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OF THE  
SUPREME COURT OF NEW JERSEY



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July 27, 2011

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

Re: In the Matter of Athan M. Mergus  
Docket No. DRB 11-149  
District Docket Nos. XIV-2009-0209E and XIV-  
2009-0642E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may determine is warranted) filed by the Office of Attorney Ethics, 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 discipline for respondent's violations of RPC 1.2(a), RPC 1.15(a), RPC 1.15(d), and RPC 8.4(c). See, e.g., In re Kane, 170 N.J. 625 (2002).

Specifically, in November 2003, Michael Shin retained respondent to represent him in a personal injury action. Unbeknownst to respondent, in February 2005, Shin died from injuries unrelated to the accident. Respondent filed a lawsuit on Shin's behalf in November 2005.

Respondent later learned of Shin's death and of the appointment of an executrix of his estate. He, nevertheless, accepted a settlement in the matter without first obtaining the executrix' consent. He also endorsed the settlement check using Shin's name, knowing that his client had died. He did not disclose that information to the insurer. Moreover, in February


2007, when he sought a release and authorization for the settlement from the executrix, he did not advise her that he had already accepted the settlement and deposited the check into his trust account. He also failed to timely deposit his earned fees and reimbursed overhead costs into his attorney trust account.

In determining the appropriate discipline for respondent, the Board considered that there were no aggravating factors and that the stipulation listed, as mitigating factors, that respondent had no ethics history and that all the funds due to the estate had been disbursed. In addition, respondent acknowledged the need to improve his office procedures to ensure that his clients are informed of significant events in their cases.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated, May 2, 2011.
2. Stipulation of discipline by consent, dated April 29, 2011.
3. Affidavit of consent, dated April 22, 2011.
4. Ethics history, dated July 27, 2011.

Very truly yours,

  
Julianne K. DeCore  
Chief Counsel

Encls.

c: (w/o encls.)

Louis Pashman, Chair, Disciplinary Review Board  
Charles Centinaro, Director, Office of Attorney Ethics  
Janice L. Richter, Deputy Ethics Counsel  
Office of Attorney Ethics  
Athan M. Mergus, Respondent