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February 26, 2016

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

Re: In the Matter of Robert B. Prignoli
Docket No. DRB 15-358
District Docket No. XIV-2015-0100E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), and RPC 1.15(b) (failure to promptly deliver to the client or third person any funds that the client or third person is entitled to receive).

Specifically, respondent represented three buyers in the purchase of residential real estate located in New York and owned by Mary Abernethy.¹ A title search conducted by Icon Abstract Solutions, Inc. (Icon), of which respondent was a co-owner, revealed three "ancient" mortgages. Thus, the parties to the transaction agreed that Icon would hold \$33,000 in escrow

¹ The name also appears as Abernathy in the record.

from Abernethy's sale proceeds until the mortgages were discharged and title cleared. New York had in place a statutory framework to discharge such "ancient" mortgages of record. Abernethy, who later died, and her son retained respondent to clear title on the property. During the course of his representation for that purpose, respondent lacked diligence, causing the unopposed quiet title action to unnecessarily span over two years, in violation of RPC 1.3. During that time period, he refused to respond to reasonable questions posed on behalf of Abernethy's estate by her children (one of whom was her executor) and the estate's attorney, in violation of RPC 1.4(b). Moreover, respondent took the position with the estate's new attorney that he "had never held any escrow monies on behalf of Mary," ignoring his principal ownership and fiduciary duties in respect of Icon. Additionally, he attempted to demand payment of an additional \$500 in legal fees for his "continued cooperation" - presumably the necessary instruction to Icon to disburse Abernethy's escrow funds. Respondent's unjustified delay violated RPC 1.15(b).

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See In the Matter of Stephanie A. Hand, DRB 14-291 (January 20, 2015) (for a nine-month period, the attorney failed to communicate with her client about the status of his case, including the non-appealable nature of the arbitrator's decision; the attorney also allowed the client to continue to believe that she would complete and file a complaint on his behalf; violations of RPC 1.4(b); the attorney also failed to perform any other work to advance the client's potential claims, a violation of RPC 1.3; we took into account that the attorney's inaction was largely the result of her inexperience in both litigation and the areas of law implicated in this matter; prior admonition for violations of RPC 1.3 and RPC 8.4(d)). The presence of a disciplinary record or other aggravating factors may serve to enhance the admonition to a reprimand. See In re Shapiro, 220 N.J. 216 (2015) (reprimand for attorney who, after filing a motion in a matrimonial matter and receiving a cross-motion from his adversary, failed to file an opposition to the cross-motion, a violation of RPC 1.3; the attorney also violated RPC 1.4(b) when he failed to inform the client about important aspects of the representation, including the cross-motion, despite the client's attempts to obtain information about his matter; prior admonition for failure to return a client file or

February 26, 2016

Page 3 of 4

to recommend to his superiors that the file be turned over to the client, and prior reprimand for gross neglect, lack of diligence, failure to communicate with the client, and failure to set forth, in writing, the rate or basis of his legal fee).

In isolation, cases involving an attorney's failure to promptly deliver funds to clients or third parties usually result in the imposition of an admonition or reprimand, depending on the circumstances. See, e.g., In the Matter of Jeffrey S. Lender, DRB 11-368 (January 30, 2012) (admonition; in a "South Jersey" style real estate closing in which both parties opted not to be represented by a personal attorney in the transaction, the attorney inadvertently over-disbursed a real estate commission to MLSDirect, neglecting to deduct from his payment an \$18,500 deposit for the transaction; he then failed to rectify the error for more than five months after the over-disbursement was brought to his attention; violations of RPC 1.3 and RPC 1.15(b); we considered that the attorney had no prior discipline); In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition imposed on attorney who, in three personal injury matters, did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to communicate with the clients; we considered that the attorney had no prior discipline); and In re Dorian, 176 N.J. 124 (2003) (reprimand imposed on attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously was admonished for gross neglect, failure to communicate, failure to withdraw, and failure to cooperate with disciplinary authorities, and previously reprimanded for gross neglect, lack of diligence, and failure to communicate).

Here, in our view, respondent's misconduct renders an admonition insufficient. We considered, in aggravation, respondent's unprofessional behavior after Abernethy's children threatened disciplinary action and/or litigation. Moreover, respondent stipulated that his prior diversion for conduct related to his handling of trust funds (negligent misappropriation) and for practicing while ineligible constituted an aggravating factor. We agree that it should be considered as such.

February 26, 2016

Page 4 of 4

We reject the suggestion of mitigation set forth in the stipulation – that respondent returned to Abernethy's heirs all monies due them. Respondent's return of Abernethy's escrow funds was his duty, as both the attorney to her estate and a fiduciary of the title company. Thus, under the totality of the circumstances, a reprimand is warranted.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated August 27, 2015.
2. Stipulation of discipline by consent, dated October 15, 2015.
3. Affidavit of consent, dated October 1, 2015.
4. Ethics history, dated February 26, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Encls.

c: Bonnie C. Frost, Chair, Disciplinary Review Board
Charles Centinaro, Director, Office of Attorney Ethics
E. Carr Cornog, III, Respondent's Counsel