

# DISCIPLINARY REVIEW BOARD

OF THE

## SUPREME COURT OF NEW JERSEY

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February 21, 2018

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

**Re: In the Matter of Robert A. Wianecki, Jr.**  
Docket No. DRB 17-381  
District Docket No. XIV-2016-0049E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems warranted), filed by the Office of Attorney Ethics (OAE), 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 RPC 1.15(d) (failure to comply with the recordkeeping requirements set forth in R. 1:21-6).

Specifically, on May 18, 2016, the OAE conducted an audit of respondent's attorney books and records. The audit uncovered the following recordkeeping deficiencies:

- Electronic transfers made without proper authorization, in violation of R. 1:21-6(C)(1)(a);
- Inactive balances, totaling \$10,196.07, left in attorney trust account, in violation of R. 1:21-6(d);

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- Thirty old outstanding checks and one recorded wire transfer, totaling \$6,196.52, in violation of R. 1:21-6(d); and
- Improper designation on attorney business account checks, in violation of R. 1:21-6(a)(2).

Previously, during a June 2012 audit, the OAE had uncovered the same recordkeeping violations. In November 2012, respondent certified to the OAE that he had resolved the deficiencies. Although respondent did resolve the inactive balances and old outstanding checks uncovered during the 2012 audit, the 2016 audit uncovered different inactive balances and old outstanding checks. Further, contrary to respondent's November 2012 certification to the OAE, he continued to make electronic transfers without proper authorization and to use the improperly-designated business account checks. For example, on April 8, 2015, respondent issued an "operating account" check. Further, his records reflected multiple electronic transfers into his trust account, but no evidence that he had provided signed written instructions to the bank prior to each transfer.

RPC 1.15(d) requires an attorney to comply with the recordkeeping requirements set forth in R. 1:21-6. Thus, as the parties stipulated, respondent's violation of R. 1:21-6(a)(2), R. 1:21-6(c)(1)(A), and R. 1:21-6(d) constituted a violation of RPC 1.15(d).

Ordinarily, an admonition is imposed for recordkeeping violations that do not result in a negligent misappropriation of trust funds. See, e.g., In the Matter of Clifford G. Stewart, DRB 16-061 (May 24, 2016) (multiple recordkeeping violations), and In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (multiple recordkeeping violations, including improper electronic transfers from attorney trust account to attorney business account). The parties stipulated, however, that, based on In re Conroy, 185 N.J. 277 (2005), respondent's prior recordkeeping violations justified enhancement of the discipline, even though no formal discipline had been imposed on respondent at the time. The Board agreed.

In Conroy, the Board imposed a reprimand on an attorney who committed recordkeeping violations, which caused the negligent misappropriation of trust account funds. In the Matter of John S. Conroy, IV, DRB 05-173 (September 15, 2005) (slip op. at 10). Although a reprimand is the usual quantum of discipline imposed in such cases, the OAE urged the imposition of an admonition based on multiple mitigating factors, including the attorney's twenty-five-year, unblemished disciplinary record. Id. at 9. The Board refused to impose

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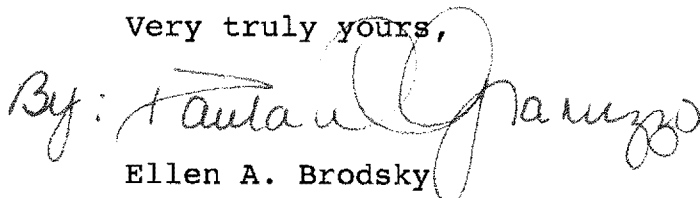
lesser discipline, noting that the attorney had been the subject of a prior audit, although it did not result in discipline. Id. at 9-10. According to the Board, as a result of the prior audit and prior recordkeeping violations, the attorney "should have been even more guarded in his handling of his attorney accounts" and "should have recognized the importance of being mindful of the recordkeeping requirements." Ibid. In this case, guided by Conroy, a majority of the Board voted to impose a reprimand on respondent.

Three Board members, Thomas J. Hoberman, Eileen Rivera, and Robert C. Zmirich, voted to remand the matter for the submission of a revised stipulation to include a violation of RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), based on the apparent misrepresentations in respondent's November 2012 certification to the OAE. In their view, conduct as serious as a misrepresentation should not be overlooked and, thus, respondent must be called to account for the falsehood.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 17, 2017.
2. Stipulation of discipline by consent, dated October 17, 2017.
3. Affidavit of consent, dated October 14, 2017.
4. Ethics history, dated February 21, 2018.

Very truly yours,

By:   
Ellen A. Brodsky  
Chief Counsel

EAB/sl

c: (w/o enclosures)

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Disciplinary Review Board (e-mail)

Charles Centinaro, Director

Office of Attorney Ethics (e-mail and interoffice mail)

Jason D. Saunders, First Assistant Ethics Counsel

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