SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-200
District Docket No. XIV-2009-0669E

IN THE MATTER OF	:
EVANS C. AGRAPIDIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 16, 2014

Decided: December 22, 2014

Maureen Grasso Bauman appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IIIB Ethics Committee (DEC). A one-count complaint charged respondent with having violated RPC 1.15(b) (failure to promptly deliver funds to third parties) and RPC 1.15(a) (commingling earned legal fees

with client trust funds). We determine to impose a reprimand, with conditions.

Respondent was admitted to the New Jersey bar in 1983. On September 6, 2006, he received a reprimand for paying referral fees totaling $20,000, to his nonlawyer employees, for referring cases to his law firm. The amounts paid were a percentage of the legal fee realized by the firm. In re Agrapidis, 188 N.J. 248 (2006).

The complaint in this matter named Frank M. Leanza, Esq., respondent's law partner, as a co-respondent. After a hearing, the DEC dismissed the complaint against him. The Office of Attorney Ethics (OAE) did not appeal the dismissal of the charges against Leanza.

This matter arose from an October 13, 2009 random audit of the records of Leanza & Agrapidis, which OAE Senior Random Auditor Mimi Lakind conducted. Respondent's practice consisted of personal injury cases.

The audit covered two periods: September 1, 2007 to August 31, 2009 and November 30, 2009 to May 31, 2010.

According to Lakind, the OAE's trust account reconciliation for the period ending August 31, 2009 revealed numerous instances of failure to pay trust account funds to clients and

third parties, including liens held by medical providers and insurance carriers, for lengthy time periods. There were more than 140 open client-trust ledger balances totaling $709,183.34. Some of those balances were the result of checks that had been issued to various parties but never negotiated. Of the total trust account funds, $114,624.60 represented 80 "old" trust account balances held for between five and ten years without resolution.

The OAE conducted a return audit on December 14, 2009 to assess respondent's progress in resolving the old balances and outstanding checks. Few had been resolved. The majority of the unpaid balances represented personal injury settlement funds due to clients and third parties.

After the OAE interviewed respondent about the unresolved matters, it requested explanations for (1) $92,435.46 that remained in the trust account, representing outstanding client-matter balances; and (2) a group of old, outstanding trust checks totaling $35,567.10.

Of the many cases that the OAE identified as having overdue and unexplained balances, it selected five for review with respondent. In the first case, on October 23, 1996, Atlantic Mutual issued a $25,000 settlement check for respondent's

client, Charles Thomas. The November 6, 1996 settlement statement revealed that respondent withheld $2,000 from Thomas' share of the proceeds, pending settlement negotiations with a medical provider, Kennedy Chiropractic (Kennedy).

Respondent conceded that the file in the Thomas matter contained no evidence that, for fourteen years (1996 to 2010), respondent had ever communicated with Kennedy to resolve the $2,000 escrow.

Respondent, however, denied the additional allegation that the law firm had made no effort, during that time, to locate Thomas, after his matter settled. He explained that, after unsuccessful efforts to locate Thomas in the mid-1990s, respondent decided to hold those funds for him, rather than turn them over to the Superior Court Trust Fund as permitted by R. 1:21-6(j).

Respondent's office later determined that Thomas had moved at least once, before returning to the address where he resided during the representation. As a result of the audit, Thomas was located and, on January 29, 2010, respondent remitted the $2,000 to him.

Respondent also denied the allegation that Kennedy had lost its claim to the funds, due to the passage of those fourteen years. According to respondent, notes on the client file jacket indicated that Kennedy processed its bill through Thomas' healthcare carrier, Oxford. In addition, respondent learned, by contacting the Kennedy doctor directly, that no monies were due, thus supporting respondent's assertion that Oxford had paid the bill.

Respondent conceded that he had not signed the settlement statement, contrary to R. 1:21-7(g), which requires an attorney in a contingent fee matter to provide the client with a settlement statement signed by the attorney.

Lakind also concluded that respondent had improperly taken the $200 cost of an expert report from Thomas' net share of the proceeds, rather than from the gross settlement amount. According to respondent's own settlement statement, after he calculated his fee ($8,214.19), he then deducted the $200 expert report fee from Thomas' share ($16,428.39). Because the $200 fee should have been included in the gross amount before respondent's fee calculation, Lakind claimed that he short-changed the client $66.67.

Respondent denied that he had improperly calculated his fee. He stated that he always took expert fees and the cost of narrative reports "off the top;" in other words, he subtracted them from the gross settlement amount before calculating his fee.

The second matter cited by the OAE was that of Lidia Jimenez. On January 15, 2003, respondent deposited Princeton Insurance Company's $30,000 settlement check in his trust account. From that amount, he held $1,800 in escrow, pending payment of a physical therapy bill. That $1,800 remained in escrow for seven years, until February 16, 2010, when, as a result of the audit, respondent disbursed the funds to Jimenez.

Respondent testified that Jimenez had lived in New Jersey, but subsequently moved to Pennsylvania in 2003. He had withheld the $1,800 out of concern that the medical provider would seek additional funds for Jimenez' care. Because respondent no longer had the client file in the matter, he surmised, at the DEC hearing, that his office had been unable to locate Jimenez after her 2003 move to Pennsylvania. Respondent had no evidence of any efforts to locate her during the seven years between 2003 and 2010, when the $1,800 was disbursed to her.

The third matter discussed at the hearing was that of Tracy Hunter, who settled his personal injury matter in July 1997. Respondent failed to pay the client's proceeds of $2,585 for more than twelve years after the 1997 settlement. Moreover, the fee agreement contained a provision requiring Hunter to pay a portion of respondent's overhead expenses. Finally, respondent failed to sign the settlement statement.

Respondent testified that Hunter's case settled for $5,500, after which Hunter never appeared to obtain his settlement funds. After two years, the law firm sent a certified letter notifying Hunter that the settlement funds were in hand. Although Hunter signed for the certified mail, he failed to pick up his share of the proceeds.

As a result of the OAE audit, respondent's office reached out to Hunter. On January 29, 2010, respondent released the $2,585 to his client, albeit more than twelve years after the settlement.

In the fourth matter, on October 18, 1995, respondent settled a personal injury matter for his client, Jose Barreiro. Respondent held in trust the client's entire share of $1,888.35 because Barreiro failed to claim his share of the settlement funds and efforts to locate him were unsuccessful. The net

proceeds for the client remained in the trust account until August 31, 2009, more than fourteen years after the settlement. According to Lakind, the client file contained no indication that the law firm had sought to locate Barreiro in the intervening years after the settlement. Only after the OAE involvement in the matter did respondent definitively determine that Barreiro could not be located. He then placed the $1,888.35 in the Superior Court Trust Fund.

Lakind also asserted that respondent failed to sign the settlement statement as required by the rules and failed to set forth the gross settlement amount on the statement.

The final matter that the OAE selected for review was an estate matter handled by Leanza'a wife, Mia Macri, Esq., also an attorney at the law firm. On August 26, 2002, the law firm received $2,336.32, payable to Annette Palmisano and Bartholomew Ferrante. The funds were placed in the trust account, where they remained for seven years, until the OAE audit uncovered them.

Macri accepted the case because Palmisano was a family friend. Palmisano's brother, Bartholomew, had passed away, leaving Palmisano to serve as the executrix of his estate. During Macri's representation, Palmisano passed away. Thereafter, in December 2005, Macri was diagnosed with a

terminal disease and immediately ceased the practice of law. Leanza, too, left the practice to care for Macri and their five-year old son. Leanza testified about the Palmisano matter as follows:

> Again my recollection is, and I know for a fact Mrs. Palmisano passed away. I don't remember who was named as the alternate executor, we still had money from the Estate, and you know the reconciliation of the account we saw that the money was there and it turned out that the person who was the alternate executor, I believe had a son-in-law who was an attorney, and they called and she asked if we would mind if the son-in-law can handle it whatever was left, to keep family piece [sic], whatever the case was. And I said, of course, we had no problem at all with it. And we waited, waited until the alternate executor was named, and I think the money was finally paid off. My wife's illness may have complicated the way the transfer [sic]. I really don't recall.
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> [3T59-22 to 3T60-10.][1]

It was not until after the OAE became involved that the Palmisano funds were released to another law firm, but Leanza was not sure exactly how that occurred.

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[1] "3T" refers to the transcript of the July 26, 2013 DEC hearing.

As of August 31, 2009, the end date of the first audit period, the law firm list of stale, non-negotiated trust account checks totaled $96,686.62. The OAE compiled the following table to illustrate the types of trust account obligations that remained unpaid for up to eleven years from November 18, 1998 through August 31, 2009:

Category	**Total Amount**	**# of Unpaid Checks**
Client/Collection/Factor Proceeds	$5,427.96	10
Commingled Attorney Fees	$13,104.87	2
Real Estate Costs/Liens	$11,620.34	7
Med. Provider/Ins. Liens	$19,482.73	43
Totals	**$49,635.90**	**62**

Respondent admitted the factual allegations contained in the above table.

Respondent denied the remainder of the allegations of the complaint. Specifically, he took issue with the allegation in the Thomas matter that the settlement statement failed to reflect that the amount of the settlement was $25,000. According to respondent, in the 1990s, the law firm used a form settlement statement, which he referred to as a "bill," that did not

contain an entry for the settlement amount. He asserted that, because the calculation of the settlement amount was set forth in the client release form and on the face of the settlement check, the client was aware of the gross settlement amount. That practice was changed in or about 2002 so that the gross settlement amount now appears on the settlement statement itself.

Respondent further denied the complaint's allegations that he had deducted from the gross settlement overhead expenses, such as postage, telephone, and photocopies in the Thomas and other personal injury matters, in contravention of R. 1:21-7(d).

Respondent testified as follows:

> Well, as I explained to the auditor those were our old form bills from back in the '90s. We had a form generic bill, a form generic retainer agreement. When we started our law firm we either checked form books or spoke to other law firms and we had forms that was just a form. We never included overhead at all. In a personal injury case we don't track it, we don't keep it. We don't tab it. That was just a form which we corrected again over a dozen years ago. Those were the old bills, just a formality that's it. We didn't actual [sic] charge overhead, never did, never kept tract [sic] and I had never kept it.
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> [3T17-4 to 15.]

In addition, respondent denied that the Thomas matter was indicative of "similar handling of personal injury matters involving 75 additional old trust account balances." Notwithstanding this denial, as previously noted, respondent admitted that the total trust account funds, $114,624.60, represented 80 "old" trust account balances held for between five and ten years without resolution. When the Thomas, Jimenez, Hunter, Barreiro, and Palmisano matters are subtracted from those eighty cases, seventy-five matters remain.

At the DEC hearing, respondent admitted that he had not signed personal injury settlement statements, as required by the rules, until the necessity to do so was pointed out to him. After the audit turned up that deficiency, respondent changed his forms.

Respondent also corrected the practice of holding client or escrow funds indefinitely. He no longer negotiates medical liens for clients. Instead, he asks the clients, at settlement, whether he is to pay the provider. If the client answers in the negative, respondent releases the funds to the client with instructions to pay the medical bills.

As to the two instances of commingling appearing in the table above, Lakind testified that the OAE found two trust account checks, issued to the law firm for legal fees, inside the client files in those matters. Because the checks, which totaled $13,104.87, had never been negotiated, the earned fees remained in the trust account for years.

Respondent testified that the commingling was unintentional and that he had been unaware, until the audit, that the two fee checks had never been deposited into the business account.

Finally, Sandy Philips, Leanza & Agrapidis' office administrator, who was in charge of books and records for the office since 1989, testified that she and others in the office had expended tremendous time and effort to comply with all of the OAE's requests for documents and information, during the audit process. She added that, in May 2010, at the OAE's direction, she began depositing old escrow funds "with the State," for clients who could not be located. According to Philips, she deposited the funds only after office staff tried searching the internet, and retaining investigators. They also contacted doctors whose checks had not been negotiated.

Philips testified that, on May 13 and June 17, 2010, the law firm deposited $16,135.39 and $21,800.02, respectively, with the Superior Court Trust fund, to comply with OAE audit directives.

The presenter asked respondent why he had left client funds in the trust account, if he had been reconciling his trust account on a monthly basis, as he claimed. Respondent replied that, under R. 1:21-6(j), he was permitted to keep these client balances in the trust account, in order to protect his clients. In respondent's view, he had the option of either depositing the funds with the Superior Court Trust Fund or holding them in trust until the client contacted him.

Respondent also argued, as an affirmative defense, that the trust balances and outstanding checks in question involved, "for the most part," clients who could not be located because of their "transient" or "immigration status."

Respondent's counsel explained the issue in greater detail:

> The reason the firm did not transfer the funds from its attorney trust account to the Superior Court Fund is because many of the firm's clients moved from address to address, sometimes in and out of the United States, and clients who initially could not be located, often were found. The funds remained in trust: they were not wrongly taken by the law firm. Whether the funds

> were in the attorneys' trust account, or whether they were in the Superior Court Trust Fund, the funds remained in trust, available to the clients if they were located.
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> [RSB18.][2]

The DEC found respondent guilty of failing to promptly turn over funds to clients and third parties, in violation of RPC 1.15(b). Specifically, the OAE random audit revealed that about $114,624 remained on deposit in the trust account, representing eighty client trust balances that lay dormant in the firm's trust account for periods of five to fourteen years. Almost all of the balances were undisbursed proceeds from personal injury cases handled by respondent.

The DEC also concluded that the funds would likely "not have been eventually cleared if the random audit hadn't taken place."

The DEC did not find clear and convincing evidence that respondent commingled earned fees with client trust funds, concluding that, in only "a small number of cases" (two cases), checks were drafted for the firm's legal fees but were

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[2] "RSB" refers to respondent's January 13, 2014 summation brief.

mistakenly left in the files when the cases were closed. As a result, the checks were never deposited in the law firm's business account. The DEC attributed it to "negligence by the attorney handling the file," noting that there was no evidence that respondent intended for the fees to remain in the trust account. For that reason, the DEC dismissed the commingling charge.

The DEC recommended a reprimand, citing respondent's 2006 reprimand as an aggravating factor.

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

Respondent admittedly left small balances in the law firm trust account, representing undisbursed settlement proceeds from eighty old, closed personal injury matters. The OAE detected these balances during a random audit.

The funds were held on account either for clients who never claimed their share of settlement proceeds or for third party medical providers whose bills respondent intended to negotiate downward for his clients. Of the eighty cases, the OAE highlighted five client matters.

Respondent admitted that the balances existed, that they had remained in the trust account for roughly five to fourteen years, and that the funds did not belong to the law firm. He claimed that problems locating "transient" clients and clients with "immigration status" issues led to many of the old balances. Although he asserted that efforts had been made to locate clients, and that some of them had surfaced years later looking for their funds, he produced no evidence that the law firm had made continuing efforts to find clients after the first few years that their matters had been closed. In three of the five matters highlighted at the DEC hearing, respondent's office easily located the clients and returned their funds, after the OAE directed respondent to make such an effort. Those funds lay dormant in respondent's trust account for fourteen years in Thomas; thirteen years in Hunter; and seven years in Jimenez.

Respondent explained that he left the balances in the trust account for the benefit of his clients, claiming that many times, the funds at issue were escrowed pending negotiations with medical providers who might discount their bills. In other instances, the funds belonged to clients who could not be located. Respondent's office tried to locate clients for the first few years after their matters settled, but did nothing

thereafter. As seen above, balances languished for more than a decade in some instances.

Respondent argued that R. 1:21-6(j) was permissive and did not require him to deposit funds with the Superior Court Trust Fund. His practice was to hold funds in case clients later claimed them, including funds that had been held for medical providers, which he considered to be client funds.

We note that, although R. 1:21-6(j) is permissive, it does not negate an attorney's duties pursuant to RPC 1.15(b), which requires attorneys to "promptly deliver to the client or third person any funds . . . that the client or third person is entitled to receive." It is without doubt that, by allowing balances to languish for periods of between five and fourteen years after a matter settled, respondent was not prompt in disbursing funds in the eighty matters in question. We, thus, find that he violated RPC 1.15(b).

With respect to the charge that respondent commingled attorney fees in the trust account in two instances, the OAE studied hundreds of cases, finding two files containing old trust account checks payable to the law firm for its fee in personal injury cases. The checks simply sat in the file, to be discovered years later, during the audit. As respondent

testified, had he known that those two checks had mistakenly been swept up into the files, probably at closing, he would have issued new checks for the fees. Because the obvious inadvertence in those two instances does not rise to the level of commingling, we dismiss the RPC 1.15(a) charge.

In summary, respondent is guilty of failing to promptly turn over funds to clients and third parties in eighty matters, a violation of RPC 1.15(b).

In cases involving attorneys who fail to promptly deliver funds to clients or third persons, admonitions or reprimands are usually imposed. See, e.g., In the Matter of Samuel M. Manigault, DRB 13-370 (February 28, 2014) (admonition imposed after an OAE random audit revealed that the attorney left a balance of $47,040.27 in unidentified funds in the attorney trust account for over two years; there was no trust account activity at all during the one year preceding the audit; when the attorney was unable to identify the clients or third parties associated with the funds, he was directed to deposit them with the Superior Court Trust Fund; the attorney also failed to keep a running cash balance for the trust account checkbook and to reconcile the client ledger account balance with monthly trust account bank statements); In the Matter of Raymond Armour, DRB

11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition for attorney who, in three personal injury matters, failed to promptly notify his clients of his receipt of settlement funds and to promptly disburse their share of the funds; failure to communicate with clients also found; mitigation considered); In the Matter of Christopher J. Carkhuff, DRB 11-062 (May 20, 2011) (admonition for attorney who kept inactive client balances in his trust account for extended periods of time); In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (admonition for attorney who, for extended periods of time, left unidentified funds in his trust account, failed to satisfy liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (admonition for attorney who failed to promptly deliver the balance of settlement proceeds to the client after her medical bills were paid); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition for attorney who, for three-and-a-half years, held $4,800 in his trust account, which had been earmarked for the payment of the client's outstanding hospital bill); and In re Dorian, 176 N.J. 124 (2003) (reprimand for attorney who failed to use escrowed

funds to satisfy medical liens for nine months after having been alerted to the existence of the problem and the filing of the ethics grievance against him; failure to cooperate with ethics investigation also found).

This case is similar to Manigault (admonition), where an audit of the attorney's trust account revealed $47,000 in unidentifiable client or escrow funds held for more than two years, largely as a result of poor recordkeeping.

We view the matter at hand as more serious than Manigault, based on the amount of money involved ($114,624.60), the large number of clients or third parties affected (eighty), and the length of time that their funds languished in respondent's trust account (as long as fourteen years). Additionally, we consider, as an aggravating factor, respondent's 2006 reprimand. Based on the foregoing, we determine that a reprimand is the appropriate quantum of discipline. We also require respondent to furnish the OAE with monthly reconciliations of his attorney trust account, on a quarterly basis, for a period of two years.

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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evans C. Agrapidis
Docket No. DRB 14-200

Argued: October 16, 2014

Decided: December 22, 2014

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			

Ellen A. Brodsky
Chief Counsel