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June 24, 2024

VIA CERTIFIED, REGULAR & ELECTRONIC MAIL

David Bayard Foltz
c/o Howard B. Mankoff, Esq.
Marshall Dennehey
425 Eagle Rock Avenue, Suite 302
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Re: In the Matter of David Bayard Foltz
Docket No. DRB 24-093
District Docket No. XIV-2019-0563E
LETTER OF ADMONITION

Dear Mr. Foltz:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Following a review of the record, the Board determined to impose an admonition for your violation of RPC 1.5(b) (failure to set forth in writing the basis or rate of the attorney's fee), RPC 1.15(a) (negligent misappropriation), and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6).

Specifically, in February 2017, Robert Criscuolo, while serving as executor of an estate (the Estate), retained you to serve as attorney for the Estate.

You previously had not represented Criscuolo. You and Criscuolo purportedly entered into a verbal agreement, establishing a flat fee for your representation; however, you failed to provide Criscuolo with a writing setting forth the basis or rate of your fee.

Thereafter, you opened, within your attorney trust account (ATA), an “interest-bearing escrow sub-account” on behalf of Criscuolo as the Estate’s executor (the Executor Sub-Account). In addition to this account, at various times, you also held Estate funds in your general ATA, from which you paid the Estate’s bills and distributed the decedent’s residuary assets.

On April 24, 2017, you paid the decedent’s 2016 income taxes, in the amount of \$844, using your general ATA, although you were holding the Estate funds in the Executor Sub-Account at the time. In addition, you were required to have in your general ATA \$501,644.73 on account of twenty-three other clients; however, on May 9, 2017, your ATA balance dropped to \$500,812.76. Thus, your use of your general ATA to pay the decedent’s taxes resulted in the invasion of unrelated client funds. As of May 12, 2017, you corrected your error by depositing \$844 in Estate funds in your general ATA.

In June 2019, Criscuolo filed a grievance against you. In addition to the above facts, the OAE’s resulting investigation revealed the following recordkeeping violations: client ledger cards with debit balances (R. 1:21-6(d)); electronic transfers made without proper authorization (R. 1:21-6(c)(1)(A)); inactive balances in your ATA (R. 1:21-6(d)); funds received by you in connection with three estate matters were not kept separate from funds in your ATA¹ (R. 1:21-6(a)(1)); and ATA checks without memo of client name or file number (R. 1:21-6(g)).

Subsequently, you provided to the OAE updated financial books and records that complied with the R. 1:21-6 recordkeeping requirements. Further, you entered into a disciplinary stipulation with the OAE.

¹ Although this violation was described as “commingling” in the disciplinary stipulation, it was listed under RPC 1.15(d) and described as a violation of R. 1:21-6(a)(1). Thus, the Board understood it to refer to a failure to hold funds separate, in accordance with the R. 1:21-6(a)(1) requirement that an attorney maintain a trust account separate from any fiduciary account that the attorney may maintain.

Based on the above facts, you stipulated having violated RPC 1.5(b) in the Estate matter by failing to set forth the basis or rate of your fee in writing; RPC 1.15(a) by negligently misappropriating client funds; and RPC 1.15(d) by failing to comply with the R. 1:21-6 recordkeeping provisions.

In imposing only an admonition, the Board accorded considerable mitigating weight to your lack of prior discipline in your thirty-eight years at the bar. Also in mitigation, you stipulated to your misconduct and brought your books and records into compliance with the recordkeeping Rules.

Your conduct has adversely reflected not only on you as an attorney but also on all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Office of Board Counsel. Should you become the subject of any further discipline, this admonition will be taken into consideration.

The Board also has directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded to you under separate cover.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg

c: Chief Justice Stuart Rabner
Associate Justices
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