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SUPREME COURT OF NEW JERSEY**

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RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 815-2920

ELLEN A. BRODSKY  
CHIEF COUNSEL  
  
TIMOTHY M. ELLIS  
DEPUTY COUNSEL  
BARRY R. PETERSEN, JR.  
DEPUTY COUNSEL  
  
JESSICA A. CALELLA  
ROCCO J. CARBONE, III  
ELIZABETH L. LAURENZANO  
COLIN T. TAMS  
KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

July 30, 2020

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625

Re: **In the Matter of Raymond Charles Osterbye**  
Docket No. DRB 20-057  
District Docket Nos. XIV-2019-0611E;  
XIV-2019-0612E; and XIV-2019-0613E  
**CORRECTED LETTER**

Dear Ms. Baker:

The Disciplinary Review Board has 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) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion and to impose a reprimand for respondent's violation of RPC 1.15(a); RPC 1.15(b); RPC 1.15(d); RPC 7.1(a); RPC 7.5(e); and RPC 8.1(b). The Board determined to dismiss the charge that respondent violated RPC 8.4(c).

Specifically, between January 2016 and February 2018, the OAE sent numerous communications to respondent regarding its investigations into his alleged misconduct. During that time, respondent provided OAE investigators with sporadic, untimely, and incomplete replies. He stipulated that his failure to reply to the OAE and to produce required records in a timely manner constituted failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

During a demand audit, respondent admitted to the OAE that he had not prepared three-way reconciliations of his attorney trust accounts. In addition, the audit revealed more than twenty separate recordkeeping deficiencies, violations of RPC 1.15(d) and R. 1:21-6.

In addition, respondent negligently misappropriated funds, in violation of RPC 1.15(a), by invading client funds in his attorney trust accounts as a result of his poor recordkeeping practices in the following client matters: Viswanathan (\$1,645.93); PIK (\$2.37); Wawrzonkiewicz (\$798); a second Wawrzonkiewicz matter (\$1,232.24); and a February 9, 2018 overdraft matter (\$874). Moreover, in connection with the four client matters, respondent failed to disburse funds promptly to third parties in connection with the real estate closings, in violation of RPC 1.15(b). In two of them, small sums still were owing: in Viswanathan, \$166.68 to the client, and in PIK, \$175 to FAACS-REO, a third party.

Respondent also commingled \$225 in personal funds received from his tenant for shared office space that she rented from him. By depositing those personal funds in his attorney trust account, respondent violated RPC 1.15(a).

Further, in the Koster matter, respondent prepared a written fee agreement containing the heading "Legal Service Center, LLC," with his signature on a line designated as follows: "RAYMOND C. OSTERBYE, ESQ. . . . ON BEHALF OF LEGAL SERVICE CENTER LLC." RPC 7.5(e) provides that a law firm name that includes "identifying language such as 'Legal Services' or other similar phrases shall inform all prospective clients in the retainer agreement or other writing that the law firm is not affiliated or associated with a public, quasi-public or charitable organization." Respondent's fee agreement, however, failed to inform his client that Legal Service Center LLC was not affiliated or associated with a public, quasi-public, or charitable organization, a violation of RPC 7.5(e) as well as RPC 7.1(a), which prohibits a lawyer's communication of false or misleading information about the lawyer or the lawyer's services.

Finally, although respondent also stipulated to a violation of RPC 8.4(c) for his use of the statement "Legal Service Center," the Board determined that the RPC 7.5(e) and RPC 7.1(a) findings adequately address that misconduct. Accordingly, the Board dismissed the RPC 8.4(c) charge as duplicative.

Ordinarily, commingling of an attorney's personal funds with trust account funds will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account) and In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of \$1,801.67; because the attorney maintained more than \$10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney engaged in the negligent misappropriation of client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d) and R.

1:21-6; significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230 N.J. 458 (2017) (attorney found guilty of negligent misappropriation of client funds held in the trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

The use of false or misleading communications about the lawyer, usually found in the form of misleading attorney letterhead, ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as "of counsel," despite his having had no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; the Board noted other improprieties) and In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (attorney continued to use firm letterhead that contained the name of an attorney no longer associated with the firm, a violation of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971); no prior discipline).

Finally, admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Carl G. Zoeklein, DRB 16-167 (September 22, 2016) (attorney failed to cooperate with an ethics investigation into the attorney's lack of diligence and failure to file a complaint on the client's behalf; violations of RPC 8.1(b), RPC 1.3, and RPC 1.4(b)) and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)).

In crafting the appropriate discipline in this matter, the Board also considered aggravating and mitigating factors. In aggravation, respondent's noncompliance was ongoing and he displayed an inability to conform his conduct in respect of his recordkeeping responsibilities. In mitigation, respondent has no prior discipline; admitted his wrongdoing; stipulated to the facts and to his misconduct; did not seek personal gain; and remediated the improper designations from all legal advertising, retainer agreements, signage, and stationery.

For the totality of respondent's misconduct, and considering the aggravating and mitigating factors presented, the Board determined that a reprimand is the appropriate sanction necessary to protect the public and preserve confidence in the bar.

In addition to the reprimand, the Board requires that respondent practice law under the supervision of a proctor; submit monthly reconciliations to the OAE, on a quarterly basis; and attend the New Jersey Institute for Continuing Legal Education course titled "New Jersey Trust and Business Accounting" or an equivalent program provided by the OAE. Respondent must pre-pay the costs associated with the course. The credit for attendance at the course will not count toward respondent's R. 1:42-1 continuing legal education requirements. Respondent agreed to these conditions in the motion for discipline by consent.

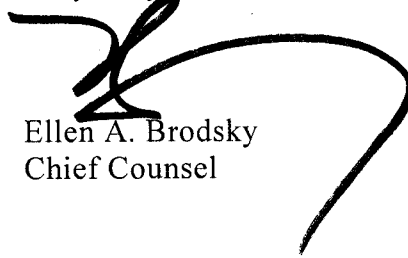
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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 28, 2020.
2. Stipulation of discipline by consent, dated January 28, 2020.
3. Affidavit of consent, dated December 5, 2019.
4. Ethics history, dated June 23, 2020.

Very truly yours,



*EW*: Ellen A. Brodsky  
Chief Counsel

Enclosures

- c: (w/o enclosures)  
Bruce W. Clark, Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (e-mail and interoffice mail)  
Johanna Barba Jones, Assistant Ethics Counsel  
Office of Attorney Ethics (e-mail)  
Raymond Charles Osterbye, Respondent (e-mail and regular mail)  
Edward Koster, Grievant (regular mail)