SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 25-037
District Docket No. XIV-2017-0255E

In the Matter of Howard Alan Bachman
An Attorney at Law

Argued
April 17, 2025

Decided
July 23, 2025

HoeChin Kim appeared on behalf of
the Office of Attorney Ethics.

Donald M. Lomurro appeared on behalf of respondent.

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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. Specifically, respondent stipulated to having violated RPC 1.7(a)(2) (engaging in a concurrent conflict of interest); RPC 1.8(a) (engaging in an improper business transaction with a client); RPC 1.15(a) (commingling – two instances); RPC 1.15(a) (failing to safeguard client funds); RPC 1.15(a) (negligently misappropriating entrusted funds); RPC 1.15(d) (two instances – failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.3(c)(3) (rendering a lawyer responsible for the conduct of a nonlawyer assistant that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer under certain circumstances); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1985. He has no prior discipline. At the relevant times, he was a partner of Goldstein & Bachman, P.A. (later Goldstein Bachman & Newman) (the Firm), located, initially, in East Brunswick and, subsequently, in Old Bridge, New Jersey. Currently, he is a partner of Dwyer Bachman Newman, located in Red Bank, New Jersey.

Facts

Respondent and the OAE entered into a disciplinary stipulation, dated February 19, 2025, which sets forth the following facts in support of respondent's admitted ethics violations.

During the relevant period, the Firm maintained an attorney trust account (ATA) and an attorney business account (ABA) at PNC Bank (the PNC ATA and PNC ABA, respectively) and, in addition, an ATA and an ABA at Unity Bank (the Unity ATA and Unity ABA, respectively).[1]

In September 2015, the OAE undertook a random audit of the Firm's financial books and records.

In October 2015, the Firm disbanded and, in May 2016, litigation ensued between respondent and his former partner, Mark Goldstein, Esq. In 2020, the parties resolved that matter via arbitration.

[1] Where the parties referred only to "the ATA" or "the ABA," without identifying the associated bank, we use the same non-specific acronyms.

In the interim, in or about April 2017, Goldstein alleged to the OAE that respondent had committed unethical conduct in connection with his handling of the Firm's attorney accounts, including by purportedly taking funds from one of the Firm's ATAs. Those allegations led to the OAE's investigation underlying the present matter, which overlapped with, or occurred in close proximity to, the random audit.

At some point, Goldstein discovered, via a court filing unrelated to the present matter, that respondent had disclosed that his wife, Gabrielle Bachman, held a twenty percent interest in American General Title Agency, Inc. (AGTA), a company that the Firm frequently had used to conduct real estate closings for both individual clients and mortgage companies. During the OAE's later investigation, respondent asserted that his wife had no operational input into AGTA.

The Firm's practice was not to ask clients or mortgage companies which title agency they wished to use; rather, it automatically would assign transactions to AGTA. The Firm neither disclosed respondent's wife's interest in AGTA to the clients or mortgage companies nor obtained their informed consent for the use of AGTA in their closings.

According to respondent, between April 2005 and August 2013, AGTA was used in 126 individual client closings and by sixteen different mortgage companies.

Based on respondent's use of AGTA, which was without "required written disclosures and signed client consents," the parties stipulated that respondent violated:

- RPC 1.7(a)(2) by "engag[ing] in a concurrent conflict of interest where there was a significant risk that the representation of his clients was materially limited by his personal interest," namely, his wife's interest as an owner of AGTA, which the Firm used in real estate transactions, pursuant to A.C.P.E. Opinion 682, 143 N.J.L.J. 454 (February 5, 1996), and A.C.P.E. Opinion 696, 180 N.J.L.J. 486 (May 9, 2005); and
- RPC 1.8(a) by "engag[ing] in a prohibited business transaction with his clients without first obtaining their written and informed consent to use of [sic] [AGTA], a firm in which his spouse's [sic] pecuniary interest."

Further, the OAE's review of the Firm's books and financial records revealed multiple recordkeeping infractions. Specifically, respondent routinely reserved $20 from each earned legal fee in the Firm's ATA or ATAs. According to his ledger for these funds, which covered the period February 2005 to February 2015, on February 13, 2013, the balance of non-client funds in one of the Firm's trust accounts reached a peak amount of $24,459.62. He also failed to promptly transfer other earned legal fees from the Firm's ATA(s) to an ABA. For example, on December 20, 2012, he deposited $16,255.26 in legal fees in his ATA but did not disburse $6,600 of that amount until roughly two months later. He also held another $6,050.18 in the ATA until November 2013. The parties stipulated that, thus, respondent ultimately maintained more than the allowable $250 of personal funds in the ATA for roughly a decade. Based on these facts, the parties stipulated that respondent violated:

- RPC 1.15(a) by commingling earned legal fees with entrusted funds; and
- RPC 1.15(d) by failing to deposit earned fees in his ABA, as R. 1:21-6(a)(2) requires.

In addition, between May 7 and June 18, 2015, respondent maintained a $157,500 shortage of client funds held in the Firm's ATA or ATAs because he failed to confirm that a check received on behalf of client Edward Pillar had been deposited and had cleared before he disbursed the corresponding funds. More specifically, on April 24, 2015, respondent received a check for funds due Pillar in the amount of $157,500. Subsequently, thinking that his partner, Goldstein, had deposited the check in the ATA, he asked Firm employee Aneta Kennedy to look into whether the check had bounced or cleared. Kennedy confirmed that no checks had bounced recently, but respondent failed to follow through on whether the Pillar funds had been deposited and had cleared the account.

The client ledger card for the Pillar matter reflected a May 1, 2015 deposit of the funds to the PNC ATA; however, no such deposit was actually made. Thus, on May 7, 2015, when respondent disbursed the $157,500 from the ATA (wiring $149,417 to Pillar and transferring the remainder, representing his legal fee, to the Firm's ABA), he caused a corresponding shortage of client funds held in the ATA.

In early June 2015, upon learning that the first check received on Pillar's behalf had not been deposited, respondent requested and received a second check from the payor, in the amount of $157,475 ($25 less than the first check, due to the stop payment fee paid for that check). On June 18, 2015, the Firm successfully deposited those funds in the Unity ATA. Respondent also deposited $25 in that account to cover the stop payment fee.

The Firm's financial records further revealed that, between May 7 and June 18, 2015, its ATA or ATAs held funds for dozens (potentially, more than fifty) clients and third parties.[2] Thus, the parties stipulated, these entrusted funds were invaded by the $157,500 shortage.

Based on respondent's premature disbursement of the Pillar funds, the parties stipulated that respondent violated:

- RPC 1.15(a) by failing to safeguard the entrusted funds of clients and third parties, identified in the table of ATA transactions, between May 7 and June 18, 2015; and
- RPC 1.15(a) by negligently misappropriating entrusted funds.

However, the OAE found no clear and convincing evidence that respondent knowingly misappropriated entrusted funds. Rather, he mistakenly thought the Pillar funds had been deposited and disbursed ATA funds while under this erroneous impression. Further, he promptly corrected the ATA shortfall upon realizing his negligent misappropriation.

In addition, on December 24, 2013, respondent deposited $8,800 in cash to the ATA, with a notation of "Rubinton" on the deposit slip. That same date, he issued an ATA check to his daughter-in-law, whose last name was Rubinton. He conceded that these funds had no relation to his practice of law. Accordingly,

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[2] The corresponding table of client names and matters, compiled from the Firm's records and incorporated in the parties' disciplinary stipulation, contains fifty-six entries. However, it appears that some may reflect the same client matter.

the parties stipulated that he again violated RPC 1.15(a) by commingling the $8,800 for his daughter-in-law in the Firm's ATA.

Moreover, the parties stipulated that, on eighteen occasions between 2010 and 2012, respondent disbursed earned legal fees directly from the Firm's ATA, without first transferring the funds to the Firm's ABA, as the Rules require. Based on this conduct, the parties stipulated that respondent violated:

- RPC 1.15(a) (commingling) by allowing earned legal fees to remain in his ATA and, thus, commingling those funds with entrusted funds; and
- RPC 1.15(d) by failing to adhere to the recordkeeping requirements of R. 1:21-6(a)(2) and R. 1:21-6(i) by failing to deposit earned fees in his ABA.

In addition, respondent admittedly failed to prepare monthly three-way reconciliations of the Firm's ATAs. Rather, he relied on Firm employee Aneta Kennedy and accountant Steven Sewald to handle all recordkeeping responsibilities for the Firm. More specifically, although he believed that his partner Goldstein was responsible for the proper maintenance of the ATAs, and that Sewald routinely prepared the mandatory reconciliations, he never reviewed any such reconciliations. Based on this conduct, the parties stipulated that respondent violated:

- RPC 1.15(d) by failing to conduct three-way reconciliations, as R. 1:21-6(c)(1)(H) requires; and
- RPC 8.1(b) by failing to conduct three-way reconciliations and, thus, failing to "provide responsive records upon a lawful demand for required bookkeeping records" from the OAE.[3]

Finally, respondent relied on employee Kennedy to issue the Firm's disbursements via checks and, on occasion, signed his name on blank Firm checks, which Kennedy then completed and issued. Without respondent's knowledge or authorization, in November and December 2010, and between January and November 2013, Kennedy used eleven such pre-signed checks to make payments directly to herself or to third parties for her own personal expenses. In total, she withdrew $27,499.25 from the Firm's accounts, as follows: $26,324.25 from the PNC ATA and $1,175 from the PNC ABA. During the OAE's investigation, the Firm terminated Kennedy's employment.

The parties stipulated that, because respondent did not perform three-way reconciliations of his ATA, he failed to detect Kennedy's theft of ATA funds and, further, failed to detect her unauthorized use of ABA funds "through supervision

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[3] In charging RPC 8.1(b), the OAE cited R. 1:21-6(i), which provides that "[a]n 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 shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)."

and management." Accordingly, they stipulated that he violated the following Rule of Professional Conduct:

- RPC 5.3(c)(3) by having direct supervisory authority over Kennedy and failing to perform "reasonable and mandatory" three-way reconciliations, which "would have disclosed her actions and propensity for misuse of ABA and ATA accounts over a three-year period."

The Parties' Positions Before the Board

The OAE recommended a reprimand for respondent's misconduct. Specifically, citing relevant disciplinary precedent, the OAE asserted that a reprimand is the baseline level of discipline for violations of RPC 1.7(a)(2) and RPC 1.8(a). Further, citing In re Schneider, 243 N.J 546 (2020), the OAE asserted that a reprimand has been imposed even where an attorney's prohibited business transactions with a client were combined with commingling and recordkeeping violations.

Next, the OAE pointed out that, in In re Lehman, 182 N.J. 589 (2005), the Court reprimanded an attorney who committed negligent misappropriation, commingled funds, paid personal and business expenses from the attorney's trust account, and committed recordkeeping infractions. Likewise, in In re

Gilbert, 144 N.J. 581 (1996), the Court reprimanded an attorney who negligently misappropriated more than $10,000, commingled personal and trust funds and deposited earned fees in the trust account, and committed recordkeeping infractions. In that matter, the attorney also failed to properly supervise the firm's employees regarding maintenance of business and trust accounts.

Finally, the OAE noted that attorneys who fail to supervise nonlawyer staff have received discipline ranging from an admonition to a censure, depending on the presence of other ethics infractions, prior discipline, and aggravating or mitigating factors.

In mitigation, the OAE highlighted respondent's lack of prior discipline in his forty-year-career at the bar and the fact that he stipulated to his misconduct, conserving disciplinary resources. The parties stipulated that there were no aggravating factors

During oral argument before us, the OAE reiterated its recommendation and emphasized the mitigating factors set forth in the disciplinary stipulation, along with respondent's character evidence. In response to our questioning, the OAE agreed that respondent's misconduct had not caused harm to any clients.

In his written submission to us, respondent, through counsel, urged us to impose a reprimand for his misconduct. In mitigation, respondent emphasized that he had accepted responsibility for each of his violations of the Rules of Professional Conduct. In further mitigation, he noted that he had served the Township of Manalapan as mayor and committeeperson; served as chair of family law committees for the Middlesex County and Monmouth County bar associations; and practiced for decades "in the contentious field of family law without having any ethical charges lodged against him by clients or adversaries."

In further mitigation, respondent highlighted his otherwise unblemished record in forty years at the bar. He asserted that he had cooperated with the OAE and, by entering into the disciplinary stipulation, saved disciplinary resources, demonstrated remorse, and accepted responsibility for his conduct. Moreover, citing In re Alum, 162 N.J. 313, 315 (2000) (tempering discipline based on "considerations of remoteness" after the passage of eleven years with no further ethics infractions), he urged that the passage of time since he had engaged in the misconduct at issue, with no further infractions in the interim, constitutes a mitigating factor. He also emphasized the accompanying statements from character witnesses which, in his words, "demonstrate[d] his commitment to pro bono work, his dedication to the bar association, and his high moral character." Finally, he apologized to us for his admitted errors.

As mentioned, respondent provided us with four character letters, written on his behalf by Jeralyn Lawrence, Esq., Mitchell J. Ansell, Esq., Timothy F. McGoughran, Esq., and James M. Newman, Esq., as well as his verified answer to the formal ethics complaint and an excerpt of his December 6, 2017 interview by the OAE.[4]

Lawrence, a former president of the New Jersey State Bar Association (NJSBA), wrote that she has known and worked with respondent in various capacities over the years; had multiple cases against him and also had opportunity to use him as a mediator; and, "[i]n every instance, he [had] exemplified the highest standards of professionalism, skill, and integrity." She praised his knowledge, excellence as a mediator, commitment to representing his clients "with diligence and precision," courtesy and respect for others, and "impeccable reputation in the legal community."

Ansell, who has known respondent for more than twenty years, wrote that they first met as opposing counsel and, subsequently, the two became friends. He stated that respondent enjoyed an impeccable reputation in the legal community and, while zealously advocating for his clients, also remained

[4] To the extent respondent also included in his brief information not otherwise in the stipulation or the record before us (but, rather, appearing only in his verified answer to the formal ethics complaint and in his interview by the OAE investigator, neither of which were included with the stipulation), not limited to mitigation, this newly introduced information is not reflected here.

professional, fair, and courteous, “embody[ing] to me what an attorney should be.”

McGoughran, the immediate past president of the NJSBA, has known respondent for approximately twenty-five years. He described respondent as “highly ethical;” praised his knowledge, skill as a trial attorney and advocate, and ability to navigate complex matters; and wrote that he had never known respondent to be disrespectful to any participant in litigation.

Newman, respondent’s law partner and a municipal court judge for the Township of Marlboro, has known respondent since 1991, when the latter became the township’s municipal prosecutor. He described respondent as highly skilled, honest, competent, dedicated, an exceptional trial attorney, courteous, respectful, and committed to his clients. Further, he wrote that respondent “frequently gives to the community at large and the legal community in particular;” goes beyond the mandated pro bono assignments to handle additional pro bono matters; has volunteered with the early settlement program (ESP) in Middlesex and Monmouth counties for more than twenty-five years; during the COVID-19 pandemic, obtained permission to modify the ESP in Monmouth County to lessen the effects of the pandemic on litigants and the bar; has delivered multiple lectures to the Monmouth County Bar Association (MCBA) and served as co-chair of the MCBA’s family law committee for two years; is “often called by colleagues for advice;” and received the Bernard H. Hoffman Law Award in 2023. Moreover, Newman wrote that respondent is regarded as “a consummate professional” in the legal community and praised his integrity, professionalism, and respect for the law.

During oral argument before us, respondent, through counsel, stressed that, during his forty-year career, no client had ever filed an ethics grievance against him. He noted that the misconduct was remote, having occurred ten years ago and, further, upon learning of his bookkeeper’s malfeasance, he immediately terminated her employment. He emphasized that no clients were harmed and that he admitted his wrongdoing. In response to our questioning, respondent’s counsel stated that he accepted the OAE’s recommendation of a reprimand, but urged that a lesser sanction, in the Board’s discretion, would be appropriate, considering the aberrant nature of the misconduct.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we find that the stipulated facts in this matter clearly and convincingly support respondent’s admitted violations of RPC 1.7(a)(2); RPC 1.15(a) (two instances – commingling); RPC 1.15(a) failing to safeguard entrusted funds); RPC 1.15(a) (negligently misappropriating entrusted funds); RPC 1.15(d) (two instances); RPC 5.3(c)(3); and RPC 8.1(b). However, we determine to dismiss the charge that respondent violated RPC 1.8(a).

Specifically, RPC 1.7(a)(2) provides, in relevant part, that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer." RPC 1.7(b) creates an exception to the prohibition on concurrent conflicts if the attorney obtains the written, informed consent of each affected client and if the representation meets certain other criteria.

In the context of real estate transactions, RPC 1.7(a)(2) has applied to an attorney representing a party to a real estate transaction who obtains title insurance from the attorney's title insurance company. In the Matter of Joel A. Mott, III, DRB 05-318 (February 22, 2006) at 8 (citing A.C.P.E. Opinion 495, 109 N.J.L.J. 329 (April 22, 1982) (prohibiting an attorney who has an interest in a title insurance agency from representing a buyer who obtains title insurance from that agency)); see also In the Matter of Robert W. Laveson, DRB 06-029 (June 7, 2006); In re Poling, 184 N.J. 297 (2005); In re Gilman, 184 N.J. 298 (2005).

Here, respondent engaged in a concurrent conflict of interest by automatically assigning AGTA – a company in which his spouse held a twenty percent ownership interest – to serve as title agent for individual client closings. He stood to gain from this arrangement, which generated business for AGTA and, in turn, enhanced his wife's likely profits or job security, or otherwise accrued to the benefit of the company she co-owned. Moreover, he never disclosed his wife's interest in AGTA to the Firm's clients or sought and obtained their written, informed consent to this arrangement, as the Rule requires.

However, we determine to dismiss the charge that this same conduct also violated RPC 1.8(a). In relevant part, that Rule prohibits a lawyer from "enter[ing] into a business transaction with a client," absent certain safeguards.

Pursuant to A.C.P.E. Opinion 657, 130 N.J.L.J. 656 (February 24, 1992), as summarized in A.C.P.E. Opinion 696, 180 N.J.L.J. 486 (May 9, 2005), RPC 1.8(a) applies "to referrals to businesses in which the attorney has an interest" and "applies equally to referrals to a business of the attorney's spouse." Further, in A.C.P.E. Opinion 696 – in which the Advisory Committee on Professional Ethics (the ACPE) addressed a situation in which an attorney for an estate executor wanted to list the decedent's real estate for sale with an agency that employed the attorney's spouse, where the spouse would receive no direct financial benefit from the sale – the ACPE advised that "where an attorney, or the attorney's spouse has a business interest in a real estate agency it must be assumed that referrals to that real estate agency benefit the attorney even where a specific referral may not give rise to direct financial compensation to the spouse."

Importantly, however, the ACPE issued these Opinions at a time that the appearance of impropriety was woven into the tapestry of the conflicts of interest law. Effective January 1, 2004, the Rules of Professional Conduct were amended to strike the "appearance of impropriety" provision, formerly RPC 1.7(c)(2). Subsequently, in 2006, the Court wrote that "the 'appearance of impropriety' standard no longer retains any continued validity in respect of attorney discipline." In re Supreme Court Advisory Comm. on Prof'l Ethics Op. No. 697, 188 N.J. 549, 568 (2006).

In In the Matter of Angelo Bagnara, DRB 21-080 (September 28, 2021), so ordered, __ N.J. __ (2022), 2022 N.J. LEXIS 1167, we determined to dismiss charges that the attorney violated RPC 1.8(a), notwithstanding our finding that he violated RPC 1.7(a)(2), in nineteen instances, by directing clients to a real estate closing company that employed him, without obtaining their written, informed consent necessary to properly waive his conflict of interest, and without providing them the opportunity to employ an alternative title company. In dismissing the charges that these conflicts of interest also constituted improper business transactions with clients, we noted that the attorney was merely a salaried employee of the real estate closing company and, further, that no evidence showed that he had reaped any additional benefit from the company for procuring title insurance clients, beyond the goodwill typical of an employer-employee relationship. Therefore, we determined that the attorney neither entered into a business transaction with his clients, nor acquired an ownership, possessory, security, or other pecuniary interest adverse to his clients.

In Bagnara, we distinguished the attorney's conduct from that of the attorneys in Mott, 186 N.J. at 367, and In re Poling, 184 N.J. 297 (2005). More specifically, in Mott, the attorney was found to have violated RPC 1.7(b) and RPC 1.8(a) by preparing, on behalf of his client-buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned. Notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise the buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them. Similarly, in Poling, the attorney – who was president of and sole shareholder in a title company – prepared, on behalf of buyer-clients, real estate agreements that pre-provided for the purchase of title insurance from his company, without disclosing to the buyer-clients that he owned the company and that the title insurance could be purchased elsewhere. In matters in which he represented buyers in real estate transactions in which the clients used his title company, we determined that he violated RPC 1.8(a), as he stood to earn a fee through his wholly-owned title agency and, although he disclosed to some clients his relationship to the title agency, he did not obtain written, informed consent from these or any of the other clients. More recently, in In re Woitkowski, 252 N.J. 41 (2022), an attorney likewise violated RPC 1.8(a) by referring his clients to a real estate title abstract company, of which he was the sole owner.

In Bagnara, we concluded that the attorney could not "enter into a business transaction with a client" as merely a salaried employee of the closing company, nor did we find any evidence that he "reaped any additional benefit from the company for procuring title insurance clients, beyond the goodwill typical of an employer-employee relationship." In contrast, in Woitkowski, Poling, and Mott, the attorneys clearly engaged in business transactions with their clients, from which they stood to profit, because they owned the title companies to which they steered their clients.

Here, we view respondent's position as closer to that of the attorney in Bagnara than to that of the attorneys found to have violated RPC 1.8(a), absent any evidence that he could act as AGTA in business transactions. Moreover, the parties did not stipulate – and the record contains no evidence that shows – that respondent "knowingly acquire[d] an ownership, possessory security or other pecuniary interest adverse to a client," as the Rule further enjoins.

Accordingly, on the limited record before us, we determine that respondent's misconduct is more appropriately encapsulated by the RPC 1.7(a) charge and, accordingly, dismiss the charge that he violated RPC 1.8(a).

Next, respondent violated RPC 1.15(a) by commingling personal funds with entrusted funds in one or both of the Firm's ATAs by frequently maintaining, between 2005 and 2015, legal fees far in excess of what he might reasonably need to cover bank charges. Respondent violated this Rule a second time by making a December 2013 cash deposit of $8,800 in the ATA (with a notation referring to his daughter-in-law) and immediately issuing a check in the same amount to his daughter-in-law.

Respondent further violated RPC 1.15(a) by negligently misappropriating and, consequently, failing to safeguard client and third-party funds, by failing to confirm that the first $157,500 check in the Pillar matter had been deposited and had cleared before making a corresponding ATA disbursement. Although he promptly corrected the resulting shortfall, when he discovered it six weeks later, his oversight resulted in the invasion of client funds.

Moreover, respondent violated RPC 1.15(d) by admittedly failing to comply with the recordkeeping provisions of R. 1:21-6. Specifically, he failed to deposit earned legal fees in the Firm's ABA and to prepare mandatory monthly three-way reconciliations of the Firm's accounts, contrary to the requirements of R. 1:21-6(a)(2) and R. 1:21-6(c)(1)(H), respectively.

RPC 5.3(c)(3) provides that a lawyer:

> shall be responsible for conduct of [a nonlawyer assistant] that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if: . . . the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Here, respondent was obligated to prepare monthly three-way reconciliations of his ATA and ABA, and also to reasonably investigate circumstances within the scope of the Rule. Kennedy's improper issuance of three checks in 2010 occurred in quick succession, during a two-week period, before respondent had cause to "make reasonable investigation" of her activities. However, between then and early 2013, when Kennedy resumed her malfeasance, respondent not only had ample time but was obligated, pursuant to R. 1:21-6(c)(1)(H), to conduct three-way reconciliations for the relevant period. These, in turn, would reasonably have alerted him to investigate the prior circumstances – specifically, her misuse of three checks – constituting multiple instances of misconduct which evidenced a propensity for such conduct.

Accordingly, respondent's conduct with respect to his supervision of Kenney violated RPC 5.3(c)(3).

Finally, respondent violated RPC 8.1(b) by failing to have specific ATA records – specifically, mandatory three-way reconciliations – available for the OAE's inspection, as R. 1:21-6(i) requires.

In sum, we find that respondent violated RPC 1.7(a)(2); RPC 1.15(a) (two instances – commingling); RPC 1.15(a) failing to safeguard entrusted funds); RPC 1.15(a) (negligently misappropriating entrusted funds); RPC 1.15(d); RPC 5.3(c)(3); and RPC 8.1(b). We determine to dismiss the charge that respondent violated RPC 1.8(a). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). More specifically, reprimands typically have been imposed in cases involving conflicts of interest stemming from attorneys' roles in recommending or arranging for their clients to obtain title insurance; however, an admonition or censure may result, depending on the circumstances. See, e.g., In the Matter of John F. O'Donnell, DRB 21-081

(September 28, 2021) (admonition; the attorney engaged in a conflict of interest by representing a client with respect to multiple promissory notes at the same time the attorney represented a property management company in a real estate transaction, for which the client acted as a "broker," which required the attorney to disburse, to the client, fees from the attorney's trust account on behalf of the property management company; this concurrent representation was accomplished without the requisite waivers of the parties and, thus, there was a significant risk that the representation of one client could adversely affect the attorney's representation of the other; further, in violation of RPC 1.8(a), the attorney loaned the client $180,000 without the necessary written consents and disclosures; the attorney also failed to set forth in writing the basis or rate of the legal fee, in violation of RPC 1.5(b); in imposing only an admonition, we considered the attorney's longstanding, unblemished legal career of over forty years, and the passage of time since the misconduct); In re Drachman, 239 N.J. 3 (2019) (reprimand; the attorney engaged in a conflict of interest by recommending that his clients use a title insurance company in eight, distinct real estate transactions, without disclosing that he was a salaried employee of that company, in violation of RPC 1.7(a); no evidence of serious economic injury to the clients; the attorney also violated RPC 5.5(a)(1) by practicing law while ineligible to do so; no prior discipline); In re Sarsano, 238 N.J. 77 (2019) (reprimand; the attorney violated RPC 1.7(a)(2) by representing the seller in a real estate transaction while the attorney's spouse served as the buyer's agent; the attorney's spouse stood to receive a portion of the commission, paid by the seller, if the deal were finalized, creating a significant risk that the attorney's representation of the seller would be materially limited by his interest in his spouse's receipt of a commission); Bagnara, __ N.J. __ (2022), 2022 N.J. LEXIS 1167 (censure; the attorney directed nineteen clients to a real estate closing company that employed him; the attorney also negligently misappropriated client funds, commingled personal funds in his trust account, and had recordkeeping deficiencies; considering the number of instances and client accounts affected by respondent's misconduct, we determined that discipline in the range of a censure to a short-term suspension was appropriate; in mitigation, the attorney enjoyed a twenty-year unblemished disciplinary history, cooperated with disciplinary authorities, consented to a stipulation, was contrite, caused no harm to client, and corrected his errors; thus, we determined to impose a censure).

Attorneys who fail to supervise their nonlawyer staff typically receive an admonition or a reprimand, depending on the presence of other violations and aggravating or mitigating factors, and such conduct has been met with the same range of discipline even in cases where attorneys also have violated RPC 1.15(a) and RPC 1.15(d). See In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of the attorney's abdication of his recordkeeping obligations, his nonlawyer assistant was able to steal more than $149,000 from his trust account; the attorney also violated RPC 1.15(a) and RPC 1.15(d); mitigating factors included the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial action; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three-year career), and In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-spouse, combined with his poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-spouse stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; violations of RPC 1.15(a), RPC 1.15(d), and RPC 5.3(a) and (b); no prior discipline).

Finally, in our view, respondent's violation of RPC 8.1(b) does not warrant discipline beyond that imposed for his failure to adhere to his recordkeeping responsibilities, in violation of RPC 1.15(d). More specifically, here, the RPC 8.1(b) violation stems solely from respondent's failure to prepare (and, consequently, have available for the OAE) three-way reconciliations of his attorney accounts, and there is no evidence that respondent failed to cooperate with disciplinary authorities in any other manner.

Based on the foregoing disciplinary precedent, Bagnara in particular, we find that respondent's misconduct could be met with a censure. To craft the appropriate quantum of discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, as a partner of the Firm, respondent allowed the Firm's use of AGTA to continue for more than eight years and, ultimately, expand to 126 client matters.

In mitigation, respondent has no prior discipline in his forty-year career at the bar, a factor which we and the Court consistently have accorded considerable weight. In re Convery, 166 N.J. 298, 308 (2001).

In further mitigation, respondent's Firm promptly terminated Kennedy's employment when her thefts from the Firm's ABA and ATA were discovered. Moreover, respondent corrected his negligent misappropriation of client funds as soon as he realized that the Pillar check had not cleared, and no clients were harmed by his misconduct. Moreover, he stipulated to his wrongdoing and, thus, conserved disciplinary resources.

In additional mitigation, respondent's misconduct was remote, having occurred more than ten years ago. Indeed, the Firm where respondent served as a partner at the time of the misconduct disbanded in 2015.

Conclusion

On balance, weighing the compelling mitigating factors, including respondent's otherwise unblemished forty-year career, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Menaker was 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 Howard Alan Bachman
Docket No. DRB 25-037

Argued: April 17, 2025

Decided: July 23, 2025

Disposition: Reprimand

Members	Reprimand	Absent
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Menaker		X
Modu	X	
Petrou	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

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