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

TIMOTHY M. ELLIS
ACTING CHIEF COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL
NICOLE M. ACCHIONE
FRANCES L. BOWDRE
SALIMA ELIZABETH BURKE
ROCCO J. CARBONE, III
NICHOLAS LOGOTHETIS
ASSISTANT COUNSEL
KIMBERLY P. WILL
ASSOCIATE COUNSEL

June 23, 2023

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

Re: **In the Matter of Thomas Michael Lenney**
Docket No. DRB 23-102
District Docket Nos. XIV-2019-0620E and XA-2021-0901E

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 (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 that a reprimand was the appropriate quantum of discipline for respondent's violation of RPC 1.15(a) (two instances – engaging in negligent misappropriation of client funds and commingling); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); and RPC 5.5(a)(1) (practicing law while administratively ineligible).

The stipulated facts are as follows. On October 28, 2019, the OAE received an overdraft notice from respondent's bank, indicating that there were insufficient funds in respondent's attorney trust account (ATA) to cover a check respondent had issued on October 25, 2019, in the amount of \$50,881.47.

Following the OAE's inquiry, respondent explained that the overdraft had occurred in connection with his representation of Kennedy and Decker Coal Company (Kennedy and Decker) in a real estate transaction with Saddleback Realty II, LLC. (Saddleback). In 2017, Kenney and Decker entered into a contract to sell a warehouse to Saddleback and, pursuant to the contract, Saddleback provided respondent with a \$50,000 deposit, which respondent was required "to hold with interest as escrow agent." In October 2019, following the termination of the contract, respondent issued to Saddleback ATA check #1028, in the amount of \$50,881.47, which he believed represented his entire ATA balance because, in his view, he was not holding funds in escrow related to any other matters. Upon learning of the overdraft, he visited his bank and was informed that, although his ATA balance indeed had been \$50,881.47, at some point, \$6.27 of that amount represented interest due to the Interest on Lawyers Trust Accounts (IOLTA) Fund. Unbeknownst to respondent, on October 1, 2019, his bank disbursed the \$6.27 due to the IOLTA Fund from his ATA, leaving a balance of only \$50,875.20, which was insufficient to cover his check. After he was apprised of the cause of the overdraft, respondent deposited personal funds to cover the shortage and the overdraft fees. He then secured a new certified check in the amount of \$50,881.47 and provided it to Saddleback.

The OAE subsequently requested and obtained certain financial records from respondent. Based on those records, as well as information that it obtained from respondent's bank via subpoena, the OAE was able to ascertain that, when respondent issued check #1028, he was not holding funds solely for Saddleback, but also for a client named Conner Bass. On January 2, 2018, respondent had "made a deposit . . . for . . . Bass in the amount of \$53,200 for the purchase of a property." On January 5, 2018, respondent disbursed \$52,700 of Bass' funds to Signature Closing Services. He then erroneously recorded on Bass' ledger card that he had disbursed \$53,200. This error later caused him to believe that he was no longer holding funds for Bass when he issued check #1028. In reality, he was holding \$500 for Bass, as well as \$375.00 in earned attorney's fees in his ATA when he issued that check. Because he failed to perform monthly three-way reconciliations, he assumed that his ATA balance consisted solely of Saddleback's deposit money and interest, when, in fact, his bank was providing all interest generated by the account to the IOLTA Fund, pursuant to R. 1:28-A(2)(e).

Meanwhile, from July 22 to December 5, 2019, respondent was ineligible to practice law due to his failure to pay the annual assessment to the New Jersey

Lawyers' Fund for Client Protection (the CPF). However, he was not aware of his ineligibility when he improperly issued ATA check #1028.

Based on the above facts, the parties stipulated that respondent violated (1) RPC 1.15(a) both by negligently misappropriating Bass' funds and by commingling \$375 in legal fees in his ATA; (2) RPC 1.15(d), by failing to comply with R. 1:21-6; and (3) RPC 5.5(a)(1), by issuing ATA check #1028 to Saddleback, on October 25, 2019, when he was administratively ineligible to practice law. The Board found that all the charges were supported by clear and convincing evidence.

Standing alone, a reprimand is appropriate for recordkeeping deficiencies that result in the negligent misappropriation of client funds, even when accompanied by commingling. *See, e.g., In re Steinmetz*, 251 N.J. 216 (2022) (the attorney committed numerous recordkeeping violations, misappropriated over \$60,000, and commingled personal funds in his ATA; the Board determined that the baseline level of discipline was either a reprimand or a censure; the attorney failed to correct his records but, in mitigation, had no history of discipline in sixteen years at the bar, engaged an accountant to help him with his records, and no clients were harmed by his conduct); *In re Osterbye*, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices caused a negligent invasion of funds owed to clients and others in connection with real estate transactions, in violation of RPC 1.15(a); his failure to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b) (failure to cooperate with disciplinary authorities)); *In re Mitnick*, 231 N.J. 133 (2017) (as a result of poor recordkeeping practices, the attorney negligently misappropriated more than \$40,000 in client funds held in his trust account; no prior discipline in thirty-five-years at the bar).

Respondent, however, committed additional misconduct. When an attorney practices law while ineligible, an admonition ordinarily will be imposed, if the attorney is unaware of the ineligibility. *See In the Matter of Jonathan A. Goodman*, DRB 16-436 (March 22, 2017) (the 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) (the attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of his ineligibility).

Pursuant to the above precedent, the Board determined that a censure is the baseline level of discipline for the totality of respondent's misconduct. In crafting the appropriate discipline, however, the Board also considered mitigating and aggravating circumstances.

In mitigation, respondent has an unblemished history of twenty-seven years at the bar – a factor to which the Board accorded significant weight. In re Grimes, __ N.J. __ (2022), N.J. LEXIS 1165 (significant weight assigned to the attorney's unblemished disciplinary history of more than thirty years at the bar). Additionally, respondent took prompt action to replenish his ATA and entered into a disciplinary stipulation, acknowledging his misconduct. In the Board's view, respondent also is unlikely to commit such misconduct in the future, because he has since joined a firm where he has no bookkeeping responsibilities.

In aggravation, respondent failed to deposit Saddleback's funds in an interest-bearing escrow account, as the contract required. However, this aggravating factor is of minimal weight, as the harm to Saddleback is difficult to quantify based on this record.

On balance, the Board determined that the mitigating factors outweigh the sole aggravating factor and, thus, a reprimand is the appropriate quantum of discipline in this case.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 26, 2023.
2. Stipulation of discipline by consent, dated April 26, 2023.
3. Affidavit of consent, dated March 28, 2023.

4. Ethics history, dated June 23, 2023.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/res
Enclosures

- c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Rachael L. Weeks, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Thomas M. Lenney, Esq., Respondent (e-mail and regular mail)