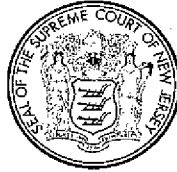


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OF THE

SUPREME COURT OF NEW JERSEY

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February 23, 2015

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

**Re: In the Matter of Bruce M. Resnick**  
Docket No. DRB 14-381  
District Docket Nos. XIV-2014-0528E and  
XIV-2014-0529E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem warranted), filed by the Office of Attorney Ethics (OAE) 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 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 1.5(b) (failure to memorialize the rate or basis of the fee); RPC 1.15(b) (failure to promptly disburse funds to the party entitled to receive them); and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

Specifically, in Docket No. XIV-2014-0528E, from September 2009 until December 2010, respondent represented Daniel Tarpley in a personal injury matter stemming from a motor vehicle accident. Respondent violated RPC 1.5(b) by entering into an agreement to provide legal services to his client without

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memorializing, in writing, the rate or basis of his fee.<sup>1</sup> Subsequently, respondent violated RPC 1.3 by not diligently tracking the Tarpley matter so as to timely disburse child support payments, as he had agreed to do. This failure to promptly disburse funds held in trust was a direct result of respondent's failure to conduct three-way reconciliations of his attorney trust account on a monthly basis, violations of RPC 1.15(b) and (d), respectively.

In Docket No. XIV-2014-0529E, from November 2008 to July 2011, respondent represented Anthony English in a personal injury matter stemming from a motor vehicle accident. Respondent violated RPC 1.4(b) by failing to keep his client reasonably informed about his matter. Respondent also executed and filed a stipulation of dismissal, without notifying English about the decision to do so or its ramifications. Because English apparently suffered no permanent injury as a result of the motor vehicle accident, presumably he could not overcome the requirements of the Verbal Threshold Law (VTL). Respondent's decision, therefore, to dismiss the complaint did not constitute any further unethical conduct.

Ordinarily, the failure to promptly deliver funds to clients or third persons, along with recordkeeping violations, will lead to an admonition, even when accompanied by other, non-serious infractions. See, e.g., In re Cerza 202 N.J. 337 (2010) (in two real estate matters, attorney delayed disbursing escrow funds to the designated recipients, failed to comply with the recordkeeping rules and, in one matter, failed to comply with a client's reasonable requests for information about the case) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill and failed to comply with the recordkeeping rules; the attorney also practiced law while ineligible).

Similarly, conduct involving failure to prepare the written fee agreement required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition.

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<sup>1</sup> Beyond the requirements of RPC 1.5(b), R. 1:21-7(g) requires a written fee agreement, signed by both attorney and client, in contingent fee cases based on the alleged tortious conduct of another. Presumably, Tarpley's case fell into this category.

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See, e.g., In the Matter of Gerald M. Saluti, DRB 11-358 (January 20, 2012) (attorney failed to communicate his fee in writing with respect to a post-conviction relief application and a potential appeal from the client's conviction); In the Matter of Myron D. Milch, DRB 11-110 (July 27, 2011) (attorney did not memorialize the basis or rate of his fee in writing; the attorney also lacked diligence in the case and failed to communicate with the client); In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the rate or basis of his fee and, in another client matter, failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, attorney failed to furnish the client with a writing that set forth the basis or rate of his fee; the attorney also lacked diligence in the matter); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction and failed to state in writing the basis of his fee, resulting in confusion about whether a \$400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

Much like the attorney in Cerza, respondent lacked diligence, failed to communicate with his client, failed to promptly disburse funds held in trust, and failed to comply with the recordkeeping rules. Although Cerza committed these infractions in one matter, the totality of respondent's violations occurred in two different matters. Respondent, however, also failed to memorialize the rate or basis of his fee in one of these matters.

In mitigation, the Board considered that respondent admitted his violations and cooperated with disciplinary authorities by entering into a consent to discipline. Further, there was little to no harm to his clients because of these violations. He paid Tarpley's child support, albeit late, and it appears that English could not have prevailed in his matter, due to the stringent criteria of the VTL. Nevertheless, for the aggregate of respondent's violations a reprimand is the appropriate degree of discipline.

Enclosed are the following documents:

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1. Notice of motion for discipline by consent, dated December 18, 2014;
2. Stipulation of discipline by consent, dated December 17, 2014;
3. Affidavit of consent, dated November 28, 2014;
4. Ethics history, dated February 23, 2015.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

Enclosures

EAB/tk

c: Bonnie C. Frost, Chair (via e-mail; w/o enclosures)  
Disciplinary Review Board  
Charles Centinaro, Director (via e-mail; w/o enclosures)  
Office of Attorney Ethics  
Maureen G. Bauman, Deputy Ethics Counsel  
Office of Attorney Ethics (via e-mail; w/o enclosures)  
Bruce M. Resnick, Respondent