

# DISCIPLINARY REVIEW BOARD

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January 16, 2015

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

**RE: In the Matter of Constantine Bardis**  
Docket No. DRB 14-330  
District Docket No. XIV-2013-0510E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board shall deem warranted), filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.15(a) (commingling of client and personal funds in the trust account) and RPC 1.15(d) (recordkeeping deficiencies).

Specifically, on March 26, 2012, the OAE received an overdraft notification from TD Bank, which reported that, on March 13, 2012, respondent's trust account was overdrawn by \$9,103.08, after trust account check no. 0945, in the amount of \$26,862.24, was presented against insufficient funds (the bank did not honor the check). Consequently, the OAE conducted an investigation into the cause of the overdraft.

The investigation revealed that, on January 12, 2012, respondent received \$115,000 from a client for the purchase of a ground lease and for respondent's legal fee. The funds were to be held in escrow. On an unknown date, the client was to make a \$10,000 additional deposit toward the purchase.<sup>1</sup>

For reasons that are not relevant to the resolution of this matter, the closing on the deal took place two months later, on March 9, 2012. On that same date, respondent issued five trust account checks, totaling \$126,000, and distributed them to their respective payees. At that time, the \$10,000 additional deposit had not yet been made. One of the checks, in the amount of \$26,862.24, was to be held by the payee until the computation of a final figure, scheduled to occur six days later, on March 15, 2012. Presumably, the \$10,000 deposit was to be made prior to March 15, 2012.

Despite the payee's agreement to hold the \$26,000 check, one of its employees, unaware of the agreement, mistakenly presented it for payment on March 13, 2012, thereby causing the \$9,000 overdraft in respondent's trust account. According to the stipulation, "the overdraft did not negatively impact the funds of other clients" because the only funds in the trust account, at the time, were respondent's legal fees, which he had not promptly removed from the trust account. The next day, March 14, 2012, respondent deposited \$10,000 of his own funds in the trust account, presumably to cover the overdraft. On March 15, 2012, the \$26,000 was presented for payment and negotiated.

Following an OAE demand audit of respondent's attorney records, the following recordkeeping deficiencies were uncovered:

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<sup>1</sup> On January 11, 2012, the day the funds were wired to respondent's trust account, respondent issued a \$2,500 trust account check to himself for his legal fee. According to the stipulation, that disbursement did not invade client or escrow funds because "any funds in the trust account at that time were the earned legal fees of respondent that he had not promptly removed" from the account.

- Monthly three-way reconciliations were not prepared from January through April of 2012 with client ledgers, journals, and checkbook [R. 1:21-6(c)(1)(H)].

- Respondent failed to deposit a \$22,000 legal fee into his attorney business account. Instead, he issued a trust account check in this amount directly to a third party instead of issuing the check from his attorney business account [R. 1:21-6(a)(2)].

- On March 30, 2012, respondent deposited \$5,000 (into an account not identified in the stipulation) and, on that same day, disbursed \$5,000, even though the deposit did not clear until April 2, 2012 [Opinion 454 of the Advisory Committee on Professional Ethics].

- Respondent's attorney trust account was improperly designated "IOLTA Trust Account," rather than "IOLTA Attorney Trust Account" [R. 1:21-6(a)(2)].

- Respondent's attorney business account was improperly designated as "Law Offices of Constantine Bardis Esq. LLC,["] without noting that it was an attorney business account [R. 1:21-6(a)(2)].

- The name or file number of client(s) were not always included on the trust account deposit slips [R. 1:21-6(c)(1)(A)].

- There were more than two imaged copies of checks per page on the trust account bank records, without images of the back of each check [R. 1:21-6(b)].

Respondent's bookkeeper maintained the trust account, the trust receipts and disbursements journals, and client trust ledgers. Respondent's accountant was supposed to review the records, make corrections as needed, and prepare monthly three-way reconciliations. The accountant, however, did not prepare three-way reconciliations for the months of January, February, March, and April 2012. Rather, he prepared them all at one time, after tax season was over. According to the stipulation, "this failure was not causally related to the overdraft."

In aggravation, the stipulation cited respondent's 2012 admonition (mistakenly identified as a reprimand in the stipulation), also for violations of RPC 1.15(a) and RPC 1.15(d). Although admonitions are generally imposed for those two violations, see, e.g., In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (attorney commingled personal funds in his attorney

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trust account and also committed recordkeeping violations), the Board determined that respondent's disciplinary history requires enhancement of the admonition to a reprimand, particularly because deficient recordkeeping is also what led to respondent's admonition in 2012. Although the Board was aware that respondent's accountant had not strictly followed the accounting practices required by R. 1:21-6, the Board noted that an attorney's recordkeeping duties are non-delegable. In re Barker, 115 N.J. 30,35 (1989).

The following documents are enclosed:

1. Notice of motion for discipline by consent, dated September 12, 2014.
2. Affidavit of Consent, dated September 2, 2014.
3. Stipulation of discipline by consent, dated September 15, 2014.
4. Ethics History, dated January 16, 2015.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EB/tk

Enclosures

c: (w/o encls.)

Bonnie C. Frost, Chair

Disciplinary Review Board

Charles Centinaro, Director

Office of Attorney Ethics

Melissa A. Czartoryski, Deputy Ethics Counsel

Office of Attorney Ethics

Constantine Bardis, Respondent