

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-260
District Docket No. XIV-2020-0521E

In the Matter of Zhiyu Hu
An Attorney at Law

Argued
February 20, 2025

Decided
April 28, 2025

Amanda W. Figland appeared on behalf of the
Office of Attorney Ethics.

Respondent appeared pro se.

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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 on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.5(b) (twelve instances – failing to set forth, in writing, the basis or rate of the legal fee); RPC 1.5(c) (failing to provide a written fee agreement in a contingent fee case); RPC 1.15(a) (commingling client and escrow funds with personal funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

For the reasons set forth below, we determine that a censure, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Ethics History

Respondent earned admission to the New Jersey and New York bars in 1994 and to the District of Columbia bar in 2000. He has no disciplinary history.

During the relevant timeframe, he maintained a practice of law in Edison, New Jersey.

Facts

On August 21, 1998, the OAE conducted a random compliance audit of respondent's financial records, which revealed that he failed to maintain (1) a running cash balance in his attorney trust account (ATA) checkbook, as R. 1:21-6(c)(1)(G) requires, (2) adequately descriptive client ledger cards, as R. 1:21-6(c)(1)(B) requires, and (3) a proper account designation for his attorney business account (ABA), as R. 1:21-6(a)(2) requires. Additionally, he failed to conduct monthly three-way reconciliations of his ATA, as R. 1:21-6(c)(1)(H) requires. Following the 1998 audit, respondent corrected his recordkeeping deficiencies.

Twenty-two years later, on January 21, 2020, the OAE conducted another random compliance audit of respondent's records. The 2020 audit revealed that respondent failed to maintain (1) adequately descriptive ATA and ABA deposit slips, as R. 1:21-6(c)(1)(A) and (G) require; (2) separate ledger cards for each client, as R. 1:21-6(c)(1)(B) requires; (3) an adequately descriptive ABA receipts journal, as R. 1:21-6(c)(1)(A) requires; (4) proper ABA image-

processed checks, as R. 1:21-6(b) requires; (5) a proper account designation for his ATA, as R. 1:21-6(a)(2) requires; and (6) the name or file number of the client on the memo line of each ATA check, as R. 1:21-6(c)(1)(G) requires. Additionally, he committed the same recordkeeping deficiencies discovered in connection with the 1998 random audit, including failing to (1) conduct monthly three-way reconciliations of his ATA; (2) maintain a proper ABA account designation; (3) maintain a running cash balance in his ATA checkbook; and (4) maintain adequately descriptive client ledger cards. Finally, the audit revealed that, as of December 31, 2019, he held \$1,439,386.10 in his ATA on behalf of an unspecified number of clients.¹

On February 24, 2020, following the random audit, the OAE sent respondent a letter directing that he obtain a certified public accountant to correct his recordkeeping errors. Moreover, the OAE required him to provide three-way monthly reconciliations, client ledger cards, and ATA receipts and disbursements journals for the period spanning from January 2018 through December 2019.

On July 9, 2020, respondent sent the OAE a reply letter producing the required financial records. Specifically, respondent maintained that, with the

¹ Respondent primarily practices real estate and immigration law.

assistance of his accountant, he had manually “cross-checked and reconciled” his ATA bank statements, receipts and disbursements journals, and client ledger cards. He also noted that he “primarily” used his ATA for real estate matters but that, beginning in 2015 or 2016, he no longer acted as a settlement agent for such transactions. Additionally, he claimed that, effective March 1, 2020, he no longer accepted escrow deposits in his ATA and began relying on title companies to accept and safeguard such funds. However, he failed to identify and reconcile all outstanding balances listed on his ATA ledger. Nevertheless, he represented that, with the assistance of his accountant, he would “continue to review [his ATA] and release any money that should be released. Eventually the account will be cleared.”

On August 28, 2020, the OAE notified respondent that he had failed to submit his complete ATA reconciliation records demonstrating whether he had rectified the “open balances” in that account.

Approximately two weeks later, on September 14, 2020, respondent replied to the OAE, providing additional financial records and maintaining that he had “been trying very hard to process” his ATA. He also claimed that he may have “identified” approximately \$420,000 of the \$798,085.65 in potentially inactive ATA balances. He asserted that “various factors contributed to” his

mismanagement of his ATA, including outdated computer systems, a potential 2008 flood that may have destroyed certain financial records, and his failure to supervise his real estate paralegals. Finally, he expressed his commitment to locate additional client files and resolve his “incomplete client[] balances” by disbursing ATA funds without depositing new funds in that account.

On January 13, 2021, the OAE sent respondent a letter, requiring that he identify all outstanding funds in his ATA and provide his three-way monthly ATA reconciliations and receipts and disbursements journals for the period January 2018 through December 2019.

On February 11, 2021, respondent sent the OAE a reply letter providing his three-way ATA reconciliations, his January 2021 ATA bank statement, and a list of numerous client matters with an estimated balance of ATA funds held for each client. In his submissions, respondent stated that, of the \$849,229.56 total balance in his ATA, approximately \$120,000 remained unidentified. His submissions, however, were “incomplete” because he not only failed to provide a separate ledger card for each client but also failed to identify and reconcile at least \$120,000 in ATA funds.²

² The parties stipulated that, sometime in or after January 2021, respondent ceased relying on his accountant and “began working on his own” to rectify his recordkeeping deficiencies.

On July 14, 2022,³ the OAE directed respondent to appear for a virtual demand interview and to provide his complete ATA and ABA financial records for the period January 2018 through July 2022.

On August 21, 2022, in advance of the demand interview, respondent provided the OAE with two lists of client balances demonstrating that, as of that date, he held a total of \$729,101.69 in inactive balances for 1,175 clients. Of the 1,175 inactive client balances, approximately eighty-nine were for amounts of less than \$100. Additionally, respondent's financial records indicated that, as of July 31, 2022, he maintained an \$845,739.56 ATA balance, of which \$116,637.87 remained unidentified.

Respondent labeled the first list of client balances as the "Old System Ledger" and the second list as the "Cosmolex Ledger." The Old System Ledger listed 1,051 client balances, totaling \$794,573.65, which respondent previously had maintained on his former accounting software, EasySoft. He utilized EasySoft until approximately April 2014, when he began attempting to "transfer" data concerning those clients' balances to his current accounting software, Cosmolex. However, he claimed that only "some" of his clients' balances had been transferred from EasySoft to Cosmolex. The Cosmolex

³ The record is unclear whether the OAE and respondent communicated with each other between March 2021 and June 2022.

Ledger listed 124 client balances, totaling \$51,165.91, which respondent maintained on his Cosmolex accounting software.

On September 9, 2022, respondent appeared for the demand interview, during which he conceded that he continued to hold “substantial inactive” ATA balances and that he had not completed his review of his clients’ records to determine the extent of the funds owed to clients, third parties, or himself for legal fees and costs. He informed the OAE that he could disburse all 124 client balances listed on his Cosmolex Ledger to their entitled parties within one month. Further, he maintained that he could disburse all 1,051 client balances listed on his Old System Ledger within six months.

Four months later, on January 9, 2023, respondent sent the OAE a letter noting that he had “investigated and disposed of” the 124 client balances on his Cosmolex Ledger. However, although he claimed that he had “disposed of” such client balances, he merely “transferred most of [those] funds to a sub-account within [his] ATA.” Additionally, he maintained that he had “verified over 100 cases” listed on his Old System Ledger.

On February 17, 2023, the OAE directed respondent to submit “client ledger cards for all open balances” listed on both his Old System and Cosmolex Ledgers. The OAE also required him to submit spreadsheets reflecting any

disbursements he had made from his ATA since January 2021. Finally, the OAE instructed him to cease disbursing any ATA funds to himself “for the time being.”

On March 24 and June 5, 2023, the parties stipulated that respondent had submitted all required client ledger cards and replied, “in full,” to the OAE’s inquiries concerning “disbursements.”

In his June 5, 2023 submission, respondent provided the OAE with a HUD-1 settlement statement, a client ledger card, and a spreadsheet concerning his 2015 representation of Cecilia Chao in connection with her purchase of real estate. Although the real estate matter had concluded on February 6, 2015, respondent’s financial records demonstrated that, for eight years, he had commingled a \$309 legal fee with entrusted funds in his ATA. Further, he stipulated that he failed to set forth, in writing, the basis or rate of his legal fee to Chao, as RPC 1.5(b) requires.

Additionally, during a July 11, 2023 conversation with the OAE, respondent conceded that he had failed, for at least seventeen years, to resolve a \$66,354.13 inactive ATA balance in connection with his representation of Shih-Feng Chiang.⁴ Specifically, in 2005 or 2006, respondent represented

⁴ During his September 9, 2022 demand interview, the OAE had questioned respondent regarding the \$66,354.13 inactive balance.

Chiang in connection with his purchase of real estate from an estate. During the representation, respondent deposited \$66,354.13 in escrow funds in his ATA, pending his receipt of a waiver of inheritance taxes. Respondent maintained that he had held the funds, in escrow, “for many years,” because he never received a waiver of inheritance taxes from the estate’s attorney. However, following the September 2022 demand interview, respondent contacted the estate’s executor and, on May 8, 2023, issued two ATA checks, totaling \$66,024.13, to the executor. Respondent maintained that, although the executor had received the checks, he did not negotiate them.

Moreover, during his July 11, 2023 conversation with the OAE, respondent conceded that, for approximately twenty years, he had allowed \$40,000 to languish in his ATA in connection with his representation of Xiang Xu. Specifically, in 2000, Xu retained respondent to file a claim against Huey Yang, a “personal guarantor” who owed Xu \$40,000. Respondent and Xu agreed that respondent would receive a fifty-percent contingent legal fee on any amount recovered from Yang. However, respondent failed to memorialize, in writing, his fee agreement with Xu, as RPC 1.5(c) requires. On November 21, 2003, after successfully negotiating with Yang, respondent deposited a \$40,000 check from Yang in his ATA. Thereafter, respondent maintained that, since 2004, he had

been searching, unsuccessfully, for Xu, who no longer resides in the United States. Although respondent purportedly was entitled to a \$20,000 contingent legal fee for his representation of Xu, he had failed, for nearly twenty years, as of July 11, 2023, to disburse those commingled earned legal fees from his ATA to his ABA.

On August 10, 2023, the OAE sent respondent another letter directing that he provide (1) his three-way ATA reconciliations for the period February through June 2023, (2) updated schedules of all inactive ATA balances, and (3) client files underlying twelve real estate matters he had handled between 2002 and 2018. Approximately two weeks later, on August 27, 2023, respondent provided the required materials to the OAE. However, as of August 27, 2023, he had neither “reviewed” each of the 1,175 inactive ATA balances nor determined the beneficial owners of those funds. Further, he had failed to identify all ATA funds, preventing him from reconciling the funds in that account with the balance listed on his bank statement.

On October 31, 2023, respondent’s ATA bank statement reflected an \$830,744.69 balance in that account. However, respondent’s self-prepared, October 31, 2023 three-way ATA reconciliation reflected a \$760,265.71 balance, a difference of \$70,478.90.

On January 4, 2024, respondent attended a second demand interview, during which he conceded that, despite the passage of at least two decades, he had failed to resolve the \$40,000 inactive ATA balance in connection with his representation of Xu. He also admitted that the executor of the estate underlying the Chiang client matter had not yet negotiated the two May 2023 ATA checks, totaling \$66,024.13, which respondent had issued to attempt to resolve that approximately eighteen-year inactive balance.

Further, during the interview, the OAE queried respondent regarding the twelve additional real estate client matters, spanning from 2002 through 2018, for which he had provided the OAE his client files. For each of those twelve client matters, respondent obtained and reviewed HUD-1 settlement statements, client ledgers, and bank records. Further, he generated spreadsheets for those matters identifying the inactive balances and the beneficial owners of those funds. Although respondent maintained that “it was time-consuming to prepare these records,” his efforts demonstrated to the OAE that he was able to reconstruct his clients’ files and financial records dating back to at least 2002.

On January 10 and January 26, 2024, following the second demand interview, the OAE directed respondent to provide, among other materials, (1) the written fee agreements underlying the twelve real estate matters discussed

during the interview, plus a thirteenth real estate client matter, (2) a list of client matters with negative balances, and (3) the status of the inactive ATA funds underlying both the Xu (\$40,000) and Chiang (\$66,024.13) client matters.

In his February 15, 2024 written reply to the OAE, respondent stated that he had failed to locate written fee agreements for twelve of the thirteen real estate client matters identified in the OAE's January 26 letter.⁵ Moreover, neither respondent nor his client, Xiaoke Cheng, executed the sole written fee agreement provided to the OAE, dated May 31, 2018. Respondent informed the OAE that, prior to 2015, he "rarely" prepared written fee agreements for his clients.

Further, in his February 15, 2024 submission to the OAE, respondent provided a recent e-mail he had received from the executor underlying the Chiang client matter. In the e-mail, the executor stated that his bank prohibited him from depositing respondent's two May 2023 ATA checks, totaling \$66,024.13, because the estate's closed bank account had not been opened under the decedent's legal name. Moreover, respondent's May 2023 ATA checks did not reflect the decedent's legal name. However, the OAE confirmed that, on or

⁵ Respondent also informed the OAE that, although he was unsure of whether he had represented those twelve clients in any prior matters, he could not locate any written fee agreements for those clients.

around March 6, 2024, respondent re-issued the ATA checks to the executor, resolving that inactive balance.⁶

Additionally, in his February 15 submission, respondent provided the OAE fifteen individual client ledger cards for real estate matters, spanning from 2002 through 2012. The ledger cards demonstrated that, in each matter, respondent maintained an ATA shortage in amounts ranging from \$6.00 to \$2,018.76 and totaling \$4,254.94.

Specifically, of the fifteen real estate client matters with account shortages, five of those matters spanned from 2002 to 2003. Respondent maintained a \$60.80 total shortage in connection with those five client matters, and he claimed that each shortage resulted from either “wire” or “bank” charges, or other “errors.”

Four of the client matters with account shortages spanned from 2003 to 2005. Respondent maintained a \$536.55 total shortage in connection with those four matters, and he asserted that each shortage “probably” resulted from his failure to “collect enough at the closing[s].”

⁶ As of October 23, 2024, the date of the disciplinary stipulation, the executor had not negotiated respondent’s March 2024 ATA checks.

Further, in connection with a 2007 real estate client matter with a \$42.61 account shortage, respondent maintained that he had “paid” a \$42.61 “invoice” “long after” the closing of the transaction, resulting in the shortage.

Moreover, respondent alleged that a \$2,018.76 account shortage underlying a 2008 real estate client matter resulted from his failure to collect title and recording fees.

Additionally, in connection with a 2009 real estate client matter with a \$1,231 account shortage, respondent speculated that the shortage “may” have resulted when he made a “payment . . . to the title company for a different real estate matter, creating a positive balance, which [he] debited incorrectly to the [2009] client matter.”

Two of the real estate client matters with negative balances took place in 2010 and resulted in a \$338.22 total ATA shortage. Respondent informed the OAE that the shortage in the first matter “probably” resulted from his failure to “collect enough from the client at closing,” and he alleged that the shortage in the second matter resulted from transposing numbers on his client ledger card.

Finally, in connection with a 2012 real estate client matter with a negative \$23 balance, respondent alleged that shortage resulted from a \$23 mortgage discharge fee.

On June 28, 2024, following the filing of a formal ethics complaint, respondent deposited personal funds in his ATA to rectify the shortages underlying fourteen of the fifteen⁷ real estate client matters.⁸

Meanwhile, on February 29, 2024, respondent resolved the inactive \$40,000 ATA balance underlying the Xu client matter. Specifically, on February 29, at Xu's direction, respondent disbursed, via wire transfer, \$20,000 to Xu's son, who lives in the United States. Additionally, on February 28, respondent, with Xu's permission, issued a \$20,000 ATA check to himself for his legal fee.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.15(d) by failing to maintain (1) adequately descriptive ATA and ABA deposit slips, as R. 1:21-6(c)(1)(A) and (G) require; (2) a running cash balance in his ATA checkbook, as R. 1:21-6(c)(1)(G) requires; (3) adequately descriptive client ledger cards, for each trust client, maintained with his accounting records, as R. 1:21-6(c)(1)(B) requires; (4) proper account designations for his ATA and ABA, as R. 1:21-6(a)(2) requires; (5) an

⁷ The record before us is unclear whether respondent rectified the \$1,231 shortage in connection with the 2009 real estate client matter.

⁸ Although the parties stipulated that respondent's mathematical, recordkeeping, and other errors resulted in account shortages underlying the fifteen client matters, the OAE declined to charge him with negligent misappropriation, in violation of RPC 1.15(a), given that, since 2002, he had commingled, in his ATA, substantial but unknown sums of personal funds, which may have covered those shortages. The OAE also could not determine whether respondent's mathematical errors "impacted . . . other client funds held in [his] ATA."

adequately descriptive ABA receipts journal, as R. 1:21-6(c)(1)(A) requires; (6) proper ABA image-processed checks, as R. 1:21-6(b) requires; and (7) the name or file number of the client on the memo line of each ATA check, as R. 1:21-6(c)(1)(G) requires.

Additionally, the parties stipulated that respondent failed to conduct monthly three-way reconciliations of his ATA, as R. 1:21-6(c)(1)(H) requires, and maintained substantial inactive and unidentified balances in his ATA, as R. 1:21-6(d) and R. 1:21-6(c)(1)(B) prohibit. Because respondent failed to “reconcile” and account for each of the 1,175 inactive client balances, the OAE could not determine the extent of the unidentified funds in his ATA.

Moreover, the OAE observed that, for more than twenty years, between November 21, 2003 and February 28, 2024, respondent commingled his \$20,000 earned legal fee underlying the Xu client matter with entrusted funds. Further, in connection with his representation of Sabanayagam Sugunavel – involving a real estate client matter that had closed on December 18, 2002 – respondent altogether failed to disburse, from his ATA to his ABA, \$735 in commingled legal fees and costs. Indeed, as of October 23, 2024, the date of the disciplinary stipulation, those commingled earned legal fees and costs remained in his ATA.

Because respondent failed to reconstruct and account for all funds in his ATA, the OAE could not determine the extent to which he had commingled his earned legal fees with entrusted funds. However, the OAE estimated that he engaged in commingling in connection with 900 of the 1,175 client matters. By commingling substantial sums of earned legal fees with entrusted funds between 2002 and 2024, the parties stipulated that respondent violated RPC 1.15(a).

Following the OAE's investigation, respondent corrected some of his recordkeeping deficiencies. However, he conceded that he had failed to (1) correct the account designations on his ATA and ABA; (2) rectify the 1,175 inactive client balances in his ATA; (3) identify substantial sums of unidentified ATA funds; and (4) remove commingled legal fees from his ATA.

Additionally, although respondent timely replied to each of the OAE's inquiries, he stipulated that he violated RPC 8.1(b) by engaging in impermissible partial cooperation. Specifically, he conceded that he failed to both "review" all 1,175 inactive ATA balances and "identify" the "surplus funds in each [of those] matters."

Moreover, respondent stipulated that he violated RPC 1.5(b) by failing to set forth, in writing, the basis or rate of his legal fee in at least twelve real estate client matters spanning from 2002 through 2018. Finally, he stipulated that he

violated RPC 1.5(c) by failing to explain, in writing, the basis of his contingent legal fee to Xu, including whether “costs would be deducted” from any financial recovery.

The Parties’ Positions Before the Board

The OAE recommended the imposition of a censure, with the conditions that respondent demonstrate that he has corrected his outstanding recordkeeping deficiencies and rectified the inactive balances in his ATA within ninety days of the Court’s disciplinary Order. Additionally, the OAE recommended that respondent be required to attend a recordkeeping course, pre-approved by the OAE, and to submit quarterly reconciliations of his attorney accounts to the OAE for a two-year period.

In support of its recommendation, the OAE emphasized, in aggravation, that, despite numerous opportunities, respondent failed to correct all his recordkeeping deficiencies, including the 1,175 inactive client balances that have languished in his ATA since between 2002 and 2013. The OAE stressed that respondent failed to resolve those inactive balances despite possessing the relevant client ledger cards, HUD-1 settlement statements, and bank records to allow him to “review and identify the source of [his] inactive [ATA] funds.”

The OAE underscored that, despite having undergone a 1998 random audit, respondent accumulated more than \$800,000 in inactive client balances, some of which dating back to 2002, when he should have been on heightened notice of his obligations to comply with the recordkeeping Rules.

In mitigation, the OAE highlighted respondent's lack of prior discipline and the fact that he stipulated to his misconduct and, thus, conserved disciplinary resources. Additionally, the OAE noted that, following the execution of the October 2024 disciplinary stipulation, respondent had reviewed and identified the source of inactive balances in approximately 500 of the 1,175 matters.

Respondent urged us to impose discipline less than a censure, alleging that his conduct will not recur because, since March 2020, he no longer deposits entrusted funds in his ATA. Respondent also maintained that he had accrued his numerous inactive client balances in connection with minor real estate matters originating between twelve and twenty-three years ago. To resolve those inactive balances, respondent emphasized that he will be forced to "go back many years" to reconstruct his records.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the facts set forth in the stipulation clearly and convincingly support the finding that respondent committed all the charged unethical conduct.

Respondent admittedly violated RPC 1.5(b) by failing to set forth, in writing, the basis or rate of his legal fee in connection with at least twelve real estate client matters spanning from 2002 through 2018.⁹ Moreover, during the OAE's investigation, he conceded that, prior to 2015, he "rarely" prepared written fee agreements for his clients. Given that respondent's Old System Ledger listed more than 1,000 clients whose matters had originated in or before 2014, respondent's violation of RPC 1.5(b) appears to have extended well-beyond the twelve client matters specifically identified by the OAE.

Similarly, respondent violated RPC 1.5(c) by failing to memorialize, in writing, his contingent fee agreement with at least one client. Specifically, in 2000, Xu retained respondent to file a claim against Yang, who owed Xu \$40,000 as a "personal guarantor." Respondent and Xu verbally agreed that

⁹ Respondent also stipulated that he failed to set forth, in writing, the basis or rate of his legal fee to Cecilia Chao in connection with her 2015 real estate matter. However, the disciplinary stipulation is unclear whether respondent's failure in that regard is encompassed within the twelve real estate client matters in which he violated RPC 1.5(b).

respondent would receive a fifty-percent contingent legal fee on any amount recovered from Yang. However, respondent failed to memorialize his contingent fee agreement with Xu in writing, including whether respondent would deduct any expenses from either the gross or the net recovery of any funds received from Yang, as RPC 1.5(c) expressly requires.

Additionally, as respondent stipulated, he violated RPC 1.15(a) by commingling substantial sums of earned legal fees and costs with entrusted funds for more than twenty years, between 2002 and 2024.

Specifically, in connection with his representation of Chao concerning her purchase of real estate, respondent commingled his \$309 legal fee with entrusted ATA funds for at least eight years following the February 6, 2015 closing in that matter. Moreover, the record before us is unclear whether, following the OAE's investigation, respondent removed those commingled legal fees from his ATA.

Further, for more than twenty years, between November 2003 and February 2024, respondent commingled his \$20,000 contingent legal fee underlying the Xu client matter with entrusted funds. During that timeframe, respondent allowed the \$40,000 he had recovered for Xu to remain, inactive, in his ATA. Respondent maintained that, between 2004 and 2023, he had been unable to locate Xu to deliver his funds. Nevertheless, following the OAE's

intervention, it took respondent only seven months, between August 2023 and February 2024, to resolve that inactive balance by disbursing \$20,000 of the recovered funds to Xu's son and the remaining \$20,000 to himself for his legal fee.

Additionally, in connection with his representation of Sugunavel in a real estate matter that had closed on December 18, 2002, respondent, for more than twenty years, commingled \$735 in legal fees and costs with entrusted ATA funds. Compounding matters, as of October 23, 2024, the date of the disciplinary stipulation, respondent had failed to remove those commingled personal funds from his ATA.

Because respondent failed to identify all ATA funds during the OAE's investigation, the full extent of his commingling is impossible to calculate on this record. Nevertheless, as he stipulated, his commingling of substantial personal and entrusted funds spanned more than twenty years, between 2002 and at least 2024.

Respondent also admittedly violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Specifically, he failed to maintain (1) adequately descriptive deposit slips; (2) a running cash balance in his ATA checkbook; (3) adequately descriptive client ledger cards for each trust

client; (4) proper ATA and ABA account designations; (5) an adequately descriptive ABA receipts journal; (6) proper ABA image-processed checks; and (7) the name or file number of the client on the memo line of each ATA check.

More egregiously, respondent failed to conduct monthly three-way ATA reconciliations and maintained substantial sums of inactive and unidentified client balances. Following the OAE's investigation, although respondent corrected some recordkeeping deficiencies, he altogether failed to (1) correct his ATA and ABA account designations; (2) rectify the inactive client balances; (3) identify all ATA funds; and (4) remove commingled legal fees from his ATA.

Specifically, at the outset of the January 2020 random compliance audit, respondent maintained not only approximately \$120,000 in unidentified ATA funds, but also more than \$800,000 in ATA funds that had languished, inactive, in connection with 1,175 client matters, since between 2002 and 2013. During the OAE's investigation, respondent, at the OAE's direction, resolved the significant \$40,000 inactive balance underlying the Xu client matter and issued ATA checks to the executor underlying the Chiang client matter, in an attempt to resolve that substantial \$66,024.13 inactive client balance. However, other than those two client matters, respondent admittedly failed, despite numerous

opportunities, to resolve at least 1,173 inactive client balances in his ATA that remained at the time he entered into the disciplinary stipulation.

In his July 9 and September 14, 2020 submissions to the OAE, respondent expressed his commitment to resolve his “incomplete client[] balances” by continuing to “review [his ATA] and release any money that should be released.” However, two years later, during the September 2022 demand interview, respondent conceded that he continued to hold “substantial inactive” ATA balances and had failed to review his clients’ records to determine the beneficial owners of those funds. Although respondent represented to the OAE that he could disburse the inactive balances listed in both his Old System and Cosmolex Ledgers within several months, he failed to do so.

By October 2023, more than three-and-a-half years after the OAE’s intervention, respondent had failed to identify at least \$70,000 in ATA funds. Specifically, his self-prepared October 2023 ATA reconciliations reflected only a \$760,265.71 account balance while his corresponding ATA bank statement demonstrated that, in fact, he maintained an \$830,744.69 balance. Respondent’s failure to reconcile and account for all ATA funds, including inactive balances underlying at least 1,173 client matters, prevented him from identifying the

beneficial owners of a substantial sum of entrusted funds, which had languished in his ATA for between twelve and twenty-three years.

Finally, as respondent stipulated, he violated RPC 8.1(b) by failing to fully cooperate with the OAE's investigation of his financial records. An attorney who fails to comply with the requirements of R. 1:21-6 "in respect of the maintenance, availability[,] and preservation of accounts and records[,] or who fails to produce or to respond completely to questions regarding such records as required[,] shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)." R. 1:21-6(i).

It is well-settled that cooperation short of the full cooperation required by the Rules has resulted in the finding that the attorney violated RPC 8.1(b). See In re Sheller, 257 N.J. 495 (2024) (although the attorney timely replied to the OAE's correspondence, he admittedly failed to bring his financial records into compliance, despite the OAE's extensive efforts spanning fourteen months; on at least four occasions, the OAE provided the attorney with specific guidance on how to correct his records; notwithstanding the OAE's repeated good faith efforts to accommodate him, his submissions consistently remained deficient; we, thus, determined that the attorney violated RPC 8.1(b)), and In re Palfy, 225 N.J. 611 (2016) (wherein we viewed the attorney's partial "cooperation as no

less disruptive and frustrating than a complete failure to cooperate,” noting that “partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion”).

Here, although respondent submitted relatively timely replies to the OAE’s inquiries, he failed, despite the OAE’s repeated requests during the more than four-year investigation, to adequately review his records to resolve at least 1,173 inactive client balances. Although he provided the OAE with any specifically requested client files and offered general explanations for his serious mismanagement of his ATA, he failed, other than in the Xu and Chiang client matters, to comply with the OAE’s repeated requests to identify and resolve his inactive balances. Indeed, in his January 9, 2023 submission to the OAE, he appeared to misrepresent that he had “disposed of” the 124 inactive client balances listed on his Cosmolex Ledger when, in fact, he merely had transferred such funds to a “sub-account within [his] ATA.”

By the conclusion of the OAE’s multi-year disciplinary investigation, respondent appeared to have attempted to resolve only two of the 1,175 total inactive client balances that he had maintained, for years, in his ATA. Although he acknowledged that “it was time-consuming” to assemble certain client files for OAE inspection, he conceded that he continued to maintain the relevant

portions of client files and financial records to allow him to review and identify the beneficial owners of the inactive ATA funds. Respondent, however, stipulated that he failed to conduct such a review of his own records, as the OAE required, and, thus, failed to fully cooperate in the disciplinary investigation.

In sum, we find that respondent violated RPC 1.5(b) (twelve instances); RPC 1.5(c); RPC 1.15(a); RPC 1.15(d); and RPC 8.1(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

In the absence of negligent misappropriation, recordkeeping infractions ordinarily result in an admonition, even if accompanied by commingling or violations of RPC 1.5(b). See, e.g., In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney committed several recordkeeping violations, including failing to perform three-way reconciliations, maintaining an improper ATA designation, and failing to preserve images of processed checks; the attorney also commingled client and personal funds; due to the attorney's poor recordkeeping practices, he failed, for two months, to remove his personal funds from his ATA; in mitigation, the attorney rectified his

recordkeeping errors, caused no ultimate harm to his clients, and had no disciplinary history); In the Matter of Steven Harlan Wolff, DRB 18-327 (November 21, 2018) (the attorney failed to produce his financial records to the OAE and failed to adequately set forth, in writing, the basis or rate of his legal fee to a matrimonial client); In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (the attorney commingled personal loan proceeds in his ATA and committed recordkeeping infractions; the attorney's commingling did not impact client funds and he corrected his recordkeeping practices; prior 2015 censure for unrelated misconduct).

The quantum of discipline is enhanced, however, if additional aggravating factors are present, including maintaining substantial inactive ATA balances or failing to correct recordkeeping deficiencies despite prior audits. See, e.g., In re Abdellah, 241 N.J. 98 (2020) (reprimand for an attorney who failed to resolve recordkeeping infractions despite being advised of those deficiencies in a prior random audit; no prior discipline); In re Lueddeke, ___ N.J. ___, (2022) 2022 N.J. LEXIS 456 (censure for an attorney whose recordkeeping deficiencies included permitting \$414,278.24 of inactive client balances and outstanding checks to languish in his ATA for almost a decade; in aggravation, the attorney's recordkeeping deficiencies occurred after having participated in two prior

random audits; however, in mitigation, the attorney eventually corrected his recordkeeping deficiencies; prior admonition for dissimilar conduct; in addition to censuring the attorney, the Court required the attorney to take two recordkeeping courses); In re Davis, 242 N.J. 141 (2020) (censure for an attorney whose recordkeeping deficiencies included holding inactive client balances totaling \$181,022.27 in connection with 116 client matters, with the oldest balances dating back nearly fifteen years before the audit; the attorney also failed to safeguard client funds and to cooperate with disciplinary authorities; in aggravation, the attorney had two prior reprimands (in 2007 and 2012); in addition to censuring the attorney, the Court required him to submit monthly reconciliations to the OAE for two years, resolve all inactive client balances in his ATA, and disburse any unidentified ATA funds to the Superior Court Trust Fund Unit); In re Esposito, 240 N .J. 174 (2019) (censure for an attorney whose recordkeeping deficiencies included holding \$169,043.03 of unidentified funds and numerous inactive ATA balances; the attorney also failed to promptly disburse excess fees to entitled parties in real estate matters; in mitigation, the attorney had no disciplinary history and remedied all his recordkeeping deficiencies, including the inactive balances; in addition to

censuring the attorney, the Court required him to submit monthly reconciliations to the OAE for two years).

Respondent also failed to cooperate with the OAE's investigation of his financial records. Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history, if the attorney's ethics history is remote, or if compelling mitigation is present. The quantum of discipline is enhanced, however, if the failure to cooperate is with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in an ATA and requests additional documents. See, e.g., In re Schlachter, 254 N.J. 375, 376 (2023) (reprimand for an attorney who committed recordkeeping violations and repeatedly failed, for almost a year, to fully comply with the OAE's numerous record requests; although the OAE attempted to help the attorney take corrective action, he remained non-compliant with the recordkeeping Rules; in mitigation, his misconduct resulted in no harm to his clients and he had no disciplinary history in sixteen years at the bar); In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two OAE random audits uncovering numerous recordkeeping deficiencies, including an unidentified client ledger card that held a negative \$50,200.35 balance, repeatedly failed, for more than three months, to comply with the OAE's

requests for his law firm's financial records; thereafter, for more than eight months, the attorney repeatedly assured the OAE that he would provide the required records but failed to do so, despite two Court Orders directing him to cooperate; the attorney, however, provided some of the required financial records; we found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate; however, we imposed a reprimand in light of the lack of injury to the clients and the attorney's remorse, contrition, and otherwise unblemished forty-seven-year career at the bar); In re Tobin, 249 N.J. 96 (2021) (censure for an attorney who, following an OAE random audit that uncovered several recordkeeping deficiencies (including more than \$800,000 in negative client balances), failed to provide the OAE with documents it repeatedly had requested for more than a year; although we noted that a reprimand was appropriate for the attorney's recordkeeping violations and failure to cooperate, we imposed a censure in light of the attorney's prior reprimand for recordkeeping violations and the default status of the matter; in mitigation, the attorney had been practicing law for sixty-three years and suffered serious health issues prior to the continuation date of the random audit).

Here, like the censured attorney in Lueddeke, who maintained \$414,278.24 in inactive ATA funds for almost a decade, respondent allowed more than \$800,000 in ATA funds underlying 1,175 client matters to languish, with significant amounts of commingled personal funds, for between twelve and twenty-three years. Additionally, like the censured attorney in Esposito, who maintained approximately \$169,000 in unidentified ATA funds, respondent, at the outset of the January 2020 random audit, maintained approximately \$120,000 in unidentified ATA funds.

However, in contrast to Lueddeke and Esposito, who eventually rectified all their recordkeeping deficiencies, respondent corrected only some of his recordkeeping errors following the OAE's intervention, including resolving a total of only \$106,024.13 in inactive balances underlying the Xu and Chiang client matters. Indeed, respondent admittedly failed to rectify at least 1,173 inactive client balances, identify all ATA funds, and remove his commingled personal funds from his ATA, despite the OAE's repeated efforts during the more than four-year investigation.

As the parties stipulated, based on respondent's protracted failure to reconcile and account for all funds in his ATA, it is impossible to calculate the total sum of all remaining unidentified and inactive balances. Nevertheless,

based on his submissions to the OAE, he had maintained at least \$70,000 in unidentified ATA funds, in October 2023. Moreover, following his February and March 2024 ATA disbursements underlying the Xu and Chiang client matters, it appears that he maintained approximately \$700,000 in inactive ATA funds in connection with 1,173 client matters originating between 2002 and 2013. Although the harm caused by respondent's conduct is impossible to quantify on this record, his ongoing failure to rectify his substantial inactive balances has, for years, deprived numerous parties of funds to which they are entitled.

In aggravation, like Lueddeke and the reprimanded attorney in Leven, who committed recordkeeping infractions despite having participated in multiple prior random audits, respondent had a heightened awareness of his obligations to comply with the recordkeeping Rules, considering his 1998 random audit for similar infractions. Rather than attempt to comply with the Court Rules governing trust accounts, respondent allowed substantial sums of entrusted funds to languish in his ATA, some of which date back to 2002, just four years after his prior random audit in which he, purportedly, had corrected his recordkeeping errors.

However, in mitigation, unlike Lueddeke, who had a prior admonition for unrelated misconduct, respondent has no disciplinary history in his more than

thirty-year career at the bar, a factor that we and the Court consistently have accorded considerable weight. See In re Convery, 166 N.J. 298, 308 (2001). Moreover, he stipulated to his misconduct and, thus, conserved disciplinary resources. Finally, he represented to the OAE that, since either 2015 or 2016, he ceased acting as a settlement agent in real estate matters and, since March 2020, no longer deposited entrusted funds in his ATA. Consequently, provided that he rectifies his serious and ongoing recordkeeping infractions, it is unlikely that, going forward, he will continue to accumulate inactive or unidentified ATA funds.

Conclusion

On balance, weighing respondent's persistent failure to rectify his serious recordkeeping infractions against his otherwise unblemished thirty-one-year career at the bar, we determine that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, given respondent's ongoing failure to comply with the recordkeeping Rules, we recommend that the Court adopt the parties' stipulated conditions. Specifically, within ninety days of the Court's disciplinary Order in this matter, respondent must demonstrate to the OAE that he has corrected all

outstanding recordkeeping deficiencies and rectified the inactive and unidentified balances in his ATA by disbursing the funds to the entitled parties or to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund Unit, pursuant to R. 1:21-6(j). Moreover, at a date set by the OAE, respondent must complete an OAE-approved recordkeeping course and submit proof of such completion within fifteen days of attendance. Finally, respondent must provide the OAE monthly reconciliations of his attorney accounts, on a quarterly basis, for a two-year period, until further Order of the Court.

Members Hoberman and Petrou were 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. Mary Catherine Cuff, P.J.A.D. (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 Zhiyu Hu
Docket No. DRB 24-260

Argued: February 20, 2025

Decided: April 28, 2025

Disposition: Censure

<i>Members</i>	Censure	Absent
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman		X
Menaker	X	
Modu	X	
Petrou		X
Rodriguez	X	
Spencer	X	
Total:	7	2

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel