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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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July 20, 2021

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

Re: **In the Matter of Moishie M. Klein**  
Docket No. DRB 21-041  
District Docket No. XIV-2016-0601E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deemed appropriate) filed by the Office of Attorney Ethics (the 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 censure for respondent's violation of RPC 1.8(a) (two instances – improper business transaction with a client); RPC 1.15(a) (four instances – commingling and negligent misappropriation); RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); RPC 5.5(a)(1) (unauthorized practice of law – practicing while administratively ineligible); and RPC 7.5(e) (use of an improper professional designation that violates RPC 7.1, which provides that a lawyer shall not make false or misleading communications about the lawyer or the lawyer's services).

From October 27, 2015 through November 2, 2016, respondent was administratively ineligible to practice law in New Jersey on multiple bases. Despite the Court notices sent to respondent, he claimed that he was unaware of his administrative ineligibility to practice law in New Jersey. Although details as to the breadth and scope of his unauthorized practice were not provided in the stipulation, respondent conceded that he practiced law during this period and, thus, violated RPC 5.5(a)(1).

Respondent also used an improper designation for his law firm, “MMK Law Group Inc.” RPC 7.5(e) permits a lawyer to use additional identifying language, such as “& Associates” only when such language is accurate and descriptive of the firm. Here, respondent, a solo practitioner, violated RPC 7.5(e) by using the term “law group” in his firm’s name.

Further, on September 7, 2017 and February 27, 2019, the OAE conducted demand audits of respondent’s financial books and records for the period of January 2015 through February 2017. During the audits, respondent stated that he was unaware of, and had not complied with, the recordkeeping obligations of R. 1:21-6.

Prior to the first audit, respondent attempted to re-construct his financial records to make them as complete as possible. Despite his efforts, the following recordkeeping deficiencies were discovered: inactive balances left in his attorney trust account (ATA); debit balances on client ledger cards; improper ATA designation on bank statements; improper ATA canceled checks; failure to include client identification on all ATA checks; improper ATA designation on checks; failure to maintain monthly ATA three-way reconciliations; failure to maintain ATA receipts and disbursements journals; client ledger cards were not fully descriptive; outstanding checks totaling \$11,735.53; improper attorney business account (ABA) designation on bank statements; ABA receipts and disbursements journals were not fully descriptive; improper ABA canceled checks.

Moreover, respondent commingled personal investment funds in his ATA, in violation of RPC 1.15(a) and R. 1:21-6(a)(1), leading to his negligent misappropriation of entrusted funds. Specifically, respondent commingled his personal funds for an investment in “iChannel” with client trust funds in his ATA and failed to conduct three-way monthly reconciliations. As a result, respondent stipulated to multiple instances of negligent misappropriation. Between January 26 through December 1, 2015, respondent deposited a total of \$1,611,000 in his ATA on behalf of iChannel. During that same period, respondent disbursed a total of \$2,008,500 from his ATA for iChannel, leaving a final negative balance of (\$397,500) due to the iChannel investment.

Respondent informed the OAE that he was aware of the balance of the iChannel investment funds, despite failing to conduct three-way reconciliations, because he had kept track of the funds for iChannel in his head. However, the OAE’s analysis of respondent’s ATA during the period from November 23 through December 7, 2015 revealed errors in respondent’s accounting. For each day of that fifteen-day period, respondent’s ATA held a significant negative balance, ranging from (\$62,592.37) to (\$422,625). Further, during that period, the OAE found that respondent’s misconduct impacted the trust funds for three clients.

Respondent rectified the negative balance in his ATA by depositing his own funds. Specifically, on December 8, 2015, he deposited \$77,500. On December 9, 2015, he deposited \$320,000.

Significantly, the stipulation noted that “[t]he lack of accurate recordkeeping on respondent’s part, as well as statements from those clients whose funds were impacted that respondent was allowed to use their funds, resulted in the OAE’s conclusion [that] there was no knowing misappropriation.” The parties noted that, with the deposits of respondent’s own funds,

totaling \$397,500, in his ATA, he corrected the shortages that had resulted from his negligent misappropriation.

Finally, during the OAE's investigation, respondent disclosed that he had received loans from two clients. One loan was for \$35,000 to fund part of his iChannel investment, and the other loan was for \$200,000, to purchase real estate. The loan of \$35,000 for the iChannel investment resulted in a negative balance in respondent's ATA. Respondent stipulated that he had created no documentation for the loans, written disclosure of the terms of the transactions, or signed informed consents, as RPC 1.8(a) requires. Respondent rectified the negative balances in his ATA resulting from the iChannel investment and repaid both loans.

In sum, the Board found that respondent violated RPC 1.8(a) (two instances); RPC 1.15(a) (four instances); RPC 1.15(d); RPC 5.5(a)(1); and RPC 7.5(e).

Generally, if a conflict of interest arises from a business transaction between a lawyer and client, the minimum measure of discipline is usually an admonition; however, reprimands have been imposed when the loan is financially significant, when the attorney engages in multiple business transactions without the client's informed written consent, when the attorney is guilty of additional ethics infractions, or when aggravating factors are present. See, e.g., In re Rajan, 237 N.J. 434 (2019) (attorney, while representing his client in the purchase of a property, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty percent share, a holding company formed by the attorney and his brother and brother-in-law lent \$450,000 (\$350,000 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client and became potentially adverse to the other clients; the attorney failed to advise his clients to consult independent counsel, and he failed to obtain their informed, written consent to the loan transaction; the attorney also represented the client in the real estate transaction and received \$32,500 in legal fees; violations of RPC 1.7(a) and RPC 1.8(a); despite the attorney's unblemished disciplinary record, the absence of harm to the client, his acceptance of responsibility, and his expression of remorse, the Board imposed a reprimand because he exercised such poor judgment; the attorney's prior service as a member of a district ethics committee was considered both in aggravation and in mitigation); In re Allegra, 229 N.J. 227 (2017) (attorney who represented a client in a number of matters engaged in a sexual relationship with her after her application for citizenship was denied, a violation of RPC 1.7(a)(2); he also borrowed \$17,500 from her, a violation of RPC 1.8(a); despite significant mitigating factors, he received a reprimand, given both conflicts of interest); and In re Amato, 231 N.J. 167 (2017) (attorney made three loans, totaling more than \$528,000, to his client, and entered into a business transaction involving a currency transaction, all in violation of RPC 1.8(a); despite the attorney's lack of a disciplinary record, his admission of wrongdoing, and the lack of harm to the client, he received a reprimand, given the large amount of funds involved).

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).

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the CPF, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar).

Likewise, admonitions have been imposed for violations of RPC 7.5(e). See, e.g., In re Oliver, DRB 09-368 (May 24, 2010) (admonition for an attorney who used letterhead that identified three attorneys as "of counsel," despite having had no professional relationship with them, violations of RPC 8.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) as two of the attorneys were sitting judges, which could have created a perception among clients or the public that he had improper influence with the judiciary); In re Abramo, DRB 08-209 (October 20, 2008) (admonition for attorney who continued to use firm letterhead that contained the name of an attorney no longer associated with the firm); and In re Rendo, DRB 08-040 (May 19, 2008) (admonition for an attorney who used letterhead identifying a firm lawyer as admitted to practice law in New Jersey, rather than as admitted to practice law in New York only).

In mitigation, the Board accorded significant weight to respondent's lack of disciplinary history in over twenty years as a member of the bar, his entry into the stipulation of consent, and his diligent efforts to remediate his misconduct. Moreover, no client was financially harmed by respondent's misconduct. The Board found no aggravating factors.

Accordingly, considering the totality of respondent's misconduct balanced against the mitigating factors, the Board granted the motion for discipline by consent and determined that a censure was the quantum of discipline required to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 5, 2021.
2. Stipulation of discipline by consent, dated February 23, 2021.
3. Affidavit of consent, dated February 8, 2021.

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4. Ethics history, dated July 20, 2021.

Very truly yours,



Johanna Barba Jones  
Chief Counsel

JBj/jm

Enclosures

- c: (w/o enclosures)  
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