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OF THE

SUPREME COURT OF NEW JERSEY

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February 23, 2015

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

Re: In the Matter of Spiro T. Michals
Docket No. DRB 14-348
District Docket No. XIV-2013-038E

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)(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 stipulated violation of RPC 1.15(d) (failure to comply with recordkeeping requirements of R. 1:21-6).

Specifically, an audit conducted by the OAE revealed that respondent issued trust account checks to himself or others for personal or business expenses. Because, however, respondent maintained sufficient personal funds in his trust account, he did not invade client funds.

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During a follow-up OAE-demand interview, respondent took full responsibility for his firm's trust and business account activity. At the time of the stipulation, the OAE was satisfied that respondent's records were in compliance with the recordkeeping rules.

The Board considered, as aggravating factors, respondent's prior admonition for negligent misappropriation of client funds and recordkeeping violations, as well as his failure to resolve several improprieties, after that discipline had been imposed. In mitigation, respondent cooperated with the OAE investigation, admitted wrongdoing by entering into the stipulation, assumed complete responsibility for the law firm's problems, and subsequently, made recordkeeping a priority.

Ordinarily, failure to comply with recordkeeping requirements results in the imposition of an admonition. See, e.g., In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (consent to discipline; attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified; mitigating factors considered); and In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an OAE audit revealed several recordkeeping deficiencies and commingling of personal and trust funds; the attorney had a prior admonition for unrelated conduct, but had a previously unblemished record in his more than forty years at the bar).

Here, however, respondent's failure to learn from his prior recordkeeping irregularities warrants a reprimand. See, e.g., In re Murray, 220 N.J. 47 (2014) (consent to discipline; during a random compliance audit, the OAE found 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) (attorney had been previously reprimanded for similar recordkeeping violations).

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 12, 2014.
2. Stipulation of discipline by consent, dated November 12, 2014.
3. Affidavit of consent, dated October 31, 2014.
4. Ethics history, dated February 23, 2015.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

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Encls.

c: Bonnie C. Frost, Chair, Disciplinary Review Board
Charles Centinaro, Director, Office of Attorney Ethics
Michael J. Sweeney, First Assistant Ethics Counsel
Office of Attorney Ethics
Spiro T. Michals, Respondent