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January 24, 2018

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

Re: In the Matter of Barry J. Beran
Docket No. DRB 17-360
District Docket No. XIV-2016-0410E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (three-month suspension or such lesser discipline as the Board deems warranted) 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 three-month suspension is appropriate discipline for respondent's violations of RPC 1.15(a) (negligent misappropriation of trust funds and commingling funds), and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

Specifically, following an overdraft in respondent's TD Bank trust account and an ensuing Office of Attorney Ethics (OAE) inquiry, respondent informed the OAE that he had inadvertently withdrawn more funds from his trust account, representing fees, than were on deposit. When he reviewed the account the following day, he discovered the error and immediately replenished the funds. At the time of the overdraft, respondent had no client funds on deposit in the account.

The OAE's audit of respondent's records revealed several recordkeeping violations. Specifically, respondent (1) did not prepare three-way reconciliations of his trust account; (2) did not prepare receipts and disbursements journals; (3) subtotaled only two client ledger cards; and (4) did not subtotal the handwritten "listing" of his trust account receipts and disbursements, in violation of R. 1:21-6(c).

The OAE's reconstruction of respondent's trust account records for the period January 1 through July 8, 2016 revealed that he had over-disbursed funds from a client's personal injury settlement, which resulted in the invasion of various clients' funds, as well as his and a business partner's funds held in connection with their joint venture. Respondent, thus, was guilty of negligent misappropriation of client funds, commingling funds, and recordkeeping improprieties, violations of RPC 1.15(a) and RPC 1.15(d) and R. 1:21-6.

Generally, reprimands are imposed for recordkeeping deficiencies that result in the negligent misappropriation of funds. See, e.g., In re Gonzalez, 225 N.J. 603 (2016) (negligent misappropriation and failure to comply with recordkeeping requirements; prior admonition); In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation in a default; failure to promptly deliver funds to a client, and recordkeeping violations; discipline not enhanced because of the attorney's otherwise unblemished professional record of thirty-six years and health and cognitive problems); and In re Gleason, 206 N.J. 139 (2011) (negligent misappropriation, recordkeeping violations, and failure to memorialize the basis or rate of his fee).

In mitigation, the Board considered that respondent cooperated with the OAE; admitted his wrongdoing; entered into a motion for discipline by consent; and agreed to submit to the OAE monthly reconciliations of his attorney accounts. The Board determined, however, that these factors are outweighed by the aggravating factors present in this record: respondent's ethics history (2009 admonition; 2004 reprimand for negligent misappropriation, recordkeeping violations, and improper advances to a client; 2016 censure for recordkeeping violations, failure to safeguard funds, failure to promptly disburse funds, and improper advances to a client; and 2017 censure) and his continuing failure to comply with recordkeeping requirements.

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In light of respondent's failure to learn from prior mistakes, and the well-established practice of progressive discipline, the Board determined that a three-month suspension was warranted. In addition, for a two-year period, respondent must provide the OAE with monthly account reconciliations on a quarterly basis.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 3, 2017.
2. Stipulation of discipline by consent, dated September 27, 2017.
3. Affidavit of consent, dated September 22, 2017.
4. Ethics history, dated January 24, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

Enclosures

c: (w/o encls.)

Bonnie C. Frost, Chair

Disciplinary Review Board (e-mail)

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Barry J. Beran, Respondent (e-mail and regular mail)