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SUPREME COURT OF NEW JERSEY

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May 30, 2019

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Charles M. Damian**
Docket No. DRB 19-107
District Docket No. XIV-2017-0716E

Dear Ms. Baker:

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

Specifically, on September 25, 2012, the OAE's random audit of respondent's attorney books and records identified recordkeeping deficiencies, including several unidentified trust account balances. In a January 25, 2013 certification to the OAE, respondent represented that he had resolved the deficiencies, had contacted all clients and attorneys involved in the matters, and was aggressively pursuing the disbursement of all inactive balances in the trust account.

Thereafter, during a June 19, 2018 follow-up audit, the OAE identified eleven inactive balances in the trust account, including seven respondent had certified, in 2013, he was actively attempting to disburse. The 2018 audit also identified new recordkeeping deficiencies, including an improper trust account designation; old, outstanding trust account checks; and improper image-processed trust and business account checks. As of September 2018, respondent had resolved all

recordkeeping deficiencies and was in full compliance with R. 1:21-6, including the disbursement of all inactive client balances.

For respondent's stipulated failure to abide by the recordkeeping Rules, he is guilty of having violated RPC 1.15(d) and R. 1:21-6.

Recordkeeping irregularities ordinarily are met with an admonition. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014). A reprimand, however, may be imposed if the attorney failed to correct recordkeeping deficiencies that had been brought to his or her attention previously, or the attorney has prior discipline. See, e.g., In re Michals, 224 N.J. 457 (2015) and In re Murray, 220 N.J. 47 (2014).

In In re Wianecki, 232 N.J. 454 (2018), the Board imposed a reprimand on an attorney who had engaged in recordkeeping violations identified during a demand audit, although those violations had not resulted in a negligent misappropriation. In the Matter of Robert A. Wianecki, Jr., DRB 17-381 (February 21, 2018) (slip op. at 1-2). In Wianecki, a June 2012 random audit identified several recordkeeping deficiencies, including the electronic transfer of funds without proper authorization and the use of improperly designated business account checks. In November 2012, Wianecki certified that those and other deficiencies had been corrected. Id. at 2. In May 2016, after receiving overdraft notices from Wianecki's bank, the OAE conducted a demand audit of his trust account. Contrary to statements contained in his certification to the OAE three years earlier, Wianecki had continued to make electronic transfers without proper authorization and to use the improperly designated business account checks. In imposing a reprimand, the Board remarked that, although Wianecki had not been disciplined for his 2012 recordkeeping deficiencies, he "should have been more guarded in the handling of his attorney accounts" and "should have recognized the importance of being mindful of the recordkeeping requirements." Id. at 3 (quoting In re Conroy, 185 N.J. 277 (2005)).

Here, in mitigation, respondent admitted his misconduct and consented to discipline, thereby saving disciplinary resources. Because the parties also cited lack of harm to clients as a mitigating factor, the Board was left to conclude that, once the inactive trust account balances were resolved, the OAE was satisfied that no clients had been harmed.

In aggravation, respondent has a prior admonition, albeit for dissimilar misconduct. Moreover, he permitted inactive trust account balances to languish in his trust account for more than five years after they were first discovered by the OAE, and after he represented to the OAE that he was aggressively seeking to resolve the disbursement of those funds.

Similar to the attorney in Wianecki, respondent escaped discipline after the initial OAE audit disclosed recordkeeping deficiencies, and should have had a heightened awareness of his recordkeeping duties when handling his attorney accounts. For respondent's failure to learn from prior mistakes, the Board determined to impose a reprimand.

May 30, 2019

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 5, 2019.
2. Stipulation of discipline by consent, dated March 5, 2019.
3. Affidavit of consent, dated February 27, 2019.
4. Ethics history, dated May 30, 2019.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/paa

Encls.

- c: (w/o enclosures)
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