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SUPREME COURT OF NEW JERSEY

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July 30, 2024

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

Re: **In the Matter of Matthew T. Wait**
Docket No. DRB 24-125
District Docket No. XIV-2023-0180E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.15(a) (negligent misappropriation) and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

According to the stipulation, from September 2014 through April 2022, respondent was an attorney with Dubois, Sheehan, Hamilton, Levin & Weissman, LLC (the Firm) and was responsible for the Firm's compliance with the recordkeeping Rules.

On March 15, 2021, the OAE selected the Firm for a random compliance audit. That audit revealed the following recordkeeping deficiencies: client

ledger cards had negative balances, contrary to R. 1:21-6(d); inactive balances left in the trust account, contrary to R. 1:21-6(d); outstanding trust account checks were unresolved, contrary to R. 1:21-6(d); commingling, in violation of RPC 1.15(a);¹ improper designation of the attorney business account, contrary to R. 1:21-6(a)(2); improper designation of the attorney trust account, contrary to R. 1:21-6(a)(2); attorney business account disbursements journal not fully descriptive, contrary to R. 1:21-6(c)(1)(A); and; improper image-processed attorney business account checks, contrary to R. 1:21-6(b).

Specifically, as of May 28, 2021, the Firm's attorney trust account (ATA) carried a \$387,072.96 deficit affecting 587 clients and \$606,719.87 in inactive balances affecting 496 clients.

On September 9, 2022, the OAE sent a letter to the Firm, noting that five of the deficiencies previously had been identified, and remained unresolved, despite an April 8, 2008 random compliance audit of the Firm's financial records.

On June 1, 2023, the OAE docketed the matter for investigation due to the Firm's substantial invasion of client funds and sent respondent a letter regarding the Firm's recordkeeping deficiencies.

On June 12, 2023, respondent provided a certification to the OAE and explained that, when he joined the Firm, he undertook recordkeeping responsibilities – a position he held from September 2014 until April 2022, when he left the Firm. Respondent asserted that, until 2021, he had no knowledge of the 2008 recordkeeping deficiencies the OAE had identified.

Nevertheless, as to the deficiencies the 2008 random compliance audit had identified, respondent stated that he was unaware that any client ledger cards carried a negative balance and maintained that the inactive balances began to accrue well before he joined the Firm and were comprised of doctor fees and expenses associated with personal injury matters. Respondent claimed that he attempted to work with the attorneys whose clients were connected with the inactive balances, but that was “a strategy that was for the most part,

¹ Although the OAE identified commingling as a recordkeeping violation in its letter to the Firm, it did not charge respondent with having violated RPC 1.15(a).

unproductive due to [respondent's] lack of authority within the firm's management hierarchy.”

Respondent claimed that the Firm's bookkeeper had raised the issue of the outstanding ATA checks “at various times” by providing him with a print-out of the checks that respondent used in his conversations with the attorneys responsible for the respective matters, but “[left] it to [the attorney] to call the client.”

As to commingling, respondent explained that the Firm's bookkeeper made errors by depositing funds in the wrong accounts. However, once respondent learned about the bookkeeper's actions, he informed the Firm's partners and never personally made or ordered any remedial changes.

Respondent denied knowledge of both the improper ABA and ATA designations and the Firm's improperly image-processed ABA checks.

Finally, with respect to the ABA receipts journal lacking sufficient detail, respondent explained that the Firm's bookkeeper recorded information in Quickbooks, using information obtained from the attorneys working on the client matters. Respondent stated that he “did not provide any such information or review the contents of individual receipts in the business account journal, nor was [he] aware there was any such deficiency in the data recorded.”

Following respondent's submission, the OAE conducted a demand audit interview of respondent. After reviewing the Firm's records, the OAE determined that the Firm should have been holding \$1,093,247.01 for 587 clients. However, as of May 28, 2021, the Firm was holding only \$767,755.65 in its ATA. Moreover, due to outstanding checks totaling \$61,5871.60, the Firm's ATA truly held only \$706,174.05 in available client funds, leaving a \$387,072.96 deficit, resulting in the invasion of the funds of 587 clients.

Indeed, the OAE's audit revealed that, from March 2017, until the Firm corrected the deficit in December 2022, it routinely incurred monthly ATA shortages ranging from \$362,798.33 to \$405,883.19, until October 2022 and November 2022, when the shortage each month was reduced to only \$2,599.09.

The OAE explained that “the origins of the shortage are not fully known as the shortages predate the seven-year period of records available to the OAE

via subpoena.” Nevertheless, the stipulation stated that, “although the shortages arose prior to Respondent’s management of the trust account, Respondent was the attorney responsible for the trust account during the audit period,” yet, he failed to identify or correct the deficiencies between 2017 and 2022.

Based on the foregoing facts, the parties stipulated that respondent had violated RPC 1.15(a) by allowing the Firm’s ATA to remain out of trust for five years, thus, perpetuating an “ongoing and significant invasion of client funds.” Further, respondent stipulated that he had violated RPC 1.15(d) by failing to maintain the Firm’s books and records in compliance with R. 1:21-6. Specifically, as respondent admitted, during the period in which he was responsible for maintaining the Firm’s financial records, the Firm’s ATA routinely carried an average \$360,000 deficit in entrusted client funds. However, the record reflects that the monthly invasions preceded respondent’s employment with the Firm and persisted after he left; therefore, in our view, respondent cannot be held wholly responsible for the substantial ATA deficit. Nevertheless, it is unquestionable that, as the attorney responsible for maintaining the Firm’s finances, respondent failed to correct the Firm’s ongoing negligent misappropriation of 587 client’s funds, in violation of RPC 1.15(a).

In mitigation, the parties asserted that respondent has no disciplinary history in almost twenty years of practice, admitted to his wrongdoing, and fully cooperated with the OAE’s investigation.

In aggravation, the parties noted that respondent failed to correct the recordkeeping deficiencies and the resulting negligent misappropriation involved a substantial sum of client funds. See In the Matter of Ronald L. Lueddeke, DRB 21-056 (September 22, 2021) (negligent misappropriation involving a substantial sum of client funds).

RPC 1.15(d) requires all New Jersey attorneys to comply with the recordkeeping requirements of R. 1:21-6. As noted above, respondent violated this Rule in various aspects. The OAE noted that five out of the eight deficiencies it identified in the 2021 random audit were previously identified following the Firm’s 2008 random audit, six years before respondent began employment with the Firm.

In the Board’s view, however, respondent cannot be held wholly responsible for the negligent misappropriation of client funds or for the inactive

trust balances that totaled \$606,719.87. Indeed, if the inactive balances that predated respondent's employment were excluded, along with balances in the six months preceding his departure from the Firm, respondent oversaw inactive balances totaling \$6,128.27, approximately \$600,000 less than is alleged in the stipulation. See In re Anderson, 254 N.J. 268 (2021) (inactive balances left in the attorney's ATA for at least six months violated R. 1:21-6(d)), and In re Davis, 242 N.J. 141 (2020) (the OAE explained that it used ten months as a measure of ATA inactivity because it "left some leeway after the six-month period of time within which checks must be negotiated").

Nevertheless, even if responsibility for the magnitude of the recordkeeping violations does not lie solely with respondent, the record clearly demonstrates that, in the six years he was responsible for the Firm's recordkeeping, the records were not kept in compliance with R. 1:21-6, in violation of RPC 1.15(d).

Thus, respondent's misconduct is most analogous to the misconduct that occurred in In the Matter of Laurence R. Sheller, DRB 24-033 (April 30, 2024) (a random compliance audit of the attorney's financial records revealed recordkeeping deficiencies that the OAE also identified in a random audit eight years earlier; the second random audit revealed more than twenty deficiencies; the attorney also failed to cooperate with the OAE's investigation despite four specific prompts from the OAE), but is distinguishable in important ways. First, the sheer number of recordkeeping violations in the instant matter (eight) pales in comparison to the violations the Board addressed in Sheller (more than twenty). Second, Sheller was directly aware of the recordkeeping violations an earlier OAE random audit uncovered, whereas respondent was not employed by the Firm at the time of the earlier audit and did not become aware of the recordkeeping violations until the year the second random audit occurred. Finally, Sheller failed to cooperate with the OAE's investigation into his recordkeeping. Here, respondent was fully cooperative and took responsibility for the Firm's recordkeeping violations.

The magnitude of the inactive ATA balances or deficit should not, based on these facts, serve to warrant an upward departure from the baseline reprimand. Although the record indicates that respondent unquestionably presided over the Firm's recordkeeping problems and resultant negligent misappropriation of client funds during his tenure, it also reflects that he took steps to try to remediate those problems by approaching the attorneys

responsible for the individual client matters. Further, the Firm's recordkeeping violations unquestionably existed since 2008, as the OAE noted in its letter to the Firm, and existed after respondent left the Firm, indicating that respondent was not the sole cause of the problems with the Firm's bookkeeping practices.

Although mitigating factors are present – respondent admitted his wrongdoing, entered a disciplinary stipulation, and has no disciplinary history in more than twenty years at the bar – in recent years neither the Board nor the Court have departed downward from imposing reprimands in cases featuring the negligent misappropriation of client funds. There were no aggravating factors for the Board's consideration.

Therefore, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 31, 2024.
2. Stipulation of discipline by consent, dated May 30, 2024, with Exhibits 1 through 6.
3. Affidavit of consent, dated May 15, 2024.
4. Ethics history, dated July 30, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

- c: (w/o enclosures)
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
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Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
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