

# DISCIPLINARY REVIEW BOARD

OF THE

## SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ., CHAIR  
EDNA Y. BAUGH, ESQ., VICE-CHAIR  
BRUCE W. CLARK, ESQ.  
HON. MAURICE J. GALLIPOLI  
THOMAS J. HOBERMAN  
EILEEN RIVERA  
ANNE C. SINGER, ESQ.  
MORRIS YAMNER, ESQ.  
ROBERT C. ZMIRICH



RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 292-1011

ELLEN A. BRODSKY  
CHIEF COUNSEL  
ISABEL FRANK  
DEPUTY CHIEF COUNSEL  
LILLIAN LEWIN  
BARRY R. PETERSEN JR.  
COLIN T. TAMS  
KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

September 22, 2014

Charles Centinaro, Director  
Office of Attorney Ethics  
P.O. Box 963  
Trenton, New Jersey 08625

Re: In the Matter of Barry J. Beran  
Docket No. DRB 14-208  
District Docket No. XIV-2012-0585E

Dear Mr. Centinaro:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem appropriate), filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-10(b).<sup>1</sup> Following a review of the motion, the Board determined to deny it. The underlying matter involved respondent's representation of an estate and the

---

<sup>1</sup> This matter was previously before the Board, also on a motion for discipline by consent. On May 17, 2011, the Board imposed a censure for respondent's admitted violations of RPC 1.15(a) and RPC 1.15(d), but did not find sufficient evidence of violations of RPC 1.8(e) and RPC 1.15(b). After the Court, on its own motion, ordered respondent and the OAE to show cause as to why it should accept the discipline by consent, the OAE moved to withdraw the motion. The Court granted the motion and remanded the matter to the OAE for further proceedings.

September 22, 2014

Page 2 of 3

prosecution and settlement of a wrongful death case on behalf of the estate.

The Board found that, in some instances, the stipulated facts did not support the stipulated violations and, in other instances, the language in the stipulation did not amount to stipulated facts. Specifically, in many respects, the stipulation recited only respondent's representations to the OAE or to the Court. It, therefore, did not constitute statements of stipulated facts. For example, the stipulation provided: "[r]espondent also stated that" over the course of many years he advanced funds; "[r]espondent represented to the OAE and the Supreme Court" that while the case was pending he borrowed \$15,000 against the cause of action from a funding company; "[r]espondent represented to OAE and to the Court" that he settled the case for \$15,000; and "[r]espondent advised the OAE" that he had distributed the \$15,000 to the executrix. This type of terminology did not establish a meeting of the minds between the parties. The stipulation should not have been couched in terms of respondent's representations and implications.

Also, as to the RPC 1.15(a) charge, the stipulation did not explain how respondent failed to safeguard the settlement funds. Moreover, the stipulation cited and appended respondent's brief and certification to the Court in connection with the Court's review of the prior discipline by consent. In the appended documents, respondent admitted that he negligently misappropriated funds. This stipulation did not make clear whether respondent stipulated to a negligent misappropriation of the settlement funds, and if so, the approximate amount and the reason for the negligent misappropriation. The stipulation also should have resolved whether respondent paid \$12,500 to both beneficiaries of the estate, and if so, whether the payment or payments were made from respondent's personal funds, from the settlement, or from a funding company.

As to the RPC 1.15(b) violation, the stipulation did not reveal how long it took respondent to disburse all of the settlement funds.

Finally, as to the RPC 1.8(e) charge, while the stipulation provided that respondent advanced funds to personal injury clients while he was representing them, it did not clarify whether the advanced funds were respondent's personal funds,

September 22, 2014


Page 3 of 3

funds obtained from a funding company, or funds from other sources.

The Board was fully cognizant of the proof problems in this case. However, because of the equivocal terminology in the stipulation, the Board could not find by clear and convincing evidence that respondent committed all of the stipulated rule violations. The Board, thus, determined to deny the motion and to remand the matter for the filing of either a complaint or a disciplinary stipulation that resolves the above issues. Either approach will permit the Board to impose the discipline, as well as any conditions on respondent's practice, that it deems appropriate.

The Board did not retain jurisdiction.

Very truly yours,

  
Ellen A. Brodsky  
Chief Counsel

EAB/sl

c: Bonnie C. Frost, Chair  
Disciplinary Review Board  
Timothy J. McNamara, Assistant Ethics Counsel  
Office of Attorney Ethics  
David H. Dugan, III, Esq.  
Respondent's Counsel