
IN THE MATTER OF :
STEPHEN N. ROBINSON :
AN ATTORNEY AT LAW :
_____ :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: October 15, 1989

Paula T. Granuzzo appeared on behalf of the Office of Attorney Ethics.

Pasquale Menna appeared on behalf of respondent.

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

This matter is before the Board based on a presentment filed by the District XIV Ethics Committee.

Respondent was admitted to the New Jersey Bar in 1970. He worked at a law firm until 1978, whereupon he started his own firm as a sole practitioner. For the first eight years, respondent's staff consisted of one secretary only. He did not employ a bookkeeper or an accountant to maintain his books and records. It was not until 1986 that respondent hired a bookkeeper/secretary. In 1987, he hired an associate attorney and another secretary.

Respondent's practice, which consists primarily of real estate matters, is of a high-volume nature. By way of illustration, in the sixteen-month period from November 1986 through March 1988,

Respondent's trust account deposits totalled \$22,000,000 (See Attachment 3 to the Formal Complaint).

As a result of numerous trust overdraft notices, one of which was not satisfactorily explained by respondent, the Office of Attorney Ethics ("OAE") ordered the audit of respondent's attorney accounts pursuant to R. 1:21-6(g). The audit encompassed the period January 1, 1984, through February 28, 1985. At his initial visit to respondent's office in January 1986, the auditor, Joseph T. Mauthe, discovered that respondent had not maintained records in accordance with R. 1:21-6. It was virtually impossible to conduct the audit because of what the auditor described as a "chaotic" state of affairs. The auditor then requested that respondent reconstruct the relevant records for the auditor's review at a subsequent field visitation. When the auditor returned, however, he found that respondent had not complied with his request. Thereafter, the auditor reconstructed respondent's books and records, a task that took 100 hours to complete and necessitated five additional visits to respondent's office.

The audit report ("Mauthe Report", Attachment 1 to Formal Complaint) disclosed numerous recordkeeping deficiencies, including failure to reconcile the trust account, failure to maintain client trust ledger cards, and failure to show a running balance in the trust account checkbooks. As a result, it was impossible to determine, at any given time, the balance of the trust funds on deposit and the precise allocation of funds to each client.

Moreover, the audit revealed that, in all but one month

covered by the audit, respondent was out of trust. From January to April 1984, the trust deficiencies ranged from \$12,705.11 as of April 30, 1984 to \$21,510.88 as of February 28, 1984 (Exhibit A to Attachment 1 to the Formal Complaint). In May 1984, respondent deposited in his trust account a \$15,000 fee received from the Aberdeen Township Municipal Utilities Authority, thus commingling personal and client funds. As a result of this \$15,000 deposit of personal funds, the deficiency noted in Exhibit A of the audit report should be reduced by an equivalent amount, leaving a shortage of \$1,074.36 as of May 31, 1984. In June 1984, respondent withdrew \$5,000 of the \$15,000 fee, leaving the \$10,000 fee balance in his trust account. Accordingly, the deficiencies for each month between the period June 1984 through February 1985 were reduced by \$10,000. The trust account shortages, thus, ranged from a high of \$13,344.07 during the month of December 1984 to a low of \$3,372.48 during the month of September 1984. The month ending August 31, 1984 presents the sole exception inasmuch as the noted \$7,301.44 shortage, when offset by the \$10,000 fee remaining in the trust account, results in a positive balance.

The audit further revealed that respondent invaded client trust funds when he issued several trust account checks in satisfaction of his personal obligations to certain individuals or corporations, without having sufficient fees or personal monies on deposit (See Exhibit C to Attachment 2 to the Formal Complaint). Specifically, on February 2 and October 15, 1984, respondent issued two trust account checks in the amounts of \$500 and \$1,200,

respectively, made payable to Joan Farley, a client and friend to whom he owed a personal debt of \$20,000.¹ According to respondent's testimony, those checks represented installment payments toward that indebtedness and were covered by legal fees left in his trust account. Respondent explained that, although he did not reconcile his trust account records, he kept a running balance of those legal fees "in his head" (T122-8 to 12).²

Respondent's other personal obligations paid with trust account funds included a \$5,000 check to Alice Lifland, issued on April 24, 1984, and a \$5,500 check dated June 25, 1984, payable to Future Design. Respondent conceded that both checks were designed to satisfy debts owed by Jaimee Page Construction, a building venture in which he had an interest, to the above named payees. Respondent contended, however, that those payments were covered by sufficient legal fees that he had earned but not withdrawn from his trust account. He added that he was unaware of the impropriety of commingling personal and trust funds.

Following the demand audit, the OAE received several additional overdraft notices on respondent's trust account. In light of these overdrafts, a further audit was conducted on April 22, 1988, by Robert J. Prihoda, an auditor with the OAE, in order to determine the status of respondent's books and records. The

¹ Two other checks to Joan Farley were subsequently voided.

² "T" denotes the transcript of the committee hearing on February 9, 1989.

audit report ("Prihoda Report", Attachment 3 to the Formal Complaint) disclosed that, although respondent had taken certain steps to improve the inadequate -- indeed non-existent -- recordkeeping for his trust account, the most important procedure, the reconciliation of the client ledger cards with the checkbook, was still not being performed. Also, not all transactions had been recorded on the existing 400 ledger cards. By way of example, the Wabito ledger card first showed a \$68,975.58 balance and then a zero balance; yet, there were no records of the disbursements. Similarly, the Jablonski ledger card indicated a \$52,026.78 balance followed by a question mark and no further notations (See Attachment B-1 to Attachment 3 to the Formal Complaint). At that time, respondent's bookkeeper informed Mr. Prihoda "that [respondent] [was] concerned about recording only what [was] deposited and what [was] disbursed from the trust account . . . that [respondent] would rather have her do secretarial work for his legal practice than to take the time to reconcile the account" (Prihoda Report, page 2). The bookkeeper added that she was familiar with the proper method of reconciling the trust account with the client ledger cards because of her previous employment with a law firm that followed proper procedures.

At the time of the compliance audit, respondent informed Mr. Prihoda that he still did not understand the recordkeeping rule requirements and had not followed up on the rule changes because he did not subscribe to the New Jersey Law Journal or to any similar publication.

At the committee hearing, respondent testified that, since the compliance audit of April 1988, reconciliations have been performed on a quarterly basis, if not more frequently. Respondent stated that he recently hired an accounting firm to conduct periodic reviews of the bookkeeper's maintenance of his trust account records. Respondent acknowledged his sloppy accounting practice, conceding that he should have devoted more time and effort to proper recordkeeping. He admitted that he had no control over his trust account records (T97-18 to 25, 98-1 to 7).

At the conclusion of the ethics hearing, the committee found that respondent "failed to maintain the required trust account records, . . . negligently misappropriated and commingled his own funds with those of his clients, [and] failed to safeguard those funds with proper accounting methods." The committee recommended that he be publicly disciplined.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the district ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

The Board carefully reviewed the record to determine independently whether respondent knowingly misappropriated client funds. Like the OAE, the Board found no evidence of a knowing misappropriation. It cannot be said that respondent took clients' money "knowing that [he] had no authority to do so". Matter of

Noonan, 102 N.J. 157 (1986). Nor can it be found that respondent designed an accounting system that prevented him from knowing whether he was using client trust funds. Matter of Fleischer, 102 N.J. 440 (1986). What the record reveals is a continuing, inexcusable lack of attention to the accounting and bookkeeping details of respondent's voluminous real estate practice. Indeed, although respondent acknowledged an attorney's duty to safeguard clients' funds, he did absolutely nothing for a period of eight years -- from 1978 to 1986 -- to establish proper accounting procedures to reflect his trust account's activity. He did not reconcile his trust account records; he did not maintain client ledger sheets; he did not even keep a running balance in the trust account checkbooks. His accounting practices were so shoddy -- better yet, non-existent -- that the auditor was forced to spend 100 hours painstakingly reconstructing monthly records for the period encompassed by the audit.

Respondent's irresponsible behavior was all the more egregious given that millions of dollars passed through his trust account in a relatively short period of time. That no client sustained any monetary injury was indeed fortuitous. Respondent's utter lack of concern for clients' funds entrusted to him could have caused substantial damage to the people whose interests he swore to protect.

In his brief submitted to the Board, respondent argued that his admitted inattention to his bookkeeping responsibilities closely parallels the conduct displayed by the attorney in Matter

of James, 112 N.J. 580 (1988). The Board disagrees. In James, the attorney misunderstood the purposes of his trust account for a period of twenty-four years. James used his trust account as a second business account, and used clients' trust funds to advance costs to other clients and to pay litigation expenses and payroll taxes, thereby causing his account to be out of trust. The Court imposed a three-month suspension, finding that James' negligent misuse of clients' funds, which brought no injury to his clients, had been the product of his perpetuation of an inadequate recordkeeping system inherited from his legal mentors.

Three major factors set James and this matter apart. First, whereas the attorney in James employed a bookkeeper/secretary and established certain recordkeeping procedures, albeit deficient, respondent took no steps at all to establish any accounting practices. In both instances, their conduct smacked of gross negligence. Respondent's neglect of his recordkeeping responsibilities, however, exceeded that found in James. Whereas James had some control over the trust account balance, as demonstrated by the transfer of funds from his business to his trust account whenever the balance in the latter approached a level where outstanding client obligations could not be satisfied, respondent did not even keep a running balance in the trust account checkbooks and, admittedly, had no control whatsoever over his trust account funds (T97-18 to 25, 98-1 to 7).

Second, although James used his trust account as a second business account for client expenses and employee payroll ta:

escrow funds, he did not use it to satisfy personal obligations. Here, respondent used his trust account as a savings account (T130-13 to 31). It matters not that respondent believed that there were sufficient personal funds on deposit to cover the trust account checks issued to his creditors. He failed to maintain even the simplest account records to support that belief. See In re Skevin, 104 N.J. 476 (1986). The rules are clear that clients' funds shall be kept separate from the lawyer's own funds. DR 9-102 and RPC 1.15.

Third, in James, checks were never returned for insufficient funds. But for the random audit, James would have continued in the belief that his accounting practices were proper. Soon after the random audit revealed his trust account irregularities, however, James took remedial measures to prevent future recordkeeping violations. Here, respondent received several overdraft notices, one of which remained unexplained. At the auditor's initial visit to his office, respondent was made aware that his accounting practices did not even approach compliance with the rule requirements. The auditor might not have discussed with respondent each and every aspect of proper recordkeeping procedures or instructed him how to ensure full adherence to the rules. The auditor did inform respondent, however, of the impossibility of conducting the audit without reconstruction of the trust account records and requested that respondent undertake said reconstruction prior to the auditor's next field visitation. Clearly, at that moment, respondent was put on notice that whatever records existed

were grossly deficient. Yet, he did not see fit to inquire of the auditor, of the OAE, or of any independent accountant, for that matter, about proper recordkeeping procedures. Indeed, some two years later, respondent still was not aware of the rule requirements, as he confessed to Mr. Prihoda, the OAE auditor who conducted the April 1988 audit. At that time, Mr. Prihoda noted that the most important procedure, the reconciliation, was still not being performed, in spite of the bookkeeper's admitted knowledge and experience in proper accounting practices. The Board was particularly disturbed with the bookkeeper's statement that, in the face of his continuing recordkeeping problems, respondent would rather have her spend more time on legal than on recordkeeping matters.

The Board is of the opinion that respondent's unethical practices were more serious than the misconduct displayed in James. Furthermore, this matter has none of the many mitigating factors found in James. In the latter case, the attorney placed great reliance on his bookkeeper, who rarely kept him advised of the status of the records. Although a lawyer's responsibility to maintain the integrity of clients' funds cannot be delegated to another, James' reliance on his bookkeeper's maintenance of the trust account records lessened the seriousness of his misconduct. Additionally, in James the committee heard five character witnesses and reviewed clients' affidavits attesting to that attorney's ability and integrity. No such evidence was submitted by respondent. In fact, he offered no reasonable explanation for his

derelictions, with the exception that he was a very busy attorney. His abdication of bookkeeping responsibilities, allegedly because of his busy schedule, is an affront to the thousands of busy members of the profession who abide by their fiduciary obligation to safeguard clients' funds, notwithstanding their active practices.

The only mitigation found by the Board was the absence of financial injury to respondent's clients. This fortuitously benign result, however, is irrelevant to the ethics principles involved.

As to the appropriate disciplinary sanction, the Board is aware that the purpose of discipline is not to punish the attorney, but to protect the public against members of the bar who are unworthy of the trust and confidence essential to the relationship of attorney and client. Matter of Addonizio, 95 N.J. 121, 124 (1984).

In view of respondent's gross disregard of proper accounting procedures and extreme indifference to the safekeeping of clients' property, coupled with the absence of mitigation factors found in James, the Board unanimously recommends that respondent be suspended for a period of six months. Three members did not participate.

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

Dated: 10/15/88

BY: 

Raymond R. Trombadore
Chair
Disciplinary Review Board