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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 Henry F. Wolff, III**
Docket No. DRB 24-175
District Docket No. XIV-2022-0414E

Dear Ms. Baker:

The Disciplinary Review Board (the 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, with conditions, for respondent's violation of RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(b) (failing to promptly disburse funds to a client or third party), and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6). The Board further determined to dismiss the charged violation of RPC 1.8(a) (engaging in an improper business transaction with a client).

As set forth in the stipulation, respondent successfully completed a trust and business accounting course in September 2019. Nearly three years later, the

OAE conducted a random audit of his financial records, which revealed significant recordkeeping deficiencies and the invasion of client funds.

Specifically, respondent maintained at least ten inactive balances in his ATA, dating back as far as January 2018 and totaling \$5,848.03. By August 2024, when the stipulation was filed, respondent had disbursed seven of those ten balances and deposited funds for two others matters with the Superior Court Trust Fund. The remaining funds (\$2,695.73) pertained to a disputed real estate matter. Thus, by failing to promptly deliver funds belonging to a client or third person entitled to such funds, respondent violated RPC 1.15(b).

Further, for nearly four years, respondent repeatedly invaded client funds that he was required to hold, inviolate, in this attorney trust account (ATA). Specifically, respondent invaded the funds of eighty-five clients by maintaining a negative balance in his HFW Escrow account. Moreover, although he ultimately cured the deficits by depositing funds in his ATA, respondent also invaded the funds of 147 different clients in connection with the 18BVA, Burke to Williams, and Fuschetti/Piazza, matters; 41 clients in connection with the Morciglio matter; and 129 clients in connection with the Sterling/Morales matter. Respondent, thus, negligently invaded funds he was entrusted to hold, inviolate, in violation of RPC1.15(a).

Moreover, respondent admittedly violated RPC 1.15(d) by failing to (1) properly designate his ATA; (2) maintain proper check images; and (3) maintain fully descriptive client trust ledgers.

The OAE also asserted that respondent violated RPC 1.8(a) by entering into an improper business transaction with a client, noting he had agreed to loan money to a member of the Atlantic Coast Development Partners of Eatontown, LLC (an organization he represented), who was also his personal friend. However, respondent represented the organization, and not his friend, to whom he loaned the money. Thus, in the absence of an attorney-client relationship, respondent was not obligated to comply with the safeguards delineated in RPC 1.8(a) prior to entering into a loan transition with his friend. Additionally, there was no evidence of a significant risk that respondent's representation of Atlantic Coast would be materially limited by respondent's personal interest in the loan he made to his friend.

Generally, a reprimand is the appropriate discipline for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Sherer, 250 N.J. 151 (2022) (as a consequence of poor recordkeeping, the attorney negligently invaded \$3,366 in client and third-party funds; additionally, for a two-week period, the attorney commingled \$8,747 in personal funds in his ATA; the attorney also failed to comply with the OAE's demand audit requirements and failed to reimburse the parties impacted by his negligent misappropriation; in mitigation, the attorney had no prior discipline in a thirty-six-year legal career and was no longer practicing law); In re Steinmetz, 251 N.J. 216 (2022) (the attorney committed numerous recordkeeping violations, negligently misappropriated more than \$60,000, and commingled personal funds in his ATA; the attorney failed to correct his records; in mitigation, the attorney had no prior discipline in sixteen years at the bar, hired an accountant to assist with his records, and no clients were harmed by his misconduct); In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices caused more than twenty deficiencies, including a negligent invasion of, and failure to safeguard, funds owed to clients and others in connection with real estate transactions, in violation of RPC 1.15(a); his inability to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b) (failing to cooperate with disciplinary authorities); in mitigation, the attorney had no prior discipline and stipulated to his misconduct).

Attorneys who fail to promptly deliver funds to clients or third persons, even when accompanied by other ethics violations, ordinarily receive an admonition or a reprimand, depending on the circumstances. See In the Matter of George W. Pressler, DRB 19-423 (March 20, 2020) (admonition for an attorney who, in an estate matter, deducted his entire legal fee and the administrator's fee from a non-client beneficiary's share of the estate without the non-client beneficiary's authorization; in addition, he failed to disburse any funds to the non-client beneficiary for more than twenty months, in violation of RPC 1.15(b); attorney had no prior final discipline), and In re Dorian, 176 N.J. 124 (2003) (reprimand for an attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; prior admonition).

Based on the foregoing disciplinary precedent, the Board determined that the baseline discipline for respondent's misconduct is a reprimand. In crafting

the appropriate discipline, however, the Board also considered aggravating and mitigating factors.

In aggravation, respondent had a heightened awareness of his recordkeeping obligations based on his successful completion, in 2019, of a trust and business accounting course.

In mitigation, respondent has no formal discipline in his fifty-one-year career at the bar. In re Convery, 166 N.J. 298, 308 (2001). Further, he cooperated fully with the OAE's investigation, admitted his wrongdoing, and stipulated to his misconduct.

On balance, the Board determined that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, as conditions, the Board recommends that respondent be required to submit to the OAE, within thirty days of the Court's disciplinary Order in this matter (1) all outstanding, previously requested financial records, (2) proof that he has resolved the title issue in the DeVito matter and disbursed the remaining \$2,695.73 to the buyer, or that a legitimate dispute remains ongoing, and (3) proof that he disbursed funds in the Farese to Farese and Rosenthal and Niles to Manton matters, deposited those funds with the Superior Court Trust Fund, or maintained active balances.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated July 24, 2024.
2. Stipulation of discipline by consent, dated August 5, 2024
3. Affidavit of consent, dated July 22, 2024.
4. Ethics history, dated October 22, 2024.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg

- c: (w/out enclosures)
- Hon. Mary Catherine, A.J.S.C. (Ret.), Chair
 - Disciplinary Review Board (e-mail)
 - Johanna Barba Jones, Director
 - Office of Attorney Ethics (e-mail and interoffice mail)
 - Saleel V. Sabnis, Deputy Ethics Counsel
 - Office of Attorney Ethics (e-mail)
 - Ryan Moriarty, Statewide Ethics Coordinator
 - Office of Attorney Ethics (e-mail)
 - Anthony C. Gunst, Counsel for Respondent (via e-mail and regular mail)