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February 25, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Barry J. Beran
Docket No. DRB 15-360
District Docket No. XIV-2014-0510E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) 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. In the Board's view, a censure is the appropriate discipline for respondent's violations of RPC 1.8(e) (providing financial assistance to clients in connection with pending or contemplated litigation), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly disburse funds), and RPC 1.15(d) (recordkeeping violations).

This matter was previously before the Board on a motion for discipline by consent. On May 17, 2011, the Board voted to impose a censure for respondent's violations of RPC 1.15(a) and RPC 1.15(d). The Board did not find sufficient support in the record for respondent's admitted violations of RPC 1.8(e) and RPC 1.15(b). Thereafter, the Court, on its own motion, ordered

respondent and the OAE to show cause as to why the Court should accept the discipline by consent. On November 2, 2012, the Court granted the OAE's motion to withdraw the consent motion and remanded it to the OAE for further proceedings.

On its review of this motion, the Board considered that respondent was unable to locate needed records; that some of the witnesses had provided inconsistent statements, thereby creating issues of credibility; and that one of the key witnesses could no longer be located. In addition, and specifically recited in the stipulation that the parties executed, although the OAE was aware that respondent's handling of the case was highly suspect and that he may have knowingly misappropriated client funds, it could not prove, by clear and convincing evidence, that he did so. In the context of these proof problems, the Board determined to grant the OAE's motion.

Specifically, respondent admitted to advancing personal funds totaling \$18,848.53 to three clients in connection with their pending or contemplated litigations, thereby violating RPC 1.8(e).

In addition, respondent had been retained by Blair Cherry, the widow of Lawrence Webb,¹ to represent Webb's estate and to prosecute a wrongful death case on the estates's behalf. In February 2003, the accident case settled for \$115,000.

During the pendency of the lawsuit, respondent advanced funds to Cherry and to Webb's heirs, Lamar Cherry and Nevaro Young. Respondent had also made payments to Nevaro Young's and Lamar Cherry's creditors. As a result of respondent's deficient records, he was unable to substantiate the total amount of advances he had made against the proceeds of the lawsuit. He, thus, admitted that, because he had failed to maintain adequate records of the advanced funds, he negligently misappropriated a portion of them by failing to distribute the correct amount to Webb's heirs, a violation of RPC 1.15(a).

Respondent's failure to maintain proper records also caused a delay in the disbursement of the settlement proceeds. Rather than disburse the settlement funds all at once, he distributed them over a five-month period, thereby violating RPC 1.15(b).

¹Webb had also been respondent's client.

Respondent also admitted that he did not maintain individual ledger cards for each client, client ledger cards were not fully descriptive, there were inactive balances left in his trust account, he did not properly conduct monthly trust account reconciliations, and he wrote checks against uncollected funds, all in violation of RPC 1.15(d).

Typically, advancing funds to only one client, without more, results in an admonition. See, e.g., In the Matter of James LaSala, DRB 93-119 (May 5, 1993) (attorney loaned \$3,000 to a client in a personal injury matter). Reprimands have been imposed when the attorney advanced funds to more than one client on multiple occasions, violated other RPCs, had a disciplinary history, or defaulted in the matter. See, e.g., In re Tutt, 170 N.J. 63 (2001) (in a default matter, the attorney advanced funds to a client and failed to cooperate with disciplinary authorities); In re Rinaldo, 165 N.J. 579 (2000) (attorney advanced funds to a client and acquired a proprietary interest in the litigation; ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re Rubin, 153 N.J. 354 (1998) (attorney advanced funds to ten clients whom he believed were very needy at the time; he stopped making the loans after the OAE informed him that they were prohibited; and he failed to comply with recordkeeping requirements; ethics history included two prior private reprimands); and In re Powell, 142 N.J. 426 (1995) (attorney advanced personal funds to clients in eight personal injury matters; violated the recordkeeping rules; and negligently misappropriated more than \$45,000).

While respondent's conduct is somewhat analogous to Powell's, the Board determined that respondent's disciplinary history (an admonition and a reprimand), warrants the imposition of discipline greater than that imposed in In re Powell. The Board, thus, determined that a censure was warranted.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated, October 16, 2015.
2. Stipulation of discipline by consent, dated October 15, 2015.
3. Affidavit of consent, dated October 12, 2015.

February 26, 2016

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4. Ethics history, dated February 25, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

/tk

Encls.

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