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

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November 29, 2021

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

Re: **In the Matter of Bruce M. Resnick**  
Docket No. DRB 21-198  
District Docket No. XIV-2021-0217E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems 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 1.5(a) (fee overreaching), RPC 1.15(a) (failure to safeguard client funds), and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

This matter previously was before the Board as a motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) (DRB 20-149).<sup>1</sup> On September 21, 2020, the Board denied that motion, determining that the facts set forth in the stipulation, along with respondent's stipulated violation of RPC 8.4(c), raised serious questions of potential knowing misappropriation of client funds. Consequently, the Board remanded the matter to the OAE for further proceedings.

In the instant matter, the Board determined to grant the parties' renewed motion for discipline by consent. The stipulated facts clearly and convincingly establish that respondent violated RPC 1.5(a), RPC 1.15(a), and RPC 1.15(d). Moreover, the additional information provided by the parties adequately answers the questions previously raised by the Board regarding

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<sup>1</sup> Although a prior, denied motion for discipline by consent typically would be treated as confidential, R. 1:20-9(a), the parties waived such confidentiality by referring to that process in the instant stipulation of discipline by consent.

potential knowing misappropriation. Specifically, the OAE explained that the parties had previously stipulated to a violation of RPC 8.4(c) based upon their review of applicable precedent. The OAE clarified, however, that it found no clear and convincing evidence that respondent's actions were intentional or that he knowingly misappropriated client funds. Given that the renewed motion does not include a violation pursuant to RPC 8.4(c), along with the OAE's explanation for previously having included such violation, the Board's 2020 remand was clearly warranted.

The stipulated facts are as follows. The OAE conducted a random compliance audit of respondent's financial books and records for the period comprising August 1, 2015 through December 31, 2017. The OAE's audit revealed multiple recordkeeping deficiencies, in violation of RPC 1.15(d). Respondent provided proof to the OAE that he had corrected these deficiencies and admitted that he violated the recordkeeping Rules in this respect. Respondent was reprimanded for similar recordkeeping deficiencies, among other misconduct, in 2015.

The OAE subsequently conducted a demand audit covering the period comprising August 1, 2015 through February 14, 2019. The OAE's investigation revealed that respondent mistakenly had overcharged 119 personal injury clients by calculating his legal fees on the gross settlement amount instead of the net amount, in contravention of R. 1:21-7(d). Although the improper fee calculations were openly reflected on the clients' settlement sheets, respondent was obligated by R. 1:21-7(d) to calculate his legal fee based upon the "net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim . . ." Respondent's miscalculation of his attorney fees constituted a per se violation RPC 1.5(a), which prohibits an attorney from charging an unreasonable fee. Respondent subsequently reimbursed each of the 119 clients. Respondent also provided the OAE with updated three-way reconciliations; client ledgers; revised distribution sheets; and checks to demonstrate that he had reimbursed \$18,904.94 in excess legal fees.

The OAE's demand audit also revealed that respondent erroneously had deposited client funds in his attorney business account (ABA) instead of his attorney trust account (ATA), in violation of RPC 1.15(a). Specifically, between November 13, 2015 and December 12, 2017, respondent erroneously deposited funds belonging to five clients, totaling \$309,500, in his ABA. Respondent transferred most of the funds to his ATA within three days, except for one deposit, in the amount of \$12,000, which was not transferred to his ATA until sixteen months later. Further, one of the transfers to his ATA account was executed electronically rather than by check. Although respondent erroneously deposited client funds in his ABA, the OAE's investigation did not reveal any evidence that respondent needed the funds.

RPC 1.15(a) provides in relevant part:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein.

Further, R. 1:21-6(a)(1) explicitly requires that funds belonging to the client be deposited in an

attorney's trust account, not the business account. Here, respondent's deposit of funds belonging to five different clients in his ABA instead of his ATA violated RPC 1.15(a). The Board determined that, if respondent had maintained fully-compliant books and records, the above errors could have been avoided.

Typically, an admonition is imposed for the mistaken miscalculation of a contingent fee. See e.g., In re Weston-Rivera, 194 N.J. 511, and In the Matter of Robert S. Ellenport, DRB 96-386. Likewise, cases involving an attorney's failure to safeguard funds usually result in the imposition of an admonition, even if accompanied by other infractions. See In re Sternstein, 223 N.J. 536 (2015) (after the attorney had received five checks from a bankruptcy court, representing payment of his clients' claim against the bankrupt defendant, he failed to deposit the checks in his attorney trust account, choosing instead to place the checks in his desk, a violation of RPC 1.15(a); the attorney also failed to inform his clients of his receipt of the funds, and, only after numerous inquiries, first from the clients and then from an attorney retained by them to pursue their interests, did he finally take the steps necessary to receive the funds from the bankruptcy court, which he then turned over to the clients, a violation of RPC 1.15(b) (failure to promptly deliver funds); despite two prior suspensions, the Board did not enhance the discipline because those matters were remote in time and involved unrelated conduct).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not directly caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (attorney failed to maintain trust or business account cash receipts and disbursements journals, proper monthly trust account three-way reconciliations, and proper trust and business account check images); In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the attorney: (1) did not maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) did not properly designate the trust account; and (5) did not maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his IOLTA account to cover overdrafts in his attorney business account, a demand audit uncovered several recordkeeping deficiencies: (1) errors in information recorded in client ledgers; (2) lack of fully descriptive client ledgers; (3) lack of running balances for individual clients on the clients' ledgers; (4) failure to promptly remove earned fees from the trust account; and (5) failure to perform monthly three-way reconciliations, in violation of RPC 1.15(d) and R. 1:21-6); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (for a period of six years, the attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified, in violation of RPC 1.15(d) and R. 1:21-6; the attorney was required to place all remaining unidentified funds in trust with the Superior Court).

Even in the absence of an intrusion upon client funds directly caused by poor recordkeeping, however, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that previously had been brought to his or her attention. See In re Abdellah, 241 N.J. 98 (2020) (reprimand for attorney who should have been mindful of his recordkeeping obligations based on a "prior interaction" with the OAE in connection with his recordkeeping practices that had not led to an allegation of unethical conduct), and In re Conroy, 185 N.J. 277 (2015) (reprimand for attorney who had been the subject of a prior random audit

during which recordkeeping deficiencies had been revealed; the Board determined that the attorney should have been more mindful of his recordkeeping obligations).

Here, the Board determined that respondent had heightened awareness of his recordkeeping obligations since, at least, the time of his misconduct underlying his 2015 reprimand for misconduct including recordkeeping deficiencies. Thus, standing alone, respondent's continued failure to correct his recordkeeping deficiencies warranted at least a reprimand. However, respondent not only failed to properly maintain his trust and business account records, but he also failed to safeguard over \$300,000 in client funds and charged excessive fees in 119 client matters. Although respondent admitted his misconduct by entering into a disciplinary stipulation, on balance, the Board determined that respondent's continued failure to properly maintain his trust and business account records, considered with his aggregate misconduct, warranted a censure.

Accordingly, considering the totality of respondent's misconduct balanced against the mitigating and aggravating 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 the confidence in the bar. The Board further determined, as agreed upon by the parties, to require respondent to submit to the OAE monthly reconciliations of his trust and business accounts on a quarterly basis, for a period of two years.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 10, 2021.
2. Stipulation of discipline by consent, dated September 9, 2021.
3. Affidavit of consent, dated August 30, 2021.
4. Ethics history, dated November 29, 2021.

Very truly yours,



Johanna Barba Jones  
Chief Counsel

JBj/jm

Enclosures

c: (w/o enclosures)  
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
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