SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 95-436

IN THE MATTER OF	:
LESTER T. VINCENTI	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 20, 1996

Decided: November 18, 1996

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

Respondent appeared pro se.

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

This matter was before the Board based on a recommendation for discipline filed by the District VII Ethics Committee (DEC). The formal ethics complaint charged respondent with negligent misappropriation of client funds and failure to produce and to maintain trust account records. Prior to the Board hearing, respondent filed a motion with the Supreme court for leave to appeal and for a stay of the proceedings before the Board. By Order dated June 28, 1996, the Court denied the motion.

* * *

This is respondent's fourth encounter with the disciplinary system. In 1983, he was suspended for one year for displaying a pattern of abuse, intimidation and contempt toward judges, witnesses, opposing counsel and other attorneys. By way of example, respondent accused a judge on numerous occasions of collusion with the prosecution, cronyism, racism, permitting the proceedings to have a "carnival nature," conducting a "kangaroo court," conducting a "cockamamie charade of witnesses," conducting a "sham hearing," being caught up in his "own little dream world," as well as other outrageous and unsupported charges. In another instance, respondent accused, in open court, a deputy attorney general of stealing the files, of being a "bald-faced liar" and a "thief, a liar and a cheat." In yet another incident, when respondent's belligerent attitude toward the court led the judge to announce that he was leaving the bench and returning when respondent had an opportunity to collect himself, respondent replied: "I don't need to collect myself, Judge, you are simply ridiculous, you know." Other examples of outrageous conduct included calling an assistant public defender, outside the courtroom, an "asshole," "schmuck" and "schmuckface, "all in the presence of a number of individuals, some of whom were involved in the case. He also pressed a Bic pen into that attorney's chest. Also, in the courthouse corridor, respondent called an attorney who was standing with a witness "schmuckface," "fuck-face," and "shit-head." He also poked his finger in the attorney's chest and, prior to removing himself from the area, intentionally bumped the

attorney with his stomach and then his shoulder. He thereafter advised the attorney that he could take his law firm and "shove it up my ass." In re Vincenti, 92 N.J. 591 (1983).

In 1989, respondent was again suspended, this time for three months, for challenging opposing counsel and a witness to fight, for using loud, abusive and profane language against his adversary and an opposing witness and for using racial innuendo on at least one occasion. There, respondent called a deputy attorney general a "piece of shit." He also told a judge's law clerk that she did not know what she was doing and became extremely abusive toward her. In re Vincenti, 114 N.J. 275 (1989).

More recently, in November 1994, respondent received an admonition for failing to comply with discovery requests a disciplinary matter, despite repeated requests from the panel chair, and for falsely testifying at the ethics hearing that he had personally served a subpoena, knowing that to be untrue.

* * *

This case originated from a trust account overdraft notice sent by the Summit Bank ("The Bank") to the Office of Attorney Ethics ("OAE"). When the OAE sent to respondent a standard inquiry letter asking for an explanation for the overdraft, respondent sent a "Quick Memo" to the OAE with, among others, the following statement:

> I must tell you that that account is not an attorney's trust account and has not been such

> for some time. Therefore, I would not expect to be required to supply your office with any of the requested information. If I am wrong, I am certain you will inform me of such by return mail.
>
> [Exhibit C-14]

Thereafter, Gerald Smith, the OAE's Chief Auditor, sent respondent another letter asking him to submit an explanation for the overdraft, inasmuch as the account clearly bore the designation "trust account." Mr. Smith also requested additional attorney records. Respondent ignored Mr. Smith's letter. A demand audit of respondent's trust account records followed. At that time, respondent brought some records with him and reiterated his contention that he was not using the Summit Bank account as a trust account. Respondent informed the OAE that he maintained a trust account at National State Bank.

At the audit and through subsequent written requests, respondent was asked to submit his trust account records for the OAE's inspection. By letter dated August 4, 1992, respondent furnished some documents to the OAE, in partial compliance with its prior request for records. Respondent did not supply, however, any documents or information on the National State Bank account, promising to do so "upon receipt of statements from the bank if you wish." In that letter, respondent also expressed his belief that the OAE audit had been concluded:

> I must add that I believe that this audit should now be at an end since I have complied with all demands, which have ranged far beyond the trust account allegedly inquired about * * * * I would request that you kindly confirm

> the above conclusion in writing and close this matter.
>
> [Exhibit C-19]

Contrary to respondent's belief, however, the OAE did not consider the audit matter resolved. Accordingly, by letter dated August 18, 1992, Mr. Smith again asked respondent for copies of the National State Bank statements and other relevant documents. When respondent, during a telephone conversation, questioned Mr. Smith's authority to continue to demand the production of the records, Mr. Smith referred him to the appropriate Rule of Court and again asked for the documentation. Respondent produced none. On March 7, 1994, the OAE filed a formal complaint, charging respondent with negligent misappropriation of client funds (count one) and failure to produce and to maintain trust account records (count two).

The facts giving rise to the allegations of count one are as follows:

On November 27, 1989, respondent opened a trust account at the Summit Bank. At that time, he signed a "signature card" clearly indicating that the account was an attorney trust account. Exhibit C-7. More than two years later, on March 3, 1992, respondent forwarded a "Quick Memo" to Summit Bank with the following request:

> I have decided to change the designation of the above captioned account [the trust account] to an attorney's business account. Kindly make the required changes on your records to reflect the above. Should there be any question, please do not hesitate to contact this office immediately.
>
> [Exhibit C-9]

The identity of the bank official who received respondent's "Quick Memo" is not clear. What is clear is that respondent's written request to convert his trust account into a business account was not honored and, in fact, could not have been accomplished without respondent's personal appearance. Respondent was so informed. According to at least two witnesses who testified at the DEC hearing, Claudette Lovely-Brown, an assistant vice-president and operations manager at the Summit Bank, and Joan Yankitis, the manager at the Elizabeth branch where respondent kept his account, trust accounts cannot ever be changed to business accounts because of the obvious risk to which trust funds are exposed if those funds are automatically transferred to an attorney's business account. Accordingly, it is the bank's operational procedure to require an attorney to close his trust account first and then open a business account. In fact, Ms. Lovely-Brown testified, respondent's request was so unusual that in her twenty-two years of banking employment she had never seen a similar request.

After his "Quick Memo" to Summit Bank, respondent did not follow up on his request to convert the trust account to a business account. Initially, he heard nothing from the bank about granting or denying his request. He did not receive a new checkbook or new deposit slips bearing a "business account" designation, instead of an "attorney trust account" designation. In fact, respondent continued to receive monthly statements from the bank with the notation "attorney trust account." Exhibit R-46. When respondent

would be of the mind to use the Summit Bank account as a "business account," he would obliterate the "attorney trust account" caption with black ink. When it would suit him to use the account as a trust account, he would leave that designation intact. Exhibit C-8 shows an example of each such use.

According to Ms. Lovely-Brown, in April or May 1992 Mildred LoBrace, the bank's employee in charge of detecting account overdrafts, brought to Ms. Lovely-Brown's attention an overdraft on respondent's trust account. She instructed Ms. LoBrace to contact respondent to determine the source of the problem. At some point in 1992, Ms. Lovely-Brown herself telephoned respondent and asked him to come to the bank to meet with her as she was aware that there was more than one overdraft in respondent's trust account. See Exhibit C-12. Ms. Lovely-Brown did not know of respondent's request that the account be changed to a business account. Although respondent indicated, during their conversation, that he would come to the bank to see Ms. Lovely-Brown, he never did.

Subsequently, Ms. Lovely-Brown wrote two letters to respondent, in June and July 1992. The letters were prompted by Ms. Lovely-Brown's notice that respondent was "blacking-out" the trust account designation on his checks. In one of her letters, Ms. Lovely-Brown advised respondent that, if the account was not being used for the purpose to which it was intended, a new account should be opened. In the other letter, Ms. Lovely-Brown indicated to respondent that, if the account had been erroneously opened in

1989, he should have so notified the bank and refrained from using the checks.

We now turn to the specific events that gave rise to the notice of overdraft sent to the OAE. On June 13, 1992, a client of respondent, Brian Connolly, signed a document titled "Closing Statement and Agreements as to Disbursement of Funds." By signing that document, Mr. Connolly authorized respondent to endorse his name "for purposes of deposit and disbursement of any and all funds obtained and/or received by him on my behalf in the * * * case entitled Aaron v. Connolly * * * * I understand that the approximate amount of those funds at this time is $4,040 or thereabout * * * * I have agreed with Mr. Vincenti that he should receive one-third of all such funds plus expenses for a total claim of payment to him of $1500." Exhibit C-3.

On June 15, 1992, respondent received a check in the amount of $4,041 from the law firm of Bowers, Murphy, Lieberman and Heathcote, made out to Brian Connolly and L. T. Vincenti, Esq. Consistent with Mr. Connolly's authorization, respondent signed the back of the check as "attorney for Brian Connolly pursuant to authority 6-13-92." Exhibit C-1. On June 22, 1992, that check, along with other minor items, was deposited in respondent's Summit Bank account. The total deposit was $4,578.14. The bank statement for June 1992 indicates that prior to that deposit respondent's account was overdrawn by $84.86. Exhibit C-2. In fact, during his summation at the DEC hearing, respondent — who did not testify — claimed that the account was "defunct" for a

period of time because he had no "trust clients" for an extended period.

On June 24, 1992, respondent issued against that account (once again deleting the "trust account" designation) check number 1062 to Mr. Connolly in the amount of $2,500. Exhibit C-4. Mr. Connolly did not cash or deposit that check immediately. On August 6, 1992, some forty-three days later, Mr. Connolly presented the check for payment. At that time, the account had a balance of $2,242.38, or $257.62 less than the required $2,500. Thanks to the intervention of James Little, Esq., the bank's general counsel, however, the bank honored the check. The circumstances leading to the bank's decision to honor the check were described by Mr. Little as follows:

Joan Yankitis, the Elizabeth branch manager, had contacted Mr. Little with the news that the $2,500 check was going to be returned. Because respondent was upset about that, Ms. Yankitis had asked Mr. Little if the check could be paid, as respondent had offered to make an immediate cash deposit to cover the account's deficiency. Mr. Little had agreed. The deposit, however, would have to be made before twelve o'clock to avoid the return of the check in the bank's system. Following a conference call with respondent and Ms. Yankitis, Mr. Little had instructed Ms. Yankitis to honor the check, despite the fact that the deposit would be made after twelve o'clock. On that same day, August 6, 1992, respondent made a cash deposit of $300. Exhibit C-5.

As noted earlier, the first count of the complaint charged respondent with negligent misappropriation of client funds based on the insufficient balance in respondent's trust account at the time that Mr. Connolly presented his check for payment.

* * *

This matter, by no means complex, took ten days of hearing before the DEC, largely because of respondent's behavior. Respondent needlessly subpoenaed witnesses who had no relevant or personal knowledge of the facts; in one instance, he insisted that Ms. Lovely-Brown return on another date to testify, only to choose not to call her again as a witness. Respondent also refused to acknowledge that he used his trust account as a business account, a stipulation that would have taken, at most, one-half day of hearing before the DEC or no hearing at all, if the matter had been submitted to the Board on stipulated facts. Respondent also displayed a pattern of rude, abusive and intimidating behavior that necessitated long interruptions in the adjudication of the two uncomplicated counts of the formal ethics complaint. In addition, respondent attempted to intimidate the hearing panel chair by constantly asking for his recusal, challenging his authority and his experience as a lawyer and accusing him of showing bias and favoritism toward the OAE presenter and bearing personal animosity against respondent. In one instance, respondent dragged the OAE presenter, the DEC chair and the hearing panel chair before the

courtroom of the Chancery judge in Mercer County to seek a continuance of the DEC hearing scheduled for January 25, 1995 and the enforcement of several subpoenas, two of which were to compel David E. Johnson, Jr., the Director of the OAE, and the hearing panel chair to testify. We would indeed be remiss if we did not praise the hearing panel chair for exercising remarkable restraint under intolerable circumstances created by respondent and for managing to conduct the proceedings with the dignity that they deserve.

* * *

As mentioned above, respondent chose not to testify at the DEC hearings. In his answer, there are some vague references to a defense that the $257.62 overdraft in his account was caused solely by certain mistakes and improprieties on the bank's part. Through the testimony of several witnesses from the bank, however, respondent attempted to interpose three main defenses: (1) the Summit Bank account was no longer a trust account, but a business account. Respondent was referring to his instruction to the bank to change the account designation from "trust account" to "business account." Therefore, respondent maintained, there could not have been a negligent misappropriation of trust funds as the funds were in a business account; (2) the Connolly funds were not trust funds and, accordingly, were properly deposited in the "business account;" and (3) if not for the bank's mistake in deducting certain service charges from the account, the balance would have

been sufficient to cover the $2,500 Connolly check. We will briefly treat each defense separately.

(1) The account was not a trust account, but a business account

As stated earlier, respondent advanced the notion that the character of the account had been changed from an attorney trust account, as it was opened in 1989, to a business account, as he instructed the bank through his "Quick Memo" of March 3, 1992. Since that date, respondent treated the account alternatively as a trust account and as a business account, despite the fact that the bank advised him that his personal appearance was necessary in order to close out the old account and open a new account with new signature cards. In raising this defense, respondent blamed the bank for not complying with his directive and for seemingly deviating from certain banking practices that allow one to conduct business by mail.

(2) The Connolly funds were not trust funds

Respondent's next defense was that he could not have caused a negligent misappropriation because the Connolly funds were not trust funds. Respondent claimed that, because he had an agreement with Mr. Connolly for the breakdown of the $4,000 recovery and for the immediate disbursement of the funds, they "ceased to carry the absolute character of trust funds."

(3) Improper service charges

Respondent's last defense was that, but for certain improper service charges made against the account, there would have been

enough funds to cover the alleged $257.62 deficiency. Respondent was alluding to the bank's policy not to impose service charges on trust accounts. For some mistaken reason, however, as conceded by two bank employees who testified at the DEC hearing and as stipulated by the OAE presenter, certain service charges had been improperly deducted from the account, which was subsequently credited accordingly. Although the parties stipulated that the service charges had been erroneously debited against the account, they were unable to agree on their amount. They agreed, however, that every bank statement for the account, since its inception, was made a part of the record (Exhibit R-46) and that such documents spoke for themselves, i.e., that the service charges contained in those statements could be easily added up to arrive at a final amount.

* * *

In view of respondent's contention that the Summit Bank account was a business account, the DEC allowed the formal ethics complaint to be amended to conform to the proofs. The amendments were (1) that respondent commingled personal and client funds and (2) that respondent failed to deposit trust funds in a trust account. The DEC allowed the amendments over respondent's objections, including constitutional claims. The DEC refrained from ruling on the raised constitutional issues, reserving them for the Supreme Court's determination. The DEC reasoned that the

amendments caused no prejudice to respondent inasmuch as (1) they differed only slightly from the original charges, (2) the OAE was not required to anticipate respondent's proofs, (3) the same RPC (1.15) was involved, (4) both allegations involved alleged mismanagement of trust funds and (5) the amendments should come as no surprise to respondent, as they had been discussed during prior hearing three months earlier.

Presumably, the same defenses raised by respondent as to the original charges are intended to apply to the amended charges. Those defenses are that there could not have been commingling because the account was not a trust account and that the Connolly funds did not have to be deposited in a trust account because they were not trust funds.

* * *

At the conclusion of the ethics hearings, the DEC found that the Summit Bank account was a trust account, not a business account, and that respondent knew or should have known that the bank had not made the requested change. The DEC concluded, therefore, that respondent's failure to maintain sufficient funds in his trust account to cover the $2,500 Connolly check constituted a negligent misappropriation of client funds, in violation of RPC 1.15(a). The DEC found that, in the alternative, if respondent was maintaining that account as a business account, he had improperly deposited client funds into a non-trust account, also in violation

of RPC 1.15(a). The DEC also found that respondent failed to maintain trust account records, in violation of R.1:21-6 and RPC 1.15(d). Those specific recordkeeping deficiencies were the failure to maintain a trust receipts book, a trust disbursements book, detailed trust deposit slips, a running checkbook balance and individual client ledger cards, as well as the failure to perform quarterly trust reconciliations and the deletion of the "attorney trust account" designation on checks issued. The DEC further found that respondent failed to submit to the OAE information about his attorney books and records. Lastly, the DEC found that respondent's failure to appear at two scheduled hearings, his frequently tardy appearances at the hearings and his generally rude, obnoxious, abrasive and extremely disrespectful behavior towards the hearing panel and witnesses throughout the hearings constituted conduct intended to disrupt the hearings, in violation of RPC 3.5(c).

The DEC recommended a reprimand for respondent's negligent misappropriation of the Connolly funds; a reprimand for his failure to produce and maintain trust account records; and public discipline for respondent's degrading and insulting behavior. Finally, the DEC recommended that respondent undergo psychological evaluation to determine his fitness to practice law.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. Respondent violated R.1:21-6, RPC 1.15(a) and (d) and RPC 3.5(c).

As to the trust account versus business account issue, the DEC properly found that respondent knew or should have known that the bank had not changed the designation of the account as he was aware that his personal appearance was required, refused to come in personally to close out the old account and open a new account with new signature cards, continued to receive bank statements with the designation "attorney trust account," did not receive new checkbooks with the heading "attorney business account" or "attorney professional account" or "attorney office account" and, significantly, at times continued to use the account as a trust account, as evidenced by the two deposit slips that are Exhibit C-8. Under these circumstances, respondent's attempt to show that, since his March 1992 request, the character of the account had been changed must be rejected. Accordingly, his failure to maintain a sufficient balance in his trust account to cover the $2,500 check to Connolly constituted an act of negligent misappropriation, in violation of RPC 1.15.

Respondent's other contention that the Connolly funds did not have to be deposited into a trust account because they were not trust funds is equally meritless. Respondent's "agreement" with Mr. Connolly merely authorized respondent to endorse Mr. Connolly's name on the $4,000 check and to disburse the funds immediately by

paying a $1,500 legal fee to himself and distributing the balance of $2,500 to Mr. Connolly. Mr. Connolly did not give up his entitlement to those funds; they were still his and he entrusted them to respondent's care. Certainly, if respondent were to intentionally misappropriate those funds, Mr. Connolly would protest. Mr. Connolly had every expectation that, as his lawyer, respondent would safeguard his funds until Mr. Connolly's receipt. As funds belonging to Mr. Connolly and entrusted to respondent's care, they were unambiguously client funds that had to be deposited in a trust account. R.1:21-6.

As to respondent's claim that, but for the bank's improper charges, there would have been a sufficient balance in his account to cover the $2,500 check, although it is true that bank officials as well as the OAE presenter agreed that certain charges had been improperly deducted from the account, a simple addition of those charges, as appearing on the bank statements designated as Exhibit R-46, shows that all the charges amount to a little more than $170, or less than the $257.62 deficiency in respondent's account. Hence, the improper service charges do not save respondent from a finding of negligent misappropriation of client funds.

In addition, respondent's attorney records were grossly deficient. He failed to maintain a trust receipts book and a trust disbursements book, failed to maintain detailed trust deposit slips, failed to maintain a running checkbook balance, failed to perform quarterly trust reconciliations, failed to maintain individual client ledger sheets and, in addition, obliterated the

"attorney trust account" designation on the checks. Moreover, he refused to comply with the OAE's demand for the production of his attorney books and records. In fact, in one more display of his penchant for making his own rules, respondent unilaterally determined that the OAE's audit had come to a conclusion, notwithstanding the fact that the OAE's requests for documentation remained ignored.

Last, but not least, and true to form, respondent exhibited characteristic behavior by deliberately disrupting the orderly process of the disciplinary hearings, by lodging attacks against the panel chair's personal integrity and professional competence, by attempting to intimidate witnesses, by using a loud tone and by generally displaying rude and offensive deportment in the course of the proceedings.

There remains the issue of appropriate discipline. This is the fourth time that respondent faces serious disciplinary charges. The two matters that resulted in a one-year suspension and a three-month suspension were prompted by the same type of belligerent, abusive behavior towards judges, witnesses, other attorneys and towards court personnel generally. Two matters currently pending — one containing nine counts — also allege degrading and insulting verbal attacks on the court and on another attorney. One of the charges alleges that respondent physically assaulted this attorney.

Had respondent's conduct been confined to one instance of negligent misappropriation and recordkeeping deficiencies and had he not been disciplined three times, he would most likely receive an admonition or no more than a reprimand. Because, however, of his abominable and prolonged pattern of misconduct, the Board determined to suspend him for one year and, as a condition to reinstatement, to require proof of fitness to practice law after examination by a psychiatrist approved by the OAE. In addition, respondent should not be restored to the practice of law until all pending disciplinary matters against him are completed and all administrative costs incurred with the prosecution of this case are fully paid.

One member concurred with the decision on the measure of the discipline, but would have found violations of the recordkeeping rules only. In that member's view, the appropriate procedure to resolve the issue of respondent's behavior toward the DEC would have been to hold a hearing on contempt charges at the time of the conduct. One member recused himself. Three members did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/18/96

Lee M. Hymerling
Chair
Disciplinary Review Board