SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-272

IN THE MATTER OF	
JEFFREY SIMMS	
AN ATTORNEY AT LAW	

Decision

Argued: November 20, 1996

Decided: June 3, 1997

Jay M. Silberner appeared on behalf of the District VB Ethics Committee.

Respondent waived appearance for oral argument.

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

The Board determined to bring this matter on for hearing following its review of a recommendation for an admonition filed by the District VB Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1 for his "failure to consult with his client and abide by his wishes" ([more properly, a violation of RPC 1.2(failure to abide by a client's decision whether to accept an offer of settlement)]; RPC 1.3 (lack of diligence); and 8.4 (no section was cited) for signing grievant's

name on both a release and a settlement check and falsely notarizing grievant's "signature" on the release.

The DEC hearing took place on May 25, 1994 and June 29, 1994. With the consent of the parties, the matter was heard by a two-member panel because the public member was unable to attend the hearing on either date.

Respondent was admitted to the New Jersey bar in 1973. He maintains a law office in West Orange, New Jersey. Respondent has no history of discipline.

* * *

McArthur Shelton, the grievant, retained respondent on March 14, 1991 to represent him in connection with injuries sustained in a motor vehicle accident that occurred during working hours. Shelton drove a truck, Monday through Saturday, apparently for a floral supply business. His hours were irregular, depending on the number of deliveries he was required to make.

Shelton claimed that respondent settled the matter for $8,000 without first obtaining his consent. Shelton was disappointed with the amount of the settlement. He contended that he was unaware of who had been sued in the matter and apparently believed that the manufacturer of the truck was a potential defendant because the truck he had driven had been recalled for brake problems.

Shelton claimed that respondent called him only twice during the course of his representation: once when Shelton was required to

go to respondent's office on July 31, 1991 to give a statement to the insurer's representative and, again, when Shelton stopped going for treatment for his injuries.

Shelton also recalled receiving only one letter from respondent, questioning whether he had been treated at Saint James Hospital or some other hospital. Shelton did not remember if he replied to respondent's inquiry.

Shelton recalled that, in December 1991, he received a check for the settlement in the amount of $4,033.34 and a closing statement requiring his signature. According to Shelton,

> I stuck it on my dresser because I wanted to talk to [respondent]. He had a statement in there for me to sign and I didn't want to sign. He said sign it if you accept it . . . . I said I want to talk to him first before I sign it. We let it stay there for several months.
>
> [1T26][1]

Apparently Shelton was referring to the closing statement, not the settlement check. Shelton testified that afterwards he began receiving bills from Northfield Imaging Center ("Center") in the amount of $1,800. When he contacted respondent's office, he was told by the secretary to ignore the bills and forward them to respondent. Shelton claimed that, although he did so, he continued to receive the bills and was eventually told by the Center that it would execute on his wages. Shelton testified that he finally spoke to someone at his job and thereafter he stopped getting the bills. He, therefore, assumed that his company had paid the bill.

---

[1] 1T denotes the transcript of the May 25, 1994 DEC hearing.

* * *

According to respondent, he discussed the $8,000 settlement with Shelton. Apparently one of the drivers involved in the accident, either Shelton or the other driver, was covered by the New Jersey Full Insurance Underwriter's Association ("JUA"). At that time, the Department of Insurance was contemplating instituting a freeze on the payment of JUA claims. As a result, respondent informed Shelton that a freeze was imminent and that it would take at least one year and one-half before he would receive any money, together with interest, if he did not accept the settlement then. To corroborate that assertion, respondent noted that he was required to include certain language in the release he drafted, which was mandated by the state. Shelton denied that he was ever informed of the settlement, much less the JUA freeze.

According to respondent, Shelton consented to the settlement, but because of Shelton's busy work schedule and irregular hours he could not sign the release. Shelton, therefore, requested that respondent sign the release in his behalf. Respondent admitted that he signed Shelton's name and acknowledged the "signature." When respondent received the settlement check, he telephoned Shelton. According to respondent, because of the holidays, Shelton was too busy to go to respondent's office and, therefore, asked respondent to also sign the check in his behalf.

Respondent endorsed the check, deposited it and, on December 11, 1991, remitted to Shelton a check in the amount of $4,033.04. Respondent deducted amounts for the medical reports, retained a one-third fee and escrowed $1,200 for outstanding medical bills. Although the record is not clear, it appears that respondent had problems calculating the amount to be escrowed. Thereafter, he was able to negotiate the bill owed to East Orange Medical Associates, which agreed to accept the escrowed $1,200 as full payment of the services provided to Shelton. The bill was apparently paid after the DEC investigation, but prior to the DEC hearing.

* * *

The DEC found that, despite Shelton's testimony, there seemed to be regular communication between him and respondent. The DEC also found that it appeared that Shelton was not completely unaware of what was going on. The DEC concluded that there was clear and convincing evidence only that respondent signed Shelton's name on the check and the release and acknowledged the false signature on the release.

As to the question of the escrow funds, the DEC stated:

> It appears further that there is a question of whether or not Mr. Simms withheld or retained $1,200 in his Escrow Account to preserve for payment of medical bills, and if he, in fact, did pay them. It appears clear, although, there might be a question of timeliness that Mr. Simms subsequently forwarded $1,200 to the East Orange Medical Associates in full and final payment of their bill for services rendered to Mr. Shelton.

The DEC thus recommended an admonition.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

The evidence did not conclusively establish that respondent failed to consult with Shelton about the settlement. Indeed, Shelton testified that respondent sent him a check for the net amount of the settlement, $4,033 and a release; he placed either the check or the release or both in a drawer where it remained for several months. It is reasonable to conclude that if Shelton had not known that respondent had settled the case and had suddenly received a settlement check for what he considered to be too little, he would have protested immediately instead of waiting several months. While the testimony in this regard was at odds, it is possible that Shelton first agreed to the settlement and then had second thoughts about it when he saw that he would recover only $4,033 in net proceeds. It can be gleaned from the record that Shelton was a difficult and uncooperative client. For example, Shelton gave respondent inaccurate information as to which police department had taken his statement and at which hospital he had received treatment and then failed to contact respondent with more information, as requested. From this record, though, the Board cannot conclude to a clear and convincing standard that respondent settled the matter without Shelton's input. Thus, the proofs do not support a finding that respondent violated RPC 1.2 or RPC 1.1,

as charged by the complaint.

The record is also unclear as to respondent's failure to pay Shelton's medical bills in a timely fashion. Respondent testified that he was unsure of how to handle the payment to East Orange Medical Associates, the entity for which the money had been escrowed. Respondent stated:

> It was after your formal grievance was filed because I will be honest with you. I didn't know what to do at that point. I knew there was a grievance filed. I was holding the $1,200.00 in my escrow account. I didn't want to make another mistake at that point. I didn't know if I should remit the money, hold the money, and at that point, after the grievance was filed I submitted the money to them and they took the money in full and final payment.
>
> [2T31][2]

The record does not disclose when respondent became aware of the final bill and, therefore, whether his delay in payment was unreasonable. Hence, there is no clear and convincing evidence that respondent's payment to East Orange Medical Associates on November 18, 1993 was unreasonably delayed. The Board, therefore, did not find a violation of RPC 1.3.

Respondent readily admitted that he signed Shelton's name on both the settlement check and release and then acknowledged the "signature" on the release. He claimed, however, that he had Shelton's authorization to do so. There is no evidence from which to conclude otherwise. Notwithstanding that respondent may have been authorized to sign Shelton's name on both the settlement check

---

[2] 2T denotes the transcript of the June 29, 1994 DEC hearing.

and release and thereafter acknowledged the signature on the release, respondent's conduct in this regard was clearly improper and violative of RPC 8.4 (c) and (d).

This matter is not as egregious as In re Silberberg, 144 N.J. 215(1996), where the Court imposed a two-year suspension on an attorney who witnessed and notarized, at a real estate closing, the "signature" of a person whom he knew to be deceased and also provided two false written statements to ethics authorities regarding the circumstances leading to the execution of the documents. This matter is more akin to cases involving the improper execution of jurats where reprimands have been imposed. See In re Robbins, 121 N.J. 454(1990) (attorney signed a deed purporting to bear the signature of the parties in interest, completed the acknowledgement and executed the jurat, then he submitted it to the planning board; there was no clear and convincing evidence that the attorney's actions were undertaken without the grantors' acquiescence; aggravating circumstances included the attorney's personal stake in the transaction and a prior six-month suspension); In re Spagnoli, 89 N.J. 128 (1982) (attorney signed his clients' names on three separate affidavits, which he then conformed and filed with the court); and In re Conti, 75 N.J. 114(1977) (attorney's clients were unable to get to his office to execute a deed; with the clients' authorization, the attorney directed his secretary to sign the clients' names on the deed, he then witnessed the signatures and took the acknowledgement; the attorney's actions were not undertaken for

personal gain).

Here, respondent candidly admitted his misconduct. He knew his conduct was improper, but explained that he was trying to accommodate Shelton by obtaining his settlement money before the holiday. It is undeniable that, albeit motivated by the desire to help his client, respondent violated RPC 8.4 (c) and (d). The Board, therefore, unanimously voted to impose a reprimand. One member did not participate.

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

Dated: 6/3/97

LEE M. HYMERLING
Chair
Disciplinary Review Board