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

TIMOTHY M. ELLIS
CHIEF COUNSEL
NICOLE M. ACCHIONE
FIRST ASSISTANT COUNSEL
BARRY R. PETERSEN, JR.
DEPUTY COUNSEL

SALIMA ELIZABETH BURKE
ASHLEY KOLATA-GUZIK
NICHOLAS LOGOTHETIS
ALISA H. THATCHER
ASSISTANT COUNSEL

AMY MELISSA YOUNG
ASSOCIATE COUNSEL

October 22, 2024

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

Re: **In the Matter of Dennis J. Barrett**
Docket No. DRB 24-196
District Docket No. XIV-2022-0392E

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 reprimand, with a condition, for respondent's violation of RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6) and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

According to the stipulation, respondent successfully completed a trust and business accounting course in September 2022. Two months later, in November 2020, the OAE received an overdraft notice from PNC Bank, indicating that respondent's ATA had been overdrawn. Although the OAE was, ultimately, satisfied that the overdraft resulted from a bank error, its review of

respondent's financial records, along with a subsequent demand audit, revealed numerous recordkeeping deficiencies. Specifically, the OAE determined that respondent had failed to (1) maintain fully descriptive attorney trust account (ATA) receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires; (2) maintain fully descriptive client ledger cards, as R. 1:21-6(c)(1)(B) requires; (3) maintain separate ledger card for attorney funds for bank charges, as R. 1:21-6(d) and 1:21-6(c)(1)(B) require; (4) conduct proper three-way ATA reconciliations, as R. 1:21-6(c)(1)(H) requires; and (5) maintain attorney business account receipts and disbursements journals, as R. 1:21-6(c)(1)(A) requires.

Further, respondent failed, over a prolonged period, to bring his financial records into compliance with the Rules, despite the OAE's extensive efforts. R. 1:21-6(i). Indeed, on no less than five occasions, the OAE informed respondent that his ATA monthly reconciliations remained deficient and provided him with the specific steps required to bring the reconciliations into compliance. Notwithstanding the OAE's repeated good faith efforts to accommodate respondent, he remained unable to reconcile his ATA records. As of the date of the disciplinary stipulation, respondent had not submitted the outstanding information required by the OAE as set forth in its September 23, 2023 e-mail communication, and had failed to bring his ATA reconciliations into compliance with the Rules.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Further, respondent admittedly violated RPC 8.1(b) by failing to fully cooperate with the OAE's investigation and to maintain proper ATA reconciliations. An attorney who fails to comply with the requirements of R. 1:21-6 in respect of maintenance, availability, and preservation, or fails to produce to respond completely to questions regarding such records "shall be deemed to be in violation RPC 1.15(d) and RPC 8.1(b)." Following its review of the record, the Board concluded that record clearly and convincingly establishes respondent's admitted violation of both Rules.

Generally, recordkeeping irregularities will be met with an admonition where, as here, they have not caused a negligent misappropriation of client funds. See In the Matter of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (following a demand audit, the OAE uncovered multiple recordkeeping deficiencies, including that the attorney (1) failed to properly

designate the trust account, (2) failed to maintain trust account ledger cards for bank charges, (3) allowed an inactive balance to remain in the trust account, and (4) failed to maintain business receipts or disbursements journals; the attorney's recordkeeping deficiencies resulted in more than twenty checks, issued to the Superior Court, being rejected for insufficient funds; the Board found that the attorney's recordkeeping failures were neglectful, but not purposeful; in imposing an admonition, the Board weighed the fact that the attorney corrected his recordkeeping errors, took remedial measures to decrease the likelihood of a future recordkeeping violation, had no prior discipline, and did not harm any client through his misconduct).

The quantum of discipline is enhanced, however, if the attorney fails to cooperate with an arm of the disciplinary system, such as the OAE, which uncovers recordkeeping improprieties in a trust account and requests additional documents, or if the attorney has failed to correct recordkeeping deficiencies that previously were brought to the attorney's attention. See, e.g., In re Sheller, 257 N.J. 495 (2024) (a random compliance audit of the attorney's financial records revealed recordkeeping deficiencies that the OAE also identified in a random audit eight years earlier; the second random audit revealed more than twenty deficiencies; the attorney also failed to cooperate with the OAE's investigation despite four specific prompts from the OAE, in mitigation, the attorney had no prior discipline and stipulated to his misconduct); In re Polcari, 255 N.J. 403 (2023) (reprimand for an attorney who had a heightened awareness of her obligations under R. 1:21-6, having previously been the subject of a random compliance audit; no prior discipline in thirty-seven years at the bar); In re Leven, 245 N.J. 491 (2021) (reprimand for an attorney who, following two random audits, repeatedly failed to comply with the OAE's request for his law firm's financial records; he also failed to comply with two Court Orders directing him to cooperate; the attorney, however, provided some of the required financial records; the Board found that a censure could have been appropriate for the attorney's persistent failure to address his recordkeeping deficiencies and his prolonged failure to cooperate with the OAE; however, the Board determined that a reprimand was the appropriate discipline based, in substantial part, on the attorney's lack of prior discipline in nearly forty-seven years at the bar); In re Abdallah, 241 N.J. 98 (2020) (the attorney failed to resolve his recordkeeping deficiencies, despite being advised of those deficiencies in a prior audit; no prior discipline in twenty-four years at the bar).

Applying the foregoing precedent, the Board concluded that respondent's continued failure to correct his recordkeeping deficiencies warranted at least a reprimand, particularly in view of his recent attendance at the OAE's trust and accounting course and his ongoing failure to bring his records into compliance with the Rules.

In mitigation, respondent admitted his wrongdoing and stipulated to his misconduct.

In aggravation, he has a prior reprimand.

On balance, consistent with disciplinary precedent, the Board determined that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar. Additionally, the Board determined that, as a condition, respondent be required to submit to the OAE, on a quarterly basis, copies of his monthly trust account reconciliations, for a period of two years.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 29, 2024.
2. Stipulation of discipline by consent, dated August 28, 2024.
3. Affidavit of consent, dated August 27, 2024.
4. Ethics history, dated October 22, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

- c: (w/o enclosures)
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
Leighann Reilly, Deputy Ethics Counsel
Office of Attorney Ethics (e-mail)
Dennis J. Barrett, Respondent (e-mail and regular mail)