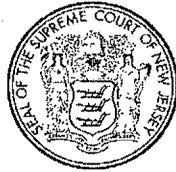


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OF THE

SUPREME COURT OF NEW JERSEY

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

ELLEN A. BRODSKY  
CHIEF COUNSEL

PAULA T. GRANUZZO  
DEPUTY CHIEF COUNSEL

MELISSA URBAN  
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS

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COLIN T. TAMS

KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

November 25, 2015

Mark Neary, Clerk  
Supreme Court of New Jersey  
Post Office Box 970  
Trenton, New Jersey 08625

Re: In the Matter of Neil I. Sternstein  
Docket No. DRB 15-301  
District Docket No. XIV-2014-0193E  
**Motion for Discipline by Consent**

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion and to impose an admonition on respondent for his failure to safeguard funds (RPC 1.15(a)) and his failure to notify his clients of the receipt of funds, which they were entitled to receive (RPC 1.15(b)).

Specifically, on March 3, 2005, Frank and Carol Mongiello retained respondent to represent them in a lawsuit against Elwood Yowler, Timothy Yowler, and Exterior Metal Systems, Inc. (collectively, Yowler) for damage to the Mongiellos' residence caused by work performed by Yowler. Respondent filed suit five days later. On June 19, 2007, more than two years after suit had been filed, respondent submitted a letter of representation to Farm Family Casualty Insurance Company (Farm Family), which proceeded to investigate the Mongiellos' claim, under a reservation of rights.

On May 29, 2009, Elwood Yowler filed a bankruptcy petition. Two months later, respondent filed an adversary complaint, in that proceeding, against Yowler on the Mongiellos' behalf. From June to October 2011, the bankruptcy court issued five checks to the Mongiellos, totaling \$2,378.08, which represented payment of their claim against Yowler. The checks were sent to respondent, who did not inform the Mongiellos that he had received them. Further, respondent did not deposit the funds into his attorney trust account. Rather, he placed the checks in his desk "to accumulate enough to pay his cost of the litigation," at which time he would obtain the Mongiellos' endorsement on them.

Due to respondent's failure to negotiate the checks, the bankruptcy court cancelled all of them and, on June 13, 2012, issued a \$2,208.75 check to the Clerk of the Court, representing the undistributed balance of the funds due to the Mongiellos.<sup>1</sup>

At some point, Mr. Mongiello contacted respondent to inquire about the unclaimed funds. Respondent admitted that he had received the monies but did not "process" the checks, which would require the filing of "a few papers." When Mongiello tried to follow-up with respondent about the funds, respondent refused to discuss the matter with him.

Mongiello sought advice from attorney Joan Adams concerning the bankruptcy court matter and the Farm Family claim. In letters dated April 4 and 7, 2014, Adams asked respondent whether he had filed the papers with the bankruptcy court and requested an accounting of the funds that he had received on the Mongiellos' behalf. Respondent ignored her inquiries, but, on April 16, 2014, filed a motion with the bankruptcy court seeking the withdrawal of the \$2,208.75 in unclaimed funds and their disbursement to the Mongiellos.

At some point, respondent received the funds from the bankruptcy court. On August 1, 2014, he sent the \$2,208.75 check to the Mongiellos and asked them to endorse and return it to him so that he could deposit it and disburse the funds to them. On August 27, 2014, respondent sent the Mongiellos an accounting of the costs

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<sup>1</sup> The stipulation does not explain the \$169.33 difference between the \$2,378.08 in checks not cashed and the \$2,208.75 single check issued in June 2012.

incurred in the Yowler matter, which totaled \$1,718.52. By October 2, 2014, respondent had disbursed to the Mongiellos their share of the bankruptcy court payment.

With respect to the Farm Family claim, as of October 30, 2014, Farm Family had made no indemnity payments and, therefore, the Mongiellos' claim remained open.

The parties stipulated that respondent violated RPC 1.4(b) and RPC 1.15(b) when he failed to inform the Mongiellos that he had received the five checks from the bankruptcy court. The parties also stipulated that respondent violated RPC 1.3 and RPC 1.15(a) when he failed to deposit the checks into the trust account, choosing instead to set them aside "to accumulate." Finally, the parties stipulated that respondent violated RPC 1.4(b) when he ignored Adams' letters. In aggravation, the stipulation cited respondent's three-month suspension in 1995 and his two-year suspension in 1998.

The Board found that, by setting aside the checks from the bankruptcy court, instead of depositing them into his attorney trust account, respondent violated RPC 1.15(a), which requires an attorney to safeguard client funds within the attorney's possession. In re Hasbrouck, 185 N.J. 72 (2006) (attorney violated RPC 1.15(a) after he took possession of a \$600,000 cashier's check, which was to be divided between the parties to a divorce proceeding, and placed it under his desk blotter, where it remained for eight months "undeposited and exposed to a risk of being stolen").

The Board rejected the stipulated violations of RPC 1.3 and RPC 1.4(b) but upheld the RPC 1.15(b) violation. In the Board's view, respondent's lack of communication and his dilatory conduct in tendering the funds to his clients are more appropriately governed by RPC 1.15(b). That rule specifically requires an attorney promptly to notify the client of the receipt of funds in which the client holds an interest and, further, to "promptly deliver" to the client those funds which the client is entitled to receive, thus rendering RPC 1.3 and RPC 1.4(b) superfluous.

Because this disciplinary case involved a single client matter and only a small sum of money, the Board determined that an admonition was sufficient discipline for respondent's conduct. See, e.g., In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and

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DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney failed to notify his clients of his receipt of settlement funds promptly and to disburse promptly their share of the funds; failure to communicate with clients also found). Although respondent has two prior suspensions, the Board did not enhance the discipline because those matters were remote in time (seventeen and twenty years ago) and involved conduct unrelated to the conduct at issue in this case.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 17, 2015;
2. Stipulation of discipline by consent, dated August 14, 2015;
3. Affidavit of consent, dated August 10, 2015;
4. Ethics history, dated November 25, 2015.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EAB/lg

Enclosures

c: (w/o encls.)

Bonnie C. Frost, Chair

Disciplinary Review Board

Charles Centinaro, Director

Office of Attorney Ethics

Isabel McGinty, Statewide Ethics Coordinator

Office of Attorney Ethics

Christina Blunda Kennedy, Deputy Ethics Counsel

Office of Attorney Ethics

Neil I. Sternstein, Esq.