SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-247

IN THE MATTER OF

STEVEN G. SIEGEL,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 16, 1992 and December 16, 1992

Decided: January 28, 1993

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Justin P. Walder appeared on behalf of respondent.

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

This disciplinary matter arose from a grievance filed by the law firm of McCarter and English ("M&E"). The formal complaint charged respondent with fabrication of disbursement requests and appropriation of over $20,000 in funds belonging to M&E through fraud, artifice, and/or deceit (Count One); improper charges of $15,000 in false expenses against a client's account for his personal use (Count Two); and improper withdrawal of $53,450 in funds that belonged to M&E, as a gift from the client to himself (Count Three). The complaint did not charge respondent with misappropriation of client funds.

The facts are as follows:

Following his admission to the New Jersey bar in 1973, respondent joined M&E as an associate. In 1981, he became a partner in that law firm, specializing in the areas of taxation, commercial transactions and estate planning. Since 1976, he has also been an adjunct professor at Seton Hall Law School. In December 1989, respondent left M&E to start the law firm of Siegel, Witman & Stadtmauer, where he remains to date.

Beginning in 1986 and through the end of 1989, respondent converted in excess of $25,000 in funds belonging to M&E by submitting false requests for disbursements drawn against "unapplied retainers," i.e, monies collected and owned by M&E as legal fees, but not yet transferred from the clients' files to M&E's accounts. According to Eugene Haring, a senior partner at M&E who testified at the DEC hearing, unapplied retainers were rare. They were only found in transactions where the compensation agreement called for either fixed or percentage fees.

It was through the use of those unapplied retainers that respondent's carefully contrived scheme to divert M&E funds for his personal benefit succeeded, went undetected for three and one-half years and might have remained unexposed if not for M&E's discovery, soon after respondent's departure from the firm, of a questionable American Express charge to a client's file. A painstaking review of disbursements authorized by respondent during the past three years then spewed a rush of improper activity that ultimately led to a confrontation with respondent and his admission of wrongdoing.

By way of illustration of a personal expense paid by M&E's funds through artifice on respondent's part, on July 10, 1987 and June 15, 1989, respondent signed disbursement requests for $689 and $530 respectively, listing the purpose therefor as "surveyor charges" owed to Coviello Brothers, Inc. in two real estate matters. In reality, that business concern was a professional landscaping service that had landscaped respondent's residence. Other false disbursement requests (thirty-four in all) covered payments for respondent's personal tennis club fees (totalling $1,700), theatre tickets ($3,000), personal legal fees ($3,000), dental expenses ($645), mortgage service fee in connection with his mother-in-law's residence ($1,797.50) and sports memorabilia ($9,000). In every instance, the payees were not fictitious; only the stated purpose for the expense was illegitimate. An itemized list of those disbursements, totalling $21,636.32, follows:

DATE	**AMOUNT**	**PAYEE, PURPORTED PAYMENT PURPOSE AND ACTUAL PURPOSE**
9/4/86	$ 395	Neil Goldstein - fee appraisal services (estate of Helen McMurray) - personal tennis club fees
12/29/86	$ 275	Dr. Marshall Rafal - consulting services (Chemical/Silverman) - personal theatre tickets
2/11/87	$1,797.50	Baker Company, Inc. - mortgage service fee (Chemical/Birdsall) - mortgage service fee on mother-in-law's house
4/24/87	$ 340	Dr. Marshall Rafal - fee for M.D.'s expert services (Chemical/Turchin) - personal theatre tickets

6/9/87	$ 74	Dr. Marshall Rafal - miscellaneous services (Norfleet Estate) - personal theatre tickets
7/10/87	$ 689	Coviello Brothers, Inc. - surveyor charges (Chemical/Old Oaks) - personal landscaping for his residence
7/20/87	$ 645	Warren Silverman, D.D.S. - services rendered (Norfleet Estate) - personal dental expenses
8/4/87	$2,000	Shipman & Goodwin - counsel fees (Hamburger Estate) - personal legal fees
9/1/87	$ 415	Neil Goldstein - appraisal services (Weiner Estate) - personal tennis club fees
11/23/87	$ 272	Dr. Marshall Rafal - services rendered (Nelson Estate) - personal theatre tickets
12/18/87	$ 80	Dr. Marshall Rafal - services rendered (Nelson Estate) - personal theatre tickets
1/29/88	$3,000	Bruce Buchman - appraisal services (Chemical Realty) - baseball memorabilia
3/16/88	$ 152	Dr. Marshall Rafal - services rendered (Nelson Estate) - personal theatre tickets
4/29/88	$ 348	Dr. Marshall Rafal - services rendered (Norfleet Estate) - personal theatre tickets
6/24/88	$ 500	Bruce Buchman - appraisal fees - baseball memorabilia
9/7/88	$ 430	Neil Goldstein - commission (Weiner Estate) - personal tennis club fees

9/21/88	$1,200	John Broggi - commission (Taranto Bus Corp.) - baseball memorabilia
11/8/88	$ 425.80	Shipman & Goodwin - counsel fees (Hamburger Estate) - personal legal fees
11/23/88	$ 190	Dr. Marshall Rafal - services rendered (Hamburger Estate) - personal theatre tickets
1/19/89	$ 144	Dr. Marshall Rafal - appraisal fee (Chemical/Hoal Associates) - personal theatre tickets
2/13/89	$ 72	Dr. Marshall Rafal - services rendered (Norfleet Estate) - personal theatre tickets
3/2/89	$1,200	John Broggi - appraisal services (Norfleet Estate) - baseball memorabilia
4/25/89	$ 130.70	Shipman & Goodwin - legal fees (Hamburger Estate) - personal legal fees
4/27/89	$ 250	Dr. Marshall Rafal - services rendered (McMurray Bennett Foundation) - personal theatre tickets
5/30/89	$ 464	Dr. Marshall Rafal - appraisal fee (McMurray Estate) - personal theatre tickets
6/15/89	$ 221.32	Shipman & Goodwin - counsel fees (Chemical/General) - personal legal fees
6/15/89	$ 530	Coviello Brothers, Inc. - survey services (Chemical/General) - personal landscaping for his house
7/25/89	$ 250	Shipman & Goodwin - counsel fees (Chemical/General) - personal legal fees

9/7/89	$ 460	Neil Goldstein - executor's fee (Weiner Estate) - personal tennis club fees
9/11/89	$1,500	John Broggi - appraisal services - (Chemical Realty/General) - baseball memorabilia
9/26/89	$1,200	Steven G. Siegel - trustee fee (Weiner Estate) improper payment for personal use.
11/21/89	$ 500	Bruce Buchman - broker's commission (Shultz v. Kerekes) - baseball memorabilia
11/21/89	$1,200	John Broggi - environmental consultant's fee (Chemical/General) - baseball memorabilia
11/21/89	$ 304	Dr. Marshall Rafal - services rendered (McMurray Estate) - personal theatre tickets

Additional false expenses, totalling $4,483.95, are listed on Exhibit P-16 (Count Two of the formal complaint). In that case, M&E represented Chemical Bank on various matters for which respondent was the billing attorney. Under M&E's bookkeeping system, each matter had an individual number. Between April 30, 1989 and December 31, 1989, respondent transferred unapplied retainers from various Chemical Bank matters to one single account, denominated Chemical General Account, thereby creating a fund of unapplied retainers in the amount of $15,392.21. Thereafter, between June 1, 1989 and December 31, 1989, respondent depleted the $15,000 fund to a zero balance, through the billing of attorney and

paralegal time and the receipt of petty cash checks as well as other checks drawn on the Chemical General file.

Specifically, respondent submitted numerous false disbursement requests to M&E to cover the payment of $4,483.95 in personal expenses, such as, for example, travels and meals.[1] Respondent also falsely billed attorney paralegal time against the Chemical General file in the amount of $6,750. As respondent admitted (T4/7/1992 231-232), the time represented by the billings was actually spent in discussions with an M&E's associate and a paralegal about their future employment with respondent's new law firm. Although M&E suffered no financial loss by this deception, the associate and the paralegal received undue credit for time spent for their personal business, instead of time spent for the clients' benefit or the firm's business.

Although respondent conceded that his conduct was clearly improper — for which he expressed regret and contrition — he contended that, at the time, his actions appeared justified to him because of what he perceived to be an abuse of the firm's facilities, services, staff, and funds by some of his partners at M&E. Respondent testified that he had expressed his dissatisfaction with these abuses to some of his partners, including Haring. No action, however, had ever been taken to eliminate them, despite the submission to M&E's Executive Committee

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[1] As correctly found by the Special Master, out of the $15,000 in false disbursements charged in Count Two of the complaint, $3,701.32 are duplicated in Count One and should be subtracted from the $8,185.27 in total false disbursements contained in Exhibit P-16, leaving a balance of $4,483.95. See Special Master's Decision at 13 for a list of the expenses that are duplicates.

of a report prepared in 1989 by the Expense Review Committee — of which respondent was a member — created to address specific concerns about those abuses and to make recommendations for the reduction of expenses.

According to respondent, sometime in 1989, when his ~~level of~~ unhappiness and frustration escalated to an intolerable level, he began entertaining thoughts of leaving M & E. It was then that Witman, one of respondent's current law partners, extended an invitation for respondent to become a member of a new law firm. Respondent accepted. For the first time ever since the establishment of M & E, a partner left that firm to start a competing law practice. As respondent explained in his answer, his withdrawal from M&E was "a recognition on his part of the error of certain actions and his desire to separate himself from the stressful circumstances which he perceived existed at the firm, and to enable his life to move forward in a positive direction." Answer at 4.

Respondent also blamed personal problems for his improper conduct. He testified that, in 1986, his stepmother was diagnosed as suffering from cancer; she died early in February 1987. As a result, his father became emotionally dependent on him, an only child. In late 1987, his father was involved in a serious automobile accident and spent three or four months in the hospital. After his recovery from the injuries suffered, respondent's father developed prostate cancer, from which he suffered greatly thereafter. Also, in 1983, respondent's wife had to undergo spinal

surgery, after the birth of their second child, to alleviate chronic hip and back pain. That ongoing state of discomfort caused her to be very unhappy for long stretches of time. To compound matters, one of respondent's children developed a serious ear problem that took three years to be diagnosed and, in 1988, his younger daughter was diagnosed as having a learning disability, which caused a situation of great stress to the family. According to respondent, this combination of great personal turmoil and stressful circumstances at M&E caused his judgment to become impaired and led to the commission of the offenses that are the subject matter of these proceedings.

Count Three charged respondent with improperly keeping $53,450 that should have gone to M&E's accounts but that respondent, instead, disbursed to himself as a gift from a client, the Asbury Park Press ("The Press"). The events that gave rise to this charge are as follows:

The Press had been a client of M&E since the 1940s. From 1984 through 1988, respondent worked on a matter titled "Vineland Media," involving the purchase and sale of the licenses and assets of several television stations owned by the Press. After the conclusion of this complex and lengthy matter, which resulted in substantial profits to the Press, the latter issued instructions to respondent on how to disburse $1.5 million in closing proceeds deposited in M&E's accounts. The disbursements included a $50,000 reward to respondent for his personal efforts in contributing to an

unexpected, extraordinary profit to the Press before the change in the tax laws, effective January 1, 1987. The sum of $3,450 in accrued interest on the $1.5 million funds was also to be disbursed to respondent as a gift. The $53,450 sum was not intended to be given to M&E, as confirmed by both Donald Lass, the editor and publisher of the Press, and Jules L. Plangere, Jr., the Press' Board Chair. In fact, were respondent unable to accept the gift because of any policy within the firm, the Press expected that the monies would be returned to it.

Consistent with the Press' directives, respondent signed disbursement requests for checks payable to all individuals named by the Press, including himself. Exhibit P-25. Respondent attached a copy of a letter countersigned by Lass, confirming the amounts to be disbursed and the respective payees. Exhibit R-1a. He labelled his own $53,450 check as "payment of closing proceeds."

Respondent neither sought approval from M&E to accept the gift nor informed the firm of the Press' wish to give him a monetary reward. He testified that he was not aware of any M&E policy requiring an affirmative duty to obtain the firm's approval to the gift. While it is undisputed that there was no agreement governing the receipt of gifts by partners, Haring testified that

> money received for hard and effective legal work on behalf of a client . . . whatever is denominated by the client, is the property of the firm . . . based on years and years of practice and tradition . . . . Gift of a basket of fruit or a card at Christmas would be fine. . . if the gift is money and if it's for legal services performed, that is partnership property."
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> [T4/7/1992 21-22]

Haring added that he was not aware of monetary gifts received by any partner during his tenure with the firms' Executive Committee.

Following the discovery of respondent's improprieties and several meetings with M&E's representatives, it was agreed that respondent's $165,000 share of the firm's capital account[2] would be offset by certain sums unduly kept by respondent, including the $50,000 gift from the Press. Ultimately, respondent received $125,000 from his share in the capital account.

* * *

At the conclusion of the ethics hearing, the Special Master found that, as a result of thirty-four false requests for disbursements (Count One), "respondent received approximately $20,000 in either goods, services or cash to which he was not entitled. All of these funds came from unapplied retainers, which were monies the firm was entitled to receive." Special Master's Report at 10.

As to Count Two, the Special Master found that respondent caused false disbursements of $4,483.95 (not $15,000, as alleged in the complaint, because of the duplication of certain expenses). The Special Master also concluded that respondent falsely billed

[2] According to Haring, capital account is "a partner's share in the assets of the firm, including undistributed income upon which taxes have been paid . . . .T4/7/1992 27.

attorney and paralegal time against the Chemical Bank matters, in the amount of $6,750. As noted by the Special Master,

> [i]n this fashion, [an associate and a paralegal] were given credit for time worked for McCarter and English, when in fact that time was being used for their private business. While McCarter and English lost no money by this subterfuge, some other attorney, attorneys, or paralegals were deprived of credit for time they had spent working on matters for which their time translated into $6,750.00.
> [Special Master's Report at 12]

Lastly, the Special Master found that respondent engaged in conduct involving dishonesty, deceit and misrepresentation, in violation of RPC 8.4(c), when he drew a check to his order for $53,450, without disclosure to the firm. The Special Master reasoned that "[b]y so doing, [respondent] never gave the firm the opportunity to even consider whether or not there was a firm policy that either prohibited the acceptance of such a gift, or mandated that it be turned over to the firm." Special Master's Report at 18.

CONCLUSION AND RECOMMENDATION

Following an independent, *de novo* review of the record, the Board is satisfied that the Special Master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The Board cannot agree, however, with the Special Master's finding that respondent's conduct in

keeping the $50,000 gift from the Press violated the disciplinary rules.

Indeed, because the record does not clearly and convincingly establish that M&E had a policy, written or unwritten, prohibiting the acceptance of such monetary gifts, respondent's acceptance of the gift itself might not have been an ethics violation. Clearly, prudence dictated that respondent either inform the firm of the gift or obtain its approval thereto. Because, however, the evidence in the record is insufficient to show that respondent deliberately concealed the gift from the firm, the Board cannot conclude that respondent's conduct rose to the level of the violation contemplated by RPC 8.4(c), which deals with dishonesty, fraud, deceit and misrepresentation. More properly, the controversy about the gift could be characterized as an internal firm dispute, rather than conduct proscribed by the disciplinary rules.

It is unquestionable, on the other hand, that respondent's conduct described in Counts One and Two of the complaint was unethical and extremely serious. Although respondent did not misappropriate clients' funds, he converted to his own use $25,000 in funds that rightfully belonged to the firm of which he was a partner. And he did so through deception and artifice.

The abuses by other partners, if true, were accomplished openly. Respondent testified that his partners would incur personal expenses, such as travels and meals, charge them against clients' accounts, and then write them off or charge them to the

firm's business development account, designed to cover, among other things, personal expenses. In this fashion, their conduct, albeit perhaps not sanctioned by the firm, was a far cry from respondent's, which required careful contrivance to allocate false disbursements to cases where no suspicion of irregularity could be raised. For instance, respondent charged his personal dental expenses against an estate matter, where doctors' expenses would not ordinarily appear out of place. Similarly, the landscaping for his house was charged against a real estate matter, where the purported services performed consisted of a survey. In this fashion, respondent's conduct was deceitful and scheming.

Respondent's conduct was all the more disturbing because it defies comprehension or understanding by reasonable minds. This is not a case where, for example, an associate in a large law firm, who feels overworked and underpaid and is conscious of abuses by less productive individuals in the firm, devises a plan to increase his or her compensation by submitting requests for reimbursement for illegitimate expenses. Here, respondent earned $307,000 in 1989. In that same year, he received a $30,000 bonus from the firm. As respondent admitted, he was earning more "than he ever dreamed of." It is clear therefore, that respondent's conduct was motivated not by need but, instead, by the desire to "get even" with his partners.

In his brief, respondent's counsel argued that the matters currently under review are nothing but an internal firm dispute and should be treated as such. This argument misses the mark. This is

not merely a spat among law partners over excessive meals or trips; this is a case involving criminal conduct that spanned a period of three years[3]. That the firm has declined to file a criminal complaint against respondent is of no moment. Respondent's conduct was nothing but theft, pure and simple, and he so admitted.

The case cited by respondent's counsel for the proposition that the subject matter of the ethics complaint is an internal law firm matter, In re Rice, 661 P.2d 591 (Wash. 1983), is inapposite to the within situation. There, the attorney, who was a member of a law firm, on eight different occasions took $2,500 as legal fees for work he had done and used them for his own benefit. The attorney failed to account to the law firm for the receipt of those funds. Although he did not change the books to hide these takings, he failed to record the receipt of the funds. The attorney acknowledged that he had taken the monies, but maintained that he intended to account for all the funds at the time that a new accounting system was installed. Finding no violation, the Washington Supreme Court reasoned that the attorney's actions were consistent with the accounting practices of the partnership and that it was unquestionable that the attorney had not intended to permanently deprive the firm of the funds he used.

Here, it is undisputed that respondent did not borrow the funds temporarily but, instead, intended to permanently deprive M&E

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[3] It did not escape the Board's attention that, although respondent was appointed a member of the Expense Review Committee in 1988 — created to implement measures to curb abuses and excessive spending by the partners — by that time, he had already stolen thousands of dollars from the firm since 1986.

of the purloined funds. It was only after respondent had the misfortune of being apprehended that he showed contrition and offered to make restitution to M&E.

Respondent's conduct is more analogous to that found in In re Spina, 121 N.J. 378 (1990), where the attorney pleaded guilty to one count of a two-count information filed by the U.S. Attorney's office in Washington, D.C., charging him with taking property without right, in violation of D.C. Code §22-1211.

Spina was associated with the International Law Institute, an independently chartered entity of Georgetown University. At various times, he held the positions of Director of Research, Director of Administration, Executive Director, and Acting Director of the Law Center. As part of his responsibility as teacher, administrator and fundraiser, Spina travelled frequently throughout the United States and overseas to conduct conferences and programs sponsored by the Law Center. He also spent considerable time, effort and money entertaining important members of the international legal community. Because his salary was insufficient to fund the various activities that he believed necessary to advance the interest of the Law Center, he began to spend significant amounts of his own funds on matters related to the Law Center. He quickly became impatient, however, with the inefficiency of the reimbursement process. He, therefore, began to commingle the Law Center's money and his own. He often deposited the Law Center's funds into his personal account, taking the position that he was spending the Law Center's funds on the Law

Center's business. By way of illustration, in 1979 and 1980, on three different occasions, Spina deposited into his personal checking account three checks representing contributions to the Law Center, in the amount of $17,000. Also in 1980, he submitted reimbursement claims for $1,600 for three first-class airfare tickets for business trips when, in reality, Georgetown University had originally purchased those tickets. He also sought reimbursement of about $400 for the cost of a limousine allegedly used on a business trip when, in fact, it had been used to attend a wedding.

Spina's most disturbing offense occurred when he converted $15,000 in funds that belonged to the Law Center as a contribution made by a corporation. He deposited the $15,000 contribution in his personal account and used it for his own purposes. When confronted by the Law Center, he initially concocted a series of false explanations about the missing monies. Subsequently, however, he was forced to acknowledge that he had stolen the funds and made restitution of the entire $15,000 sum plus interest.

Ultimately, Spina pleaded guilty to the misdemeanor of taking property, the $15,000, without right. As part of the plea agreement, he admitted converting an additional $32,000 sum. The Board recommended to the Court, by a five-member majority, that Spina be disbarred. Four members recommended that he receive a three-year suspension. In mitigation, Spina submitted the report of a treating psychiatrist, concluding that he suffered from a personality disorder that, although not preventing him from knowing

right from wrong, had led him to "the performance of the alleged act." In concluding that Spina's psychological difficulties had not precluded him from realizing that the misuse of the Law Center's money was wrong, the Court ordered his disbarment. The Court reasoned that "[s]o flagrant were the ethical violations that we would not hesitate to disbar had the misconduct arisen out of a lawyer-client relationship. Nor do we believe that we should hesitate here, for the relationship was fiduciary in nature. . . . No discipline short of disbarment can be justified." Id. at 390.

Attorneys from other jurisdictions who have stolen law firm funds have faced the ultimate sanction of disbarment. Thus, for instance, in In re Salinger, 452 N.Y.S. 2d 623 (1982), an attorney was disbarred for misappropriation of firm funds in the amount of $10,000 over a period of one year. Those monies were collected by Salinger directly from the clients and were used for his own benefit, instead of finding their way into the firm's accounts. In In re Nothstein, 480 A.2d 807 (Md. 1984), an attorney was also disbarred when, dissatisfied with his salary, he submitted false vouchers for reimbursement for expenses. Nothstein acknowledged the impropriety, but claimed that he was mentally incompetent to control his conduct. In disbarring Nothstein, the Maryland Court remarked that wilful dishonesty, in the absence of compelling extenuating circumstances, will lead to disbarment as a matter of course. Id. at 818. In In re Ezrin, 541 A.2d 966 (Md. 1988), the Court disbarred an attorney who was convicted of conversion of partnership funds, despite evidence of a mental condition,

excellent reputation, lack of prior misconduct and full restitution. The Court reasoned that "misappropriation of funds by an attorney involves moral turpitude, is an act infected with deceit and dishonesty and will result in disbarment in the absence of compelling extenuating circumstances justifying a lesser sanction". Id. at 969. Finally, in In re Selden, 728 P.2d 1036 (Wash.) 1986, the Court disbarred an attorney who kept checks in the amount of $6,000 given to him by clients and took advantage of his two partners while they were both ill and unable to take care of the office. The same Court clarified its earlier decision in In re Rice, supra, 661 P.2d 591 (Wash. 1983) — on which respondent relies — noting that Rice is not applicable whenever there is a finding of fraud; in that case, disbarment is the only sanction.

The Board carefully considered the above foreign cases and, in particular, In re Spina, supra, 121 N.J. 378 (1990). The Board endorsed the disbarment sanctions ordered in those cases. But the Board cannot conclude that disbarment is mandated under the facts and circumstances of this matter.

This is a case of first impression in our state. Never before has our disciplinary system passed upon conduct involving the misappropriation of funds belonging to an attorney's law partners, as opposed to the attorney's clients. To be sure, theft by an attorney, regardless of the source of the stolen funds, will never to tolerated. But, at least in this instance, where the funds did not belong to clients, the Board is not persuaded that disbarment is the only appropriate sanction. This conviction is based on two

basic considerations. One is grounded on essential fairness: the bar has not been put on notice that stealing other law partners' monies might result in disbarment; the other is rooted on human sympathy: an attorney, like this respondent, who has commanded the overwhelming respect and trust of his peers and clients alike, who has served as a role model for countless young attorneys and who has, before this tragic occurrence, epitomized what the public and the judicial system expect of a member of the legal profession, should be given a second chance.

With these considerations in mind, a six-member majority of the Board recommends that respondent be suspended for a period of three years. This measure of discipline is based on the lack of prior notice to the bar that the within conduct might be met with disbarment and, additionally, on respondent's extraordinary accomplishments in furthering the interests of his clients and of the profession. Three members dissented, believing that respondent should be disbarred.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Date: 1/21/1993

By: James R. Zazzali
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-247

IN THE MATTER OF

STEVEN G. SIEGEL

AN ATTORNEY AT LAW

DISSENT

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

We are constrained to register our dissent from the Board majority's recommendation for a three-year suspension. We unhesitatingly vote to disbar.

The majority has come to a determination that Siegel should be excepted from disbarment because (a) his professional accomplishments should count for something and (b) lawyers have not been forewarned that their license to practice law might be pulled if they pick their partners' pockets. With due respect to the majority, these three public members disagree.

Siegel's achievements and impeccable reputation as a lawyer, lecturer and law professor are undeniably impressive; but they should not serve to mitigate the extensive ($25,000) and extended

(three years) swindle of his own partners' funds, just as nothing will serve to mitigate theft of clients' funds. In like manner, Siegel's acknowledgment of his piracy and restitution to his partners should not merit great commendation, particularly in light of the unavoidable suspicion that contrition ensued only because he had the bad luck of being apprehended.

No one will deny that Siegel committed an act of moral turpitude. He embarked on a prolonged deceitful scheme to plunder his partners' money, a scheme that ultimately put $25,000 in his pocket. And he did so surreptitiously, unlike the examples he cited of perceived abuses by other partners. While, arguably, some of his partners' conduct might have been irregular, it was not unethical, illegal or shrouded in secrecy, like his. To submit to the bookkeeper a receipt for a personal lunch and to say "pay it" is a far cry from fabricating disbursement requests that, on their face, give clear notice to the firm that the expenses had been incurred for the benefit of clients. The first example could be called an internal firm dispute; the second is called thievery.

These public members have great difficulty in understanding the majority's belief that Siegel deserves a break because he and his peers have not been cautioned that, in some circumstances, the theft of partners' funds — as opposed to clients' funds — is so patently offensive that disbarment must be ordered. The majority, as these dissenting members, is not proposing that, in the future, all attorneys who steal monies rightfully belonging to their law partners be disbarred without exception. Accordingly, these

members do not understand the necessity to put attorneys on notice that they may be disbarred if they steal their partners' money. We, like the majority, accept that there might be instances when the theft of partners' funds should not result in disbarment. We understand and agree with the notion of fact-sensitive situations. It is our unshaken conviction, however, that, in <u>this</u> case, <u>this</u> attorney must be disbarred. We see no other appropriate discipline for an attorney who stole considerable sums from his law partners — an association that requires reliance, confidence and trust — not once, not twice, but on thirty-four separate occasions stretched over a period of three years.[1]

As suggested by the presenter, if this matter had come before the Board as a Motion for Final Discipline based upon a criminal conviction, would the Board's recommendation be for a sanction less than disbarment? We think not. As the voice of the general public, we believe that conduct of the sort encountered here must be sanctioned with disbarment. How will a prospective client be able to trust an attorney who unflinchingly stole monies from his own law partners, most or some of whom — it is hoped — were his friends? And how will his existing clients who chose to continue to employ him ever be sure that he will not steal again, next time, maybe, from them? And how can hopeful law students and young lawyers be expected to model themselves on a dishonest tutor? And,

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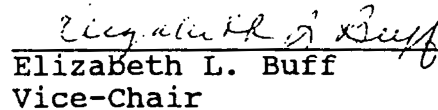
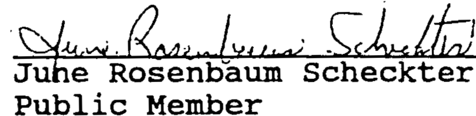
[1] In a sense, the stolen funds belonged to the public for the following reasons: one, as non-declared income, no taxes were paid thereon; and two, because monies charged as expenses are converted into the firm's overhead and the overhead costs are then used to determine hourly rates, the clients ultimately sustained injury in the form of increased rates.

lastly, what sort of message will the disciplinary system be sending to the public if this respondent is not disbarred? The answer is clear: that this type of thievery is tolerated and that an attorney who fabricated thirty-four disbursement requests, for a period of three years, will be given a second opportunity to steal someone else's funds — perhaps clients'— if he convinces himself that he is so entitled.

We would disbar.



Elizabeth L. Buff
Vice-Chair



June Rosenbaum Scheckter
Public Member

February 3, 1993
Dated

Frederick P. Ryan
Public Member