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January 31, 2012

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

Re: In the Matter of Richard M. Flynn
Docket No. DRB 11-356
District Docket Nos. IV-2010-0046E and IV-2010-
0047E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or lesser discipline) filed by the District IV Ethics Committee (DEC), 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 reprimand is the appropriate measure of discipline for respondent's violations of RPC 8.4(c) (misrepresentation) and RPC 1.15(c) (keeping separate property over which the lawyer and another claim an interest; if a dispute arises concerning their respective interests, keeping the portion over which there is a dispute separate until the dispute is resolved). See, e.g., In re Singer, 200 N.J. 263 (2009); In re Pemberton, 181 N.J. 551 (2004); and In re Weiworka, 179 N.J. 225 (2004).

Specifically, in 1990, respondent was retained to represent eight beneficiaries of an estate, in a matter venued in the Commonwealth of Pennsylvania that involved the mishandling by the trustee of various trusts of the estate.

The fee agreement provided that respondent was to receive ten percent of any recovery from the litigation. However, the protracted litigation became more lengthy and complex than anticipated and required respondent to retain additional counsel and experts. When respondent realized the complexity of the case, he forwarded a new retainer to the heirs. John Kessler and Mary Beth Adams were the only two who did not consent to the new agreement.

The litigation settled, with the assistance of the court as the mediator, for \$578,752; which included \$132,000 for attorneys' fees and costs. Adams and Kessler did not agree to the attorneys' fees and costs disbursement because respondent had agreed to accept a smaller fee in the initial fee agreement. To induce them to sign a release finalizing the settlement, respondent proposed to resolve their fee dispute by mediation, within sixty days of the disbursement of the settlement to the beneficiaries. Respondent agreed that, if the mediation did not occur within that time, he would disburse the entire amount in dispute to Adams and Kessler.

The mediation did not occur within that time. Adams and Kessler maintained that they were entitled to the entire contested amount.

Eventually, Adams and Kessler agreed to accept a previously agreed upon settlement amount. However, respondent did not disburse the funds as agreed. He disbursed the contested fees to his firm, over their objection, and not in accordance with the procedure to which they had agreed.

Respondent stipulated that he had made misrepresentations to the beneficiaries by offering to disburse the entire amount in dispute or a previously-discussed settlement amount, and then failing to do so. He also stipulated that he disbursed the contested fees to his firm, over Adams' and Kessler's objection.

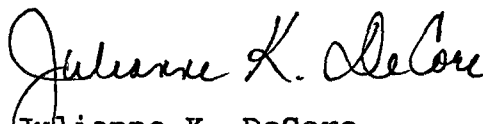
In assessing the appropriate discipline for respondent, the Board considered that 1) he deposited the disputed amount with his attorney, to be paid as restitution to Adams and Kessler; 2) he has no ethics history, in his more than thirty-four years at the bar; 3) he had consulted with an attorney, who had advised him that the fees awarded by the judge in the mediation were not

subject to a claim by the beneficiaries and, therefore, could be disbursed as lawyers' fees and costs of litigation; and 4) his timesheets showed that he spent substantially more time on the case than was reflected in the fee award.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 19, 2011.
2. Stipulation of discipline by consent, dated September 12, 2011.
3. Affidavit of consent, notarized on September 12, 2011.
4. Ethics history, dated January 31, 2011.

Very truly yours,


Julianne K. DeCore
Chief Counsel

JKD/
encls.

cc: Louis Pashman, Chair, Disciplinary Review Board
(w/o encls.)
Charles Centinaro, Director, Office of Attorney Ethics
(w/o encls.)
Jean S. Chetney, Chair, District IV Ethics Committee
(w/o encls.)
Robert E. Ramsey, Esq., Respondent's Counsel
(w/o encls.)