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March 22, 2021

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

Re: **In the Matter of Michael J. Maloney**
Docket No. DRB 20-309
District Docket No. XIV-2019-0356E

Dear Ms. Baker:

The Disciplinary Review Board has 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) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violations of RPC 1.15(a) (negligent misappropriation); RPC 1.15(d) (failure to maintain financial records required by R. 1:21-6); and RPC 5.3(a) and (b) (failure to supervise a nonlawyer assistant).

Specifically, the OAE conducted a random audit of respondent's attorney trust and business accounts. Five days before the random audit was conducted, James McGovern, Jr., Esq., respondent's counsel, notified the OAE that respondent's bookkeeper, Sandra Beveridge, had misappropriated money from one of respondent's attorney trust accounts at TD Bank. The OAE's audit revealed that, from September 1, 2016 through May 14, 2018, Beveridge had improperly issued fourteen checks to herself, totaling \$18,291.99, from respondent's TD Bank trust account.

In addition to the details of Beveridge's misappropriations, the OAE audit revealed multiple recordkeeping deficiencies: debit balances existed in the TD Bank trust account, in violation of R. 1:21-6(d); old outstanding checks were not resolved, in violation of R. 1:21-6(d); improper designations of the attorney trust and business accounts, in violation of R. 1:21-6(a)(2); failure to maintain monthly three-way reconciliations, in violation of R. 1:21-6(c)(1)(H); insufficient detail on deposit slips, in violation of R. 1:21-6(c); use of corporate designation was not used on all bank account records, in violation of R. 1:21-A(c); and improper images of

cancelled attorney trust and business accounts checks, in violation of R. 1:21-6(b).

On September 13, 2018, respondent provided the OAE with proof that an individual named Anthony Renzo had reimbursed respondent, via two checks totaling \$18,291, on behalf of Beveridge.

Based on the foregoing facts, respondent admitted that he had systematically failed to review his trust account records, his bank statements, and his trust account checks. Respondent conceded that those failures, combined with his utter failure to supervise Beveridge, enabled Beveridge to invade client funds and steal more than \$18,000, and also allowed TD Bank to charge his firm wire fees totaling \$13,507.30 without his knowledge. Each wire transfer fee also invaded client funds because respondent did not have funds in the trust account to cover the charges.

On September 24, 2019, respondent provided proof to the OAE that he had corrected his recordkeeping deficiencies and was preparing monthly, three-way reconciliations for each of his trust accounts, as R. 1:21-6 requires. Respondent also informed the OAE that he chose to not report Beveridge's theft to law enforcement and that he continued to employ her in his law office.

Respondent's misconduct violated RPC 1.15(a); RPC 1.15(d); and RPC 5.3(a) and (b). The OAE and respondent further stipulated, in mitigation, that respondent has no disciplinary history, was contrite, and readily admitted to his wrongdoing. In aggravation, the stipulation cited respondent's failure to notify law enforcement of Beveridge's criminal conduct and his continued employment of her at his law firm.

The Board determined that respondent's admitted ethics violations are clearly and convincingly supported by the facts set forth in the stipulation. As a result of the OAE's random audit, respondent admitted that he had committed multiple recordkeeping infractions, in violation of RPC 1.15(d) and R. 1:21-6. Those recordkeeping infractions, combined with respondent's abdication of his recordkeeping obligations, created the circumstances whereby Beveridge was able to steal \$18,291.99 from respondent's TD Bank attorney trust account, and TD Bank was able to charge his firm more than \$13,000 in wire fees, without his knowledge, with each charge causing a further invasion of client funds. Respondent, thus, also violated RPC 1.15(a) and RPC 5.3(a) and (b).

Generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230 N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

Respondent, however, also violated RPC 5.3(a) and (b). Attorneys who fail to supervise their nonlawyer staff and have no serious prior discipline typically receive an admonition or a

reprimand, depending on the presence of other ethics infractions or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-55 (January 21, 2020) (admonition; as a result of the attorney's abdication of his recordkeeping obligations, his nonlawyer assistant was able to steal more than \$149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of \$55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career); In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of the attorney's failure to review and reconcile his attorney records, his bookkeeper was able 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 misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of a disciplinary record); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, \$14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); and In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations).

The Board determined that, based on New Jersey disciplinary precedent, a reprimand is the baseline sanction required for respondent's misconduct. In crafting the appropriate discipline in this matter, the Board also considered aggravating and mitigating factors. In aggravation, despite his knowledge of Beveridge's theft of \$18,291.99 in trust funds, respondent decided not to report Beveridge to law enforcement and, instead, continued her employment at his law firm. This decision is troubling and reminiscent of a similar case recently heard by the Board. See In re Gonzalez, 241 N.J. 526 (2020) (three-month suspension for attorney who committed multiple ethics violations, including recordkeeping violations, negligent misappropriation, and failure to supervise nonlawyer staff; the attorney employed his wife as his secretary and paralegal; the wife forged the attorney's signatures on attorney trust account (ATA) checks, fabricated ATA deposit slips; prepared false ATA ledger sheets, and hid important information from respondent; even after the attorney learned of his wife's improper conduct, the attorney maintained her employment at the firm and claimed he was "transitioning" her out of his law office; in imposing a three-month suspension, the Court ordered the attorney to provide the OAE with proof he had terminated the wife's employment at the firm).

In respect of mitigation, respondent's unblemished disciplinary record, since his 1990 admission to the bar, was accorded substantial weight. Moreover, respondent was contrite and readily admitted to his wrongdoing. Considering the substantial mitigation, a reprimand is a sufficient quantum of discipline.

The Board found respondent's decision to continue Beveridge's employment, despite her theft of over \$18,000 in client funds, quite troubling. Consequently, the Board cautions respondent that, should Beveridge's continued employment at his law firm result in additional theft, negligent

misappropriation, or other adverse impact on his entrusted funds, any corresponding discipline may be subject to enhancement due to respondent's demonstrated failure to learn from his past mistakes.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 29, 2020.
2. Stipulation of discipline by consent, dated October 30, 2020.
3. Affidavit of consent, dated October 20, 2020.
4. Ethics history, dated March 22, 2021.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johanna Barba Jones". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Johanna Barba Jones
Chief Counsel

JBj/trj
Enclosures

- c: (w/o enclosures)
Bruce W. Clark, Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Colleen L. Burden, Deputy Ethics Counsel
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