SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-278
District Docket No. VI-2009-006E

IN THE MATTER OF	
ROBERT JOSEPH JENEY, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2011

Decided: December 1, 2011

Richard W. Mackiewicz, Jr. appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was originally before us on a recommendation for an admonition, which we determined to treat as a recommendation for discipline greater than an admonition. R. 1:20-15(f)(4). The District VI Ethics Committee's (DEC)

recommendation for an admonition was based on respondent's failure to safeguard, in his trust account, the proceeds from the sale of his client's marital home, a violation of RPC 1.15(a). For the reasons set forth below, we determine to impose a reprimand on respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1984. He has no disciplinary record. He maintains an office for the practice of law in Scotch Plains.

The underlying matter involved a bitter divorce action between Karen and Jeffrey Licato. Respondent represented Jeffrey. Edward R. Weinstein represented Karen.

In this disciplinary proceeding, the DEC presided over a one-day hearing, on October 22, 2010, where it received testimony from Karen, Weinstein, respondent, and attorney Kenneth C. Eckles, who represented Jeffrey in the sale of the parties' marital home.

On October 15, 2007, the parties were granted a judgment of divorce from bed and board, which incorporated a property settlement agreement (the PSA). Under the terms of the PSA, a number of payments were to be made from the proceeds of the sale of the marital home. From Jeffrey's share of the net proceeds, he was to pay the following:

- The balance of a Mercury Mountaineer car loan.
- $8000 to Weinstein & Weinstein, representing a portion of Karen's legal fees.
- $2890 to Karen, representing one-half of the balance in Jeffrey's Crown Bank account.
- $3,558.66 to Karen, representing unspecified arrears.

[Ex.C-21A.¶1.7;Ex.C-21A¶1.16;Ex.C-21A¶9.24.] [1]

The PSA expressly stated: "The parties shall equally divide the proceeds of sale after the payments set forth in paragraph 1.7 are made." This paragraph required the pay-off of the Mountaineer car loan and the payment of $8000 to the Weinstein firm. The PSA, however, did not require that the proceeds from the sale of the home be placed in escrow, pending these disbursements.

On Friday, November 16, 2007, the parties were scheduled to close on the sale of the marital home. Their matrimonial attorneys did not represent them in the real estate transaction.

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[1] "Ex.C-21A" refers to the October 15, 2007 final judgment of divorce from bed and board.

As stated previously, Eckles represented Jeffrey. Karen was represented by Evan N. Pickus.

Karen testified that, when she spoke to Weinstein, prior to the closing, and learned that he would be on vacation on that date, she expressed concern over what would happen to the proceeds. Weinstein testified that he, too, wanted to make sure that there would be "no trouble," given Jeffrey's "bad behavior" throughout the divorce litigation.[2] According to Karen, Weinstein assured her that the money would be held in escrow by the divorce attorneys and that no funds could be released without the consent of both attorneys.

Weinstein described what he did on November 14, 2007, two days before the closing, to ensure the preservation of the proceeds from the sale of the parties' home:

> One of the first things I did that day was to reach out to Mr. Jeney, who at that juncture, he and I had a fine working relationship. I wanted to confirm there

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[2] Throughout the matrimonial litigation, Jeffrey, who was represented by respondent, sent Weinstein sarcastic and at times offensive emails. On at least one occasion, he referred to Weinstein as "the Jew." Even respondent remarked that his former client was a "difficult" and "[v]ery hostile individual."

> wasn't gonna' be any trouble while I was away, and knowing how Mr. Licato had behaved throughout the litigation, I remember I specifically said my client would prefer that I held [sic] all the money, however, just to make life easy, because I anticipated that Mr. Jeney would have trouble with his client agreeing to that, and my client was nervous about Mr. Jeney's office holding the money, I said I'll tell you what, I'll make it easy, let's do 50/50. Mr. Jeney very clearly said you got it, no problem, done, and then I wrote a letter memorializing same.
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> [T29-7 to 22][3]

The letter, dated November 14, 2007, was addressed to the real estate attorneys, with a copy to respondent. Among other things, Weinstein wrote that the net proceeds from the sale of the property were to be "held in escrow," with one-half of the monies payable to Weinstein's trust account and the other half payable to respondent's trust account. The letter also stated: "I have the consent of Mr. Jeney with respect to said escrow so that the Seller's [sic] may resolve any and all credits as memorialized in the parties [sic] divorce decree, without causing any delay to said closing."

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[3] "T" refers to the transcript of the October 22, 2010 DEC hearing.

Respondent's copy of the letter was faxed to him. A fax machine confirmation notice was produced at the DEC hearing. Weinstein heard nothing from respondent in response to this letter.

Nothwithstanding Weinstein's belief that respondent had consented to escrowing the proceeds from the sale of the home, on November 14, 2007, Jeffrey sent an email to Weinstein, informing him that Eckles would be "doing the closing and holding . . . all money with regards to the closing." Weinstein testified that he forwarded the email to respondent, writing, in part: "Of course, you and I agreed to ½ escrow in each of our respective trust accounts." According to Weinstein, respondent did not reply to this email and did not tell Weinstein that Weinstein's understanding about the escrow was incorrect.

In respondent's answer to the formal ethics complaint, he denied that he had had consented to escrowing the funds. To the contrary, he asserted, he had told Weinstein that Jeffrey would have to consent to the escrow and had expressed doubt to him that consent would be given. As it turned out, Jeffrey "strenuously objected to the monies being held in escrow."

Weinstein denied emphatically that respondent had told him that he would first have to obtain the consent of his client,

before the funds could be escrowed. On cross-examination, Weinstein testified: "You told me, deal."

On November 16, 2007, the closing date, a concerned Weinstein wrote the following letter to Eckles:

> As you are aware, the undersigned represents Karen Licato in connection with her divorce litigation. The purpose of this correspondence is to confirm that your office shall hold in escrow, in your Attorney Trust Account, one-half of the net proceeds in connection with the sale of the aforementioned property. The other 50% of said escrow shall be made payable to Weinstein & Weinstein Attorney Trust Account, and said check shall be immediately sent to my office. If this is not the case, then the closing shall have to be postponed until I return from my vacation on Monday, November 26, 2007. Kindly confirm, in writing, that this is your understanding as well.
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> [Ex.C-3.][4]

After the words "understanding as well," Eckles inserted the following, by hand:

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[4] "Ex.C-3" refers to the November 16, 2007 letter from Weinstein to Eckles.

> No monies shall be released by either party to atty. without the express written consent of both matrimonial attys. or court order.
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> [Ex.C-3.]

Underneath these words, Eckles also wrote: "Reviewed and approved this 16th day of Nov., 2007." Jeffrey's signature was inscribed on the signature line.

Respondent was copied on this letter, which was transmitted to his office via fax. He claimed, however, that he did not actually see the letter until Weinstein sent another copy of it to him, on December 13, 2007. Until then, respondent claimed to have no idea that Jeffrey had agreed to having the proceeds escrowed.

Moreover, respondent stated, the copy of the letter that he had received in November did not have Eckles's handwriting on it. He explained that he ignored the letter because he was not involved in the real estate transaction.

Eckles's testimony directly contradicted respondent's claim that he did not know that Jeffrey had agreed to escrow the funds. Eckles identified the following entry, in his time records for November 16, 2007: "telephone from/to Bob Jeney, Esquire/matrimonial attorney regarding net proceeds, etc." He

explained that "from/to" meant that respondent had called Eckles and that he had called respondent back.

It was Eckles's recollection that, after he had inserted the handwritten language into Weinstein's November 16, 2007 letter, which Jeffrey then signed, he faxed a copy of the marked-up letter to respondent. Eckles produced a fax machine confirmation notice, at the DEC hearing.

Moreover, Eckles's testimony contradicted respondent's claim that he did not agree to hold the funds in escrow. Eckles testified that, during the November 16, 2007 telephone call, he and respondent discussed how the net proceeds were to be handled. Based on their conversation, it was Eckles's belief that respondent understood that the net proceeds from the sale of the marital home were to be placed in escrow. In addition, respondent would receive the net proceeds from the sale and hold them in his trust account. Indeed, Eckles wanted nothing to do with the funds, given the contentiousness of the parties' divorce. Eckles could not specifically recall the actual conversation with respondent, but he vouched for the accuracy of his notes.

On November 21, 2007, the buyers' attorney, Ellen Radin, wrote to the real estate attorneys, to Weinstein, and to

respondent. Consistent with Weinstein's and Eckles's testimony, she had enclosed a $41,654.44 check, with Weinstein's copy, made payable to his firm's trust account. With respondent's copy, she enclosed a $41,644.44 check, made payable to his trust account. When the check from Radin came into respondent's office, he instructed his staff to deposit it into the trust account.

Weinstein testified that, after he received Radin's letter, he made "numerous" calls to respondent, but none of them were returned. On November 26, 2007, Weinstein wrote to respondent and Eckles, enclosed a copy of the November 14, 2007 email from Jeffrey, stating that Eckles would be holding the proceeds from the sale of the home, and asked which of them would be disbursing the proceeds. He received no reply.

On December 3, 2007, Weinstein wrote to respondent, complaining that respondent had not replied to his emails and letters. Among other things, Weinstein demanded that respondent confirm that the $41,000 had been deposited into his trust account. The letter also demanded that certain disbursements be made immediately and threatened the filing of an order to show cause, if he did not hear from respondent.

On that same date, respondent sent an email to Weinstein, confirming that the monies were in his trust account. Two days later, respondent replied to Weinstein's December 3, 2007 letter and, among other things, provided him with a list of disbursements that he had made from the escrowed funds. The disbursements included the pay-off of the Mountaineer car loan and the payment of $2890 to Crown Bank, which were required to be paid under the terms of the PSA. Respondent did not disburse $8000 to the Weinstein firm, as required by the PSA and requested by Weinstein in his December 3, 2007 letter.

Weinstein testified that his December 3, 2007 letter, demanding that certain disbursements be made from the funds held in respondent's trust account, was merely intended to convey his client's position with respect to disbursement of the escrowed funds. He did not intend for respondent to send out the checks, absent written consent of the parties. "Hindsight's 20/20," he added. He insisted that "all the other evidence is clear that no way would I ever say okay, well, then let's ignore the escrow agreement."

On December 7, 2007, Weinstein wrote to respondent and warned that, unless he received, on that day, written confirmation that respondent had not released the remaining

escrowed funds to Jeffrey, he would file an order to show cause on Monday, December 10, 2007. Respondent stood silent.

On December 12, 2007, Jeffrey sent an email to Weinstein, informing him that he was no longer represented by counsel in the divorce matter. On that same day, Weinstein was copied on a letter from respondent to the Superior Court Clerk's Office, transmitting for filing a substitution of attorney in the divorce litigation. The document stated: "The undersigned hereby consents to the substitution of Jeffrey Licato, pro se."

Respondent testified that Jeffrey terminated his representation on December 12, 2007, but instructed him to keep the monies in escrow. Because respondent believed that he had not entered into any escrow agreement, he gave the $10,375.11 remaining in the trust account to Jeffrey.

The next day, December 13, 2007, Weinstein wrote a letter to respondent, complaining of his unilateral disbursement of funds from the trust account, without first seeking Weinstein's consent. At that time, Weinstein had not yet received the substitution of attorney. Weinstein also demanded that respondent advise him as to whether he had released the balance of the trust account funds to Jeffrey.

On December 14, 2007, respondent sent an email to Jeffrey, stating: "As we discussed yesterday, the trust check I gave to you should be deposited into a separate account until all matters are concluded between you and Mr. Weinstein." On that same date, Jeffrey sent an email to Weinstein, stating, in part: "I [h]old all proceeds from the house as I have NO LAWYER."

As to the disbursements, respondent testified that, because he was not a party to any escrow agreement, he took direction from Jeffrey as to which disbursements to make because it was Jeffrey's money. Respondent stated: "I never entered into any escrow agreement. [Jeffrey] did. I didn't. He didn't bother to tell me that. If he told me that, the money would have stayed in my trust account." Respondent denied that he had given the monies to Jeffrey because he was afraid of him.

Respondent acknowledged that the PSA required the payment of $8000 to the Weinstein firm out of Jeffrey's share of the net proceeds from the sale of the house. However, he claimed, Jeffrey had expressly instructed him not to disburse any funds to Weinstein. Concerned that the money should be segregated because Jeffrey owed money to Weinstein, he told Jeffrey to put the monies into a separate account.

On December 18, 2007, Weinstein obtained an order to show cause, requiring the $10,375.11 disbursed to Jeffrey be returned to respondent's trust account immediately, where they were to remain "pending the resolution of this matter." The order also provided for an accounting of all disbursements made from respondent's trust account.

On December 26, 2007, respondent's then associate, Sarah O'Connor, wrote to Weinstein and provided him with an accounting of the funds disbursed from respondent's trust account, prior to the entry of the order to show cause. Among the disbursements was the payment of $3,237.63 in legal fees to respondent's law firm. The PSA, however, did not authorize the payment of respondent's legal fees out of the net proceeds from the sale of the marital home.

According to the accounting, after the $10,375.11 was returned to respondent's trust account, $8000 was disbursed to the Weinstein firm and $2,375.11 was disbursed to Karen to cover "pedente lite arrears per PSA." Weinstein testified that, after the $10,000 was exhausted, Jeffrey still owed money to Karen, which, he claimed, could have been paid, had respondent not taken some of the escrowed funds for his legal fees.

With respect to the grievance filed by Karen against respondent, Weinstein testified that, after the funds were recovered and returned to respondent's trust account, he told Karen, who continued to be upset by what had occurred, that she had a right to file a grievance against respondent and that "yes, you should." Weinstein recalled that, about a year after the resolution of some "frivolous" municipal court charges filed by Jeffrey against him and Karen, Karen told Weinstein that she wanted to file a grievance against respondent and asked if he would assist her. He agreed. Weinstein, who claimed that Karen had written the initial draft, revised the document with "a lot of legalese" and described the final version as "a beautifully written grievance from a lay person."

The DEC found that respondent violated RPC 1.15, presumably (a), when he released the $10,000 to Jeffrey. Notwithstanding respondent's claim that he never agreed to act as escrow agent, the DEC determined that the clear and convincing evidence had established that the $10,000 was "certainly in dispute and should not have been turned over to his client without either consent of all parties or by Court Order."

The DEC also determined that respondent's own actions demonstrated his knowledge that the funds were in dispute.

Specifically, after he turned over the funds to Jeffrey, he expressly instructed Jeffrey to deposit the monies into a separate account until "all matters are concluded between you and Mr. Weinstein." The DEC noted that, after the disbursement of all escrowed funds, Jeffrey was entitled to nothing.

In the DEC's opinion, respondent's violation of RPC 1.15(a) was negligent. According to the DEC, once respondent acknowledged receipt of the letter containing Jeffrey's consent to maintain the funds in escrow, he should have been "more proactive." He compounded "the offense" by his failure to take back the monies from Jeffrey, choosing instead to direct him to segregate the funds in a separate account.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent violated RPC 1.15(a), when he disbursed to his firm $3,237.63 in legal fees without the consent of Weinstein and when he released the $10,375.11 to Jeffrey, without the consent of Weinstein. As a preliminary matter, we note that the complaint charged respondent with failure to safeguard all of the funds that were placed into his attorney trust account. The DEC, however, limited its determination to the $10,000 that was

released to Jeffrey. We, too, limit our determination to the $10,000, with the exception of the $3000+ in legal fees paid to respondent's law firm out of the escrowed funds.

Respondent cannot be faulted for making disbursements at the written direction of Weinstein. Weinstein's demand that the disbursements be made signified his consent. By making the disbursements, respondent, too, signified his consent. Respondent committed no improprieties in making these payments.

Notwithstanding respondent's insistence to the contrary, a number of facts demonstrate that he was aware that Jeffrey's portion of the proceeds was to be escrowed and that he agreed to hold the funds in escrow. First, after Jeffrey agreed to escrow the funds, albeit with Eckles's firm, Eckles notified respondent of his client's change of mind, by letter and telephone conversation. Second, Eckles, who testified that he wanted nothing to do with the funds, stated that, during his telephone conversation with respondent, respondent agreed to receive the funds and to hold them in his trust account. Third, this is exactly what happened. The attorney for the buyers issued a check to respondent, in trust, for one-half of the proceeds, which respondent deposited into his trust account. He did not

object to the issuance of a trust account check to him and made no claim that he had not agreed to hold the funds in escrow.

As Jeffrey's matrimonial attorney, respondent was fully aware of his client's obligation, under the PSA, to make certain payments for the benefit of Karen, out of his share of the proceeds of the sale. Therefore, respondent knew that Karen had an interest in at least some of the escrowed funds.

Because respondent was (1) fully aware that the proceeds were to be escrowed, (2) received the funds and deposited them into his trust account, without objection on his part, and (3) knew that their distribution was governed by the terms of the PSA, he had a duty to safeguard those monies under RPC 1.15(a). He breached that duty when he took his legal fees out of the proceeds, a disbursement not authorized by the PSA. He also breached that duty when, at the direction of his client, he refused to disburse $8000 to the Weinstein firm, which was expressly required by the PSA. Respondent had no right to disburse funds or to refuse to disburse funds, other than as directed by the PSA.

Because respondent was aware that the proceeds were to be escrowed and because he agreed to hold the proceeds in escrow, his release of the funds to Jeffrey after Jeffrey had fired him

could not be justified, as respondent attempted to do, on the ground that there was no escrow agreement. Moreover, his obligation to safeguard the funds was of a fiduciary nature for the benefit of Karen and, therefore, survived the termination of his relationship with Jeffrey. See, e.g., In re Margolis, 161 N.J. 139 (1999) (attorney violated RPC 1.15(a) when, at the direction of his client, but without the consent of the other parties to the escrow agreement, he disbursed escrowed funds in payment of his legal fees and released the balance to his client).

In summary, respondent violated RPC 1.15(a) when he disbursed $3,237.63 in legal fees to his firm, without the consent of Weinstein, and when he released the $10,375.11 trust account balance to Jeffrey, after Jeffrey terminated the legal representation.

The improper release of escrow funds, without more, has generally resulted in the imposition of either an admonition or a reprimand. See, e.g., In re Fenske, 158 N.J. 144 (1999) (admonition imposed on attorney who, although obligated to hold a real estate deposit in escrow, released it to his client, the buyer, when a dispute arose between the parties; in mitigation, we took into account that there was some confusion as to the

proper escrow holder and contractual dates); In the Matter of Joel Albert, DRB 97-092 (February 23, 1998) (admonition for the release of a portion of escrow funds to pay college tuition costs of a daughter of a party to the escrow agreement, without first obtaining the consent of the other party; the attorney had a reasonable belief that consent had been given); In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who, against a court order, released to the client funds escrowed for a former attorney's fees and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney relied on a legal theory to argue that the former attorney had either waived or forfeited her claim for the fee); In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who was required to hold in trust a fee in which she and another attorney had an interest; instead, the attorney took the fee, in violation of a court order; the attorney was inexperienced, admitted her wrongdoing, and demonstrated contrition); In re Milstead, 162 N.J. 96 (1999) (attorney reprimanded for disbursing escrow funds to his client, in violation of a consent order); In re Margolis, supra 161 N.J. 139 (reprimand for attorney who breached an escrow agreement requiring him to hold settlement funds in escrow until the completion of the

settlement documents; the attorney used part of the funds for his fees, with his client's consent; mitigating factors included his unblemished thirty-seven-year career and the adversary's unreasonable behavior); and In re Flayer, 130 N.J. 21 (1992) (reprimand for attorney who made unauthorized disbursements against escrow funds; the attorney represented himself in the purchase of real estate).

An examination of these cases shows that admonitions are typically imposed when the attorney has a reasonable belief as to the propriety of the disbursements. This is not the case here. Respondent agreed to act as escrow agent, but refused to comply with the clear terms of the PSA, which required payment of $8000 in legal fees to the Weinstein firm. Moreover, without Weinstein's consent, he paid his own firm's legal fees out of the escrowed funds, a disbursement that was not permitted by the PSA, at least before other disbursements had been made first. Finally, without Weinstein's consent, respondent released the $10,000 trust account balance to Jeffrey, upon the termination of their attorney-client relationship. Respondent offered no reasonable explanation for these breaches. Thus, a reprimand is the appropriate measure of discipline for his misconduct.

Although, at the time of respondent's misconduct, he had an unblemished twenty-three-year career, we do not consider it sufficient to downgrade the discipline to an admonition. See, e.g., Margolis, supra, 161 N.J. at 139 (reprimand imposed despite attorney's spotless record of thirty seven years).

Vice-Chair Frost recused herself. Member Wissinger did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert J. Jeney, Jr.
Docket No. DRB 11-278

Argued: November 17, 2011

Decided: December 1, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost					X	
Baugh			X			
Clark			X			
Doremus			X			
Wissinger						X
Yamner			X			
Zmirich			X			
Total:			6		1	1

Julianne K. DeCore
Chief Counsel