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September 21, 2017

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

Re: In the Matter of Benjamin Morton
Docket No. DRB 17-229
District Docket No. VA-2016-0004E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems warranted), filed by the District VA Ethics Committee (DEC), pursuant to R. 1:20-10(b)(1). Following its review of the record, the Board determined to grant the motion and to impose a reprimand on respondent for his violation of RJC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

Specifically, on October 17, 2009, grievant Marcus Sanders (Sanders) retained respondent to represent him in the administration of, and a dispute concerning, his grandfather's estate. During the DEC's investigation of the grievance, respondent was unable to provide executed copies of retainer agreements, time sheets, e-mail correspondence, letters, or summaries of any of the work that he had performed for Sanders. He also could not provide any documentation in respect of payments that he had received from the estate or the money that he withheld from those payments in compensation for additional tasks that he claimed to have performed at Sanders' request. These tasks included the provision of advice concerning a potential divorce and a number of "investment opportunities."

As the parties stipulated, R. 1:21-6(c) requires an attorney to retain, among other things, "copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto" and "copies of all retainer and compensation agreements with clients" for a period of seven years, which, in this case, would have been until October 17, 2016. Respondent's failure to do so violated both that Rule and RPC 1.15(d).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not resulted in a negligent misappropriation of client funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (attorney failed to maintain trust or business receipts or disbursements journals and client ledger cards; made disbursements from the trust account against uncollected funds; withdrew cash from the trust account; did not properly designate the trust account; and did not maintain a business account; violations of R. 1:21-6 and RPC 1.15(d); the uncollected funds, deposited and withdrawn from the trust account, represented the payment of a small fee); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information on client ledgers, which also lacked full descriptions and running balances; failed to promptly remove earned fees from the trust account; and failed to perform monthly three-way reconciliations; violations of R. 1:21-6 and RPC 1.15(d)); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified).

The Board considered, in aggravation, respondent's disciplinary history, that is, a 2015 three-month suspension for violations of RPC 1.4(b) (failure to communicate with the client), RPC 1.8(a) (prohibited business transaction with a client), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Morton, 220 N.J. 102 (2014).

In the Board's view, the mitigating factors, cited in the stipulation, were insufficient to maintain the level of discipline at an admonition. It is irrelevant that respondent obtained a good result for Sanders in the estate matter or that he maintained other records on his computer system. Further, his acknowledgement of responsibility could not overcome the impact of the prior suspension.

Thus, the Board determined that a reprimand was warranted for respondent's misconduct.

September 21, 2017

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 19, 2017.
2. Stipulation of discipline by consent, dated June 5, 2017.
3. Affidavit of consent, dated June 5, 2017.
4. Ethics history, dated September 21, 2017.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/sl

c: (w/o enclosures; via e-mail)
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Office of Attorney Ethics
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