

**DISCIPLINARY REVIEW BOARD**  
**OF THE**  
**SUPREME COURT OF NEW JERSEY**

HON. MAURICE J. GALLIPOLI, A.J.S.C. (RET.), CHAIR  
PETER J. BOYER, ESQ., VICE-CHAIR  
JORGE A. CAMPELO  
THOMAS J. HOBERMAN  
REGINA WAYNES JOSEPH, ESQ.  
STEVEN MENAKER, ESQ.  
PETER PETROU, ESQ.  
EILEEN RIVERA  
LISA J. RODRIGUEZ, ESQ.



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

TIMOTHY M. ELLIS  
ACTING CHIEF COUNSEL  
BARRY R. PETERSEN, JR.  
DEPUTY COUNSEL  
NICOLE M. ACCHIONE  
FRANCES L. BOWDRE  
ROCCO J. CARBONE, III  
NICHOLAS LOGOTHETIS  
ASSISTANT COUNSEL  
SALIMA ELIZABETH BURKE  
KIMBERLY P. WILL  
ASSOCIATE COUNSEL

February 22, 2023

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

**Re: In the Matter of Edward J. McKenna, Jr.**  
Docket No. DRB 22-230  
District Docket No. XIV-2021-0009E

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 (the OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined that an admonition is the appropriate quantum of discipline for respondent's violation of RPC 1.15(a) (negligent misappropriation of escrow funds).

Specifically, beginning in December 2011, respondent served as the escrow agent for \$800,000 in settlement funds in connection with multi-track Superior Court litigation involving Putnam at Tinton Falls, LLC (Putnam), the owner of a residential real estate complex. Throughout the multi-track litigation, respondent and other attorneys represented Putnam and its majority owners.

In March 2009, Robert Ross, Jr., filed the first lawsuit, in the Superior Court of New Jersey, Law Division, against Putnam and its owners, claiming an ownership interest in Putnam. On February 29, 2012, the Appellate Division issued an opinion affirming the dismissal of Ross's complaint.

In August 2010, Richard Annunziata, who held a 25% interest in Putnam, filed the second lawsuit, in the Superior Court of New Jersey, Chancery Division, against Putnam and Gino & Family, LLC, which held a 75% interest in Putnam. In his lawsuit, Annunziata demanded specific performance of either (1) an option agreement that allowed Annunziata to purchase Gino & Family's interest during a one-year option period, or (2) the parties' original operating agreement, which provided that Annunziata and Gino & Family would share equal ownership of Putnam. The Superior Court required the parties to proceed to arbitration in connection with Annunziata's lawsuit.

In October 2011, during arbitration, Putnam and Annunziata agreed to a settlement in which Putnam would pay Annunziata \$900,000 in exchange for his 25% interest in Putnam. However, in November 2011, Annunziata, represented by new counsel, attempted to set aside the settlement, claiming that his former attorney did not have the authority to accept the settlement.

On December 21, 2011, the arbitrator ordered that, of the \$900,000 in potential settlement funds, \$100,000 be paid to Annunziata's various attorneys, as partial payment for their legal fees. The arbitrator further ordered that respondent hold the remaining \$800,000, in escrow, pending the outcome of Ross's Law Division matter. Finally, the arbitrator determined that Annunziata no longer held an interest in Putnam.

On April 27, 2012, the Superior Court issued a series of orders, in the Chancery Division matter, which confirmed the December 21, 2011 arbitration order and required respondent to disburse a portion of the escrowed funds to Annunziata's attorneys for their legal fees. On August 13, 2014, the Appellate Division issued an opinion affirming the Superior Court's April 27 orders and, on December 11, 2014, the Court denied Annunziata's petition for certification of the Appellate Division's opinion.

On April 30, 2012, Putnam filed the third lawsuit, in the Superior Court of New Jersey, Law Division, against Annunziata, among other parties, seeking to void Annunziata's alleged fraudulent loan and mortgage secured by property owned by Putnam. Respondent did not represent Putnam in connection with its lawsuit.

Meanwhile, on December 7, 2012, the Superior Court issued an order, in the Chancery Division matter, concluding the Chancery matter and directing that any further issues between the parties be resolved in connection with Putnam's Law Division lawsuit.

On January 23, 2013, the Superior Court issued an order, in Putnam's Law Division matter, granting partial summary judgment in favor of Putnam and against Annunziata for \$1.5 million. The record is unclear when Putnam's Law Division matter concluded.

Throughout the multi-track litigation, respondent repeatedly made proper escrow distributions, each time at the direction of the Superior Court, to Annunziata's multiple attorneys and to his accountant for their legal and accountancy fees.

However, on December 12, 2014, the day after the appellate litigation in connection with the Chancery Division matter had concluded, but prior to the conclusion of Putnam's Law Division matter, respondent informed his clients, Michael and Nicholas Patti, who became the owners of Putnam, that he intended to take his \$53,312.25 legal fee from the escrow funds. On December 17, 2014, respondent, at the direction of Michael Patti, disbursed from the escrow funds his \$53,312.25 legal fee. Two days later, respondent disbursed the remaining escrow funds to Putnam's other attorney to be held in escrow pending the outcome of any remaining litigation.

Respondent's disbursement of his legal fee from the escrow funds, however, constituted negligent misappropriation, in violation of RPC 1.15(a). Specifically, although respondent received his clients' consent to disburse his fee from the escrow funds, he failed to obtain such permission from either the Superior Court or the other parties who held an interest in the funds, including Annunziata and his attorneys. Given that respondent repeatedly had made multiple, proper escrow disbursements, at the direction of the Superior Court, throughout the multi-track litigation, respondent's failure to seek Court approval in connection with the disbursement of his own legal fee was reckless. As the OAE and respondent stipulated, however, respondent's actions appear to have stemmed from his mistaken belief that the multi-track had concluded, rather than from his conscious decision to violate his obligations as an escrow agent.

On August 18, 2015, eight months after respondent's improper disbursement of his legal fee, respondent arranged for the Pattis to send him a \$53,312.25 check, the exact amount of his legal fee, to be held in escrow in his

ATA. Subsequently, in June 2016, following Annunziata's filing of a Chapter 13 bankruptcy petition, respondent, at the direction of Annunziata's bankruptcy trustee, disbursed to the trustee the \$53,312.25 to become part of Annunziata's bankruptcy estate.

In imposing only an admonition, the Board weighed, in mitigation, the passage of eight years since respondent's single act of negligent misappropriation, the lack of ultimate harm to his clients or to any third parties, and, most significantly, his lack of prior discipline in his forty-eight-year career at the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated December 19, 2022.
2. Stipulation of discipline by consent, dated December 15, 2022.
3. Affidavit of consent, dated December 13, 2022.
4. Ethics history dated February 22, 2023.

Very truly yours,

*/s/ Timothy M. Ellis*

Timothy M. Ellis  
Acting Chief Counsel

TME/lg

Enclosures

c: See attached list (w/o enclosures)

Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair  
Disciplinary Review Board (e-mail)  
Johanna Barba Jones, Director  
Office of Attorney Ethics (e-mail and interoffice mail)  
Jennifer L. Iseman, Deputy Ethics Counsel  
Office of Attorney Ethics (e-mail)  
Edward G. Washburne, Esq.,  
Respondent's Counsel (e-mail and regular mail)  
Deborah Annunziata, Grievant (regular mail)

---

IN THE MATTER OF  
EDWARD J. McKENNA, JR.

---

**AFFIDAVIT OF SERVICE  
WITH CERTIFICATION IN  
LIEU OF OATH (R.1:4-5)**

---

STATE OF NEW JERSEY  
COUNTY OF MERCER

---

ss

I, Lois Guarino, of full age, being duly sworn upon her oath deposes and says:

1. I am employed by the State of New Jersey as a Court Services Officer I with the Disciplinary Review Board.

2. On February 22, 2022, I personally sent a copy of the letter dated February 22, 2022, addressed to Heather Joy Baker, Clerk of the Supreme Court of New Jersey (with relevant enclosures) to the following address and e-mail:

**CERTIFIED MAIL, REGULAR MAIL and E-MAIL**

Edward G. Washburne, Esq., Counsel for Edward J. McKenna, Jr.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 22, 2022

  
Lois Guarino, Court Services Officer I  
Disciplinary Review Board