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October 2, 2018

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

**Re: In the Matter of Howard J. Batt**  
Docket No. DRB 18-212  
District Docket No. XIV-2016-0005E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems 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 violations of RPC 1.15(a) (negligent misappropriation of client funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 5.3(a) and (b) (failure to make reasonable efforts to ensure that the conduct of nonlawyers is compatible with the lawyer's professional obligations).

Specifically, during the relevant time period, respondent employed Geraldine Coia as a file clerk and Tammy Segal-McNamara as a paralegal and office manager. From 2005 through 2015, respondent improperly delegated to Segal-McNamara the tasks of reconciling his attorney business account (ABA)

and attorney trust account (ATA). Segal-McNamara, however, systematically failed to perform the reconciliations of respondent's ABA and ATA accounts in accordance with R. 1:21-6. Worse, from 2009 through 2014, respondent failed to even review his ABA and ATA statements.

In September 2013, after Coia's employment with the firm ended, she and Segal-McNamara engaged in a criminal scheme, resulting in the theft of more than \$49,000 in ATA funds, in addition to significant ABA funds. Respondent did not discover the theft until October 2014, when Segal-McNamara attempted to cash her payroll check and it was dishonored, due to insufficient funds.

On October 9, 2014, respondent filed criminal charges against Coia, alleging that she had stolen ABA funds from September 2013 through October 2014. Coia admitted to the OAE that she had stolen ABA funds, but denied having stolen ATA funds. Respondent's failure to supervise his nonlawyer employees was so pervasive that, even after he had pressed criminal charges against Coia for her theft of ABA funds, he failed to investigate whether his employees also invaded ATA funds.

On December 21, 2015, an \$11,391.48 ATA check issued by respondent was dishonored, due to insufficient funds. Three days later, TD Bank notified the OAE of the attempted ATA overdraft. After the OAE required respondent to provide an explanation, his accountant discovered that the overdraft issue had been caused by a July 1, 2009 transfer of \$10,000 in ATA funds to the ABA, which respondent had not authorized.

Consequently, respondent hired a forensic accountant to perform an analysis of his ATA. The analysis revealed that, between July 1, 2009 and October 15, 2012, \$49,949.03 in ATA funds were transferred to the ABA, without respondent's knowledge or authorization, and were disbursed via fraudulent ABA checks, as part of his employees' criminal scheme.

On December 30, 2015, respondent deposited personal funds in his ATA to cover the shortfalls that his employees' thefts had created. On March 3, 2017, respondent deposited \$5,619.77 in unidentified client ATA funds with the Superior Court Trust Fund. Respondent admitted that he had

not discovered the invasion and negligent misappropriation of client trust funds because he did not properly reconcile his ATA.

Generally, a reprimand is imposed for recordkeeping deficiencies resulting in negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney deposited \$8,000 into his trust account, earmarked to satisfy a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed 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 deal fell through, the attorney, who had forgotten about the \$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," in 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 Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated client funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a censure, depending on the presence of other ethics infractions, past discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal \$142,000 from his trust account, causing a shortage of \$94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and

stole \$272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds via thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise non-attorney employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies); and In re Key, 220 N.J. 31 (2014) (censure for attorney who failed to ensure that his nonlawyer employees recorded the attorney's time spent on client matters, a violation of RPC 5.3; the attorney also violated RPC 3.1 when, while his appeal from an adverse fee arbitration award was pending, he filed an answer to his clients' civil complaint seeking to enforce the award and asserted a counterclaim for the purpose of relitigating the reasonableness of his fee; the attorney knew that the court was without jurisdiction while the fee appeal was pending and, further, that he was barred from relitigating the fee arbitration panel's determination; in addition, after the Board dismissed his appeal from the fee award, he did not withdraw his counterclaim; the attorney also failed to record expenses and costs incurred on behalf of his clients, a violation of RPC 1.15(d); two prior admonitions and a reprimand for recordkeeping violations).

Here, respondent stipulated to the RPC violations and has no prior discipline in thirty-eight years at the bar. Like the attorney in Bardis, respondent's neglect enabled his nonlawyer employees to steal client funds from his trust account, causing a major invasion of ATA funds. But, as in Bardis, there is compelling mitigation to consider, including respondent's deposit of personal funds to replenish the account, corrective actions taken through forensic accounting and reconstruction of his ATA, acceptance of responsibility for his misconduct, and his lack of a disciplinary record. On balance, based on disciplinary precedent, the compelling mitigation present, and the lack of aggravating factors, the Board determined that respondent's misconduct warrants a reprimand.

October 2, 2018

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 7, 2018;
2. Stipulation of discipline by consent, dated June 6, 2018;
3. Affidavit of consent, dated May 23, 2018; and
4. Ethics history, dated October 2, 2018.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

Encls.

c: (w/o enclosures)  
Bonnie C. Frost, Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (e-mail and interoffice mail)  
Reid Adler, Deputy Ethics Counsel,  
Office of Attorney Ethics (e-mail)  
John Hogan, Respondent's Counsel (e-mail and regular mail)