SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-033
District Docket Nos. XIV-2009-106E
and IIA-2009-900E

IN THE MATTER OF	
CLIFFORD B. SINGER	
AN ATTORNEY AT LAW	

Decision

Argued: April 15, 2010

Decided: July 1, 2010

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for discipline filed by the District IIA Ethics Committee ("DEC"). The second amended complaint charged respondent with violating

RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); RPC 1.15(a) (negligent misappropriation of client trust funds), and RPC 1.15(d) and R. 1:21-6(c)(1)(H) (recordkeeping violations) (count two); RPC 8.4(c) (count three); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count four).

At our February 2009 session, we considered this matter, which had been certified to us as a default, based on the Office of Attorney Ethics' ("OAE") determination that respondent had not filed a verified answer. At that time, we determined that respondent had, in fact, filed a verified answer. We remanded the case to the OAE to proceed to a hearing. In light of our action, the OAE withdrew count four of the complaint (RPC 8.1(b)).

We determine that a reprimand is the proper discipline for respondent.

Respondent was admitted to the New Jersey bar in 1984. He was admitted to practice in Georgia and the District of Columbia

in 1981 and 1982, respectively.[1]

Respondent was reprimanded, in September 2009, for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a personal injury matter. In re Singer, 200 N.J. 263 (2009). The Court ordered respondent to submit proof of his psychological fitness to practice law, within sixty days of the order. The record does not indicate whether respondent has complied with this directive. In addition, respondent was to submit to the OAE periodic reports of his compliance with his treatment plan, until discharged, and was to practice under the supervision of a proctor for two years.

Count One

In 1996, Giselle L'Ecuyer retained respondent to represent her in a personal injury matter arising from a May 1996

[1] Respondent was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection for a four-month period, from September 2006 to January 2007. The record does not reveal whether respondent's representation of the grievant continued into those months. Therefore, his ineligibility may or may not be relevant. Respondent's ineligible status is not noted in the record.

automobile accident.[2] L'Ecuyer was a passenger in a car driven by her former husband, Robert Conklin. The car was struck by another vehicle. The accident took place in New York. Respondent had previously represented Conklin in a workers' compensation matter.

Respondent filed a complaint on L'Ecuyer's behalf, in May 1998. He had difficulty serving the other driver, despite his attempts to do so. In 2002, the case was dismissed for failure to prosecute.

According to L'Ecuyer, since 1996, she had spoken with respondent three or four times per year, during which time respondent advised her that the case was proceeding apace. In 2004, respondent told L'Ecuyer that her case was settled and that he was waiting for a check. Respondent never spoke to her about a specific dollar amount.

Respondent did not dispute that he knew L'Ecuyer's case had been dismissed. He denied intentionally misleading L'Ecuyer and also denied ever telling her that the case had been settled and that he was waiting for a check. Respondent explained that,

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[2] In some places in the record L'Ecuyer is referred to as Giselle Conklin.

when he said he was working on settling the matter, "in my mind I was seeking to either restore it or make amends."[3]

Count Two

Respondent represented Pasquale DiGravina in a real estate transaction that closed in December 2005. The HUD-1 indicated that $7,517 was due to the Bergen County register for a realty transfer fee. Although respondent issued the check, he failed to note it on the client trust ledger. Therefore, when respondent disbursed the net sale proceeds to the client, he over disbursed them by $7,517. Respondent replaced the money, when the shortage was brought to his attention.

DiGravina "had bank rolled" the development of eleven houses. Respondent had a number of client ledgers for him. He delegated his bookkeeping responsibilities to an employee and did not personally compare each check against his ledger. He conceded that he "should have checked every check before [he] disbursed." Moreover, he did not reconcile his trust account for "a couple of years."

[3] L'Ecuyer filed a malpractice claim against respondent, which was settled.

Count Three

The complaint in this matter was served on respondent by regular and certified mail, on February 19, 2008. One week earlier, on February 12, 2008, in connection with an application for malpractice insurance, respondent answered "No" to the following question: "Has any attorney listed on your letterhead EVER been refused admission to practice, disbarred, suspended or formally reprimanded, or been subject to ANY disciplinary proceedings?" The application also stated: "Applicant further warrants on its behalf . . . a continuing obligation to report to the Company immediately any material changes in all such information after signing the application and prior to issuance of the policy. . . ."

Respondent answered "no" to the question because, although he had been interviewed by the OAE in connection with the within matter, no formal charges had been filed against him. Moreover, he believed that, following the interview, most of the OAE's questions had been answered to its satisfaction. In addition, the insurance company was made aware of the L'Ecuyer matter because respondent disclosed it in his answer to another question on the form, pertaining to potential claims.

Respondent has suffered from depression for a number of years for which he has received treatment and taken medication. In addition, he was involved in a motor vehicle accident, in 1994, that resulted in serious injuries and led to recurring physical difficulties. Respondent's wife also has a number of medical issues. Respondent's oldest son has cerebral palsy and his younger son has Asperger syndrome. As to whether these circumstances affected his representation of L'Ecuyer, respondent testified: "I know we're held to a standard where it's not supposed to in any way, shape or form, but I can't help but believe that yeah, it's part of what made me less than I should be."

The record contains a psychiatric report about respondent, prepared by Robert T. Latimer, M.D. P.A., and dated October 27, 2008. Dr. Latimer confirmed that respondent suffers from Depressive Syndrome. Dr. Latimer's report appears to be the same one that was submitted during respondent's first disciplinary proceeding, which addressed misconduct from late 2002 or early 2003 through 2006. In the Matter of Clifford B. Singer, DRB 09-021 (July 8, 2009) (slip op. at 3). That is the same period of time relevant to respondent's misconduct in the

present matters.[4] Thus, Dr. Latimer's analysis would apply in this disciplinary case as well.

As to count one, the DEC did not find respondent guilty of lack of diligence in his representation of L'Ecuyer.[5] The DEC noted that, although respondent allowed the complaint to be dismissed, the dismissal occurred because he could not serve the defendant. The DEC found no evidence that he was not diligently attempting to serve the defendant.

The DEC found, however, that respondent was guilty of failure to communicate with L'Ecuyer and of deceit. Although respondent testified that, in his mind, he was planning to remedy the situation, the DEC found credible the testimony of OAE investigator Nicholas Hall that respondent had admitted lying to L'Ecuyer that he was working on a settlement, when he knew that the case had been dismissed. The DEC also found

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[4] The record does not reveal when respondent's representation of L'Ecuyer ended. We treated the year that she filed the grievance (2006) as the end of the representation.

[5] The DEC made no reference to the gross neglect charge. Presumably, however, because lack of diligence is a lesser included offense of gross neglect, if the DEC did not find respondent guilty of the former, it did not find him guilty of the latter.

credible L'Ecuyer's testimony that respondent had told her that he had settled the case and was waiting for a check.

In count two, respondent stipulated that there was a $7,517 shortage in his trust account. In addition, it was clear to the DEC that he had not reconciled his account for several years. By over disbursing funds for DiGravina, respondent negligently misappropriated funds held for another client, in violation of RPC 1.15(a).

The DEC was unable to conclude that respondent was guilty of the misconduct charged in count three, namely, that he had made misrepresentations on his application for malpractice insurance. The DEC noted that (1) at the time of respondent's application, no formal disciplinary charges were pending against him; thus his answer was truthful; (2) respondent had already disclosed the underlying facts of the L'Ecuyer's matter on the application; (3) there was no indication that the omission was material, in light of the L'Ecuyer disclosure; and (4) respondent's duty to correct was required only between the time of the application and the issuance of the policy and the record did not disclose when the policy was issued. Because the DEC could not conclude that a duty to supplement ever arose, it dismissed the third count of the complaint.

In mitigation, the DEC found that respondent was cooperative, had no prior disciplinary history, and promptly remedied the shortage in his account, when it was brought to his attention.[6] The DEC also noted that respondent has been treated for depression for a long period of time, and is taking medications.

Both the OAE and respondent suggested that a reprimand was the appropriate measure of discipline. The DEC agreed with the recommendation. The DEC also suggested that respondent remain under the care of "a medical professional," continue to take his medication, and take a continuing education course in recordkeeping.

Following a de novo review of the record, we find that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

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[6] The hearing panel report is dated January 5, 2010. Respondent's reprimand had been issued four months earlier. Thus, the DEC is mistaken about respondent's disciplinary history.

The DEC's findings that respondent violated RPC 8.4(c), RPC 1.15(a), and RPC 1.15(d) are supported by the record.[7] Also, the DEC's dismissal of the other allegations was appropriate.

In count one, there was no indication that respondent failed to diligently pursue L'Ecuyer's claim. His inability to serve the defendant did not appear to be for lack of trying. We find, thus, that the DEC's dismissal of the charged violation of RPC 1.3, and presumably of RPC 1.1(a), was correct. The DEC's dismissal of the allegations in count three was also proper. At the time that respondent completed the application for insurance, there were no charges pending against him. Moreover, he revealed the existence of the L'Ecuyer matter elsewhere on the form.

As to the charged violation of RPC 8.4(c), the DEC found credible the testimony of Hall and L'Ecuyer that respondent had told L'Ecuyer that he was working on a settlement. Respondent's counsel argued that this was a case of "he said, she said." Even

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[7] We are aware that the complaint charged, and the DEC found, that respondent had violated RPC 1.4(b). Respondent's misconduct, however, was more properly a violation of RPC 8.4(c), which was also charged in the complaint.

accepting respondent's version of the facts, however, he was guilty of misrepresentation.

Indeed, our analysis of respondent's actions in the L'Ecuyer matter is identical to our analysis of respondent's actions in the matter that resulted in his earlier reprimand. Specifically, in that matter, we wrote:

> The only questionable charge is the alleged violation of RPC 8.4(c). Respondent was charged with misrepresenting the status of the personal injury case to Ash and her parents by telling them that he was working on it. Respondent testified that, during the time that he represented Ash, he was thinking about the matter; therefore, in his mind, he was pursuing the case.
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> Recently, we considered a similar matter, In the Matter of David G. Uffelman, DRB 08-355, where the attorney advised his client that he was working on a motion in a litigated matter and never filed the motion. Uffelman suffered from extreme depression. We concluded that, at the time that Uffelman said he would file the motion, he was intending to do so. In our view, if an attorney makes a statement believing it to be true at the time that the attorney makes it, that statement does not amount to a misrepresentation. In Uffelman, we did not find a violation of RPC 8.4(c).
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> The difference between Uffelman and this case is the length of time that respondent represented that work was being done. In Uffelman, for two months the attorney told the client that he was working on a motion. Here, respondent stated that he was working on the case, periodically, for at least four years. At some point, he knew

> that he was no longer pursuing the case, regardless of how much he thought about it. Indeed, respondent's testimony that he had thought of saving his own money to pay Ash shows that he knew that he would not be reinstating the complaint. In light of respondent's recognition of his own dereliction, his telling his client and her family that he was working on the case was a misrepresentation and, therefore, a violation of RPC 8.4(c).
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> In re Singer, DRB 09-021 (July 8, 2009) (slip op. at 8-9).

In the matter before us, respondent was "working on settling" the case from its dismissal, in 2002, presumably until L'Ecuyer filed the grievance against him, in 2006. At some point, he had to come to the realization that he was no longer going to restore the case. Moreover, his argument that he was planning to make L'Ecuyer whole also loses steam when it is considered that so many years had passed. Indeed, his recognition that he might be responsible for making L'Ecuyer whole evidences that he considered the matter finished and beyond restoration. We find, thus, that he violated RPC 8.4(c) by misrepresenting to L'Ecuyer that he was "working on settling," when he had to know that he was not. Thinking about how to pay off one's client for one's dereliction cannot be described as working on settling the case.

Misrepresentation to clients requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions, as here. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

As to respondent's other infractions, he admitted his recordkeeping derelictions. A simple bookkeeping mistake went

undetected due to his disregard of his responsibilities and his failure to perform required reconciliations. Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated $50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated $103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both

clients were entitled); In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account $4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); In re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated $31,000 in client funds and failed to comply with recordkeeping requirements); and In re Goldstein, 147 N.J. 286 (1997) (attorney negligently misappropriated clients' funds and failed to maintain proper trust and business account records).

Here, respondent replaced the funds when the problem was brought to his attention. Prior to his 2009 reprimand, his career had been unblemished for twenty-five years. Moreover, respondent was beset by psychological and physical difficulties, as well as by those of his wife and sons. We, therefore, determine that a reprimand is adequate discipline for the totality of his conduct. Member Wissinger did not participate.

One final point warrants mention. Respondent's misconduct appears to be closely tied to his psychological difficulties.

Therefore, the OAE should focus on ensuring respondent's compliance with the Court's September 2009 order.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Clifford B. Singer
Docket No. DRB 10-033

Argued: April 15, 2010

Decided: July 1, 2010

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger						X
Yamner			X			
Zmirich			X			
Total:			8			1

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