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OF THE

SUPREME COURT OF NEW JERSEY

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July 27, 2016

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

Re: **In the Matter of Nicholas Nicosia**
Docket No. DRB 16-166
District Docket Nos. XIV-2012-0635E and
XIV-20014-0695E

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 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 misconduct.

Specifically, between August 1, 2011 and November 10, 2014, respondent represented ten clients in eleven real estate transactions. His actions resulted in the negligent misappropriation of other clients' funds in at least one of the real estate transactions.¹ On October 19, 2012, a \$55,575 deposit check, against which respondent had drawn checks, was returned for

¹ The exact number of client-fund invasions is unclear because TD Bank, where respondent maintained his trust account at the time, appears to have honored some trust account checks presented against insufficient funds in some of these matters.

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insufficient funds. TD Bank, thus, generated an overdraft notice in the amount of \$359.61.

Following a review of respondent's attorney books and records, the OAE determined that respondent had failed to comply with the recordkeeping requirements of R. 1:21-6 in several respects. Specifically, the OAE determined that respondent had issued checks against uncollected funds, deposited funds in the business account instead of the trust account, deposited funds into the "wrong" trust account, and failed to deposit a check that was to be applied to an upcoming real estate purchase.

The TD Bank wire-transfer fees applicable to the transactions also created shortages in respondent's trust account. All of these issues resulted from respondent's admitted failure to review his trust account bank statements and to conduct three-way reconciliations of the various trust accounts he used from about August 2012 to November 2014. Respondent's failure to follow the mandates of R. 1:21-6 and his failure to review and reconcile his attorney accounts resulted in the negligent misappropriation of client funds. Thus, by his conduct, respondent violated RPC 1.15(a), RPC 1.15(d), and R. 1:21-6(c).

The OAE's review of respondent's attorney books and records also revealed several other recordkeeping deficiencies, including: (1) outstanding deposits dating back to May 31, 2013; (2) the commingling of personal funds (earned fees left in the trust account) with client funds held in the trust account; (3) failure to properly designate an account as an attorney trust account; (4) failure to comply with the IOLTA requirements for an attorney trust account; and authorization of a non-attorney to sign trust account checks. In so doing, respondent again violated RPC 1.15(d) and R. 1:21-6.

Generally, a reprimand is imposed for negligent misappropriation of client funds and recordkeeping deficiencies, even when found alongside commingling. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited \$8,000 into his trust account for the pay-off of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed to him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77 belonging to other clients; when the transaction failed, the attorney, who had forgotten about the

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\$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading the other clients' funds, a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); and In re Liotta-Neff, 147 N.J. 283 (1997) (attorney negligently misappropriated approximately \$5,000 in client funds after commingling personal and client funds; the attorney left \$20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices).

In mitigation, the Board took into account that respondent has no prior discipline in over ten years at the bar. Thus, the Board determined that a reprimand is the appropriate measure of discipline for his violations of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 5, 2016.
2. Stipulation of discipline by consent, dated April 15, 2016.
3. Affidavit of consent, dated April 29, 2016.
4. Ethics history, dated July 27, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa
See Attached

I/M/O Nicholas Nicosia, DRB 16-166

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c: Bonnie C. Frost, Chair (via e-mail)
Disciplinary Review Board
Charles Centinaro, Director (via e-mail)
Office of Attorney Ethics
Christina Blunda Kennedy, Deputy Ethics Counsel
Office of Attorney Ethics
Nicholas Nicosia, Respondent