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June 24, 2025

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

Re: **In the Matter of Jonathan D'Agostino**
Docket No. DRB 25-100
District Docket No. XIV-2022-0235E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (reprimand 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 that a reprimand, with a condition, is the appropriate quantum of discipline for respondent's violation of RPC 1.15(a) (two instances – commingling and negligently misappropriating client 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). The Board determined, however, to dismiss the charge that respondent violated RPC 1.15(b) (failing to promptly disburse funds).

According to the stipulation, on July 12, 2022, TD Bank notified the OAE of an overdraft affecting respondent's attorney trust account (ATA). Specifically, on July 6, 2022, three checks, totaling \$32,501.66, issued for his

legal fees in connection with representing Anthony Samuels, Adrin Mercedes, and Vanessa Cathcart, were presented for payment but returned due to insufficient funds. Two days later, respondent wired \$125,000 to his ATA, curing the overdraft.

The OAE docketed the matter for investigation and, on November 29, 2022, conducted a demand audit of respondent's financial books and records. Respondent represented that the overdraft resulted because, after receiving settlement funds in each of the three client matters and believing the funds had been deposited in his ATA, he issued checks for attorney's fees; however, the settlement funds had not yet been deposited. He conceded that the overdraft, in turn, impacted other client funds held in his ATA. Subsequently, to prevent future overdrafts of his ATA, respondent arranged for his staff to provide detailed information regarding when checks are both deposited and cleared.

During the demand audit, respondent informed the OAE of a fourth improperly issued ATA check, also presented to the bank on July 6, 2022: specifically, a check for \$45,000, erroneously duplicating a legal fee that he already had withdrawn from his ATA in connection with client Veronica Barber's matter. This duplicate fee payment caused an invasion of other client funds that, according to the parties, lasted until July 8, 2022 (although, on January 31, 2023, he deposited \$45,000 in his ATA to correct for the error).

The demand audit also brought to light other excess disbursements from respondent's ATA. In connection with his respective representations of Degrace Benobatadini and Destin Benobatadini, he agreed to waive costs. Nevertheless, on July 8, 2021, he improperly issued checks for costs, totaling \$896.60, causing a negative balance in each client's account. Moreover, in the Mercedes matter, he improperly calculated both the client's portion of the settlement proceeds and his legal fee and, on July 10, 2022, issued checks that included overpayments of \$1,200 to the client and \$600 to himself. The parties stipulated that his erroneous or excess payments in the Benobatadini and Mercedes matters impacted client funds held in his ATA until January 31, 2023, when he deposited \$45,000 in that account.

Further, on July 12, 2022, respondent issued a check that included an overpayment of \$2,244.72 in settlement proceeds to client Iwona Mofina. This overpayment impacted client funds held in his ATA until April 2023, when he

partially credited back his legal fee in the matter to his ATA, reducing it by \$2,244.72.

The parties further stipulated that the OAE's review of respondent's submissions revealed four inactive client balances in his ATA, as follows:

Client	Date Inactive	Date(s) Disbursed	For	Amount
Daziya McCray	12/13/2021	01/23/2023 12/26/2023	Attorney's fee (\$3,635.09) Remaining attorney's fee and costs (\$1,625.70)	\$5,260.79
Weislaw Rumin	02/10/2022	03/25/2023	Costs	\$836.05
Vanessa Cathcart	07/13/2022	03/25/2023	Costs	\$930.14
Anthony Samuels	07/25/2022	01/31/2023	Costs	\$1,527.04 ¹
			Total:	\$8,554.02

The OAE's review of respondent's ATA also revealed that he had failed to disburse a total of \$2,588.46 in costs relating to six client matters: the Rumin and Cathcart matters, identified above, and additional matters in which he represented Kenneth Cormican, Melodie Marin, Carina Suero, and Maria Mota. Moreover, in two other matters – for clients Michelle Custer and Heather Doran – he failed to promptly disburse earned legal fees, totaling \$15,555.56. By late March 2023, he had disbursed all the above costs and fees.

In addition, the OAE's demand audit revealed the following recordkeeping deficiencies: (1) failure to conduct monthly three-way ATA reconciliations; (2) insufficient client ledger cards; (3) improperly designated attorney business account (ABA) checks (also with an incorrect address); (4) improperly processed ABA check images; (5) failure to maintain ATA receipts or disbursements journals; and (6) client ledger cards with negative balances, contrary to the requirements of R. 1:21-6(a)(2), (b), (c)(1)(A), (B) and (H). Finally, the OAE discovered that respondent held attorney funds in his ATA exceeding the amount permitted for bank charges.

Despite the OAE's efforts to assist respondent in bringing his records into compliance with the requirements of R. 1:21-6, as of January 23, 2024, when he last communicated with the OAE before the filing of the formal ethics

¹ Also recorded as \$1,527.37 in respondent's financial books and records.

complaint, he still had client ledger cards with negative balances and continued to hold in his ATA attorney funds exceeding the amount permitted.

Based on the above facts, the parties stipulated that respondent violated RPC 1.15(a), RPC 1.15(b), RPC 1.15(d), and RPC 8.1(b). Specifically, he violated RPC 1.15(a), first, by commingling attorney funds with the funds of clients or third persons by failing to promptly disburse from his ATA thousands of dollars in earned legal fees and costs owed to him. He violated RPC 1.15(a) a second time by negligently misappropriating entrusted funds when he improperly withdrew costs in the Benobatadini matters; prematurely disbursed his legal fees in the Samuels, Mercedes, and Cathcart matters; negligently disbursed a duplicate fee in the Barber matter; disbursed excess settlement proceeds to his clients in the Mercedes and Mofina matters; and inadvertently overpaid his legal fee in the Mercedes matter. In all, he invaded entrusted client funds for more than twenty months, from July 2021 until April 2023, when he corrected the last of the overpayments. Further, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping provisions of R. 1:21-6, as described above. Finally, he violated RPC 8.1(b) by failing to (1) maintain required financial books and records, and (2) submit proof that he had fully corrected his recordkeeping deficiencies.

However, the Board determined to dismiss the charge that respondent violated RPC 1.15(b). In relevant part, that Rule requires an attorney, upon receiving funds in which a client or third person has an interest, to promptly deliver the funds to that client or third person. Here, the OAE based the RPC 1.15(b) charge on respondent's inactive balances in the Cathcart, Rumin, Samuels, and McCray matters. However, as stated in the stipulation, the first two balances stemmed from his failure to disburse costs owed to him. The record makes clear that the same held true of the Samuels balance, while the McCray balance reflected both attorney fees and costs owed him. Respondent's failure to promptly disburse funds to himself falls outside the scope of RPC 1.15(b) and is adequately addressed by the RPC 1.15(d) charge.

Generally, a reprimand is imposed for negligent misappropriation caused by poor recordkeeping practices, even when accompanied by less serious infractions, including commingling. See In re Sherer, 250 N.J. 151 (2022) (reprimand for an attorney who, as a result of poor recordkeeping, negligently invaded client and third-party funds; the attorney also commingled personal

funds in his ATA and failed to promptly deliver funds to entitled parties, violations of RPC 1.15(a) and (b); further, the attorney failed to comply with the OAE's demand audit requirements or to properly recreate his trust account records, a violation of RPC 8.1(b); in aggravation, the attorney did not 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 Osterbye, 243 N.J. 340 (2020) (reprimand for an attorney whose poor recordkeeping practices caused him to negligently misappropriate client funds in his ATAs, and who also commingled personal funds in his ATA and failed to promptly disburse funds to third parties, violations of RPC 1.15(a), (b), and (d); for more than two years, in response to the OAE's numerous communications, he provided only sporadic, untimely, and incomplete replies, a violation of RPC 8.1(b); the attorney also communicated false or misleading information about himself or his legal services; in aggravation, the attorney's noncompliance was ongoing and he displayed an inability to conform his conduct in respect of his recordkeeping responsibilities; in mitigation, the attorney had no prior discipline and stipulated to his misconduct).

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 a trust account and requests additional documents. See In re Schlachter, 254 N.J. 375, 376 (2023) (reprimand for an attorney who committed numerous recordkeeping violations and failed to comply with the OAE's repeated record requests).

As illustrated by Sherer and Osterbye, in recent years, the Board and the Court have imposed reprimands where attorneys have negligently misappropriated entrusted funds as a result of poor recordkeeping practices and, in addition, failed to cooperate with investigations of improprieties in their trust accounts. However, greater discipline may result, depending on the presence of other misconduct or aggravating factors. See In re Nussey, 251 N.J. 383 (2022) (censure for an attorney whose poor recordkeeping practices resulted in his negligent misappropriation of client funds in his ATA; the attorney also commingled personal funds in that account and failed to cooperate with

disciplinary authorities; although the Board determined that the attorney's violations warranted a reprimand, the Board enhanced the discipline to a censure because the attorney had received a reprimand less than two years earlier, failed to remediate his recordkeeping practices following a prior random audit, informed the OAE in connection with the prior audit that he had corrected deficiencies when he had not, and had a heightened awareness of his obligations under the Rules of Professional Conduct, yet failed to cooperate with the OAE).

Here, in mitigation, respondent has no prior discipline in thirty-five years at the bar, a factor which the Board and the Court accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). In addition, he readily admitted his wrongdoing and entered into the present disciplinary stipulation, thereby accepting responsibility for his misconduct and conserving disciplinary resources.

In aggravation, in August 2016, a random audit of respondent's financial books and records revealed the following recordkeeping deficiencies: (1) attorney funds held in his ATA exceeded the amount authorized for bank charges; (2) attorney funds were commingled with client trust funds; (3) his ABA was improperly designated; (4) fees received for professional services were not deposited in his ABA; (5) funds entrusted to his care were not deposited in his ATA; and (6) ABA image-processed checks were not in compliance. Following this audit, he had a heightened awareness of his recordkeeping obligations, yet his 2022 demand audit again revealed multiple deficiencies, including several that replicated issues identified six years earlier.

On balance, consistent with disciplinary precedent, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Additionally, as a condition to his discipline, the Board recommends that respondent be required to submit to the OAE, on a quarterly basis, his monthly three-way reconciliations for a period of two years.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 22, 2025.

2. Stipulation of discipline by consent, dated April 22, 2025.
3. Affidavit of consent, dated April 18, 2025.
4. Ethics history, dated June 24, 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
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