

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-233
District Docket No. XIV-2022-0324E

In the Matter of Joseph A. Rutigliano
An Attorney at Law

Argued
January 18, 2024

Decided
March 28, 2024

Corrected Decision

Saleel V. Sabnis appeared on behalf of the
Office of Attorney Ethics.

John P. Nulty, Jr. appeared on behalf of respondent.

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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 pursuant to R. 1:20-6(c)(1).¹ The Office of Attorney Ethics (the OAE) charged respondent with having violated RPC 1.15(a) (negligently misappropriating entrusted client funds), RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6), and RPC 5.3(a) and (b) (failing to supervise a nonlawyer assistant). In his verified answer, respondent admitted the allegations of the complaint.

For the reasons set forth below, we determined that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2001, the District of Columbia bar in 2002, and the Minnesota bar in 2003. At the relevant times, he maintained a practice of law in Wycoff, New Jersey.

¹ That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request to be heard in aggravation.

Facts

In connection with his legal practice, respondent maintained an attorney trust account (ATA) and an attorney business account (ABA) at TD Bank. After he began operating his law firm, in 2013, respondent allowed his wife, Irena Rutigliano, to manage the firm's finances, despite her lack of bookkeeping training or experience. Irena was not compensated as a firm employee.

On or around September 6, 2022, TD Bank notified the OAE that respondent's ATA had been overdrawn by \$396. On September 21, 2022, the OAE directed respondent to submit a written explanation for the overdraft, no later than October 21. Further, the OAE directed respondent to provide: (1) information regarding the ATA check that had resulted in the overdraft; (2) his client ledgers; and (3) copies of his monthly ATA statements for the last three months. Last, if respondent had deposited or transferred funds to cure the overdraft, the OAE directed him to produce a copy of the dated deposit slip, credit memo, or bank statements, together with a full description of the nature of the funds comprising that deposit.

Respondent failed to reply to the OAE's September 21 letter until November 2, 2022, asserting that he had not received it until November 1. In his reply, respondent claimed that, in April 2022, he mistakenly had

issued a \$1,221 ATA check made payable to EXP Realty. Respondent further claimed that the check to EXP Realty should have been “voided upon receipt” rather than negotiated. To remedy the problem, in April 2022, respondent issued a new \$1,221 ATA check to the correct recipient (Ida Racquet). However, in September 2022, EXP Realty mistakenly negotiated the \$1,221 ATA check, resulting in the overdraft.

Respondent acknowledged the overdraft but assured the OAE that it resulted from “a series of misfortunate human errors,” and that “no one [had] misappropriated any funds.”

Subsequently, on January 19, 2023, respondent, through his attorney, Jeffrey Garrigan, Esq., sent the OAE a letter enclosing his firm’s bank records, including (1) his monthly ATA and ABA statements from January 2020 to November 2022; (2) handwritten notations on check stubs; (3) client ledger cards; and (4) various handwritten journal entries.

During his February 14, 2023 demand interview, respondent informed the OAE that Irena had issued ATA checks, improperly using his signature, and had made electronic transfers without his knowledge or authorization. He told the OAE that at 3:00 a.m. on December 3, 2022, Irene woke him to confess her actions. He stated that, until that day, he was unaware of any issues, and he “[didn’t] think anyone was reviewing [his] monthly bank

statements.” Respondent could not recall “ever” having a conversation with Irena “about any particular responsibilities having to do with the trust account.” He also maintained that he was unaware that Irena had transferred funds from his ATA to his ABA to “pay daily bills, both personal and business[,] to keep the lights on.”

Respondent acknowledged that he was responsible for his firm’s finances and recordkeeping obligations and, further, conceded that his failure to supervise Irena “permitted [her] to misappropriate client funds.” Respondent emphasized that, at the onset of the OAE’s investigation, he “went through the books” himself and produced the required documents. During the OAE’s interview, respondent pledged that, going forward, he would “fully cooperate” and “correct the errors.”

Respondent further stated, during the demand interview, that he did not hire an accountant or a bookkeeper and explained that Irena was not a bookkeeper but that she “did write the checks and write the amounts in the books.” He again admitted that Irena had signed checks on his behalf but stated that he “did not realize that that was not in keeping with the [Rules].” Respondent emphasized that he “never directed nor knew about any electronic transfers between the two accounts.”

Additionally, respondent told the OAE that he maintained his own real estate closing ledgers to keep track of how much money he had in trust for each client. The OAE, however, informed respondent that ledgers were required to have a running balance in order to conduct three-way reconciliations of his ATA, as R. 1:21-6 requires.

After he learned of Irena's illicit ATA and ABA financial activity, respondent closed the ATA to which Irena had access and opened a new account "to make sure that there were no further ties to his wife having access to those accounts." Moreover, in December 2022, he deposited \$18,296.15 of his personal funds in his new ATA to cover shortfalls. Consequently, by February 2023, respondent had "full control" of his new ATA and had barred Irena from accessing that account. The OAE stressed that he should be the only one "signing the checks" because it would give him "a modicum of control" over the accounts. Respondent agreed and expressed his intent to personally "prepare the deposit slips and the checks by hand, bring [them] to the bank by hand, [and to] keep all records," so that "no one else will be touching [his] accounts."

Because respondent admitted he did not have deposit slips for his new ATA or ABA, the OAE instructed him that he needed to keep properly

designated deposit slips for both accounts, for seven years, in order to track his firm's financial activities in conformity with the Rules.

Respondent claimed that the handwritten journals were written mostly by Irena, and "they [were] not necessarily reflective of what was done." After the OAE had commenced its investigation, however, respondent began maintaining his journals in an Excel spreadsheet to which only he had access.

Respondent had not conducted required monthly, three-way ATA reconciliations, which would have revealed the unauthorized checks signed by Irena, but he agreed to do so moving forward. Respondent assured the OAE that, since December 2022, he had been, and would continue to be, the only person "preparing any checks[,] business, trust, or otherwise."

Although respondent opened a new ATA, he was still using the same ABA, explaining that there were outstanding checks and automatic payments that would need to be addressed. Subsequently, he realized that he could open a second ABA, "let everything clear[,] and then close" the original ABA. In the meantime, he also removed Irena as a signatory on his original ABA.² Respondent also had begun to maintain receipts and disbursements journals for his ABA, and he was keeping four monthly

² Irena, however, never served as an authorized signatory on respondent's ATA.

journals for his ATA; however, the OAE advised respondent that he should have one journal for receipts and one journal for disbursements, for each account.

Finally, the OAE told respondent that the new ABA and ATA were not properly designated and that it would send him a deficiency letter identifying all recordkeeping issues that still required correction. The OAE directed respondent to go through his old records to create ledgers and reconciliations and, if his accounts still were not balanced, he would need to explain why they were not, and what he did to correct the balances.

Subsequently, between March and May 2023, respondent, through counsel, provided the OAE with his revised records, including his three-way ATA reconciliations. The OAE determined that respondent had “resolved his recordkeeping deficiencies” to the OAE’s satisfaction and that his submissions “brought his records into compliance with R. 1:21-6.”

On June 9, 2023, the OAE interviewed Irena, who appeared with her attorney. Irena admitted that she had prepared and signed “about sixty percent” of the firm’s checks, at times without respondent’s knowledge or authorization, and had made transfers from the ATA to the ABA to cover their expenses. She was adamant that, although respondent directed her to prepare checks, he “definitely” did not direct her to sign them, and he did

not direct her to make electronic transfers between the ATA and ABA. Consistent with respondent's prior claim, Irena told the OAE that she "actually woke [respondent] up in the middle of the night and told him" about her unauthorized checks and disbursements from his ATA.

Irena admitted that, between January 2020 and September 2022, she initiated twenty-four electronic transfers from the ATA to the ABA, in amounts ranging between \$400 and \$3,000. She transferred the funds via TD Bank's mobile application on her personal cellphone or via the bank's website. She claimed she made these transfers because the ABA was overdrawn, and TD Bank was "charging exorbitant fees on the account." Irena also admitted that, between January 2020 and August 2022, she had prepared and signed thirteen ATA checks, using respondent's signature, in amounts ranging from \$500 to \$5,000, and made payable to respondent. In August 2022, Irena also issued an ATA check to their landscaping company, because she "did not have anything else anywhere" and "he was waiting for his payment since the very beginning of July." She later realized it was a "bad decision to pay him via check . . . from the trust account."

Irena, however, was unaware of whether respondent had personal knowledge of any ABA overdrafts. In fact, she told the OAE, "I don't think that we ever talked about it." Although he knew of the firm's financial

struggles, Irena maintained that respondent “was not aware of the extent of it.” Irena stated that respondent would “always tell [her] to make sure the trust account [was] in order,” and she “really did [her] best, but [her] best [was] not good enough.” Finally, Irena confirmed that, once the investigation commenced, she no longer handled the firm’s finances.

Followings its investigation, the OAE identified the following recordkeeping deficiencies: (1) improper ATA and ABA designations (R. 1:21-6(a)(2)); (2) improper processed check images (R. 1:21-6(b)); (3) no monthly receipts or disbursements journals (R. 1:21-6(c)(1)(A)); (4) electronic transfers from his ATA (R. 1:21-6(c)(1)(B)); (5) no running ATA checkbook balance (R. 1:21-6(c)(1)(G)); and (6) no monthly three-way reconciliations (R. 1:21-6(c)(1)(H)).

The OAE also concluded that, although respondent allowed Irena to prepare and write ATA checks, he was unaware that, between January 2020 and September 2022, she had initiated twenty-four electronic transfers from his ATA to his ABA, in amounts ranging between \$200 and \$3,000, totaling \$31,950. Further, respondent was unaware that, on August 13, 2021, Irena had initiated a \$370 electronic transfer from his ATA to the District of Columbia Bar. The OAE also determined that, unbeknownst to respondent, between January 2020 and August 2022, Irena had issued thirteen ATA

checks, made payable to respondent, in amounts ranging between \$500 and \$5,000, totaling \$38,160. Moreover, on July 26, 2022, Irena issued a \$2,150 ATA check to their family's landscaper, without respondent's knowledge. As a result of these unauthorized ATA disbursements, Irena invaded twenty-nine clients' funds.

Based on the foregoing, the formal ethics complaint charged respondent with having violated RPC 1.15(a); RPC 1.15(d); and RPC 5.3(a) and (b). The OAE acknowledged, however, that respondent resolved the recordkeeping deficiencies, "elected on his own initiative to take the ICLE course on proper trust and accounting procedures," and promptly excluded Irena "from all accounts and firm financial matters."

In his verified answer, respondent admitted the material facts underlying the allegations of the formal ethics complaint and that he had violated all the charged Rules of Professional Conduct. In mitigation, he emphasized that he (1) resolved and corrected his recordkeeping deficiencies; (2) "immediately and personally repaid all improperly disbursed funds;" (3) attended a continuing legal education course on proper trust and accounting procedures; (4) removed Irena "from all duties or responsibilities as to bank account and law firm financial matters;" (5) had

no disciplinary history; and (6) no client had been harmed by his misconduct.

In its written submission to us, the OAE recommended that respondent receive an admonition for his misconduct. During oral argument, the OAE noted that Irena was still performing minimal administrative tasks, such as answering the telephone, because respondent's law office had since moved to their home. Consequently, the OAE urged, for the first time, that we require respondent to exclude Irena entirely from any involvement with his law practice to "minimize the risk" of a repeat offense or the mishandling of funds. In response to our questioning, the OAE asserted that merely excluding Irena from the ATA was an insufficient resolution because "as time passes," she could "revert to the role that she held prior to his complaint."

Respondent, on the other hand, urged us to reject the OAE's suggestion with respect to Irena and, further, emphasized how this case was distinguishable from In the Matter of Nelson Gonzalez, DRB 23-139 (December 13, 2023), where the attorney's wife committed multiple offenses, including misappropriation of entrusted funds, and the attorney rehired her to do the same work. Contrasting his behavior to that of the attorney in Gonzalez, respondent argued that he fully cooperated with the OAE, took immediate corrective action, and "fully underst[ood that] it was his failure to oversee [Irena] and oversee his

trust account” that caused significant issues. Respondent again emphasized that he alone was now handling his trust account, which he reconciled regularly. He stressed, however, that he needed his wife to handle purely administrative tasks, such as client intake, because they were time consuming and, in his “modest practice,” he needed to focus on the legal work. Respondent argued that OAE’s concern about Irena was “illusory” and, further, that his involvement with the disciplinary system was a sufficient deterrent to prevent future recurrence.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the material facts recited in the formal ethics complaint, as admitted by respondent in his answer, clearly and convincingly support the finding that he violated RPC 1.15(a), RPC 1.15(d), and RPC 5.3(a) and (b).

First, respondent violated RPC 1.15(a), which requires a lawyer to safeguard client funds, by fostering an environment which allowed Irena to systemically misappropriate entrusted client funds, undetected. Specifically, between January 2020 and September 2022, as a result of respondent’s complete abdication of his non-delegable fiduciary duties, Irena issued more than ten ATA checks and made more than twenty electronic

transfers from respondent's ATA to his ABA, repeatedly invading client funds without respondent's knowledge.

However, as respondent conceded, he ultimately was responsible for her conduct. His claim, during the OAE demand interview, that he and Irena never discussed the "particular responsibilities" of his attorney accounts does not excuse him from this fundamental obligation, particularly when respondent's lack of supervision allowed Irena, for more than two years, to effortlessly misappropriate funds from nearly thirty clients without respondent's detection. Fortunately, none of respondent's clients suffered any financial harm because he replenished his ATA with his own personal funds.

Next, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping provisions of R. 1:21-6. Specifically, respondent violated this Rule by permitting improper electronic transfers from his ATA to his ABA; failing to maintain ATA receipts and disbursements journals; failing to properly designate his ATA and ABA; and failing to maintain proper images of processed checks. Likewise, respondent's failure to conduct monthly three-way reconciliations and to maintain a running balance for his ATA kept him in the dark about Irena's prohibited trust account activity.

Ultimately, respondent's misconduct stemmed from his failure to properly supervise Irena. Respondent failed to "adopt and maintain

reasonable efforts to ensure that [Irena's] conduct . . . [was] compatible with the professional obligations of the lawyer," as RPC 5.3(a) requires. The fact that Irena was not a paid employee does not excuse respondent's conduct because, pursuant to RPC 5.3(b), he had "direct supervisory authority" over her. Respondent's failure to supervise Irena allowed her to sign his name on numerous ATA checks and to electronically transfer client funds to his ABA, paying for their personal and business expenses. We find respondent's prolonged failure to review his bank statements, which readily would have revealed Irena's improper conduct, alarming and inexcusable. Respondent's decision to remain blind to the activities of his wife fails to comport with the most basic tenets of the Rules of Professional Conduct and his obligation to ensure that nonlawyer employees conform their conduct with the professional responsibilities of a lawyer. As Irena admitted, her best efforts were not "good enough," but respondent was duty-bound to ensure they were. Accordingly, respondent violated RPC 5.3(a) and (b).

In sum, we find that respondent violated RPC 1.15(a); RPC 1.15(d); and RPC 5.3(a) and (b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct was his improper abdication of his non-delegable fiduciary duties, which directly allowed Irena's undetected misappropriation of his clients' 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 an 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 or 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; no prior discipline in thirty-three years at the bar); In re Deitch, 209 N.J. 423 (2012) (reprimand for an attorney who delegated responsibility of his firm's accounts to his

paralegal/wife, whom he failed to supervise; the attorney's failure to oversee the paralegal's activities allowed her to negotiate thirty-eight ATA checks, made payable to herself, by forging the attorney's signature or using a signature stamp; the paralegal also overcharged clients more than \$124,000 for title costs over the course of five years; in mitigation, the attorney had no prior discipline, cooperated fully with the investigation, and immediately replenished the ATA and began reimbursing his clients for overcharges); In re Bergman, 165 N.J. 560 (2000), and In re Barrett, 165 N.J. 562 (2000) (reprimands 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 the 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's records 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 recordkeeping responsibilities, 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 remedial action. See, e.g., In re Brown, 218 N.J. 387 (2014) (censure for an 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; ultimately, the bookkeeper/paralegal pleaded guilty to fraud after conducting real estate closings without his knowledge; the attorney also grossly neglected his duties by failing to record the mortgage for one matter and signing checks with blank payees in another; prior three-month suspension, in 1996, for making material representations while under oath); In re Falzone, 209 N.J. 420 (2012) (censure for an 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; the attorney, however, failed to take any reasonable remedial action to prevent further thefts; the attorney did not provide his records for over a year and then he 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 an 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; as a condition to his reinstatement, the Court required the attorney to submit proof to the OAE that he had terminated his wife's employment at the firm; no prior discipline).

In our view, the facts in this matter are distinguishable from Verdiramo, where the secretary took advantage of the attorney's trust by carefully concealing her misappropriation of client funds. By contrast, Irena's conduct was not "carefully hidden" from respondent, who created an environment in which she was able to assert control of his firm's finances. Had respondent conducted the required monthly reconciliations or, at a minimum, monitored

his ATA and ABA bank statements, Irena's misconduct would have been discovered much sooner. We find this matter is more closely analogous to the reprimanded attorney in Deitch, who improperly delegated responsibility of his firm's bank accounts to his spouse, who, without any meaningful oversight, was able to negotiate ATA checks by forging the attorney's signature or using a signature stamp. Like Deitch, respondent failed to conduct any meaningful supervision of Irena's activity, allowing her to effortlessly misappropriate client funds. Nevertheless, like Deitch, respondent replenished his ATA with his own personal funds once the OAE had identified his recordkeeping deficiencies. Moreover, like the reprimanded attorneys in Bergman and Barrett, respondent fully cooperated with the OAE, promptly brought his records into compliance to the OAE's satisfaction, and accepted full responsibility for his actions.

Here, Irena's misconduct did not rise to the level of the paralegals' fraudulent schemes in Deitch; Bergman; Barrett; Brown; or Falzone. Although respondent failed to comply fully with the recordkeeping requirements of R. 1:21-6, his ledgers demonstrated that he did his best to avoid any such improprieties, and the investigation did not reveal any unearned fees. Likewise, in contrast to Falzone, who knowingly made false statements to the OAE during its investigation, respondent fully cooperated with the OAE; produced records

without delay; candidly admitted the allegations; and remediated all the OAE's concerns. Respondent's misconduct is also distinguishable from that of the attorney in Gonzalez, who was suspended; here, once respondent became aware of Irena's errors, he immediately terminated her financial responsibilities with his firm, opened a new ATA, and ensured she had no access to his accounts.

In further mitigation, respondent has had no prior discipline in his more than twenty-year career at the bar, a factor we and the Court typically accord significant weight. In re Convery, 166 N.J. 298 (2001).

Conclusion

On balance, consistent with disciplinary precedent and Deitch, Bergman and Barrett in particular, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. We decline, however, to require respondent to exclude Irena entirely from his law firm and the administrative tasks she performs, as the OAE requested. We view such a requirement as unnecessary because the risk of recurrence and future client harm was abated when respondent restricted her access to his attorney accounts.

Member Joseph voted to impose an admonition.

Member Menaker was recused.

Member Rivera was absent.

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 Joseph A. Rutigliano
Docket No. DRB 23-233

Argued: January 18, 2024

Decided: March 28, 2024

Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	Absent	Recused
Gallipoli	X			
Boyer	X			
Campelo	X			
Hoberman	X			
Joseph		X		
Menaker				X
Petrou	X			
Rivera			X	
Rodriquez	X			
Total:	6	1	1	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel