

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-261

IN THE MATTER OF :
MARC K. BONDS, :
AN ATTORNEY AT LAW :
_____ :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 28, 1990

Decided: January 29, 1991

William R. Wood appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter is before the Board based upon a recommendation for a private reprimand filed by the District VI Ethics Committee, which the Board determined to treat as a presentment.

Respondent was admitted to the practice of law in New Jersey in 1982. During the time relevant to these proceedings, he was a Jersey City Municipal Prosecutor. In addition, he had a part-time private practice.

The Office of Attorney Ethics ("OAE") received three overdraft notices concerning respondent's trust account. The overdrafts occurred between 1987 and 1988. Although respondent explained the first overdraft, he did not provide explanations on the second and third. A demand audit was, therefore, scheduled by letter dated

June 21, 1988. On July 6, 1988, an audit was conducted by Aaron Van Duyne, III, C.P.A., covering the period from January 1986 to June 1988. Respondent failed to produce the records Van Duyne requested and, in fact, admitted to Van Duyne that he had violated R. 1:21-6 by failing to maintain the records required under that rule. The audit revealed respondent's virtual non-compliance with R. 1:21-6. Accordingly, pursuant to R. 1:20-3(g), the OAE served on respondent a letter of intent to make a recommendation for the issuance of a private reprimand. The letter indicated it was contingent on: (1) a certification that the deficiencies in respondent's records were corrected, and (2) payment of the \$750 cost of the audit. Respondent had thirty days to comply with the conditions. Respondent paid only \$350, failing to comply fully with the conditions. Therefore, on November 30, 1989, the OAE filed a formal complaint against respondent.

Prior to testifying at the hearing, respondent admitted the following:

- (a) No trust and/or business receipts book was maintained for the period of January 1986 through June 1988.
- (b) No trust and/or business disbursements book was maintained during the period of January 1986 through June 1988. (R. 1:21-6(b)(1)).
- (c) Deposit slips were not descriptive in accordance with generally accepted accounting practice. (R. 1:21-6(c)).

- (d) There was no running cash balance in the trust account check book. (R. 1:21-6(c)).
- (e) Client trust ledger sheets or sheets that were descriptive for the period of January 1986 through June 1988 were not maintained. (R. 1:21-6(c)).
- (f) Receipts and disbursement books for the trust and/or business accounts were not maintained in accordance with generally accepted accounting practice. (R. 1:21-6(c)).
- (g) Three (3) overdrafts occurred.
- (h) Business account records were missing before the audit.
- (i) The trust bank account designation was improper prior to the audit. (R. 1:21-6(a)).

Respondent also admitted that he did not keep a schedule of client ledger accounts that was then reconciled to the bank statement, in violation of R. 1:21-6(c).

During the audit respondent admitted to Van Duyne that he did not maintain the required records, and assured Van Duyne that his accountant/friend would prepare the records, and deliver them to Van Duyne within thirty days. In his answer to the complaint, however, respondent contended that he did keep the records, although they were not currently reconciled with his bank statements. In his answer, respondent stated that his accountant had been unavailable to assist him in preparation for the audit (Exhibit RB-1).

At the hearing before the committee, the OAE orally amended its complaint to include a violation of RPC 8.4(c). Respondent admitted that the statements in his answer were inconsistent with the statements made to Van Duyne. Specifically, respondent admitted misrepresentations when he claimed he maintained a trust receipt ledger, a trust disbursement ledger, and client trust ledger sheets.

A second amendment to the complaint was also made at the committee hearing. The OAE added a charge of violation of RPC 8.1(b), by respondent's failure to cooperate with the disciplinary system. This charge related to respondent's failure to answer the ethics complaint within ten days, as required by R. 1:20-3(i). In addition, respondent had ignored the OAE's May 11, 1990 request for production of accounting records and information on respondent's accountant. Respondent's only response was to make telephone calls to the OAE on May 22 and May 23, 1990, at which time he advised he would call back. Respondent neither called back, nor replied to the OAE's letter of June 11, 1990, which warned respondent of possible further charges against him for failing to cooperate.

At the committee hearing, respondent offered testimony in mitigation of his misconduct. Respondent testified that, during the period in question, he was suffering from stress, aggravated by his divorce and a custody battle. Respondent did seek psychological and medical help for his difficulties. While he was advised by his psychologist to take a two-to-three week leave of absence, respondent extended this to a four-month leave of absence.

Since that time, respondent has, in fact, cut back on his work and currently works on a per diem basis for the Jersey City Corporation Counsel's office as a Special Prosecutor in Municipal Court. In addition, respondent has employed a bookkeeper who has set up an accounting system for him.

In its report, the panel considered that, with regard to the three overdrafts, there was no allegation that respondent had misappropriated any funds or that any clients had lost funds as a result of respondent's misconduct. Respondent's lack of prior discipline was also taken into account.

The panel noted that, by way of explanation for his failure to produce the records, respondent testified that his accountant had moved to California taking the bulk of respondent's records with him, and that respondent had been unable to locate that accountant. Its report stated that the panel was

not impressed by his explanation that it was impossible for him to cooperate with the OAE due to the disappearance of Walter Douglas with some of his records. If, indeed, respondent was having problems locating records, why did he not simply communicate that fact to the OAE? By ignoring their warnings, he invited their sanctions.

The accounting and record problems of respondent were easily rectifiable with, indeed, the helping hand of the OAE. He chose, instead, to ignore them setting in motion a series of events culminating in the formal proceedings which is [sic] the subject matter of this report.

[Hearing Panel Report at 11.]

The panel was also concerned by the misrepresentations in respondent's answer to the complaint, and his failure to cooperate with the OAE. Accordingly, the panel determined that respondent

had violated R. 1:21-6, RPC 1.15(d), RPC 8.4(c), and RPC 8.1(b), and recommended that he be privately reprimanded.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board does not concur, however, with the level of discipline recommended by the committee.

Proper trust account and recordkeeping procedures are fundamental to the practice of law. Every attorney has a duty to maintain books and records, as required by R. 1:21-6.

Attorneys must recognize that part of their responsibility to the legal system is the maintenance and supervision of accounting records. There can be no excuse for inadequate recordkeeping particularly in light of the technological and relatively inexpensive means available today.

[In re Orlando, 104 N.J. 344,350 (1986).]

By his own admission, respondent neglected his responsibilities (T6/26/90 30).

In Matter of Fucetola, 101 N.J. 5 (1985), the attorney was found not to be in compliance with R. 1:21-6, thereby violating DR 9-102(c) and DR 1-102(A)(6). In determining the appropriate discipline, the Court considered, in mitigation, that the attorney had admitted that his recordkeeping practices did not comply with the rules. In addition, the Court noted that no client had been injured, that the attorney had hired a bookkeeper, and that there was no evidence of misappropriation. As an aggravating factor, the

Court considered that the attorney had been publicly reprimanded in 1979.

Although, in the past, attorneys have been privately reprimanded for record-keeping improprieties similar to respondent's, the Board is concerned by respondent's failure to cooperate with the OAE. An attorney has an obligation to cooperate fully with an ethics committee. In re Gavel, 22 N.J. 248, 263 (1956). Failure to cooperate is itself a violation of the Rules of Professional Conduct, RPC 8.1(b). Disrespect to an ethics committee constitutes disrespect to the Supreme Court inasmuch as the committee is an arm of the Court. In re Grinchis, 75 N.J. 495, 496 (1978). In Matter of Macias, ___ N.J. ___ (1990), the Court determined that the attorney's failure to cooperate with the ethics committee, in and of itself, warranted a public reprimand.

The Board is also concerned by respondent's misrepresentation to the OAE in his answer to the complaint in violation of RPC 8.4. "Any sophistry or half-truth or other tactic which has as its purpose or effect the frustration of the disciplinary proceeding is deceitful and indefensible from an ethical standpoint and contrary to the spirit of the rules." In re Gavel, supra, 22 N.J. at 263-264.

In all disciplinary matters, the quantum of discipline must accord with the seriousness of the misconduct in light of all relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). Aggravating and mitigating factors may, therefore, be considered as part of the circumstances of the violation. In re Hughes, 90 N.J.

32, 36 (1982).

In mitigation, the Board considered the psychological stress affecting respondent at the time in question, as well as his leave of absence, and the reduction in his practice. The Board also considered respondent's difficulties with his accountant and the fact that he has since hired both a bookkeeper and an accountant. Respondent's numerous violations of the rules governing attorney trust accounts, however, together with the equally serious violations of RPC 8.1(b) and RPC 8.4(c), cannot be overlooked. Accordingly, the Board unanimously recommends that respondent be publicly reprimanded. In addition, the Board recommends that an audit of respondent's trust account records be conducted within three months and annually for the next two years. The Board also recommends that respondent be required to attend the next ICLE Skills and Methods course on trust and business accounting for attorneys offered by the OAE.

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

Dated:

1/29/1991

By:



Raymond R. Trombadore
Chair
Disciplinary Review Board