

# DISCIPLINARY REVIEW BOARD

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

ELLEN A. BRODSKY  
CHIEF COUNSEL

PAULA T. GRANUZZO  
DEPUTY CHIEF COUNSEL

MELISSA URBAN  
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS  
LILLIAN LEWIN

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COLIN T. TAMS

KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

September 22, 2017

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: **In the Matter of Alex Pavliv**  
Docket No. DRB 17-232  
District Docket No. XIV-2016-0303E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate measure of discipline for respondent's violations of RPC 1.5(c) (failure to provide an accurate settlement statement to the client in a contingent fee matter), and RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6).

Specifically, at all relevant times herein, respondent was a partner in the law firm of Pavliv & Rihacek, in Howell, New Jersey. The law firm maintained an attorney trust account at Provident Bank, another trust account at Bank of America (BOA) (the ATAs), and two attorney business accounts, one at each of those banks (the ABAs).

Although respondent's law partner, John T. Rihacek, undertook most of the recordkeeping for the firm, and is the subject of a similar consent to discipline, both he and respondent performed

recordkeeping tasks, including drafting checks on the law firm's accounts.

Between 2015 and September 2016, the OAE conducted several compliance audit visitations in respect of the law firm's attorney books and records. Although the law firm produced certain books and records for the first audit interview on February 5, 2015, the attorneys could not account for all of the client funds in the Provident and BOA ATAs. The Provident ATA contained old client balances and a negative client balance, and there were no reconciliations or listings of client balances presented for the BOA ATA.

A second audit visitation, on February 19, 2015, revealed the following:

[T]he OAE's reconstructed reconciliations for the Provident ATA and the Bank of America ATA were reviewed with Rihacek and respondent. In addition to funds deposited to the Provident ATA and disbursed from the Bank of America ATA, a debit (negative) client balance for the Anderson matter totaling <\$650.00> in the Provident ATA was documented and discussed in detail with respondent and Rihacek. It was determined that a deposit on the client ledger card dated 10-18-13 referencing check #12376 from "Awning Design" in the amount of \$650.00 did not appear on the bank statement, but had been disbursed by the firm, bringing the Anderson client ledger card to <\$650.00>. Exhibit 3. The remaining deficiencies noted were reviewed with respondent and Rihacek.

[S~~15~~.]<sup>1</sup>

The OAE and the law firm coordinated efforts thereafter to resolve those, and other recordkeeping issues that persisted beyond a third, (November 2015) audit, until September 14, 2016, when the OAE conducted its fourth and final demand audit interview. That meeting was attended by respondent, Rihacek, and their bookkeeper, Debbie Chapman. They produced all of the records requested by the OAE, with one exception, but furnished those items later that same month. The OAE's September 2016 audit confirmed that the firm had brought its books and records into compliance with the Rules.

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<sup>1</sup> S refers to the June 26, 2017 disciplinary stipulation.

In respect of the recordkeeping deficiencies, respondent stipulated that he violated RPC 1.15 by his failure to comply with the recordkeeping provisions of R. 1:21-6. Specifically, respondent stipulated that he failed to maintain proper ATA and ABA receipts and disbursements journals; client ledger cards and ledger sheets; a running balance in the trust account check register and proper bank reconciliations; schedules of client ledger account balances; all checking account records for a period of seven years; and fully compliant ATA and ABA processed checks. Finally, he issued wire transfers that were not compliant with R. 1:21-6(C)(1)(A).

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In a personal injury matter for client Lidiya Korpusova, respondent received a check for \$70,000 from Liberty Mutual, representing the settlement funds. Subsequently, the firm issued to Korpusova a trust account check for \$46,000, representing her share of the proceeds. In order to provide a settlement check in that amount, respondent reduced his fee, but failed to reflect it on the settlement statement or elsewhere. Respondent, who had explained his actions to Korpusova, stipulated that, because he failed to document the reduced fee, the settlement statement did not accurately reflect the remittance to the client and the method of its determination, a violation of RPC 1.5(c) and R. 1:21-7(g).

In aggravation, the stipulation cited respondent's 2005 reprimand, as well as similar recordkeeping deficiencies that were found in a 2007 audit of his previous law partnership. Respondent was not the subject of any disciplinary action as a result of that audit.

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

Even in the absence of a negligent misappropriation, however, a reprimand may be imposed if the attorney failed to correct recordkeeping deficiencies that had been brought to his or her attention previously, engaged in additional acts of misconduct, or had a disciplinary history. See, e.g., In re Michals, 222 N.J. 457 (2015) (reprimand by consent; an OAE audit revealed that the attorney had issued trust account checks to himself or others for personal or business expenses; because, however, he maintained sufficient personal funds in his trust account, he did not invade

September 22, 2017

Page 4 of 4

client funds; following a prior admonition for negligent misappropriation of client funds and recordkeeping violations, the attorney still failed to resolve several improprieties); In re Murray, 220 N.J. 47 (2014) (reprimand by consent; an OAE random compliance audit revealed that the attorney had not corrected some of the same recordkeeping violations for which he had been admonished one month earlier); and In re Colby, 193 N.J. 484 (2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been reprimanded for the same violations and for negligent misappropriation as well).

Given respondent's prior discipline and history of recordkeeping anomalies, the Board determined to impose a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 26, 2017.
2. Stipulation of discipline by consent, dated June 26, 2017.
3. Affidavit of consent, dated June 9, 2017.
4. Ethics history, dated September 22, 2017.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EAB/paa

Enclosures

c: w/o enclosures (via e-mail)  
Bonnie C. Frost, Chair  
Disciplinary Review Board  
Charles Centinaro, Director  
Office of Attorney Ethics  
(via interoffice mail and e-mail)  
Steven J. Zweig, Deputy Ethics Counsel  
Office of Attorney Ethics  
Marc Garfinkle, Esq., Respondent's Counsel  
(via regular mail and e-mail)  
Isabel McGinty, Statewide Ethics Coordinator  
Office of Attorney Ethics