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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 Paul R. Rajan**
Docket No. DRB 24-105
District Docket Nos. XIV-2020-0225E and VII-2021-0903E

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 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 censure for respondent's violation of RPC 1.15(a) (negligent misappropriation of client funds) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6).

The stipulated facts are as follows. On July 9, 2019, the OAE conducted a random compliance audit of respondent's books and records.¹ On May 19,

¹ During the relevant period, respondent was the managing partner of his firm and maintained three attorney accounts at TD Bank, including two attorney trust accounts (ATA) and an attorney business account (ABA).

2020, due to respondent's failure to properly reconcile his ATAs each month, and to assuage the potential impact on client funds, the OAE initiated a disciplinary investigation.

During its investigation, the OAE determined that respondent's financial records featured many of the same deficiencies previously uncovered by a 2010 random audit, including: (1) failure to maintain fully-descriptive client ledger cards, in violation of R. 1:21-6(c)(1)(B); (2) client ledger cards held debit balances, in violation of R. 1:21-6(d); (3) failure to disburse inactive trust ledger balances for an extended period of time, in violation of R. 1:21-6(d); (4) failure to conduct proper three-way reconciliations of ATA, in violation of R. 1:21-6(c)(1)(H); (5) improper designation of his ABA, in violation of R. 1:21-6(a)(2); (6) improper designation of his ATA, in violation of R. 1:21-6(a)(2); (7) holding attorney funds in his ATA in excess of the amount necessary for bank charges, in violation of RPC 1.15(a); (8) trust funds on deposit were in excess of the total trust obligations, in violation of R. 1:21-6(d); (9) outstanding ATA checks, in violation of R. 1:21-6(d); and (10) failing to maintain imaged copies of ABA checks, in violation of R. 1:21-6(b).² The 2019 audit also revealed that, as of May 31, 2019, respondent's ATA did not reconcile. Specifically, from January 2016 through April 2019, there were multiple debit balances held in the ATA.³

On January 12, 2016, respondent's firm deposited \$3,000 in the ATA for a real estate deposit received on behalf of a client, Magda Komorowski. On January 28, 2016, the firm received a cashier's check for \$24,843.54 representing closing funds on behalf of Komorowski, but that check was not deposited in respondent's ATA for an additional four days. Nevertheless, on January 28, 2016, the firm issued three checks from the ATA, totaling

² Following the 2010 random audit, the OAE determined that respondent had the following deficiencies: (1) ATA held inactive trust ledger balances for an extended period, in violation of R. 1:21-6(j); (2) client ledger cards held debit balances, in violation of R. 1:21-6(d); (3) holding attorney funds in his ATA in excess of the amount necessary for bank charges, in violation of RPC 1.15(a); (4) outstanding ATA checks, in violation of R. 1:21-6(d); and (5) failure to maintain imaged copies of ABA checks, in violation of R. 1:21-6(b). Respondent was the managing partner of the firm at the time of the 2010 audit.

³ The OAE investigation did not develop any evidence to support a finding of knowing misappropriation.

\$27,843.54, on behalf of Komorowski.⁴ The next day, the payee negotiated ATA check #3419 for \$26,195.54, thereby reducing the balance in respondent's ATA and causing a shortage of \$23,195.54.

On November 6, 2015, the firm issued ATA check #3192 for \$1,000 representing a refund of an excess deposit on behalf of Sayan Patel. As of the date of the check, the firm was not holding any funds in the ATA on behalf of Sayan Patel and, thus, issuing that check caused a shortage of \$1,000 in the ATA. On March 3, 2016, the firm transferred \$1,000 from respondent's ABA to his ATA to rectify the shortage. During the OAE's February 19, 2021 demand audit interview, respondent asserted that \$1,000 in funds for Sayan Patel inadvertently had been deposited in his ABA instead of his ATA.

In 2014, Resource Logistics (RL) retained respondent's firm. Respondent issued the client invoices on a regular basis and routinely deposited retainers received from RL in his ATA. On December 31, 2015, respondent's ATA held a retainer balance of \$2,138.98 on behalf of RL. Nevertheless, on January 4, 2016, the firm issued ATA check #3086 for \$2,691.84 to the firm, representing legal fees earned on the RL matter, which resulted in an ATA shortage of \$552.86. On February 23, 2016, the firm received a \$2,500 retainer replenishment from RL, which rectified the shortage. During the demand audit, respondent conceded that, at the time the firm issued check #3086, he did not know the balance maintained in his ATA on behalf of RL.

On September 9, 2015, the firm deposited a \$10,000 retainer on behalf of Roma Funding (Roma). From October 2015 through December 2015, the firm issued three checks totaling \$5,965.16 to the firm, representing legal fees earned in the Roma matter.⁵ Then, on January 4, 2016, the firm issued ATA check #3087 for \$4,291.33, for earned legal fees, which resulted in an ATA shortage of \$256.49. On January 25, 2016, the firm issued ATA check #3896 for \$1,960.51, for earned legal fees, resulting in a shortage of \$2,172.81. During the demand audit, respondent explained that, at the time the firm issued ATA checks

⁴ Respondent issued the following checks from his ATA: check #3419 to Precious Butterflies Child Care, LLC (\$26,195.54); check #3420 to Vintage Title Services, LLC (\$623); and check #3421 to Rajan & Rajan, LLP (\$1,025).

⁵ Respondent issued the following checks from his ATA: check #3073 (\$1,008.94); check #3093 (\$2,856.22); and check #3101 (\$2,100).

#3087 and #3896, he did not know the balance being maintained in his ATA on behalf of Roma.

On January 29, 2016, the firm received a bank check for \$103,222.32 in connection with a real estate closing on behalf of Sunny Singh, although the check was not deposited in respondent's ATA for an additional four days. Nevertheless, on January 29, 2016, in connection with the Singh matter, the firm issued ATA checks #3422 and #3425, totaling \$97,290.32, causing a shortage of the same amount in the ATA.⁶ On February 3, 2016, the Singh deposit check cleared the bank, and the funds became available in the ATA. During the demand audit, respondent conceded that the bank check for \$103,222.32 should have immediately been deposited in his ATA.

On December 2, 2016, the firm issued ATA check #4543 for \$1,000 to Papesh Patel as a refund of a deposit related to a commercial real estate matter. As of the date of the check, the firm was not holding any funds in the ATA on behalf of Papesh Patel, and, thus, issuing that check caused a shortage of \$1,000 in the ATA. On November 20, 2018, the firm transferred \$1,000 from respondent's ABA to his ATA to rectify the shortage. During the demand audit, respondent maintained that the \$1,000 for Patel previously had been inadvertently deposited in his ABA instead of his ATA.

In or around August 2016, Hyde Engineering (Hyde) retained respondent's firm. An associate with the firm, who, at the time, also was a signatory on respondent's ATA, handled the Hyde matter. As of February 28, 2019, the firm was holding \$175 in the ATA on behalf of Hyde. Nevertheless, on March 5, 2019, the associate issued ATA check #4828 for \$600 in the Hyde matter, which caused a shortage of \$425. On March 15, 2019, the associate issued ATA check #4344 for \$1,410, increasing the shortage to \$1,835. On April 2, 2019, Hyde paid respondent's firm a \$20,000 retainer, rectifying the shortage. During the demand audit, respondent conceded that the associate handling the matter had issued checks from the ATA prior to receiving necessary retainer funds. Respondent represented that, after he discovered the error, he removed the associate as a signatory on his ATA.

⁶ Respondent issued the following checks: ATA check #3422 to 101 St. George Avenue LLC (\$6,000), and ATA check #3425 to 19 Pet Rahway, Inc. (\$91,290.32).

As of January 31, 2016, respondent's ATA should have held \$3,264,626.71 in escrow in connection with seventy client matters. As a result of the debit balances that occurred in the Komorowski; Sayan Patel; RL; Roma; and Singh matters, respondent's reconciled ATA balance was only \$3,140,451.18, resulting in a shortage of \$124,211.53.

As of January 31, 2016, respondent's ATA held \$28,472.25 in retainer funds for several clients, as well as \$205.18 in firm funds. As of that same date, the Komorowski; Sayan Patel; RL; Roma; and Singh shortages alone caused a total of \$95,534.10 of entrusted funds held in his ATA to be invaded.

The 2019 random compliance audit further revealed that, between 2010 and 2018, respondent held inactive balances in his ATA, in connection with twenty client matters, totaling \$150,963.40. Three of the inactive client balances, totaling \$61,843.34, had been inactive at the time of the 2010 random audit. Specifically, those three, previously existing inactive ATA balances were identified as: Kailasanathan (\$300), Rajan & Rajan ATA (\$3,808.25), and Paul Rajan & Associates ATA (\$57,735.09).

Respondent explained that, prior to 2010, Kailasanathan was involved in a landlord-tenant dispute and the attorney for the landlord would not authorize the release of the \$300. Following the 2019 audit, respondent was unable to locate Kailasanathan. He further explained that the funds held in his Rajan & Rajan ATA and Paul Rajan & Associates ATA were unidentifiable funds that he transferred from his prior Bank of America ATA to his TD Bank ATA, some of which dated back prior to 2009 and others dated as far back as the 1990's. Respondent indicated that he no longer maintained the client ledger cards from before 2009 and, thus, he could not identify which clients were entitled to the funds. However, he was able to determine that \$5,000 of that balance was owed to Hershey Realty for a realtor's commission.

On September 10, 2019, respondent disbursed the \$5,000 to Hershey Realty and remitted the remaining balance of \$56,735.09 to the New Jersey Superior Court Trust Fund Unit (SCTF).

The 2019 random compliance audit further revealed that, as of May 31, 2019, respondent's ATA had ten outstanding checks totaling \$11,143.49.⁷

⁷ Although respondent had the same deficiency in connection with the 2010 random audit, the

Following the 2019 audit, respondent voided two of the outstanding checks, totaling \$2,698.41, and reissued the checks to the New Jersey Division of Taxation in connection with bulk sales in two client matters. On August 22, 2019, respondent remitted the funds for the remaining outstanding checks, totaling \$8,445.08, to the SCTF.⁸

As of January 14, 2021, respondent had corrected all recordkeeping deficiencies, performed proper reconciliations, and the firm's records complied with R. 1:21-6.

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

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support the finding that the respondent committed all the charged misconduct.

Specifically, respondent admitted to having committed multiple recordkeeping deficiencies, in violation of RPC 1.15(d), including (1) failure to maintain fully descriptive client ledger cards, in violation of R. 1:21-6(c)(1)(B); (2) client ledger cards held debit balances, in violation of R. 1:21-6(d); (3) failure to disburse inactive trust ledger balances for an extended period of time, in violation of R. 1:21-6(d); (4) failure to conduct proper three-way reconciliations of his ATA, in violation of R. 1:21-6(c)(1)(H); (5) improper designation of his ABA, in violation of R. 1:21-6(a)(2); (6) improper designation of his ATA, in violation of R. 1:21-6(a)(2); (7) holding attorney funds in his ATA in excess of the amount necessary for bank charges, in violation of RPC 1.15(a); (8) trust funds on deposit were in excess of the total trust obligations, in violation of R. 1:21-6(d); (9) outstanding ATA checks, in violation of R. 1:21-6(d); and (10) failure to maintain imaged copies of ABA checks, in violation of R. 1:21-6(b).

outstanding checks identified during the 2019 audit were not the same as those identified in the 2010 audit.

⁸ On August 22, 2019, respondent remitted \$14,945.08 to the SCTF for the outstanding ATA checks. However, only \$8,445.08 of that amount represented outstanding checks related to this matter. The balance of the funds was unrelated and was not encompassed in the deficiencies found in the 2019 audit.

Between January 2016 and April 2019, respondent's ATA had a total shortage of \$124,211.53. Although respondent promptly corrected the shortages, he admitted that he failed to properly monitor his ATA balance to ensure the checks issued by the other signatories to the account were drawn on available funds for that specific client. These errors, admittedly, resulted in an invasion of client funds in respondent's ATA totaling more than \$95,000.

In addition, between 2010 and 2018, respondent's ATA held inactive balances, from twenty client matters, totaling \$150,963.40. Respondent admitted that a portion of the inactive balances were unidentifiable funds, dating back as far as the 1990's. Last, respondent admitted that his ATA had ten outstanding checks totaling \$11,143.49.

In the Board's view, the undisputed facts support a theory of negligent, as opposed to knowing misappropriation, because there is no evidence in the record to suggest that respondent intended to invade client funds or that he utilized client funds for his own purposes. Rather, the record clearly and convincingly established that respondent failed to adhere to the recordkeeping requirements of R. 1:21-6, which repeatedly resulted in the negligent misappropriation of clients' entrusted funds, in violation of RPC 1.15(a) and RPC 1.15(d).

Generally, as the OAE observed, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds, regardless of mitigation. See, e.g., In re Sherer, 250 N.J. 151 (2022) (reprimand; as a consequence 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 Steinmetz, 251 N.J. 216 (2022) (reprimand for an attorney who committed numerous recordkeeping violations, negligently misappropriated more than \$60,000, and commingled personal funds in his ATA; the attorney failed to correct his records; in mitigation, the attorney had no prior discipline in sixteen years at the bar, hired an accountant to assist with his records, and no clients were harmed by his misconduct); In re Osterbye, 243 N.J. 340 (2020) (attorney reprimanded when his poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, funds owed to clients and others in connection with real estate transactions, in violation of RPC

1.15(a); 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); in mitigation, the attorney had no prior discipline and stipulated to his misconduct).

Based upon the above precedent, the Board concluded that the baseline discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline, the Board also considered mitigating and aggravating factors.

In mitigation, respondent has no formal discipline in his forty-three-year career, a factor which the Board and the Court accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). Respondent also cooperated fully with the OAE's investigation; admitted his wrongdoing; and entered into the present disciplinary stipulation, thereby accepting responsibility for his misconduct and conserving disciplinary resources.

However, in aggravation, respondent had a heightened awareness of his recordkeeping obligations based upon his prior random audit nine years prior to this misconduct. In addition, he allowed a substantial sum – \$150,963.40 – to linger in his account due to his failure to resolve inactive balances, of which \$61,843.34 had been inactive at the time of the 2010 random audit. See In re Lueddeke, __ N.J. __ (2002), 2022 N.J. LEXIS 456 (censure for the attorney who had over \$400,000 in client and third-party funds languishing in his ATA, even though that same amount had been brought to his attention roughly nine years earlier in a random audit; the attorney entered into a stipulation and corrected all deficiencies; however, he had one previous admonition, albeit for dissimilar conduct).

On balance, the Board determined that the aggravation outweighs the mitigation and, thus, a censure 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 8, 2024.
2. Stipulation of discipline by consent, dated May 8, 2024
3. Affidavit of consent, dated May 2, 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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