

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-197
District Docket No. XIII-2016-0018E

In The Matter of

Raymond F. Meisenbacher, Jr.

An Attorney At Law

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Decision

Argued: September 20, 2018

Decided: November 29, 2018

Michael P. O'Grodnick appeared on behalf of the District XIII Ethics Committee.

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 pursuant to R. 1:20-6(c)(1).¹ The District XIII Ethics Committee (DEC) charged respondent with violating RPC 1.15(b)

¹ That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

(failure to promptly notify a client or third person of receipt of funds and to promptly deliver the monies) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons expressed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1990. He has no disciplinary history and maintains a solo law practice in Bridgewater, Somerset County, New Jersey.

Respondent and the DEC entered into a stipulation, dated September 6, 2017, which sets forth the following facts in support of respondent's admitted ethics violations. In 2002, respondent filed a lawsuit against the grievant, Ellen Ganopoulous, in behalf of his client, Retail Recovery Svc. of NJ (RRS), in the Special Civil Part of the Superior Court of New Jersey, Hudson County. The lawsuit sought to recoup \$1,219.76 in credit card debt assigned to RRS, a collection agency. Because Ganopoulous failed to answer the complaint, the court entered a default judgment in favor of RRS.

Subsequently, respondent filed a motion for a wage execution against Ganopoulous, which the court granted in favor of RRS. RRS' efforts to collect the debt were fruitless, however, until it discovered that Ganopoulous was employed by Ocean County as a seasonal bridge operator. On January 16, 2015, RRS was granted a second order of wage execution against Ganopoulous, in

respect of that employment. On January 22, 2015, however, Ganopoulous informed respondent that she was no longer employed by Ocean County. In March 2016, Ganopoulous and RRS reached a settlement, whereby Ganopoulous agreed to pay RRS \$750 in certified funds, in full satisfaction of the credit card debt. On March 27, 2015, Ganopoulous paid the \$750 in certified funds to respondent, and, in turn, he filed a Warrant to Satisfy Judgment in Hudson County.

Respondent, however, failed to take action in respect of the standing order of wage execution, as Ganopoulous had previously informed him that "she was no longer employed." Consequently, in June and July of 2015, the Ocean County Sheriff's Office executed two wage garnishments, totaling \$159.91, against Ganopoulous. In response, Ganopoulous presented the Warrant to Satisfy Judgment to her employer, who confirmed the satisfaction of the debt, and ceased the garnishments. On July 3, 2015, Ganopoulous also contacted respondent to inform him that the garnishments had occurred, despite the prior satisfaction of the debt. That same date, respondent contacted the Ocean County Sheriff's Office to confirm that the wage garnishments had been halted. In August and September 2015, the Sheriff's Office sent the improperly garnished funds to respondent, via two checks. Respondent, however, failed to remit those funds to Ganopoulous.

Ganopoulous then made multiple attempts to recoup the garnished funds from respondent, even warning him that she would file a suit for damages, if necessary. Despite Ganopoulous' efforts, respondent failed to refund the garnished funds. Consequently, on May 12, 2016, Ganopoulous filed a lawsuit against him in Superior Court of New Jersey, Somerset County. During the same time frame, Ganopoulous also filed an ethics grievance against respondent.

On May 31, 2016, the trial date for the lawsuit, respondent and Ganopoulous reached a settlement of her claim, whereby respondent agreed to pay Ganopoulous \$320.87, representing a return of the garnished funds, plus a donation to her chosen charity. Respondent, however, required that the settlement agreement include a provision that the "ethics complaint is waived" by Ganopoulous. Respondent stipulated that this provision constituted a per se violation of RPC 8.4(d).² On June 4, 2016, nearly eleven months after he had received Ganopoulous' improperly garnished wages, respondent made the payments to both Ganopoulous and the charity.

² A.C.P.E. Opinion 721, 204 N.J.L.J 928 (June 27, 2011), prohibits an attorney from conditioning a settlement on the withdrawal of an ethics grievance. Specifically, the opinion states that "[a]ttorney discipline is not a private cause of action or private remedy for misconduct that can be negotiated between an attorney and the aggrieved party. The discipline process furthers public, not private interests"

Respondent, thus, admitted that his conduct in respect of the RRS/Ganopoulous matters violated RPC 1.15(b) and RPC 8.4(d).

Following our review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. Respondent admitted that, for almost eleven months, he failed to refund the improperly garnished wages to Ganopoulous, despite his knowledge that she had fully complied with the parties' settlement agreement, and that he had filed a Warrant of Satisfaction. Consequently, Ganopoulous was forced to file a lawsuit to motivate respondent to refund her wages. That lawsuit was settled, and respondent paid Ganopoulous her wages, plus made a charitable contribution. Respondent, thus, violated RPC 1.15(b) by failing to promptly disburse funds to a third party.

During the same time frame in which the lawsuit was filed, Ganopoulous filed an ethics grievance against respondent. As part of the settlement agreement for Ganopoulous' suit, respondent required a provision stating that the "ethics complaint is waived" by Ganopoulous. As he has stipulated, that conduct was a per se violation of RPC 8.4(d).

Cases involving an attorney's failure to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b), generally result in the imposition of an admonition or a reprimand, depending on the circumstances. See, e.g., In

the Matters of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (admonition imposed on attorney who, in three personal injury matters, neither promptly notified his clients of his receipt of settlement funds nor promptly disbursed their share of the funds; the attorney also failed to promptly communicate with the clients; we considered that the attorney had no prior discipline); In the Matter of Jeffrey S. Lender, DRB 11-368 (January 30, 2012) (admonition; in a "South Jersey" style real estate closing in which both parties opted not to be represented by a personal attorney in the transaction, the attorney inadvertently overdisbursed a real estate commission, neglecting to deduct from his payment an \$18,500 deposit for the transaction; he then failed to rectify the error for over five months after the overdisbursement was brought to his attention; violations of RPC 1.3 and RPC 1.15(b); the attorney had no prior discipline); and In re Dorian, 176 N.J. 124 (2003) (reprimand imposed on attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously was admonished for gross neglect, failure to communicate, failure to withdraw, and failure to cooperate with disciplinary authorities, and reprimanded for gross neglect, lack of diligence, and failure to communicate).

Respondent also attempted to cause Ganopoulous to withdraw her ethics grievance. Such conduct has been met with discipline ranging from an

admonition to a censure. See, e.g., In the Matter of Ralph Alexander Gonzalez, DRB 12-283 (November 16, 2012) (admonition imposed on attorney who, in a civil suit that he had instituted against his client seeking payment of his legal fee, entered into a settlement agreement that required her to withdraw "any ethics complaint she may have filed" against him; prior reprimand); In re Levin, 193 N.J. 348 (2008) (admonition imposed on attorney who contacted the grievant's son and convinced him to obtain his mother's withdrawal of her grievance; attorney also wrote a letter to the grievant containing threats of lawsuits and court-ordered psychiatric examinations; those threats frightened the grievant into withdrawing her allegations); In re Welch, 208 N.J. 377 (2011) (reprimand imposed on attorney who improperly released escrow funds in a matrimonial matter, a violation of RPC 1.15(a), and attempted to shield himself from an ethics grievance by including a provision in the parties' property settlement agreement whereby the wife "waive[d] and forever relinquishe[d]" any ethics grievance against the attorney or his firm as the result of the improper release of the escrowed funds; mitigation included the attorney's unblemished career of thirty-eight years, his quick admission of wrongdoing, his expression of remorse, and his statement that he took this matrimonial matter more personally than other cases); In re Allen, 221 N.J. 298 (2015) (censure imposed on attorney who offered to refund the client's retainer in exchange for the

withdrawal of his grievance, a violation of RPC 8.4(d); attorney also engaged in gross neglect, lack of diligence, and failure to communicate in respect of the client matter; prior admonition for failure to communicate with a client; sanction enhanced for "monumental lack of contrition" and calculated dishonesty toward disciplinary authorities); and In re Pocaro, 214 N.J. 46 (2013) (censure imposed on attorney who requested that his client withdraw an ethics grievance in exchange for his forbearance from instituting a defamation action; prior discipline included a censure and a one-year suspension).

Here, for almost eleven months, respondent inexplicably failed to remit the improperly garnished wages to Ganopoulous. Moreover, although he ultimately repaid her those wages and made a charitable contribution, after she was forced to take legal action, he improperly obtained her agreement to withdraw the ethics grievance she had filed for that misconduct, as a condition of that settlement. Based on disciplinary precedent, respondent's admitted misconduct warrants aggregate discipline in the range of an admonition to a reprimand. In crafting the appropriate discipline, we consider the influence of aggravating and mitigating factors. In aggravation, we weigh heavily respondent's extensive and inexcusable delay in remitting the funds to Ganopoulous, and the need for her to file a lawsuit to spur him to action. In mitigation, respondent has an unblemished career of twenty-eight years and


ultimately admitted his guilt. On balance, we determine that a reprimand is warranted to protect the public and preserve confidence in the bar.

Vice-Chair Clark and Member Singer voted to impose an admonition.

Member Hoberman did not participate.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


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Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer	X			
Gallipoli	X			
Hoberman				X
Joseph	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	6	2	0	1


Ellen A. Brodsky
Chief Counsel