Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-235

IN THE MATTER OF,

LINDA K. ANDERSON,

AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)(1)]

Decided: May 22, 2000

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

Pursuant to R. 1:20-4(f)(1), the District IV Ethics Committee ("DEC") certified the record in this matter directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On April 14, 1999 the DEC forwarded a copy of the complaint to respondent's last known address by regular and certified mail. The certified mail return receipt was returned signed, indicating delivery on April 16, 1999. The accepting agent was "E. Anderson,"

respondent's mother. The regular mail was not returned. On May 11, 1999, a second complaint was served on respondent at the same address. Neither the certified mail return receipt nor the regular mail was returned.

Respondent was admitted to the New Jersey bar in 1984. At all relevant times, she maintained law offices under the name of Carmichael and Anderson in New Brunswick, New Jersey. Respondent's law partner, LeRoy Carmichael, did not practice out of the New Brunswick office and was not responsible for any cases handled at that location.

Respondent was temporarily suspended on July 24, 1998 for failure to appear at a demand audit scheduled by the Office of Attorney Ethics ("OAE"). She remains suspended to date. In re Anderson, 155 N.J. 114 (1998).

On September 15, 1999 respondent filed a motion to vacate the default, alleging financial hardship and a pending criminal indictment as her reasons for not answering the complaints. Because respondent did not present any meritorious defenses to the charges, we unanimously determined to deny the motion.

The complaint alleges nine counts of misconduct, including knowing misappropriation.

The Korngor Matter (District Docket No. XIV 98-371E)

The first count of the complaint alleges that respondent represented Kemor Korngor, an infant, by his guardian ad litem, Martin Korngor, in an automobile personal injury claim.

On October 6, 1997, a friendly hearing was held and a settlement in the amount of $100,000 was approved on Kemor's behalf. Prior to retaining respondent, Kemor had been represented by Bruce LiCausi. The settlement entailed two judgments: $15,000 against a Luis Castillo and $85,000 against Allstate Insurance Company ("Allstate"). Of those settlement monies, respondent was to receive $3,881.25 of the $15,000 and was to divide $21,250 of the $85,000 between herself and LiCausi for attorney's fees.

On October 8, 1997, Allstate issued four settlement checks to respondent, totaling $100,000: one payable to respondent for $3,881.25, one payable to respondent and LiCausi for $21,250 and two checks jointly payable to Korngor and the Union County Surrogate ("Surrogate") in the amounts of $11,118.75 and $63,750. On October 14 and 24, 1997, respondent deposited the first two checks into her trust account. On December 24, 1997, she deposited the last two checks into her trust account. All checks were endorsed and deposited without the knowledge or consent of Korngor and the Surrogate. In accordance with the court order of October 6, 1997, respondent should have turned over the two last checks to Korngor, totaling $74, 868.75, so that he could deposit them with the Surrogate on Kemor's behalf. Respondent never disbursed any funds to Korngor or the Surrogate.

On December 29, 1997, when respondent deposited the $74,868.75 into one of her two attorney trust accounts, their combined balance was $287.66. By that date, respondent had depleted all funds issued by Allstate for her fees. Between December 29, 1997 and January 28, 1998, respondent went on to disburse to herself sixteen checks, totaling $72,750,

as attorney fees. As of April 30, 1998 respondent had a combined trust account balance of $5.02, when she should have been holding $74,868.75 in trust for Kemor. Respondent used Kemor's settlement funds to cover the trust account checks written to herself without Korngor's knowledge or consent.

Korngor has placed numerous telephone calls to respondent's office, but she has not returned any of his calls. In fact, Korngor has had no communication with respondent since the friendly hearing.

The complaint charged respondent with violations of RPC 1.15(a) (knowing misappropriation of client trust funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation), RPC 1.4(a) (failure to communicate) and RPC 1.1(a) (gross neglect).

The Allen Matter (District Docket No. XIV 98-118E)

The second count of the complaint alleges that, on April 28, 1994, respondent was retained by Jane and Gregory Allen to file a personal injury claim on their behalf and as guardians ad litem for Shanesha and Shakera Allen, their daughters, and Shaneka Fowler, their niece, against Texas Eastern Transmission Corporation ("TETC"). On March 21, 1996, respondent settled the Allen matter for a total of $126,000. On April 3, 1996, GAB Business Services, Inc. issued the following five settlement checks to respondent on behalf of TETC:

Payee	Amount
Gregory Allen and Carmichael & Anderson	$ 63,500
Jane Allen and Carmichael & Anderson	$ 12,500
Gregory & Jane Allen and Carmichael & Anderson, for Shakera Allen	$ 8,500
Gregory & Jane Allen and Carmichael & Anderson, for Shanesha Allen	$ 8,000
Gregory & Jane Allen and Carmichael & Anderson, for Shaneka Fowler	$ 7,500
	$100,000

Prior to the March 1996 settlement, TETC had advanced $26,000 directly to Gregory Allen. On April 16, 1996, respondent deposited the $100,000 Allen settlement into one of her two trust accounts. According to settlement statements respondent gave to the Allens, they were entitled to the following settlement monies:

Client	Net to Client
Gregory Allen	$58,252
Jane Allen	$ 7,202
Shakera Allen	$ 5,410
Shanesha Allen	$ 5,225
Shaneka Fowler	$ 5,250
	$81,339

On April 25, 1996 respondent gave Jane Allen five trust account checks in th above

amounts. Jane cashed the two checks payable to herself and to her husband. The remaining three checks, however, were not accepted by the Middlesex County Surrogate's Office because of a problem with the judgments. Although respondent eventually remedied the problem, when Jane received the amended judgments, the dates on the checks were stale and she was again unable to deposit them.

Jane telephoned respondent several times to request that respondent re-issue the three checks. Respondent did not return her telephone calls. Finally, on March 1, 1997, Jane sent a letter to respondent requesting that she contact her. On March 10, 1997, respondent telephoned Jane and they met that evening. At that meeting, respondent gave Jane trust account check no. 1149, payable to the Middlesex County Surrogate, on behalf of all three minors, in the amount of $16,118. Respondent explained that she only had one check left for that trust account. The next day Jane attempted to deposit the check with the Surrogate and was informed that three separate checks were required. Jane telephoned respondent several times thereafter to inform her that three checks were required by the Surrogate. Respondent failed to return her telephone calls. Jane also attempted to speak with respondent at her law office, but when she arrived there the office was closed and appeared to be vacant. To date, Jane has not received a reply from respondent.

A review of respondent's bank records from March 31, 1997 to April 30, 1998 showed that trust account check no. 1149 for $16,118 remained outstanding. Therefore, those monies should have remained in respondent's trust account. However, on September

8, 1997, respondent's trust account balance fell to $9,263.23 and continued to decline, falling to a balance of $5.02 as of April 30, 1998. Between March 10, 1997 and September 30, 1997, respondent issued eight checks to herself from her attorney trust account, totaling $27,575. An analysis of respondent's trust account bank records shows that she used the Allen settlement funds for those disbursements without the Allens' knowledge or consent.

This count of the complaint charges respondent with violations of RPC 1.15(a) (knowing misappropriation), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation), RPC 1.4(a) (failure to communicate with her client) and RPC 1.1(a) (gross neglect).

The Rhett Matter (District Docket No. XIV 98-120EB)

The third count of the complaint alleges that, in April 1997, respondent settled an automobile personal injury claim on behalf of Diondray Rhett. On June 5, 1997, Rhett signed an insurance release form for the payment of $2,000. On June 10, 1997, Rhett signed an authorization for respondent to execute all settlement drafts and to deposit the settlement funds into the Carmichael and Anderson trust account. On October 24, 1997, respondent deposited in her trust account the $2,000 settlement monies received from State Farm Mutual Insurance on Rhett's behalf. Respondent never notified Rhett that she had received, and subsequently deposited, the settlement funds. Respondent's next communication with Rhett was the settlement statement that she sent to Rhett, dated June 6, 1997, almost eight

months after the deposit of the check. The settlement statement indicated that $939.28 of the funds was to be disbursed to Rhett and $287 was to be disbursed to Joseph J. Riley, D.O., for Rhett's medical expenses. However, respondent did not disburse any settlement monies to either Rhett or Dr. Riley.

Rhett placed several telephone calls to respondent's law office to inquire about the funds, but respondent never returned his telephone calls. During Rhett's final telephone call to respondent's law office, he was informed that her telephone had been disconnected.

After depositing the $2,000 into her attorney trust account on October 24, 1997, respondent should have had a minimum of $1,226.28 held in trust for Rhett. However, a review of respondent's trust account disclosed that, on November 13, 1997, the balance fell to $902.66 and dwindled to $287.66 on December 22, 1997. By April 30, 1998 respondent's combined trust account balance was $5.02. Therefore, respondent was out of trust by a minimum of $1,221.26 in connection with the Rhett matter alone. Respondent utilized Rhett's settlement funds without his knowledge or consent.

At an OAE demand audit on June 23, 1998, respondent admitted that she received the $2,000 settlement and that she never disbursed the funds to Rhett. She further admitted that she invaded her attorney trust account to support her casino gambling habit.

This count of the complaint charges respondent with violations of RPC 1.15(a) (knowing misappropriation of client's funds), RPC 8.4(c) (conduct involving fraud, deceit and misrepresentation) and RPC 1.15(b) (failure to notify her client upon receipt of

settlement funds).

The Drinkard Matter (District Docket No. XIV 98-119E)

The fourth count of the complaint alleges that, on January 26, 1995, respondent was retained by Doreen and Larry Drinkard to represent them in a civil matter. The Drinkards paid respondent $4,050 towards a $5,000 retainer fee. On September 3, 1996, respondent filed a complaint against American Eagle Coach Lines ("American Eagle") on the Drinkards' behalf. However, respondent failed to take further action in the matter, despite court notices sent to her law office. In June 1997, Doreen Drinkard received a notice from the court, dated June 13, 1997, advising her that the complaint would be dismissed unless an affidavit detailing the reason for the delay of the matter was received prior to July 13, 1997. Doreen then telephoned respondent and was told to telefax the notice to respondent's office, which she did on June 24, 1997. On July 17, 1997, four days past the deadline, respondent filed a certification with the court. On July 18, 1997, the Drinkards' complaint was dismissed for lack of prosecution.

In September 1997, Doreen telephoned respondent's law office and was told by respondent's paralegal, Richard Huff, that her case had been reinstated and that she would receive copies of the reinstatement documents the following month. In fact, the case had not been reinstated and the Drinkards never received the promised documents. Doreen telephoned respondent on numerous occasions and left messages requesting that respondent

contact her, but respondent failed to reply to her telephone calls.

In another matter, on February 26, 1996, Doreen retained respondent to file a workers' compensation benefits claim on her behalf. On October 11, 1996, respondent filed the claim. Thereafter, respondent failed to provide answers to interrogatories and to schedule medical examinations. In March 1998, the case was marked "not moved" by the workers' compensation judge.

Although Doreen telephoned respondent on numerous occasions, her calls were never returned. Because of respondent's inaction, Doreen retained a new attorney in March 1998.

This count of the complaint charges respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.16(d) (failure to protect client's interests on termination of representation).

The Davis Matter (District Docket No. XIV 98-134E)

The fifth count of the complaint alleges that respondent was retained by Donald Davis, in or about September 1994, to file a claim with the New Jersey Division of Labor for workers' compensation benefits. Davis signed a written retainer agreement and paid respondent approximately $250 in cash for his representation. On August 19, 1996, respondent filed the petition on Davis' behalf. Respondent failed to appear at two scheduled pre-trial conferences, held on November 17, 1997 and March 2, 1998.

On March 27, 1998, the defense filed a motion to dismiss for lack of prosecution.

When respondent did not appear on the motion date, the motion was granted. On June 15, 1998, the workers' compensation claim was dismissed for lack of prosecution.

Davis telephoned respondent at her law office on several occasions to inquire about the status of his case. Respondent did not return Davis' telephone calls and ultimately closed her law office without notifying Davis. To date, Davis does not know the status of his case and cannot locate respondent.

This count of the complaint charges respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.16(d) (failure to protect client's interest on termination of representation).

Pattern of Neglect

The sixth count of the complaint alleges that the charges of gross neglect included in counts one through five constitute a pattern of neglect, in violation of RPC 1.1(b).[1]

Recordkeeping Violations

The seventh count of the complaint alleges that, by letters dated May 26, 1998 and June 12, 1998, the OAE instructed her to bring certain business and trust account records for review at the June 23, 1998 demand audit. Specifically, respondent was directed to

[1] The third count of the complaint, the Rhett matter, does not charge respondent with a violation of RPC 1.1(a).

present (a) statements from January 1996 to June 1998, (b) check stubs from January 1996 to June 1998, (c) canceled checks from January 1996 to June 1998, (d) receipts and disbursements journals, (e) client ledger cards, (f) deposit tickets, (g) original client files and (h) her written response to the grievances. To date, respondent has not provided the OAE with any of the requested records.

However, at the audit respondent admitted that (a) she stopped maintaining attorney books and records sometime in 1997, (b) she had not received bank statements for the five months preceding the date of the audit because she had closed her post office box and had not given the bank a forwarding address, (c) her bank records and original client files had previously been thrown away by the owners of the building where she had her office, sometime in November or December 1997, and her older files had been thrown away by Public Storage Rental Spaces in March 1997 and (d) her gambling losses total approximately $100,000, much of which she had issued to herself from her trust account.

This count of the complaint charges respondent with violations of RPC 1.15(d) (failure to comply with recordkeeping provisions of R. 1:21-6) and R. 1:21-6 (failure to maintain proper records).

Failure to Cooperate

The eighth count of the complaint alleges that, when the OAE received information about the misappropriation of the Korngor trust funds, respondent was requested, by letter

dated November 6, 1998 and sent regular and certified mail, to submit a written response to the allegations and to provide the original Korngor client file and retainer agreement. The certified mail return receipt was received by the OAE signed by "E. Anderson," respondent's mother, indicating delivery on November 12, 1998. However, respondent failed to submit a reply. A second letter was sent to respondent on December 11, 1998 by regular and certified mail, again requesting a written response. The certified mail was returned as "unclaimed," but the regular mail was not returned. Respondent failed to reply.

A demand audit was scheduled for January 26, 1999, due to respondent's lack of cooperation. Respondent was notified of the demand audit by letter dated January 8, 1999, sent by regular and certified mail. The certified mail was returned as "unclaimed." The regular mail was not returned. Respondent did not appear at the audit or contact the OAE. To date, respondent has not complied with the OAE's audit demand. Furthermore, the OAE has not received written replies from respondent for any of these five grievances.

This count charges respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities.

Failure to Comply with R. 1:20-20.

The ninth count of the complaint alleges that, following her temporary suspension, respondent was directed by the New Jersey Supreme Court to comply with R. 1:20-20 dealing with suspended attorneys. To date, she has not submitted an affidavit to the OAE

detailing how she has complied with that rule and with the Supreme Court Order.

This count of the complaint charges respondent with violating R. 1:20-20(b)(14) and the July 24, 1998 Court Order.

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent knowingly misappropriated the Korngor, Allen and Rhett trust funds, in violation of RPC 1.15(a) and RPC 8.4(c). Her attorney trust account records reveal that she depleted the settlement monies held in trust for those parties, admittedly to support her casino gambling habit. Respondent's combined trust account balance of $5.02 on April 30, 1998 was insufficient to cover the total $92,213.03 in settlement funds that should have remained in her trust accounts for Korngor, Allen and Rhett.

Respondent also violated RPC 1.4(a) (failure to communicate) in the Korngor, Allen, Drinkard and Davis matters; RPC 1.15(b) in Rhett (failure to notify client of receipt of settlement funds); RPC 1.3, RPC 1.1(a) and RPC 1.16(d) (abandonment of clients) in Drinkard and Davis; RPC 1.15(d) for recordkeeping infractions; RPC 8.1(b) for failure to

cooperate with disciplinary authorities, and R. 1:20-20(b)(14).

We dismissed the charges of violations of RPC 1.1(a) in Korngor and Allen, as well as the charge of a violation of RPC 1.1(b). There are insufficient facts in the complaint to support findings of such violations.

Respondent knowingly misappropriated client trust funds for a total of $92,213.03 in three matters. That alone requires her disbarment. In re Wilson, 81 N.J. 451 (1979). Accordingly, we unanimously determined to disbar respondent.

We further direct that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/22/06

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Linda K. Anderson
Docket No. DRB 99-235

Decided: May 22, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Cole	x						
Brody	x						
Boylan	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Wissinger	x						
Total:	9						

By Isabel Frank 6/14/00
Robyn M. Hill
Chief Counsel