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SUPREME COURT OF NEW JERSEY

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February 29, 2016

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

Re: In the Matter of Jeannet E. Pavez
Docket No. DRB 15-416
District Docket No. XIV-2014-0537E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b)(1). 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 1.7(a) (concurrent conflict of interest); RPC 1.15(b) (failure to promptly notify clients of receipt of funds in which they have an interest and to promptly disburse those funds); and RPC 1.15(d) (failure to comply with R. 1:21-6, recordkeeping rules).

Specifically, on February 28, 2013, the OAE notified respondent that she had been randomly selected for a compliance audit of her attorney trust and business accounts, for the period February 2012 through February 2013. The OAE's initial audit of records provided by respondent uncovered numerous recordkeeping violations, including an unidentified subaccount negative balance; missing client ledger cards for twenty-three out of thirty clients; several trust account checks unaccounted

for; a missing bank statement for October 2012; and undisbursed client trust funds in sixteen matters, spanning fourteen months, and totaling \$16,927.50.

Accordingly, on October 17, 2013, the OAE conducted a demand audit at respondent's office, which uncovered additional recordkeeping violations, including respondent's failure to maintain a running cash balance for her attorney trust account checkbook; failure to promptly disburse trust account funds to clients; failure to maintain separate ledger sheets for each client; and failure to perform monthly reconciliations of the attorney trust account.

Additionally, the OAE's audit revealed that respondent had been receiving periodic commission payments from Guardian Title Company (Guardian). Prior to April 30, 2014, respondent was a licensed title insurance producer, and had entered into an agreement with Guardian whereby she would receive a commission when her client obtained title insurance through Guardian. Respondent, however, did not inform her clients that she had a business arrangement with Guardian, or that she would be receiving a commission in connection with their title insurance, in addition to the legal fee the client paid. Between April 30, 2012 and April 8, 2013, Guardian paid respondent \$6,537 in commissions.

The OAE identified nineteen real estate matters in which respondent disbursed client trust funds to Guardian. It is undisputed, however, that during the relevant timeframe, respondent believed that her commission arrangement with Guardian was ethical. Additionally, in each transaction, respondent satisfied all of Guardian's title conditions, requirements, and closing instructions.

On January 23, 2014, the OAE conducted a second demand audit at respondent's office. By this date, although respondent had identified and disbursed numerous client trust balances, twelve matters, totaling \$6,136.16 in client trust funds, remained unresolved. With the assistance of the OAE auditor, respondent had also reconciled her attorney trust account through December 31, 2013.

On March 17, 2014, the OAE formally notified respondent of the recordkeeping deficiencies that had been documented during

the audit of her attorney trust and business accounts. Additionally, the OAE informed respondent that her practice of receiving commissions from Guardian constituted a conflict of interest, in violation of RPC 1.7(a), and cautioned her that, should she continue her business arrangement with Guardian, it would be considered an aggravating factor in determining any discipline to be imposed. Respondent took all corrective recordkeeping actions required by the OAE and, as of the date of the stipulation of discipline, was in compliance with R. 1:21-6.

Absent egregious circumstances or serious economic injury, a reprimand is appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). In some situations, a reprimand may result even if the attorney commits other ethics improprieties. See In re Hunt, 215 N.J. 300 (2013) (attorney found guilty of a concurrent conflict of interest by agreeing to represent Essex County while still retained to pursue a claim against the county on behalf of a client; he was also guilty of engaging in gross neglect and lack of diligence, failing to keep the client informed about the status of the matter, failing to explain a matter to the extent reasonably necessary to permit a client to make informed decisions about the representation, recordkeeping violations, and making misrepresentations to disciplinary authorities and to a client; mitigating factors included the attorney's lack of a disciplinary history in his twenty-eight years at the bar and his acknowledgement of wrongdoing by stipulating to the misconduct).

Failure to promptly deliver funds to clients or third persons, even where accompanied by other ethics violations, generally results in an admonition. See In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to promptly communicate with the clients; mitigation considered, including attorney's unblemished record since his 1994 admission).

An admonition generally is imposed for recordkeeping violations. See In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running

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balances, failed to promptly remove earned fees from the trust account, and failed to perform monthly three-way reconciliations, in violation of R. 1:21-6 and RPC 1.15(d); in mitigation, the Board considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline).


There are no aggravating factors to consider in this case. In mitigation, respondent has no disciplinary history and readily admitted her misconduct by consenting to discipline. With the OAE's assistance, she promptly took corrective measures to address her recordkeeping deficiencies and to identify and disburse client trust funds.

Thus, based on the above precedent, the presence of mitigation and the absence of aggravation, the Board determined that respondent's misconduct warrants a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 18, 2015.
2. Stipulation of discipline by consent, dated December 16, 2015.
3. Affidavit of consent, dated November 20, 2015.
4. Ethics history, dated February 29, 2016.

Very truly yours,


Ellen A. Brodsky
Chief Counsel

Enclosures

c: See attached list

I/M/O Jeannet E. Pavez, DRB 15-416

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Bonnie C. Frost, Chair

Disciplinary Review Board (w/o enclosures)

Charles Centinaro, Director

Office of Attorney Ethics (w/o enclosures)

Jeannet E. Pavez, Respondent (w/o enclosures)