

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ., CHAIR
BRUCE W. CLARK, ESQ., VICE-CHAIR
PETER J. BOYER, ESQ.
HON. MAURICE J. GALLIPOLI
THOMAS J. HOBERMAN
REGINA WAYNES JOSEPH, ESQ.
EILEEN RIVERA
ANNE C. SINGER, ESQ.
ROBERT C. ZMIRICH



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

ELLEN A. BRODSKY
CHIEF COUNSEL
PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL
MELISSA URBAN
FIRST ASSISTANT COUNSEL
TIMOTHY M. ELLIS
LILLIAN LEWIN
BARRY R. PETERSEN, JR.
COLIN T. TAMS
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

November 26, 2018

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

Re: **In the Matter of Benjamin G. Kelsen**
Docket No. DRB 18-333
District Docket No. XIV-2016-0427E

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). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate quantum of discipline for respondent's violations of RPC 1.15(a) (commingling) and RPC 1.15(d) and R. 1:21-6 (recordkeeping).

Specifically, during the relevant time frame, respondent maintained multiple attorney trust accounts (ATAs) and attorney business accounts (ABAs) at Bank of America. On July 8, 2016, respondent caused a \$10 overdraft of one of those ATAs, which Bank of America promptly reported to the OAE.

Subsequently, the OAE directed respondent to produce all of his ATA and ABA records for the period of July 1, 2015 forward. Respondent's financial records revealed numerous recordkeeping violations, including a \$4,500 cash withdrawal from an ATA; no monthly three-way reconciliations of two of his ATAs; no receipts and disbursements journals for one of his ATAs and one of his ABAs; deficient receipts and disbursements journals for another of his ATAs; no ledger card identifying attorneys' fees and back charges for multiple ATAs; improper ABA designations; and commingling of earned fees in his ATAs.

Specifically, in respect of commingling, on January 2, 2017, respondent signed a promissory note, securing a \$30,000 personal loan from his congregation's "discretionary account." Respondent represented neither the congregation nor the rabbi who provided the loan proceeds. Nevertheless, four days later, respondent deposited the \$30,000 in one of his ATAs. Those funds remained in his ATA for more than six months, until July 18, 2017, when respondent disbursed them via an ATA check. Respondent also deposited earned fees, totaling \$1,023.50, from three client matters, in one of his ATAs.

Respondent, thus, stipulated that his conduct violated RPC 1.15(a) and RPC 1.15(d). The OAE and respondent recognized, as an aggravating factor, respondent's 2010 agreement in lieu of discipline (ALD) for commingling, negligent misappropriation, and recordkeeping violations.

Admonitions have been imposed on attorneys who engage in commingling and recordkeeping violations, in the absence of negligent misappropriation. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (attorney commingled personal funds in his attorney trust account and committed recordkeeping violations) and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (attorney commingled personal funds in his attorney trust account and committed recordkeeping violations).

In crafting the appropriate quantum of discipline, however, the Board considered, in aggravation, respondent's failure to learn from past mistakes – specifically, his past ALD for misconduct that included both commingling and recordkeeping violations. Thus, the Board determined that respondent's misconduct warrants a reprimand.

I/M/O Benjamin G. Kelsen, DRB 18-333

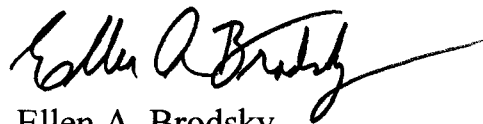
November 26, 2018

Page 3 of 3

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 15, 2018.
2. Stipulation of discipline by consent, dated September 18, 2018.
3. Affidavit of consent, dated September 14, 2018.
4. Ethics history, dated November 26, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

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)
Christina Blunda, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Marc D. Garfinkle, Respondent's Counsel (e-mail and regular mail)