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December 3, 2024

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

Re: **In the Matter of Theodore Oshman**
Docket No. DRB 24-202
District Docket No. XIV-2021-0399E

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 of 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 while administratively ineligible).

According to the stipulation, on June 30, 2021, Capital One negotiated a fraudulent check against respondent's ATA-6213, for \$3,364.23.¹ On or about

¹ During the relevant period, respondent maintained two attorney accounts at Capital One Bank: an attorney trust account (ATA) ending in 6213 (ATA-6213), and an attorney business account

July 1, 2021, respondent notified Capital One of the fraudulent check. Sometime in July 2021, respondent also reported the fraudulent activity in his ATA-6213 to the OAE.

On July 13, 2021, Capital One acknowledged the fraud and the next day, froze ATA-6213.² Nevertheless, on July 15, 2021, Capital One honored three checks written against respondent's ATA-6213, and four days later, reversed the fraudulent payment.³

On or about July 23, 2021, due to the fraudulent activity, respondent attempted to open a new ATA at Chase Bank. However, unbeknownst to him at the time, the bank improperly designated the new account as an attorney business account (ABA-7587), rather than an IOLTA trust account. Approximately one month later, respondent informed the OAE that he learned of the improper designation.

On August 2, 2021, Capital One closed respondent's ATA-6213, and issued bank check #933224 to him, for \$871,539.93, representing the balance of the client funds held in his ATA-6213 at the time of its closing.⁴ Almost three

(ABA) ending in 6221 (ABA-6221). Respondent also maintained two attorney accounts with Chase Bank: an ATA ending in 7801 (ATA-7801), and an ABA ending in 7587 (ABA-7587).

Respondent asserted that "an unknown third party" attempted to cash "a poorly duplicated" check drawn on his ATA-6213. The record does not include any further information concerning how the third party gained access to an ATA check. Nor does the record include an image of the fraudulent check or respondent's June 2021 bank statement.

² Respondent alleged that Capital One froze the account without notice to him and he did not learn of the closure until days or weeks later. The record reflects that, on July 13, 2021, Capital One processed a "customer withdrawal" from respondent's ATA-6213 for \$869,214.10. The next day, Capital One issued a "Miscellaneous credit 'Acct Closure'" for the same amount.

³ On July 15, 2021, Capital One honored the following ATA checks: #2567 for \$1,075; #2565 for \$1,075; and #2566 for \$150. On July 19, 2021, Capital One reversed a "customer withdrawal" for \$4,625.83. The record does not provide any additional information concerning the discrepancy in the amount of the fraudulent activity claimed in respondent's letter to the OAE and the amount reflected in the bank statement.

⁴ Respondent asserted that he did not request to close his ATA-6213 and that Capital One did not notify him that it had closed the account. However, the August 2021 Capital One bank statement for respondent's ATA-6213 reflected a "customer withdrawal" on August 2, 2021 for the total

weeks later, on August 23, 2021, respondent deposited those client funds in his ABA-7587 held at Chase Bank.⁵

On September 29, 2021, upon learning of the improper designation of the account he opened in July, respondent opened ATA-7801 at Chase Bank with an initial deposit of \$250 in personal funds. However, he continued to operate ABA-7587 as his ATA until February 14, 2022, despite the improper designation and already having opened ATA-7801.

On February 14, 2022, respondent issued ABA-7587 check #2000 for \$632,942.71, representing the balance of the client funds he held in trust, and deposited those funds in ATA-7801.

As explained above, on September 29, 2021, respondent opened ATA-7801 at Chase Bank with \$250 of personal funds as an initial deposit.

On October 21, 2022, respondent issued ATA-7801 check #1049 for \$300 and payable to The Brocker Law Firm, P.A. However, respondent could not attribute check #1049 to any client matter for which he was holding funds in his ATA-7801, and thus, caused a shortage of \$50. On May 22, 2023, respondent deposited ABA-6221 check #3177, for \$50, in his ATA-7801, rectifying the shortage.

Prior to July 2020, respondent represented thirty-five claimants, including Mary Quinn, in class action lawsuits against the manufacturers of transvaginal mesh products.⁶ The lawsuits involved products manufactured by C.R. Bard, Johnson & Johnson, Boston Scientific, and Covidien.

On June 20, 2018, the parties settled a group of thirteen claims against C.R. Bard, including the Quinn matter.

balance held in the account.

⁵ The parties stipulated that, on September 15, 2021, respondent reported to the OAE that, due to the bank closing his ATA-6213, he deposited the client funds previously held in ATA-6213 in ABA-6221. However, the record revealed that, on August 23, 2021, respondent deposited the entirety of the client funds previously held in his ATA-6213 in his ABA-7587.

⁶ Quinn was a plaintiff in the lawsuit against C.R. Bard.

On July 13, 2020, the parties settled the claims against Boston Scientific for an aggregate sum of \$4,675,000.⁷ Between December 2020 and January 2021, respondent received the Boston Scientific settlement funds totaling \$4,441,250.⁸

Following the receipt of the Boston Scientific settlement funds, respondent issued ATA checks for attorney's fees earned in connection with the lawsuit. On July 7, 2021, he issued ATA-6213 check #2575 for \$33,961.96 to his firm, representing legal fees and costs purportedly earned in the Quinn matter. That day, he deposited check #2575 in his ABA-6221.⁹ Respondent issued check #2575 a week after the fraudulent activity in ATA-6213, which led him to believe that the bank did not honor the check, and thus, his financial records reflected the check #2575 as still outstanding.

Almost two years later, on March 30, 2022, Quinn executed the necessary release form to enable respondent to secure her share of the funds from the C.R. Bard settlement. Respondent maintained that due to the fraudulent activity in ATA-6213, and his recordkeeping deficiencies at the time, he did not immediately realize that he received Quinn's settlement proceeds as a separate wire transfer.¹⁰

On May 10, 2022, respondent reviewed his financial records and discovered his error in prematurely issuing ATA check #2575, in July 2021, for attorney's fees earned in connection with the Quinn matter.¹¹ That day, he

⁷ Quinn was not a plaintiff in the lawsuit against Boston Scientific.

⁸ On December 15, 2020, respondent received the initial settlement payment for \$2,220,625, and on January 11, 2021, he received the final settlement payment in the same amount.

⁹ The record does not include any bank statements for ABA-6221.

¹⁰ According to respondent's client ledger card for Quinn, on November 6, 2022, almost two years after the fraudulent bank activity and the receipt of the settlement funds, respondent received \$100,000 via bank wire representing Quinn's share of the settlement. However, the settlement agreement indicated the aggregate settlement amount was \$4,675,000, less a five percent "common benefit assessment," payable in two installments of \$2,220,625 each. There is no mention of a separate payment to Quinn and the record does not include any bank statements for November 2022.

¹¹ The OAE asserted that it carefully considered whether respondent committed knowing

initiated an electronic funds transfer for \$33,961.96 from his ABA-6221 to his ATA-7801 to rectify the shortage.

The parties stipulated that, from July 7, 2021 to May 10, 2022, respondent's premature disbursement of the funds in the Quinn matter caused a shortage in the client funds held in ATA-7801. As of the date of the disciplinary complaint, respondent had corrected all deficiencies and brought his financial records into compliance with R. 1:21-6.

On May 12, 2022, the OAE conducted a demand audit of respondent's financial records, which revealed the following recordkeeping deficiencies: (1) failing to conduct proper three-way reconciliations, as R. 1:21-6(c)(1)(H) requires; (2) failing to disburse inactive and unidentified trust ledger balances, totaling \$43,615.91, as R. 1:21-6(d) and RPC 1.15(b) require; and (3) failing to resolve outstanding attorney trust account checks, totaling \$65,070.83, as R. 1:21-6(d) and RPC 1.15(b) require.¹² On May 27, 2022, the OAE directed respondent to provide proof of the corrective actions he had taken to address the deficiencies.¹³

Approximately a year later, on April 3, 2023, the OAE requested updated financial records and additional information from respondent. Specifically, the OAE directed him to provide his three-way reconciliations; identify the inactive balance in his ATA, totaling \$43,615.91; identify all the outstanding checks, totaling \$65,070.83; provide updated client ledger cards reflecting settlement funds received and disbursed; and identify all clients matters that made up the \$871,539.93 held in ATA-6213 and transferred to ABA-7587 in August 2021.

On May 15, 2023, respondent provided the requested information. On May 17, 2023, following a review of the documents, the OAE directed

misappropriation of client funds by issuing ATA check #2575. However, the OAE stated that, although the records revealed that respondent did invade client funds, it found no clear and convincing evidence that respondent knew he misappropriated client funds.

¹² Respondent asserted that he could not disburse these funds because one of the clients had died and the other had entered a nursing home.

¹³ From 2020 through 2021, respondent was the subject of a prior random audit. Following the audit, he received the OAE manual on recordkeeping and attended a CLE course on recordkeeping provided by the OAE.

respondent to provide (1) proof that he resolved a \$50 negative balance in his reserve account, (2) proof that he submitted a \$9,504.91 excess balance held in his ATA to the Superior Court Trust Fund (the SCTF), and (3) the contact information for his accountant. On May 22, 2023, respondent provided his reply, which included ATA-7801 check #1157 for \$9,504.91 issued to the SCTF.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.15(a) by disbursing the legal fees in the Quinn matter in July 2021 when his client ledger card reflected that he did not receive Quinn's settlement funds until November 2022, nearly eighteen months later. Respondent further violated this Rule by issuing an ATA check, in October 2022, for \$300, not attributable to any client, and thus, causing a reserve account shortage of \$50.

Additionally, respondent admitted to having committed multiple recordkeeping deficiencies, in violation of RPC 1.15(d), including (1) failing to conduct proper three-way reconciliation of attorney trust account client ledgers, journals, and checkbook, as R. 1:21-6(c)(1)(H) requires, (2) failing to disburse inactive and unidentified trust ledger balances, totaling \$43,615.91, as R. 1:21-6(d) and RPC 1.15(b) require, and (3) failing to resolve outstanding attorney trust account checks, totaling \$65,070.83, as R. 1:21-6(d) and RPC 1.15(b) require.

Last, effective October 18, 2021, the Court declared respondent administratively ineligible to practice law for failing to comply with his continuing legal education (CLE) requirements for one or more of the compliance reporting years. Given that respondent failed to comply with his CLE requirements until January 2022, he knew of his ineligibility to practice law when he issued ABA-7587 check #1101 for \$50,000, on November 2, 2021, and ABA-7587 check #1007 for \$45,349.55, on December 20, 2021, in violation of RPC 5.5(a)(1).

Generally, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds, regardless of mitigation. See, 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), and 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 addition, even in the absence of a negligent misappropriation (which is present here), a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that previously were brought to the attorney's attention. See In re Spielberg, ___ N.J. ___ (2022); 2022 N.J. LEXIS 666 (in default matter, reprimand for the attorney who failed to correct recordkeeping infractions identified in a previous audit; the attorney also failed to communicate in one client matter, did not promptly return property to clients; and failed to cooperate with the OAE's investigation; despite default status, the baseline of reprimand was not enhanced to censure because of the attorney's unblemished nearly forty-five-year career at the bar), and In re Abdellah, 241 N.J. 98 (2020) (reprimand for an attorney who should have been mindful of his recordkeeping obligations based on a "prior interaction" with the OAE in connection with his recordkeeping practices, although that interaction had not led to an allegation of unethical conduct).

When an attorney practices law while administratively ineligible, and is aware of the ineligibility, a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See In re Mordas, 246 N.J. 461 (2021) (reprimand for attorney who, despite his awareness of his ineligibility to practice law, twice appeared before the Superior Court in connection his client's criminal matter; the attorney's ATA records also revealed that he had engaged in the unauthorized practice of law through a minimum of five ATA transactions in connection with three client matters; in mitigation, the attorney stipulated to his misconduct and had a remote disciplinary history), and In re Freda, ___ N.J. ___ (2022) (censure for attorney, in a default matter, who knowingly practiced law while ineligible in connection with seven client matters; the attorney's ABA bank statements demonstrated that, for more than one year, the attorney continued to provide unauthorized legal services; the attorney had no prior discipline in his nearly thirty-year career at the bar).

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-two-year career, a factor which the Board and the Court accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). He 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. All applicable aggravation was considered, pursuant to disciplinary precedent detailed above, in setting the baseline quantum of discipline in this matter.

On balance, 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 July 22, 2024.
2. Stipulation of discipline by consent, dated September 10, 2024.
3. Affidavit of consent, dated August 28, 2024.
4. Ethics history, dated December 3, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

c: See attached list.
(w/o enclosures)

Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
Disciplinary Review Board (e-mail)

Johanna Barba Jones, Director

Office of Attorney Ethics (e-mail and interoffice mail)

Rachael L. Weeks, Deputy Ethics Counsel

Office of Attorney Ethics (e-mail)

Theodore Oshman, Respondent (e-mail and regular mail)