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September 27, 2023

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

Re: **In the Matter of Meryl M. Polcari**
Docket No. DRB 23-151
District Docket No. XIV-2021-0238E

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 to impose a reprimand for respondent's violation of RPC 1.15(a) (commingling); RPC 1.15(b) (failure to promptly deliver funds belonging to a client); and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

On December 9, 2020, the OAE conducted a random compliance audit of respondent's financial books and records. At the time, respondent maintained an attorney business account (ABA) and two attorney trust accounts: one at Valley National Bank (the VNB ATA) and one at New York Community Bank (the NYCB ATA).

The audit revealed numerous deficiencies associated with one or both of respondent's ATAs, including the presence of unidentified funds, inactive trust ledger balances, and outstanding checks, in violation of R. 1:21-6(c)(1)(B) and (d). In conjunction with these deficiencies, respondent admittedly had failed to timely disburse \$27,276.46 to her clients.

Moreover, in each ATA, respondent was holding more than \$250 in attorney funds for bank charges, in violation of RPC 1.15(a). Other deficiencies affecting one or both of her ATAs included failure to retain records for seven years and failure to maintain the following: a running cash balance in the checkbook; separate and fully descriptive ledger sheets for each trust client matter; a separate ledger sheet detailing attorney funds for bank charges; trust receipts and disbursements journals with fully descriptive entries; and a schedule of clients' ledger accounts, prepared and reconciled monthly with her ATA bank statement, in violation of R. 1:21-6(c)(1)(A), (B), (G) and (H).

The audit of respondent's ABA also revealed recordkeeping deficiencies. Specifically, her ABA was improperly designated; her ABA receipts and disbursements journals were not fully descriptive; and electronic check images were improperly formatted, in violation of R. 1:21-6(a)(2), (b), and (c)(1)(A), respectively.

By letter dated February 8, 2021, the OAE informed respondent of the above deficiencies. Further, the OAE emphasized that, in 2007, a random compliance audit had revealed four of the same deficiencies, including (among others) unidentified funds in her ATA and outstanding trust account checks.

In March 2021, respondent sent the inactive, unidentified funds (totaling \$5,619.63) in her NYCB ATA to the Superior Court Trust Fund (SCTF) for deposit. In her accompanying certification, she stated that, in 2005, she had stopped using her NYCB ATA; thereafter, she disbursed most of the funds from that account; and, during the 2007 random audit by the OAE, she was asked to deposit the remaining funds into the SCTF if she could not locate their sources. Although she then retained an accountant to assist with locating the sources, she still could not identify the funds that she finally submitted to the SCTF in 2021.

In addition to resolving the deficiencies associated with her NYCB ATA, respondent timely addressed the outstanding balances and unidentified funds in her VNB ATA. Specifically, in August 2021, respondent submitted to the SCTF a check for \$5,267.81, addressing inactive VNB ATA balances in five client matters. In March 2022, she submitted to the SCTF a check for \$497.67, addressing inactive VNB ATA balances in three other client matters. Her March 2022 submission to the SCTF also resolved the old outstanding checks.

Moreover, during the course of the OAE's investigation, respondent corrected all other identified deficiencies in her recordkeeping and brought her books and records into compliance with R. 1:21-6.

Based on the above facts, the parties stipulated that respondent commingled funds, failed to promptly deliver funds to entitled parties, and failed to comply with the recordkeeping requirements of R. 1:21-6.

Commingling ordinarily is met with an admonition, even in the presence of additional recordkeeping violations. See In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (the attorney commingled personal loan proceeds in the attorney trust account; however, the commingling did not impact client funds; recordkeeping violations also found), and In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney commingled personal and trust funds; recordkeeping violations also found; despite a trust account shortage of \$1,801.67, no client or escrow funds were invaded, because the attorney maintained more than \$10,000 of earned legal fees in his trust account).

Similarly, failure to promptly deliver funds to a client to whom the funds belong usually results in an admonition, even if accompanied by other infractions. See In the Matter of Brian Fowler, DRB 12-036 (April 27, 2012) (the attorney, after being retained to represent an estate, was to collect funds due on a note given to the estate; for three years, he collected the funds but failed to deposit at least nineteen checks and supply a required accounting; he also failed to reply to numerous inquiries from the client; although the attorney had two prior admonitions, the Board imposed an admonition due to mitigating factors), and In the Matters of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, the attorney failed to promptly notify his clients of his receipt of settlement funds and to promptly

disburse the funds to the clients; he also failed to communicate adequately with the clients; no prior discipline).

Moreover, recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. However, a reprimand may be imposed if the attorney has failed to correct recordkeeping deficiencies that were previously brought to the attorney's attention. See In the Matters of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (admonition for attorney who committed multiple recordkeeping violations, resulting in more than twenty dishonored checks; in mitigation, he corrected his recordkeeping errors and adopted measures to prevent future recordkeeping deficiencies), and 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 regarding his recordkeeping, although that interaction had not led to disciplinary charges).

In mitigation, respondent has no prior discipline in thirty-seven years at the bar; cooperated with the OAE's investigation; expressed remorse; rectified all deficiencies identified in the 2020 audit; and entered into a disciplinary stipulation, thereby accepting responsibility for her misconduct and conserving disciplinary resources. In aggravation, in 2007, the OAE addressed four of the same recordkeeping deficiencies with her. Thus, she had a heightened awareness of her obligations under R. 1.21-6. Of particular concern, she was still holding unidentified funds in her NYCB ATA in 2020, roughly thirteen years after the OAE alerted her to the need to address these funds.

On balance, weighing both aggravating and mitigating factors, the Board determined that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 30, 2023.
2. Stipulation of discipline by consent, dated June 30, 2023.
3. Affidavit of consent, dated June 26, 2023.

4. Ethics history, dated September 27, 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
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