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RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

TIMOTHY M. ELLIS
CHIEF COUNSEL
NICOLE M. ACCHIONE
FIRST ASSISTANT COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL

SALIMA ELIZABETH BURKE
ADALINE KASER
ASHLEY KOLATA-GUZIK
NICHOLAS LOGOTHETIS
ALISA H. THATCHER
ASSISTANT COUNSEL

AMY MELISSA YOUNG
ASSOCIATE COUNSEL

February 25, 2025

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

Re: **In the Matter of Charly Gayden**
Docket No. DRB 24-264
District Docket No. XIV-2023-0157E

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 censure for respondent's violation of RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.15(a) (two instances – committing negligent misappropriation and commingling); RPC 1.15(b) (two instances – failing to promptly disburse funds to a client or third party); RPC 1.15(c) (failing to segregate property in which both the attorney and another party have an interest until there is an accounting); and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6).

The Garcia Matter

According to the stipulation, in December 2010, Cupertino Garcia executed a retainer agreement for respondent to represent him in connection with his divorce. By 2016, Garcia's unpaid legal fees exceeded \$64,700. Subsequently, respondent and Garcia executed a second retainer agreement that set forth a payment plan for the outstanding legal fees and set a new hourly rate for any additional legal services rendered.

In 2019, Garcia and respondent executed a third retainer agreement for legal services rendered in connection with post-judgment divorce arbitration, which stated that the legal fees would be paid from the arbitration award at the conclusion of those proceedings. All three retainer agreements stated that respondent would issue monthly billing statements.

In April 2019, the arbitrator entered an arbitration award in Garcia's favor. Between February 14, 2020 and June 28, 2021, Garcia's ex-wife paid the full award amount of \$523,223.65, via installments, which respondent deposited in her attorney trust account (ATA). In April 2020, Garcia directed respondent to pay a total of \$143,500 from the funds to various creditors on his behalf.

Between February 18, 2020 and February 2, 2022, respondent disbursed \$216,5000 of those award funds to her firm toward the payment of legal fees.¹ Respondent failed to provide Garcia with any invoices or billing statements prior to disbursing those award funds to her firm.

In January, February, and June 2021, Garcia sent respondent text messages and e-mails indicating that he needed the funds released as soon as possible and requesting an accounting of legal fees owed and payments made. Respondent failed to reply to either the January text or e-mail. Respondent sent Garcia a curt reply to the February e-mail, stating that she did not believe there were any funds remaining. In reply to the June text message, respondent stated

¹ The OAE asserted that it had considered whether respondent committed knowing misappropriation of client funds by disbursing the legal fees from her ATA. However, the OAE found no clear and convincing evidence to support a finding of knowing misappropriation and, based on the language included in the 2019 retainer agreement concerning the payment of legal fees, respondent had a reasonable belief that she could disburse the funds from her ATA.

“It’s going to take me a little while to put together all of the fees because some of the things I didn’t write down.”

Following Garcia’s filing of an ethics grievance in January 2022, and seven years after she had issued her last billing statement to Garcia, respondent prepared a statement for the legal services, from March 2014 through February 2022, and provided it to Garcia.

During the disciplinary investigation, respondent admitted that she failed to provide Garcia with periodic billing statements despite having asserted, in her three retainer agreements, that she would issue monthly statements; she failed to provide Garcia a settlement statement detailing all legal fees incurred, all payments received, and the net proceeds of the arbitration, despite his repeated requests for the information; she failed to reply to Garcia’s February 2021 request for the status of the disbursement of the net proceeds; and she failed to provide a full accounting to Garcia before she disbursed the \$216,500 to her firm for her legal fees. In addition, respondent asserted to the OAE that Garcia still owed her legal fees. However, she failed to provide the OAE with any documentation establishing the total amount of outstanding legal fees, and she failed to quantify Garcia’s net share of the arbitration award.

On October 24, 2024, respondent issued a \$148,698.30 ATA check to Garcia, representing his net share of the arbitration award, and a \$14,525.90 ATA check to her law firm, representing the final payment toward outstanding legal fees.

Recordkeeping Deficiencies

On January 16, 2024, the OAE conducted a demand audit of respondent’s financial books and records for the period January 2020 to June 2024, which revealed recordkeeping deficiencies, including: (1) failing to resolve client ledger cards with debit balances, as R. 1:21-6(d) and R. 1:21-6(c)(1)(B) require; (2) failing to safeguard client funds, as RPC 1.15(a) requires; (3) failing to separate personal funds, or funds unrelated to the practice of law, from an ATA, as RPC 1.15(a) and R. 1:21-6(a)(1) require; (4) holding attorney funds in an ATA that exceed the amount reasonably sufficient to pay bank charges, in violation of RPC 1.15(a); (5) failing to distribute inactive balances in an ATA, as R. 1:21-6(j) and RPC 1.15(b) require; (6) failing to deposit all earned legal fees in an ABA, as R. 1:21-6(a)(2) requires; and (7) failing to obtain proper

authorization for electronic transfers from an ATA, as R. 1:21-6(c)(1)(A) requires.

The OAE's review of respondent's books and records revealed additional misconduct. Specifically, on August 31, 2020, respondent issued an ATA check for \$100 to Malcolm Quigley. As of the date of the check, respondent was not holding any funds in her ATA on behalf of Quigley and, thus, issuing that check caused a shortage of \$99.64 in her ATA, invading other clients' funds. On November 17, 2021, respondent deposited personal funds in her ATA to rectify the shortage. Respondent asserted that she had inadvertently issued the check from her ATA rather than her ABA. She characterized the shortage as an "oversight" and attributed the error to her admitted failure to closely review her three-way reconciliations.

Between November 2021 and December 2023, respondent improperly maintained \$6,590.86 in personal funds in her ATA. As of January 31, 2024, respondent had reduced the personal funds held in her ATA to \$249.60.

Between May 21, 2019 and July 27, 2021, respondent held inactive balances in her ATA, totaling \$13,110.76, in connection with five client matters. Specifically, the inactive ATA balances were for the following clients: Jeffrey Davis (\$583.11); Brenda Gayden (\$0.26); Tracey Gayden (\$624.29); Juan Gonzalez (\$20); and Shire (\$11,883.10). Respondent asserted that all the inactive balances represented earned legal fees that she failed to promptly disburse to herself. On January 25, 2024, respondent issued five ATA checks to her law firm, totaling \$12,528.26, representing unclaimed legal fees and costs associated with the Brenda Gayden, Tracey Gayden, Gonzalez, and Shire matters.

In the Davis matter, Davis and his sister, Deirdre Miller, were the beneficiaries in an estate matter and were entitled to a share of undistributed assets totaling \$1,133.11. In September 2019, respondent sent Davis \$550, representing his share of the funds. However, she did not have Miller's address and ceased all efforts to locate her. Subsequently, in February 2024, respondent initiated an internet search and retained a private investigator to perform a "skip-trace" to locate Miller. On February 14, 2024, respondent issued an ATA check for \$583.11 to Miller to resolve the inactive balance in the Davis matter.

As of the date of the stipulation, respondent had corrected all recordkeeping deficiencies and brought her records into compliance with R. 1:21-6.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.4(b) by failing to inform Garcia that she had disbursed ATA funds for legal fees and failing to reply to Garcia's requests for information concerning the legal fees incurred and the timing of the release of the net proceeds; RPC 1.15(a) by commingling personal funds with ATA funds and failing to safeguard client funds; RPC 1.15(b) by failing to promptly disburse the arbitration award to Garcia and the client funds held in the Davis matter; RPC 1.15(c) by failing to provide Garcia with an accounting of the disbursements from the arbitration award; and RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. The parties jointly recommended the imposition of a censure as the appropriate quantum of discipline (or such lesser discipline as the Board deems appropriate).

Attorneys who fail to adequately communicate with their clients in conjunction with other, less serious misconduct, typically are admonished. See In the Matter of Sarah Ruth Barnwell, DRB 21-270 (June 20, 2022) (admonition for an attorney who undertook to represent a client in a child custody matter and, thereafter, ignored most of the client's communications; the attorney also failed to take any affirmative step to advance the client's matter and ultimately terminated the six-month representation without providing an explanation, invoice, or refund; violations of RPC 1.1(a) (engaging in gross neglect); RPC 1.2(a) (failing to abide by the client's decisions concerning the scope and objectives of representation); RPC 1.3 (lacking diligence); RPC 1.4(b); and RPC 1.16(d) (failing to refund the unearned portion of the fee to a client upon termination of the representation); the attorney had an unblemished thirteen year-career at the bar), and In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (admonition for an attorney who promised to take action to remit his client's payment toward an owed inheritance tax; despite the attorney's assurances that he would act, he failed to remit the payment until two years later; the attorney also failed to return his client's telephone calls or to reply to correspondence; violations of RPC 1.3 and RPC 1.4(b); the Board considered, in mitigation, the attorney's unblemished career in more than twenty-five years at the bar).

Standing alone, commingling personal funds with client funds will be met with an admonition, even if accompanied by other recordkeeping infractions. See In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (admonition for an attorney who commingled personal funds in his ATA; due to the his poor recordkeeping practices, the attorney failed, for two months, to remove his personal funds from his ATA; the attorney also committed several recordkeeping violations, including failing to perform three-way reconciliations, maintaining an improper account designation, and failing to preserve images of processed checks; no prior discipline).

Attorneys who fail to keep disputed funds separate and intact prior to providing an accounting typically are admonished. See In the Matter of Arthur G. Nevins, Jr., DRB 22-126 (October 24, 2022) (attorney admonished for disbursing settlement funds from a personal injury lawsuit to himself for legal fees and expenses without providing an invoice or accounting to a client; the attorney also failed to keep a client reasonably informed about the status of his matter and failed to provide an accounting in a contingent fee matter; no prior discipline in his thirty-five years as a member of the bar).

Typically, cases involving attorneys who fail to promptly deliver funds to clients or third parties have resulted in admonitions or reprimands, depending on the existence of other ethics infractions and prior disciplinary history. See In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition for an attorney who, in three personal injury matters, failed to promptly notify his clients of his receipt of settlement funds and to disburse the clients' share of the funds; the attorney also failed to communicate with clients; no prior discipline), and In re Anderson, ___ N.J. ___ (2021), 2021 N.J. LEXIS 1327 (reprimand for an attorney who failed to deliver \$24,575 in escrow funds promptly; the attorney also failed to safeguard funds, negligently misappropriated client funds, and had numerous recordkeeping deficiencies; no prior discipline).

Generally, regardless of mitigation, a reprimand is the appropriate discipline for recordkeeping violations that cause the negligent misappropriation of, and constitute failure to safeguard, client funds. See In re Sherer, 250 N.J. 151 (2022) (reprimand for an attorney who, as the result of poor recordkeeping, 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).

Based upon the above precedent, the Board concluded that the baseline discipline for the totality of 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 her twenty-six-year career, a factor which the Board and the Court accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). Respondent also admitted her wrongdoing and entered into a disciplinary stipulation, thereby accepting responsibility for her misconduct and conserving disciplinary resources.

The Board weighed, in aggravation, the demonstrable harm to respondent's clients. It is well-settled that harm to the client constitutes an aggravating factor. Here, respondent's prolonged failure to deliver client funds in the Garcia and Davis matters caused multi-year delays in the clients receiving their money. Overall, respondent demonstrated a general indifference to the harm her delays had on her clients. Neither the urgency that Garcia expressed nor his pleas for her to finalize the billing and issue the check for his share of the award funds influenced respondent's cavalier attitude towards closing out the matter.

In the Davis matter, respondent deposited the settlement funds as far back as September 2019 and, almost five years later, had still failed to conduct a diligent search for Miller. The ethics complaint filed in the instant matter was the sole impetus for respondent to finally disburse the client funds in both the Garcia and Davis matters.

Throughout the investigation, respondent asserted that Garcia owed additional legal fees, yet she did not know the final amount he owed and could not produce any documentation establishing the total amount of outstanding

legal fees. Her inability to answer questions regarding the amount of legal fees owed or the status of Garcia's net proceeds was a direct result of her failure to issue periodic billing statements for a seven-year period, as expressly required by Court Rule. Despite her inability to quantify the outstanding fees owed, respondent continued to disburse legal fees from the funds held in her ATA.

On balance, the Board determined that 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 October 17, 2024.
2. Stipulation of discipline by consent, dated October 30, 2024.
3. Affidavit of consent, dated October 17, 2024.
4. Ethics history, dated February 25, 2025.

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
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Corsica D. Smith, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Robert Ramsey, Respondent's Counsel (e-mail and regular mail)
Cupertino Garcia, Grievant (regular mail)