H) requires; (7) maintained personal funds and funds unrelated to her practice of law in her ATA, as RPC 1.15(a) prohibits; (8) failed to maintain ATA and ABA receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (9) failed to maintain sufficiently detailed deposit slips, as R. 1:21-6(c)(1)(A) requires; (10) failed to maintain professional liability insurance for her law firm, which she operated as a limited liability company (LLC), as R. 1:21-1B(a)(4) requires; and (11) maintained improper image-processed ABA checks, as R. 1:21-6(b) prohibits.

In her verified answer, respondent stipulated to having committed each of

the foregoing recordkeeping infractions. However, as detailed below, respondent denied (1) having failed to retain ATA records for a seven-year period, as R. 1:21-6(c)(1) requires, and (2) having committed discrete aspects of two additional recordkeeping infractions identified by the OAE.

Retaining ATA Records for a Seven-Year Period

Regarding the allegation that she failed to retain ATA records for a seven-year period, the OAE noted that respondent provided only “some” of the records that it had requested in connection with its audit, forcing her to “create[]” those records, with the assistance of an accountant, to determine whose funds were in her ATA “at any given time.” Although the OAE did not specify which records respondent failed to retain, it argued that her general failure to retain “contemporaneous” ATA records violated R. 1:21-6(c)(1). In her answer, respondent represented that she had “maintained” ATA records “for more than seven years,” given her view that, during the audit, she was able to “reconstruct” her ATA records going “back to 2012 and earlier.”

Unidentified ATA Funds

The OAE also alleged that respondent maintained “unidentified funds” in her ATA, as R. 1:21-6(d) prohibits. On October 11, 2019, following the random

audit, the OAE sent respondent a letter detailing the recordkeeping deficiencies it had identified, including that her ATA contained \$718.33 in “unidentified funds.”

On December 2, 2019, respondent sent the OAE a reply letter claiming, among other things, that she was “[c]hecking unidentified funds that will be turned over to the Superior Court if they remain unidentified.”¹ Three weeks later, on December 26, 2019, respondent sent the Superior Court Clerk’s Office a letter enclosing a \$258.96 ATA check for deposit with the Superior Court Trust Fund (the SCTF). In her certification to the Clerk’s Office, respondent claimed that the \$258.96 represented “unidentified funds” that had remained in her ATA “for more than two years.” Respondent also maintained that the \$258.96 “likely” belonged to “purchasers in a real estate closing who . . . never [negotiated] the check(s).”

Following her \$258.96 deposit with the SCTF, respondent discovered additional unidentified funds in her ATA. Specifically, during her July 30, 2021 demand interview with the OAE, respondent conceded that, by February 2021, following her accountant’s reconstruction of her financial records, she

¹ R. 1:21-6(j) provides that funds that remain unidentifiable for more than two years must be specifically designated as such in an ATA. Thereafter, an attorney must conduct a reasonable search to determine the beneficial owner of the unidentifiable trust funds. If the beneficial owner cannot be identified after the passage one year following a search, the funds may be paid to the Superior Court for deposit with the Superior Court Trust Fund.

discovered \$7,324.83 in unidentified ATA funds, which, in her view, belonged to her clients.

On June 1, 2022, after identifying most of the beneficial owners of her unidentified funds, respondent sent a \$6,230.09 ATA check to the Superior Court Clerk's Office for deposit with the SCTF, given her inability to locate certain beneficial owners, who, respondent claimed, never negotiated the checks that she had provided them years earlier. In her May 31, 2022 certification to the SCTF enclosing the \$6,230.09 ATA check, respondent noted that such funds had remained in her ATA "for more than two years."

Following respondent's \$6,230.09 deposit with the SCTF, the OAE noted that \$167.57 remained, unidentified, in her ATA. In the OAE's view, those unidentified funds belonged to respondent's clients. However, in her verified answer, her May 31, 2022 letter to the OAE, and through her testimony at the ethics hearing, respondent characterized the \$167.57 as law firm funds held for bank charges. In her view, those funds represented the remaining \$200 of her personal funds that she had deposited in her ATA, in 1991, when she opened that account. Respondent, however, failed to maintain a contemporaneous ledger card reflecting that the \$167.57 represented law firm funds held for bank charges and, during the ethics hearing, she could not recall when her purported \$200 initial deposit had been reduced to \$167.57. Respondent also maintained that,

following the opening of her ATA in 1991, she had not deposited any additional law firm funds for bank charges. On December 31, 2019 and August 18, 2021, following the OAE's random audit, respondent created ledger cards to reflect her view that the \$167.57 represented law firm funds held for bank charges.

Inactive ATA Balances

In her verified answer, respondent admitted that "inactive trust ledger balances" had remained in her ATA "for an extended period," as R. 1:21-6(d) prohibits. However, although the OAE's audit revealed a total of \$3,825.05 in inactive ATA funds in connection with six client matters, respondent stipulated that, in her view, only \$1,025.50 of such funds had remained inactive in connection with only two client matters.

First, respondent stipulated that she held a \$908.50 inactive balance belonging to her client, Loretta Sanders, from 2017 until November 26, 2019, when she issued a \$908.50 ATA check to Sanders, resolving that inactive balance.

Second, respondent stipulated that she held a \$117 inactive balance in connection with Denzil Nam's client matter from 2015 until October 18, 2021, when she issued a \$117 ATA check to herself for her legal fee in that matter.

Third, the OAE alleged that respondent held a \$1,000 inactive balance in

connection with Domingo Ulerio's client matter from 2016 until June 16, 2020, when she issued a \$500 ATA check to Ulerio and a second \$500 ATA check to herself for her legal fee.

In her verified answer and through her testimony at the ethics hearing, respondent alleged that she had represented Ulerio in connection with his unsuccessful attempt to sell his residential property. Respondent also maintained that the \$1,000 represented an earnest money deposit and that, following the collapse of the transaction, the buyer prohibited respondent from disbursing those funds to Ulerio. Respondent alleged that, until the timeframe underlying the random audit, she was unable to contact the buyer's attorney and obtain authorization to release those funds to Ulerio and to herself. Respondent, however, did not provide the OAE with any written evidence to substantiate her claim.

Fourth, the OAE alleged that respondent held a \$410.37 inactive balance in connection with Darryl Dunson's client matter from 2019 until October 2020. Specifically, during her September 2020 demand interview, respondent claimed that she had represented Dunson in connection with his dispute with a "timeshare" company and that "nothing ha[d] been happening" in that matter. In early 2019, respondent claimed that she had issued a \$410.37 ATA check "to a third-party payee," which "disputed" the "payment" and declined to negotiate

the check. During her interview, the OAE instructed respondent to void the 2019 \$410.37 check and issue a new check to resolve that inactive balance. One month later, on October 29, 2020, respondent issued a new \$410.37 ATA check to Dunson, who, in November 2020, successfully negotiated that check.

In her verified answer, respondent denied that the \$410.37 constituted an inactive balance because, until the funds from the 2019 ATA check “became available,” she was unable to return those funds to Dunson.

Fifth, the OAE alleged that respondent held a \$689.18 inactive balance belonging to her mother, Harriet Alsobrook, from 2019 until at least November 2020. Specifically, in 2016, respondent represented Harriet and the estate of her father, Eugene Alsobrook, in connection with the sale of their personal residence. Following the transaction, respondent properly disbursed the majority of the sale proceeds but allowed \$689.18 of such funds to remain in her ATA “in case there were any miscellaneous expenses stemming from” the transaction. On November 18, 2020, four years after the underlying real estate transaction, respondent issued a \$137.83 ATA check to Harriet and, during her July 2021 demand interview, she claimed that the \$689.18 balance had been fully disbursed.²

² Although the real estate transaction took place in 2016, the OAE did not explain why it had determined that 2019 was the year in which the \$689.18 balance became inactive.

Sixth, and finally, the OAE alleged that, between 2019 and November 2021, respondent held a \$700 inactive balance in connection with a client matter relating to 517 Lincoln Place. During the ethics hearing, the OAE investigator noted that, following the reconstruction of respondent's financial records, she discovered that she had failed to enter a November 2016 \$700 deposit on that client's ledger card.³ Because the \$700 had been languishing for "some time," the OAE instructed respondent to disburse the funds to the beneficial owner. Thereafter, on October 29, 2021, respondent issued a \$700 ATA check to Clive Hudson, which resolved the inactive balance in that client matter.

In her verified answer, respondent admitted the facts underpinning the Harriet Alsobrook and the 517 Lincoln Place client matters but offered no explanation to support her claim that she did not maintain inactive ATA funds in those matters.

Commingling

The \$60,000 From Respondent's Father

On February 12, 2014, respondent deposited, in her ATA, a \$60,000 check from her father, Eugene Alsobrook. However, that sum represented her father's

³ Although the \$700 deposit occurred in 2016, the OAE did not explain why it had determined that 2019 was the year in which the \$700 balance became inactive.

“personal funds” that were unrelated to her practice of law. During her September 2020 demand interview, respondent claimed that, in 2014, her father was ill and decided that he wanted her “to handle that money . . . to pay his bills” and cover his grandchild’s education expenses. Respondent also alleged that her father had allowed her to use those funds for her own personal use. Respondent, however, conceded that she improperly had deposited those non-client funds in her ATA and that “[t]he funds should have been deposited in a separate, non-attorney account.”

Following that deposit, respondent utilized those funds to pay for Eugene’s tax obligations, his grandchild’s education, and his funeral expenses.⁴ Thereafter, respondent disbursed the remaining funds to her personal account.⁵

The Earned Legal Fees from the Ulerio and Nam Client Matters

As noted above, between 2016 and June 2020, respondent held \$1,000 in her ATA in connection with Ulerio’s client matter, funds which the OAE maintained languished as an inactive balance. However, on June 16, 2020, following the OAE’s random audit, respondent issued a \$500 check to Ulerio

⁴ Eugene passed away in November 2014.

⁵ The OAE noted that, other than respondent’s decision to commingle her father’s personal funds in her ATA, the investigation did not reveal any improper use of those funds.

and a second \$500 check to herself for her earned legal fees. The OAE alleged that, because respondent maintained her \$500 earned legal fee in her ATA from 2016 until June 2020, she committed commingling by failing to promptly remove her legal fee. Respondent, however, alleged that she had no authority to remove her legal fee until the buyer in the failed real estate transaction underlying Ulerio's client matter had provided his consent to disburse those funds.

Further, respondent stipulated that, in connection with Denzil Nam's client matter, she failed to promptly remove her \$117 earned legal fee from 2015 until October 18, 2021, when she finally disbursed those funds to herself from her ATA. Consequently, respondent conceded that, during that timeframe, she commingled her earned legal fee with client funds.

Negligent Misappropriation

The Larry Johnson Matter

On January 5, 2012, respondent attempted to deposit, in her ATA, a \$200 check on behalf of her client, Larry Johnson. Five days later, on January 10, the check was returned for insufficient funds, and Santander Bank charged respondent's ATA a \$15 fee for the returned check. The OAE alleged that, because respondent was not maintaining any law firm funds for bank charges,

the \$15 bank charge impacted the \$7,027.26 that respondent held, in her ATA, on behalf of five clients.

Respondent, however, denied that the \$15 bank charge impacted any client funds because, in her view, in 2012, she maintained at least \$167.57 in law firm funds for bank charges. As detailed above, respondent claimed that the \$167.57 represented the remainder of a \$200 personal deposit that she had made, in 1991, when she opened her ATA.

The Eric Samuels Matter

On August 20, 2015, respondent issued a \$73 ATA check to the Essex County Register on behalf of her client, Eric Samuels. However, at the time she issued the check, respondent was not holding any ATA funds on behalf of Samuels. On August 26, 2015, when the check cleared, the OAE alleged that respondent should have been safeguarding a total of \$43,953.33 on behalf of eight clients. However, as a result of the \$73 ATA check to the Essex County Register and the \$15 bank charge underlying the Johnson client matter, the OAE maintained that respondent created an \$88 shortage in her ATA, given that her account balance was reduced to only \$43,865.33.

During the ethics hearing, the OAE investigator noted that, on August 26, 2015, respondent held no personal funds in her ATA to offset the \$88 shortage.

However, in the formal ethics complaint, the OAE indicated that, on August 26, 2015, respondent held \$34,450 of the remaining \$60,000 in “commingled funds” that she had received from her father, Eugene, in February 2014. Consequently, the OAE maintained, and respondent agreed, that, in August 2015, “no client funds were directly impacted as a result of the \$73 disbursement.”

The Eugene Alsobrook Matter

As detailed above, on February 14, 2014, respondent deposited in her ATA a \$60,000 check issued by her father, Eugene, who passed away nine months later, in November 2014. Between April 2014 and October 2016, respondent gradually disbursed those funds to pay for Eugene’s personal and estate expenses and his grandchild’s education. By October 13, 2016, \$2,918 of Eugene’s original \$60,000 deposit remained in respondent’s ATA.

On November 20, 2016, respondent issued a \$3,000 ATA check to herself, comprising the remaining funds that she held on behalf of Eugene. However, because respondent held only \$2,918 on Eugene’s behalf, the \$3,000 disbursement caused an \$82 shortage in her ATA. Moreover, on November 22, 2016, when her \$3,000 check cleared, respondent should have been safeguarding a total of \$217,575.33 on behalf of ten clients. However, because of the \$15 bank charge underlying the Johnson client matter, the improper \$73

disbursement underlying the Samuels client matter, and the \$82 shortage resulting from respondent's \$3,000 check to herself, the OAE alleged that, on November 22, 2016, respondent created a \$170 total shortage in her ATA. By contrast, based on her view that, since at least 2012, she had held at least \$167.57 in her ATA for bank charges, respondent argued that her conduct resulted in only a \$2.43 ATA shortage.

Between January 12, 2017 and March 26, 2020, after depleting all of Eugene's ATA funds, respondent issued an additional six ATA checks to herself, in amounts ranging from \$218 to \$1,600, and totaling \$7,418, believing that the disbursements comprised Eugene's remaining funds.⁶ However, on March 26, 2020, respondent held only \$2,264.42 in her ATA when she should have been safeguarding a total of \$9,943.81 on behalf of ten clients.⁷ Consequently, respondent's \$7,418 in improper disbursements increased the alleged \$170 ATA shortage to \$7,588.⁸

⁶ The OAE considered but declined to charge respondent with having violated RPC 1.15(a) and the principles of In re Wilson 81 N.J. 451 (1979). Despite the significant ATA shortages resulting from respondent's conduct, the OAE found no clear and convincing evidence that she knew that she was misappropriating client funds or that she was willfully blind to the risk of such misappropriation, pursuant to the principles of In re Skevin, 104 N.J. 476 (1986). In support of its contention, the OAE noted that, prior to the reconstruction of her financial records, her ledger card for Eugene's funds reflected a \$218 remaining balance.

⁷ Respondent's improper disbursements did not result in any ATA overdrafts.

⁸ The OAE also maintained that, for an undisclosed timeframe, respondent increased her \$7,588

In its formal ethics complaint, the OAE agreed with respondent's position that she was unaware of the significant shortage in her ATA "until the OAE's involvement in this matter." During her July 2021 demand interview, respondent conceded that her conduct resulted in a \$7,588 ATA shortage but denied having been contemporaneously aware that she was invading client funds. Specifically, respondent argued that she did not engage in any knowing misappropriation based on her claim that her financial records reflected an inaccurate running balance for Eugene's ATA funds.

Following her July 2021 demand interview, on August 18, 2021, respondent deposited \$7,588 in her ATA and, thus, rectified the shortage in that account.

Failing to Maintain Professional Liability Insurance

In 2004, at some point after her first random audit, respondent began operating her practice of law as an LLC. However, following the formation of her LLC, respondent altogether failed to maintain professional liability insurance for her law practice, as R. 1:21-1B(a)(4) requires. During the 2019

ATA shortage to \$7,679.39, based on its view that, on December 26, 2019, she had "preemptively turned over" \$91.39 in ATA funds to the Superior Court for deposit with the SCTF. However, the formal ethics complaint did not charge respondent with having engaged in any acts of negligent misappropriation in connection with her disbursements to the Superior Court.

random audit, the OAE advised respondent of her obligation to obtain such insurance. Thereafter, prior to her September 2020 demand interview, respondent provided proof to the OAE that she since had obtained the required insurance. Based on the foregoing facts, respondent stipulated that, from 2004 until at least September 2019, she violated RPC 5.5(a)(1) by failing to maintain professional liability insurance in connection with the operation of her practice of law.

The Parties' Positions Before the DEC

In her summation brief to the DEC, respondent conceded that she failed to comply with the recordkeeping requirements of R. 1:21-6, in violation of RPC 1.15(d), and to maintain professional liability insurance in connection with the operation of her law practice via an LLC, in violation of RPC 5.5(a)(1). Additionally, respondent conceded that she commingled personal funds with client funds by failing to promptly remove her \$117 earned legal fee in connection with Denzil Nam's client matter and by maintaining \$60,000 of her father's personal funds in her ATA, in violation of RPC 1.15(a). Respondent further conceded that she negligently misappropriated client funds in connection with the Samuels and Eugene Alsobrook matters, in violation of RPC 1.15(a).

Respondent, however, disputed that the \$15 bank charge underlying the

Johnson client matter caused a negligent misappropriation of client funds, given her view that, in 2012, she maintained at least \$167.57 in law firm funds for bank charges. Respondent also argued that, in connection with Ulerio's client matter, she neither commingled her \$500 attorney's fee nor allowed the \$1,000 that she had held in that matter to languish, as an inactive balance, given her view that she could not have disbursed those funds until her adversary authorized her to do so.

In recommending the imposition of an admonition, respondent urged, as mitigation, her contrition and the fact that, during the ethics hearing, she took responsibility and apologized for her conduct. Respondent also emphasized that, with the assistance of an accountant, she corrected her recordkeeping deficiencies and "made material changes" to her recordkeeping practices, including conducting three-way ATA reconciliations using new computer software. Moreover, respondent noted that she fully cooperated with disciplinary authorities and that her conduct resulted in no ultimate financial harm to her clients. Finally, respondent argued that her 2006 censure in Alsobrook I should not serve to enhance her discipline because that matter involved unrelated misconduct.

In its summation brief to the DEC, the OAE urged the hearing panel to sustain all the charges of unethical conduct, including the disputed charges that

respondent negligently misappropriated client funds in the Johnson client matter and commingled her legal fee and failed to resolve an inactive balance in the Ulerio client matter.

Regarding the Johnson client matter, the OAE argued that, because respondent was not holding any attorney funds for bank charges in her ATA, the \$15 bank charge that resulted from Johnson's \$200 returned check impacted the \$7,027.26 in client funds that she had maintained, in January 2012.

Regarding the Ulerio client matter, the OAE argued that, from 2016 until June 2020, respondent allowed a \$1,000 inactive balance to languish in her ATA. The OAE also asserted that, because \$500 of that \$1,000 inactive balance constituted her legal fee, respondent failed to promptly remove her legal fee and, thus, engaged in commingling.

In recommending the imposition of a reprimand, the OAE analogized respondent's conduct to that of the reprimanded attorney in In re Mitnick, 231 N.J. 133 (2017), who, as detailed below, engaged in negligent misappropriation as a result of poor recordkeeping practices. The OAE also argued that little mitigating weight should be accorded to respondent's admission of wrongdoing, given its view that she did not conserve disciplinary resources by allowing this matter to proceed to us via a disciplinary stipulation or a motion for discipline by consent. Further, although respondent's interactions with disciplinary

authorities “met the expectations of an attorney under investigation,” the OAE asserted that respondent’s cooperation was not so exceptional to constitute a mitigating factor. Additionally, despite respondent’s remedial efforts to correct her recordkeeping deficiencies, the OAE argued that she “should not be rewarded for following the Rules.” Finally, the OAE noted that respondent’s conduct underlying her 2006 censure in Alsobrook I was remote and unrelated to her conduct underlying the instant matter and, thus, should be accorded “appropriate” aggravating weight.

The OAE urged the DEC to recommend the condition that, within ninety days of the Court’s disciplinary Order in this matter, respondent attend a recordkeeping course pre-approved by the OAE and submit monthly reconciliations of her attorney accounts to the OAE, on a quarterly basis, for a two-year period.

The Hearing Panel’s Findings

The DEC found that respondent violated RPC 5.5(a) by failing, from 2004 until at least September 2019, to maintain professional liability insurance in connection with the operation of her law practice, as R. 1:21-1B(a)(4) requires.

The DEC also found that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in a number of

respects. Specifically, in addition to finding that she committed the stipulated recordkeeping infractions, the DEC found that respondent maintained unidentified funds in her ATA, as R. 1:21-6(d) prohibits. The DEC noted that, in her certified correspondence to the Superior Court Clerk's Office and during her demand interviews with the OAE, respondent repeatedly "admitted to the existence of unidentified funds." Indeed, in her December 2019 certification to the Clerk's Office, respondent characterized the \$258.96 that she had submitted for deposit with the SCTF as "unidentified funds."

The DEC rejected respondent's contention that, following the reconstruction of her financial records, she discovered \$167.57 of law firm funds that she claimed she had held for bank charges. The DEC found no basis to credit respondent's claim that those funds represented the remainder of a \$200 deposit that she had made, in 1991, when she opened her ATA. The DEC observed that respondent failed to maintain a contemporaneous ledger card demonstrating that those funds constituted law firm funds for bank fees and that her position "rest[ed] solely on her say-so." Moreover, respondent could not recall how her purported \$200 deposit had been reduced to \$167.57.

Further, the DEC found that respondent maintained inactive client balances in her ATA, contrary to R. 1:21-6(d). First, as respondent conceded, the DEC found that, between 2017 and November 2019, she maintained a

\$908.50 inactive balance in connection with the Sanders client matter and, between 2015 and October 2021, she maintained a \$117 inactive balance in connection with the Nam client matter. The DEC also found that, (1) between 2019 and October 2020, respondent maintained a \$410.37 inactive balance in connection with the Dunson client matter; (2) between 2019 and November 2020, she maintained a \$689.18 inactive balance in connection with the Harriet Alsobrook client matter; and (3) between 2019 and November 2021, she maintained a \$700 inactive balance in connection with the 517 Lincoln Place client matter.

However, the DEC found that the OAE did not prove, by clear and convincing evidence, that, between 2016 and June 2020, respondent maintained a \$1,000 inactive balance in connection with the Ulerio client matter. Specifically, the DEC observed that respondent consistently and credibly claimed that, following the failed real estate transaction underlying Ulerio's client matter, she was unable to disburse the earnest money deposit to Ulerio and to herself for her legal fee until the buyer's attorney authorized her to do so. The DEC further noted that the OAE presented no evidence to rebut respondent's claim in this respect. Consequently, the DEC concluded that the OAE did not clearly and convincingly establish that respondent maintained an inactive balance in the Ulerio client matter.

Next, the DEC found that respondent violated RPC 1.15(a) by commingling her father's \$60,000 in personal funds in her ATA from February 2014 until November 2016, when she fully removed those funds from her account. The DEC also found that respondent committed commingling by allowing her \$117 legal fee in the Nam client matter to remain in her ATA from 2015 until October 2021. However, in the Ulerio client matter, because respondent was unable to disburse her \$500 legal fee to herself until the buyer authorized her to do so, the DEC found no clear and convincing evidence that she committed commingling in that matter.

Finally, the DEC determined that respondent violated RPC 1.15(a) by engaging in multiple instances of negligent misappropriation.

First, the DEC found that, based on her failure to maintain law firm funds for bank charges, respondent negligently invaded client funds, in January 2012, when her bank assessed a \$15 fee for Johnson's \$200 returned check. Second, the DEC found that respondent committed an additional instance of negligent misappropriation, in August 2015, when she issued a \$73 ATA check on behalf of Samuels, despite holding no funds for that client in her account.⁹ Third, the

⁹ Given the parties' stipulation that, in August 2015, respondent held \$34,450 of Eugene's non-client funds in her ATA and, thus, no client funds were impacted as a result of the \$73 disbursement, the DEC questioned whether, in August 2015, respondent committed negligent misappropriation. However, because neither the OAE nor respondent directly addressed this issue during their presentations, the DEC determined to "accept[] the violation as conceded."

DEC found that, between November 20, 2016 and March 26, 2020, respondent engaged in additional instances of negligent misappropriation by disbursing ATA funds to herself while believing that she held sufficient funds from her father, Eugene, to cover those disbursements. However, by November 20, 2016, respondent had depleted all of Eugene's funds in her ATA and, thus, her disbursements resulted in a \$7,588 ATA shortage. The DEC noted that it accepted the OAE's position that it could not establish, by clear and convincing evidence, that respondent knowingly invaded client funds.

The DEC determined, based on applicable disciplinary precedent detailed below, that a reprimand was the baseline level of discipline for the totality of respondent's misconduct. In determining whether to depart from that baseline level of discipline, the DEC accorded "marginal" mitigating weight to the fact that (1) respondent took responsibility and apologized for a "substantial majority of her unethical conduct," (2) rectified her recordkeeping errors, (3) and caused no ultimate harm to her clients. In the DEC's view, an attorney's remorse and contrition "are expected" in disciplinary proceedings, and respondent's apology "did not go above and beyond that expectation." The DEC also stated an attorney's efforts to correct recordkeeping deficiencies are "basic prudent steps one would expect to prevent further unethical conduct." Moreover, despite the lack of ultimate harm to her clients, respondent's negligent misappropriation

resulted in a \$7,588 ATA shortage from March 26, 2020 until August 18, 2021, when she replenished her account following the reconstruction of her financial records. Finally, the DEC accorded “minor” aggravating weight to respondent’s 2006 censure in Alsobrook I, given that her conduct underlying that matter was remote and dissimilar to her conduct underlying the instant matter.

Based on the “marginal” mitigating and aggravating factors presented, the DEC found no basis to depart from its baseline level of discipline and, thus, recommended the imposition of a reprimand, with the same conditions urged by the OAE.

The Parties’ Positions Before the Board

At oral argument and in its submission to us, the OAE clarified its position regarding the allegations of negligent misappropriation in the Samuels matter, considering its view that the DEC mistakenly found that, in August 2015, respondent committed negligent misappropriation in that matter.

Specifically, on August 20, 2015, respondent issued a \$73 ATA check to the Essex County Register on behalf of Samuels, despite holding no ATA funds on his behalf. However, in August 2015, respondent still held \$34,450 of her father’s funds in her ATA – funds which the OAE maintained respondent could utilize for herself. Based on respondent’s authority to use those funds, the OAE

stated that no acts of misappropriation occurred as a result of respondent's improper \$73 ATA check until November 22, 2016, when respondent depleted her father's ATA funds and still held no ATA funds on behalf of Samuels.

With that clarification regarding the charges of negligent misappropriation, the OAE urged us to adopt the DEC's findings and determine that a reprimand, with the recommended conditions, is the appropriation quantum of discipline for respondent's misconduct.

Respondent did not submit a brief for our consideration. However, in waiving oral argument before us, she indicated that she agreed with the conclusions and recommendations of the DEC.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we are satisfied that the DEC's findings are fully supported by clear and convincing evidence.

RPC 1.15(d)

Specifically, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 in numerous respects.

First, as the OAE's investigation revealed, and as respondent conceded,

she (1) improperly maintained client ledger cards with debit balances; (2) failed to maintain separate ledger cards for each client and for law firm funds held for bank charges; (3) allowed “old” ATA checks to languish, unresolved; (4) maintained, “for an extended period,” inactive ledger balances in her ATA; (5) maintained improper account designations on her ATA and ABA; (6) failed to conduct proper three-way ATA reconciliations; (7) maintained personal funds and funds unrelated to her practice of law in her ATA; (8) failed to maintain ATA and ABA receipts and disbursements journals; (9) failed to maintain sufficiently detailed deposit slips; (10) failed to maintain professional liability insurance for her law firm, which she operated as an LLC; and (11) maintained improper imaged-processed ABA checks.

The OAE alleged that respondent further violated RPC 1.15(d) by failing to “retain” ATA records for seven years, as R. 1:21-6(c)(1) requires. In support of its contention, the OAE argued that respondent failed to retain “contemporaneous” ATA records and produced only “some” of the financial records that it had requested in connection with its audit. Respondent disputed the OAE’s allegation based on her view that she had sufficient financial records to reconstruct the complete ATA records that she should have been maintaining in accordance with R. 1:21-6(c)(1).

R. 1:21-6(c)(1) requires attorneys to both maintain and retain their

financial books and records, including, among other things, ATA reconciliations, client ledger cards, and receipts and disbursements journals. In In the Matter of Evan D. Weiner, DRB 22-217 (May 9, 2023), an attorney admittedly failed to conduct proper ATA reconciliations and failed to maintain receipts and disbursements journals and sufficiently detailed client ledger cards, in violation of RPC 1.15(d). Id. at 27-28. However, we concluded that the attorney did not separately violate RPC 1.15(d) by failing to retain certain records for a seven-year period. Id. at 28. Specifically, we declined to find the attorney to be noncompliant with the Rule's seven-year retention requirement with respect to documents that he admittedly never prepared in the first place. Id. at 29. Rather, we found that the appropriate charge was his failure to maintain, or create in the first place, his reconciliations, journals, and client ledger cards. Ibid.

Applying our rationale in Weiner, we decline to find respondent noncompliant with the seven-year retention requirement of R. 1:21-6(c)(1) with respect to the financial records that she, admittedly, failed to maintain in the first place. Specifically, respondent's stipulated recordkeeping violations are more appropriately characterized as a failure to maintain, or create in the first place, her reconciliations, receipts and disbursements journals, and separate ledger cards for each client. Accordingly, we decline to sustain the allegation

that respondent violated the seven-year retention requirement of R. 1:21-6(c)(1) as duplicative of the substantive recordkeeping violations detailed above.

Respondent, however, further violated RPC 1.15(d) by maintaining unidentified funds in her ATA, as R. 1:21-6(d) prohibits.

As the DEC correctly observed, respondent repeatedly admitted to having maintained unidentified funds throughout the OAE's investigation. Specifically, in her December 26, 2019 certification to the Superior Court Clerk's Office, respondent admitted that the \$258.96 ATA check that she submitted for deposit with the SCTF represented "unidentified funds" that "likely" belonged to a buyer in a real estate transaction who never submitted those funds for deposit. Additionally, during her July 30, 2021 demand interview, respondent conceded that, several months earlier, following her accountant's reconstruction of her financial records, she discovered \$7,324.83 in unidentified ATA funds, which, she maintained, belonged to her clients. After identifying the beneficial owners of the majority of those funds, the OAE maintained that \$167.57 remained, unidentified, in respondent's ATA.

Throughout the disciplinary proceedings below, respondent repeatedly contested the OAE's allegation that the \$167.57 constituted unidentified ATA funds. Rather, in her view, those funds represented the remainder of a \$200 personal deposit that she had made, in 1991, to cover bank charges.

In New Jersey disciplinary proceedings, it is well-settled that “the burden of going forward regarding defenses . . . relevant to the charges of unethical conduct shall be on the respondent.” R. 1:20-6(c)(2)(C). Here, however, respondent offered no evidence to corroborate her claim that the \$167.57 represented the remainder of a purported \$200 personal ATA deposit that she had made, more than three decades earlier. Specifically, respondent failed to maintain a contemporaneous ledger card reflecting her view that the \$167.57 constituted law firm funds for bank charges, despite having been advised by the OAE, in connection with her 2004 random audit, of her obligation to maintain such a record. Moreover, during the ethics hearing, respondent could not explain how her purported \$200 deposit had been reduced to \$167.57. Based on the lack of any corroborating proof to support respondent’s assertion, we adopt the DEC’s factual finding that the \$167.57 constituted unidentified ATA funds, rather than attorney funds held for bank charges.

Finally, we determine that respondent further violated RPC 1.15(d) by maintaining inactive client balances in her ATA. Recently, we observed that “inactive funds are funds belonging to a known client whose matter has been closed, but the funds have yet to be disbursed.” In the Matter of Daniel David Hediger, DRB 22-071 (Nov. 1, 2022) at 6-7.

Here, as respondent stipulated, from 2017 until November 26, 2019, she

maintained a \$908.50 inactive balance in connection with the Sanders client matter and, from 2015 until October 18, 2021, she maintained a \$117 inactive balance in connection with the Nam client matter.

Additionally, from 2019 until October 2020, respondent maintained a \$410.37 inactive balance in connection with the Dunson client matter involving his dispute with a timeshare company. Specifically, in early 2019, respondent issued a \$410.37 ATA check to a “third-party payee,” which disputed the payment and did not return the check to respondent. More than one year later, by September 2020, the third-party payee still had not submitted that check for deposit. Considering the age of the outstanding ATA check, during the September 2020 demand interview, the OAE advised respondent to void the 2019 check and issue a new ATA check to resolve the inactive balance. One month later, in October 2020, respondent issued a new \$410.37 ATA check to Dunson, who successfully deposited those funds and resolved the inactive balance.

In her verified answer, respondent denied that she had maintained an inactive balance because, until the funds from the 2019 ATA check “became available,” she was unable to return those funds to Dunson. However, based on the record before us, it does not appear that respondent took any action to resolve the outstanding check until the OAE’s intervention, during the September 2020

demand interview. Given that the 2019 ATA check to the third-party payee languished, for more than a year, without respondent attempting to resolve the status of those funds, we determine that, from 2019 until October 2020, respondent maintained a \$410.37 inactive balance in the Dunson client matter.

Further, between 2019 and at least November 2020, respondent maintained a \$689.18 inactive balance belonging to her mother, Harriet. Specifically, following her 2016 representation of Harriet and the estate of her father, Eugene, in connection with the sale of their personal residence, respondent allowed \$689.18 in closing funds to remain in her ATA, for at least four years, in case any “miscellaneous expenses” arose from the transaction. On November 18, 2020, respondent issued a \$137.83 ATA check to Harriet and, by July 2021, respondent resolved the entire \$689.18 inactive balance.¹⁰

Respondent offered no explanation for why she had held \$689.18 in her ATA, for years, for potential “miscellaneous expenses” stemming from an otherwise straightforward real estate transaction. Indeed, in her verified answer, respondent provided no explanation to support her claim that her conduct did not result in an inactive balance. Given that she allowed the \$689.18 to languish in her ATA, for at least four years, without any reasonable explanation, we find

¹⁰ As noted above, although the real estate transaction took place in 2016, the OAE did not explain its theory that 2019 was the year in which the \$689.18 balance became inactive.

that respondent maintained an inactive balance in this matter.

Moreover, between 2019 and November 2021, respondent maintained a \$700 inactive balance in connection with the 517 Lincoln Place client matter. The inactive balance in that matter resulted from respondent's failure to record, on her client's ledger card, a \$700 ATA deposit made in November 2016. Respondent did not discover the \$700 transaction until the reconstruction of her financial records, following which, on October 29, 2021, respondent issued a \$700 ATA check to the beneficial owner of those funds. Respondent offered no explanation to support her claim that she did not maintain an inactive balance in this matter. However, based on these circumstances, respondent's poor recordkeeping practices unquestionably resulted in an inactive ATA balance.

Finally, between 2016 and June 16, 2020, respondent maintained a \$1,000 inactive balance in connection with the Ulerio client matter. In that matter, respondent represented Ulerio in connection with his unsuccessful attempt to sell his residential property. In 2016, respondent deposited, in her ATA, the buyer's \$1,000 deposit towards the purchase of the property and, following the collapse of the transaction, the buyer refused to allow respondent to disburse those funds.

In her verified answer and through her testimony during the ethics hearing, respondent maintained that, until the timeframe underlying the OAE's random

audit, she was unable to contact the buyer's attorney and obtain authorization to disburse those funds to herself, for her legal fee, and to Ulerio.

However, it appears that for four years, from 2016 until mid-2020, respondent made no effort to resolve the dispute regarding those funds. Further, respondent offered no details regarding her attempts, if any, to contact the buyer's attorney regarding those funds until the OAE's intervention. Indeed, it does not appear that respondent attempted to segregate those purportedly disputed funds, of which she claimed a fifty-percent interest, as required by RPC 1.15(c) (failing to keep disputed funds separate and intact). Consequently, we find that, from 2016 until June 2020, respondent maintained an inactive balance in connection with Ulerio's matter.

RPC 1.15(a) (Commingling)

Respondent violated RPC 1.15(a) by engaging in two instances of commingling.

First, in February 2014, respondent deposited, in her ATA, a \$60,000 check from her father, Eugene. However, as respondent conceded, that sum represented her father's personal, non-client funds, which he authorized her to use to pay for his personal expenses. Additionally, as the OAE and respondent stipulated, Eugene allowed respondent to use those funds for her personal

expenses. As respondent admitted, Eugene's non-client funds were unrelated to her practice of law and, thus, "should have been deposited in a separate, non-attorney account." Based on these stipulated facts, respondent commingled personal, non-client funds in her ATA between February 2014 and November 2016, when she disbursed Eugene's remaining funds to herself.

Second, in connection with the Nam client matter, from 2015 until October 18, 2021, respondent admittedly commingled her \$117 earned legal fee in her ATA.

However, we decline to sustain the allegation that respondent engaged in commingling in connection with the Ulerio client matter. As detailed above, in that matter, between 2016 and June 2020, respondent maintained the buyer's \$1,000 real estate deposit in her ATA following the collapse of the transaction. On June 16, 2020, following the OAE's random audit, respondent, with the buyer's authorization, disbursed \$500 to Ulerio and the remaining \$500 to herself for her legal fee. The OAE asserted that respondent engaged in commingling because she continuously maintained her \$500 earned legal fee in her ATA from 2016 until June 16, 2020. Respondent, however, alleged that she had no authority to remove her legal fee until the buyer authorized her to disburse the \$1,000 real estate deposit.

Here, the limited record before us does not reveal at what point respondent

and Ulerio had agreed that \$500 of the \$1,000 deposit constituted respondent's earned legal fee. Without that information, the record cannot support the OAE's contention that respondent continuously maintained and commingled her earned legal fee in her ATA. Although respondent's prolonged failure to make any effort to resolve the dispute with the buyer regarding the \$1,000 deposit resulted in an inactive ATA balance, in our view, there is no clear and convincing evidence that respondent's conduct also amounted to commingling. Because respondent's conduct is more appropriately encapsulated by the charge that she maintained an inactive balance, we decline to sustain the allegation that she engaged in commingling in connection with Ulerio's client matter.

RPC 1.15(a) (Negligent Misappropriation)

Respondent also violated RPC 1.15(a) by engaging in several instances of negligent misappropriation.

First, on January 10, 2012, five days after respondent attempted to deposit a \$200 check from her client, Larry Johnson, her bank imposed a \$15 charge after Johnson's check was returned due to insufficient funds. Because there is no clear and convincing evidence that respondent was holding any law firm funds for bank fees, the \$15 charge impacted the \$7,027.26 in ATA funds that respondent held on behalf of five clients.

Three-and-a-half years later, on August 20, 2015, respondent issued a \$73 ATA check on behalf of her client, Eric Samuels. Because respondent was not holding any ATA funds on behalf of Samuels, such a disbursement ordinarily would have impacted the \$43,953.33 in client funds that she held in her ATA. However, as the parties stipulated, because respondent still held \$34,450 of her father's personal funds in her ATA – funds which the parties agreed respondent could utilize for herself – the improper \$73 disbursement did not result in any misappropriation of client funds, in August 2015.

However, on November 26, 2016, respondent issued a \$3,000 ATA check to herself comprising her father's remaining personal funds. Given that respondent held only \$2,918 on behalf of her father, her disbursement resulted in a \$170 total ATA shortage, considering the \$15 bank charge underlying the Johnson client matter, the \$73 improper disbursement underlying the Samuels client matter, and the \$82 shortage resulting from her improper \$3,000 check to herself.

Due to her grossly deficient recordkeeping practices, between January 12, 2017 and March 26, 2020, respondent's invasion of client funds continued. Specifically, during that timeframe, respondent issued six additional ATA checks to herself, in amounts ranging from \$218 to \$1,600, and totaling \$7,418, based on her articulated belief that those disbursements were covered by her

father's remaining ATA funds. Given that she had depleted her father's ATA funds by November 26, 2016, her improper disbursements increased her \$170 ATA shortage to \$7,588 by March 26, 2020, when she should have been safeguarding a total of \$9,943,81 on behalf of ten clients. It was not until seventeen months later, on August 18, 2021, when she deposited \$7,588 of her own funds in her ATA, that respondent finally rectified her account shortage.

The parties stipulated that respondent was unaware of her invasion of client funds "until the OAE's involvement in this matter." Although respondent's year-and-a-half long \$7,588 ATA shortage raises the specter of knowing misappropriation, we determine to leave, undisturbed, the OAE's decision declining to charge respondent with having violated the principles of In re Wilson, 81 N.J. 451 (1979). Given that respondent's ledger card for her father reflected an inaccurate \$218 balance prior to the reconstruction of her financial records, the OAE appears to have accepted respondent's position that her misappropriation was the result of her poor recordkeeping practices, but did not rise to the level of willful blindness.

RPC 5.5(a)(1) (Failing to Maintain Professional Liability Insurance)

Finally, respondent violated RPC 5.5(a)(1) by failing, from 2004 until at least September 2019, to maintain professional liability insurance in connection

with the operation of her practice of law. R. 1:21-1B(a)(4) requires a limited liability company to obtain and maintain, in good standing, one or more policies of lawyers' professional liability insurance. The Court Rule provides, in relevant part that:

The limited liability company shall obtain and maintain in good standing one or more policies of lawyers' professional liability insurance which shall insure the limited liability company against liability imposed upon it by law for damages resulting from any claim made against the limited liability company by its clients arising out of the performance of professional services by attorneys employed by the limited liability company in their capacities as attorneys.

[R. 1:21-1B(a)(4).]

Further, R. 1:21-1B(b) requires a limited liability company formed to engage in the practice of law to file with the Clerk of the Court a certificate of insurance, within thirty days of filing its certificate of formation. The Court Rule also requires the limited liability company to file with the Clerk any amendments to or renewals of the certificate of insurance within thirty days of the effective date of the amendment or renewal.

Here, following her 2004 random audit, respondent began practicing law via an LLC and, thus, she was required, by Court Rule, to maintain professional liability insurance and to file certificates of insurance with the Clerk. Respondent, however, failed to fulfill those obligations for at least fifteen years,

until September 2019, when the OAE advised her of her obligation to obtain such insurance in connection with its 2019 random audit.

In sum, we find that respondent violated RPC 1.15(a) (two instances), RPC 1.15(d), and RPC 5.5(a)(1). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Generally, a reprimand is the appropriate discipline for negligent misappropriation caused by poor recordkeeping practices, even when accompanied by commingling violations. See, e.g., In re Sherer, 250 N.J. 151 (2022) (as a consequence of poor recordkeeping, the attorney negligently invaded \$3,366 in client and third-party funds; additionally, for a two-week period, the attorney commingled \$8,747 in personal funds in his ATA; the attorney also failed to comply with the OAE's demand audit requirements and failed to reimburse the parties impacted by his negligent misappropriation; in mitigation, the attorney had no prior discipline in a thirty-six-year legal career and was no longer practicing law); In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices resulted in the negligent invasion of, and failure to safeguard, 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) (failing to cooperate with disciplinary authorities); the attorney also commingled \$225 in personal funds he received from his tenant; no prior discipline); In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his ATA; additionally, for four months, the attorney commingled \$10,000 of personal funds in his ATA; no prior discipline).

Respondent, however, also failed to maintain professional liability insurance, for at least fifteen years, in connection with the operation of her law practice. The baseline level of discipline for practicing law without maintaining the required professional liability insurance is an admonition. See In re Lindner, 239 N.J. 528 (2019) (in a default matter, for a three-year period, the attorney practiced law via a limited liability company without maintaining professional liability insurance; no prior discipline), and In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (for a six-year period, the attorney practiced law via a professional corporation without maintaining liability insurance).

However, if the misconduct is accompanied by other violations or aggravating factors, greater discipline may be warranted. See In re Killen, 245 N.J. 381 (2021) (reprimand for an attorney who knowingly failed to maintain

professional liability insurance for four years; specifically, the attorney made a conscious decision not to renew his professional liability insurance policy based on financial considerations, demonstrating that his own monetary interests were more important than the interests of his clients; the attorney also violated RPC 8.1(b) by refusing to reply to the OAE's communications regarding his conduct and by failing to appear for a demand interview; no prior discipline in his more than thirty-year career), and In re Coleman, 245 N.J. 264 (2019) (censure for attorney who, in two consolidated matters, failed to maintain liability insurance while practicing law via a professional corporation; the attorney also negligently misappropriated client funds, violated the recordkeeping Rules, and, for nearly eight years, advertised as a professional corporation despite his corporate status having been revoked; in aggravation, we weighed the default status of one matter and, in the second matter, the prolonged shortage in the attorney's ATA; no prior discipline).

Here, like the reprimanded attorneys in Sherer and Osterbye, whose poor recordkeeping practices resulted in negligent misappropriation of client funds, respondent's failure to comply with the recordkeeping Rules resulted in a prolonged and significant invasion of her clients' entrusted funds. Specifically, for more than two years, between January 2012 and February 2014, and, thereafter, for nearly five years, between November 2016 and August 2021,

respondent failed to hold client funds inviolate by maintaining ATA shortages in amounts ranging from \$15 to \$7,588. Indeed, respondent's \$7,588 ATA shortage spanned nearly a year-and-a-half and was rectified only after the OAE's intervention following its 2019 random audit.

However, unlike Sherer and Osterbye, who had no prior interactions with the disciplinary system, respondent had a heightened awareness of her obligations to comply with the recordkeeping Rules and to maintain client funds inviolate, in light of her 2004 random audit for substantially similar infractions. Specifically, in connection with the 2004 random audit, the OAE discovered, among other deficiencies, that respondent failed to perform ATA reconciliations; maintained inactive and unidentified ATA funds; and maintained client ledgers with negative balances.

Fifteen years later, in connection with the 2019 random audit, the OAE discovered that respondent had, once again, failed to maintain numerous financial records and allowed unidentified and inactive funds to languish, for years, in her ATA. Rather than attempt to comply with the Court Rules governing trust accounts, in February 2014, respondent elected to commingle \$60,000 of personal funds in her ATA and, between January 2017 and March 2020, continued to draw from those funds long after they had been depleted, resulting in a \$7,588 ATA shortage lasting nearly a year-and-a-half.

Moreover, sometime in 2004, following the random audit that had occurred that same year, respondent began operating her practice of law via an LLC. In our view, based on the timing of her LLC's formation, respondent should have had a heightened appreciation of her obligations to operate her law practice in conformity with Court Rules. However, for at least fifteen years, between 2004 and 2019, respondent failed to obtain the required professional liability insurance for her law firm. Had it not been for the OAE's intervention in connection with its 2019 random audit, respondent's failure to obtain such insurance, as well as her numerous recordkeeping deficiencies and invasion of client funds, likely would have persisted.

Finally, unlike the attorney in Sherer, who had an otherwise unblemished legal career of thirty-six years at the bar, respondent has a 2006 censure, in Alsobrook I, albeit for unrelated misconduct. However, as the parties and the DEC correctly noted, her misconduct underlying that matter occurred in 1999 and, since her 2006 censure, she has had no further ethics infractions. See In re Sternstein, 223 N.J. 536 (2015) (attorney admonished for violations of RPC 1.15(a) and RPC 1.15(b); despite a 1998 two-year suspension and a 1995 three-month suspension, we did not enhance the discipline because those matters were remote in time and involved unrelated conduct). The compelling mitigation of an otherwise long, unblemished legal career, as occurred in Sherer, however, is

not present in this matter. Nevertheless, as a result of her cooperation with the OAE's random audit and her retention of an accountant, respondent has brought her recordkeeping practices into compliance.

Conclusion

In conclusion, weighing the prolonged shortages in her ATA and the protracted nature of her recordkeeping infractions against her heightened awareness of her trust account obligations, and consistent with disciplinary precedent, we determine that a censure is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Further, given respondent's demonstrated failure to comply with the recordkeeping Rules, we recommend that the Court adopt the OAE and the DEC's recommended conditions that, within ninety days of the disciplinary Order in this matter, respondent attend a recordkeeping course, approved by the OAE, and submit monthly reconciliations of her attorney accounts to the OAE, on a quarterly basis, for a two-year period.

Member Joseph voted to adopt the discipline recommended by the DEC and the OAE and impose a reprimand, 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Athena Dulice Alsobrook
Docket No. DRB 24-006

Argued: February 15, 2024

Decided: May 31, 2024

Disposition: Censure

<i>Members</i>	Censure	Reprimand
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	8	1

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