

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-046
District Docket No. XIV-05-0225E

IN THE MATTER OF
RONALD D. BARRETT
AN ATTORNEY AT LAW

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Decision

Argued: May 15, 2008

Decided: July 8, 2008

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter came before us on a recommendation for a reprimand filed by the District IX Ethics Committee (DEC). The two-count complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate a the client), RPC 1.5(b) (failure to provide

client with a writing setting forth the basis or rate of the fee), RPC 1.15(b) (failure to promptly deliver property to a client), RPC 1.15(d) (recordkeeping violations), and RPC 3.4(c) (knowingly disobeying a court order). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1959. He maintains a law office in Oakhurst, New Jersey. He has no history of discipline.

Count One

The following facts were gleaned from testimony, a stipulation of facts between the Office of Attorney Ethics (OAE) and respondent, exhibits, and respondent's admissions to the formal ethics complaint.

Frank Vandevort retained respondent, on July 7, 1998, to have Vandevort appointed as a substitute administrator CTA, in place of Vandevort's mother, Jane, who was incompetent. Jane had been the executrix of the estate of Geraldine Handy, her mother. Although the stipulation stated that respondent did not regularly represent Vandevort, it did not add that respondent failed to provide him with a writing memorializing their fee arrangement.

The purpose of Vandevort's appointment was solely to permit him to execute a deed to convey real estate in Ocean, New Jersey. A court order, dated July 29, 1998, appointed Vandevort the

temporary administrator of the Handy estate and authorized respondent to hold all proceeds from the sale of the property in his trust account, until a permanent administrator was appointed by the Surrogate Court of Monmouth County.

The Handy estate received a one-third interest (\$25,095.83) from the net proceeds (\$75,287.50) of the July 31, 1998 sale of the above-mentioned property. On August 3, 1998, respondent deposited the sales proceeds into his PNC Bank trust account. The following day, August 4, 1998, he disbursed to himself \$4,709.28 from his trust account as his fee, thereby violating the court order and, in turn, RPC 3.4(c).

On August 6, 1998, respondent wrote a letter to Vandevort, purportedly enclosing a \$12,322.99 trust account check to him (representing Jane's one-sixth share). Respondent told Vandevort that he would hold the balance of the "Handy funds," \$8,063.56, in his trust account, until Vandevort's permanent appointment as the administrator of the Handy estate. Respondent, however, inadvertently omitted enclosing the check and did not actually disburse the \$12,322.99 to Vandevort until August 24, 1998. The disbursement left an \$8,063.45 balance in respondent's trust account for the Handy estate.

By order dated October 16, 1998, the court appointed Vandevort as the permanent administrator of the Handy estate and required him to obtain a bond in the amount of \$75,000.

According to respondent, Vandevort did not post a bond. Respondent attempted to get that requirement waived because the value of the estate was so small. He thought it was "silly to pay a premium on [\$75,000]." Respondent claimed that he wrote to the judge, on November 9, 1998, asking that the bond be waived and also telephoned him several times, but did not follow through with it.

At the DEC hearing, Vandevort's widow, Beverly Sunday Vandevort, testified that Vandevort passed away in February 2003. She had been present, on several occasions, when her husband had telephoned respondent to inquire when the balance of the estate's funds would be released. She was aware that her husband had telephoned respondent from his office as well and had sent faxes to respondent, inquiring when the balance of the estate's funds would be released, all to no avail.

When Vandevort became very sick, in November or December 2002, he and Beverly discussed the status of the distribution of the estate's assets. A few days prior to his death, Vandevort asked Beverly to take care of the matter, that is, to obtain from respondent the funds that were due to the Vandevort family.

In the spring of 2003, while Beverly was probating her husband's estate, she came across the documents relating to the Handy estate, prompting her to contact respondent. On May 13, 2003, she faxed a note to respondent, stating that he still owed the estate's funds to the Vandevort family. She received no reply. She, therefore, contacted the estate attorney, John Forry, who, in May 2004, called and wrote to respondent on her behalf.

Respondent's secretary informed Forry that respondent had no paperwork in the matter. As a result, on May 10, 2004, Forry forwarded several documents to respondent, including the petition that respondent had filed, his bill for over \$4,000, "a subsequent bill," and correspondence from him from the fall of 1998, indicating that he was holding \$8,063.64 in his escrow account. Forry requested verification from respondent that he was still holding the money and inquired about the steps required to have the funds released to his client.

Respondent recalled speaking with Forry in 2004 and informing him that he could not locate the file. In his answer to the complaint, respondent explained that he had lost the Handy file when he sold the building, in April 2000. The files that he had been holding "in a pending status," including that file, had disappeared. He claimed that he did not disburse the funds, even after Forry forwarded the information to him, because he was not

sure where the funds were or whether or not he had already disbursed them.

On November 2, 2004, Beverly filed an ethics grievance against respondent and simultaneously served it on him. Respondent then determined to make the disbursement out of his own funds, just "to get it over with."

On November 11, 2004, respondent sent Beverly an \$8,063.64 check from his personal bank account. His accompanying letter stated:

I would like to apologize as it was my understanding that the funds were forwarded a long time ago. However I have attempted to find the file and have been unable to do so. I did not steal funds, and I have never taken any money that does not belong to me in my entire life. I have been an attorney for 35 years and have always enjoyed a very fine reputation. I received your fax back in March of 2004 and had contacted the attorney John Forry and I told him that I was still looking for the file.

I am very sorry that this occurred and that you had to take the action that you have. I would appreciate it if you would advise the Disciplinary Review Board that I have forwarded the funds to you.

Please accept my apology.

[Ex.11.]

Respondent informed the OAE that he used his personal funds to pay the balance of the "Handy funds" because his trust

account records were in such disarray that he could not determine whether he had previously paid the monies to Vandevort. He added that he did not want to affect client funds by possibly disbursing the funds twice from his trust account.

The OAE's review of respondent's trust account bank statements for the period from August 3, 1998, the date the Handy estate funds (\$25,095.83) were deposited into respondent's trust account, to November 12, 2004, the date respondent paid the funds from his personal account, showed that respondent had maintained the balance of the Handy funds (\$8,063.56) in his trust account.

Count Two

The OAE's review of respondent's trust and business accounts uncovered the following recordkeeping violations:

- a. Client ledger balances in the attorney trust account were not prepared and reconciled to the bank account statement, in violation of R. 1:21-6(c).
- b. Inactive trust account ledger balances remained in the trust account for an extended period of time, in violation of R. 1:21-6(d).
- c. Business account designation was improper, in violation of R. 1:21(6)(a)(2).
- d. Trust account bank reconciliations prepared by the OAE Auditor and respondent's accountant revealed that total funds on deposit were in excess of total trust obligations, in violation of R. 1:21-6(d).
- e. Old outstanding checks [] had not been resolved, in violation of R. 1:21-6(d).

f. Client ledger cards were found with debit balances, in violation of R. 1:21-6(d).

[S3117.]¹

According to the stipulation, respondent "has since changed his Attorney Business Account designation to comply with R. 1:21-6(a)(2)." The OAE withdrew the portion of count two that related to respondent's business account.

At the DEC hearing, respondent admitted that he had approximately \$70,000 of unidentified funds in his trust account. OAE investigator G. Nicholas Hall testified that, because respondent's records had been lost, it could not be determined to whom the funds belonged. According to Hall, respondent's records were in "such bad shape" that the OAE required respondent to hire "a professional" to bring his records into compliance. Hall found no evidence that respondent had taken any money that did not belong to him. Respondent believed that some of the unidentified funds were fees that he had not removed from his trust account.

Hall noted that respondent had cooperated fully with the OAE and had provided all of the information requested by that office.

The OAE recommended that, as a condition to any discipline, respondent be required to account for the excess funds in his

¹ S refers to the stipulation between respondent and the OAE.

trust account and to deposit with the court any funds whose ownership could not be established.

The DEC found that respondent violated RPC 1.15 (no subsection cited, presumably (a)), because he failed to maintain his files for a period of seven years after the event they recorded; RPC 1.15(c) because he failed to "keep separate the client's [p]roperty" (the complaint did not charge this violation); RPC 1.15(d) by failing to properly maintain his trust account; and RPC 3.4(c) by violating a court order.

The DEC recommended that respondent receive a reprimand and that, for a period of four years, he be required to submit quarterly trust account reconciliations, presumably to the OAE; that he successfully complete a continuing legal education course on record retention, within the next year; and that, over the next year, he conduct a diligent search to identify the owners of the trust funds and deposit any unidentified funds with the Superior Court Trust Fund.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

The OAE's January 31, 2008 transmittal letter to Office of Board Counsel stated that the OAE has not abandoned the following violations charged in the complaint: RPC 1.1(a) (gross neglect),

RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 1.15(b) (failure to promptly deliver property to a client). The OAE, however, conceded that it had not proven a violation of RPC 1.5(b) (writing setting forth the basis or rate of fee) by clear and convincing evidence.

We agree with the OAE. There is no evidence that respondent did not provide Vandevort with a writing setting forth the basis or rate of the fee (RPC 1.5(b)). We also find no clear and convincing evidence that respondent grossly neglected the case. We, therefore, dismiss these two charges.

On the other hand, the record clearly and convincingly establishes that respondent failed to turn over the balance of the estate's funds until Beverly filed a grievance against him, six years after Vandevort had been appointed the permanent administrator of the Handy estate. His conduct in this regard violated RPC 1.15(b). Although respondent lacked diligence in turning over those funds, RPC 1.15(b) is the more applicable rule. Thus, we dismiss the RPC 1.3 charge.

We also find clear and convincing evidence that respondent did not adequately communicate with his client (RPC 1.4(b)) by failing to reply to Vandevort's calls and faxes. Later, Beverly's request, too, did not elicit a reply from respondent, prompting her to enlist the assistance of her attorney.

Respondent also did not comply with the recordkeeping rules relating to his trust accounting practices (RPC 1.15(d) and R. 1:21-6), as he stipulated.

Finally, the court's July 29, 1998 order required respondent to hold in trust the proceeds from the sale of the property until the appointment of a permanent administrator for the Handy estate. The court made that appointment on October 16, 1998. Yet, respondent took his fee on August 4, 1998, and disbursed funds to Vandevort on August 24, 1998. Although those disbursements were in the proper amounts and made to the proper parties, they violated the court order requiring that the funds be kept in trust until the appointment of the permanent administrator (RPC 3.4(c)).

In sum, respondent's conduct violated RPC 1.4(b), RPC 1.15(b), RPC 1.15(d), and RPC 3.4(c).² We find as a significant mitigating factor that this is respondent's only ethics infraction in his forty-nine years at the bar.

We now turn to the proper quantum of discipline for respondent's unethical conduct.

² Although the DEC found a violation of RPC 1.15(c) (keeping separate property in which a lawyer and another person claim interests until there is an accounting and severance of their interests), it was neither charged in the complaint, nor is there any evidence in the record to support this violation.

Attorneys who fail to properly deliver funds to clients or third persons are usually admonished. See, e.g., In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client after client's medical bills were paid) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-one-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's hospital bill).

When an attorney makes improper distributions of escrow funds, a reprimand is the likely form of discipline. In re Milstead, 162 N.J. 96 (1999) (disbursement of escrow funds to client, in violation of consent order; violations of RPC 1.15(b), RPC 3.4(c), and RPC 8.4(d)); In re Marqolis, 161 N.J. 139 (1999) (escrow agreement required attorney to hold settlement funds in escrow until settlement documents completed, but attorney used part of the funds for his fees, albeit with the client's consent); and In re Flayer, 130 N.J. 21 (1992) (attorney made unauthorized disbursements against escrow funds, violating RPC 1.15(a), (b) and (c)).

The Court recently censured an attorney for misconduct in an estate matter that included similar violations, although more serious than respondent's. In re Goldsmith, 190 N.J. 196 (2006). Goldsmith ignored a sizable, uncomplicated estate. The estate

assets remained undistributed for almost two years, even though there was almost \$500,000 available for disbursement. In the Matter of Jeff A. Goldsmith, DRB 06-280 (December 19, 2006) (slip op. at 8). Goldsmith was found guilty of gross neglect, lack of diligence, failure to communicate with the clients, ignoring the beneficiaries' complaint seeking his removal as executor, and violating a court order requiring an accounting and the return of estate records. An aggravating factor was his ethics history, which included an admonition and a private reprimand.

Here, respondent failed to communicate with his client; failed to turn over the balance of the estate's funds for a six-year period; violated a court order; and engaged in recordkeeping violations. Unlike Goldsmith, he did not display gross neglect and lack of diligence in handling the case, did not ignore the beneficiaries' complaint for his removal as executor, and does not have a disciplinary record in his forty-nine years as an attorney. Furthermore, Goldsmith did not distribute a significant sum, \$500,000.

In part, respondent's misconduct might have been the result of the loss of his records and recordkeeping deficiencies, which, he claimed, prevented him from determining whether he had already disbursed the funds to Vandevort. Nevertheless, his failure to distribute the estate's funds for six years, despite requests

from his client, his client's wife and her attorney, requires discipline greater than an admonition.

Because the totality of respondent's transgressions falls between an admonition and a censure, a reprimand is the proper level of discipline in this case.

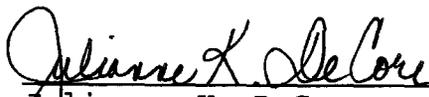
Also, within a one-year period, respondent must provide proof to the OAE that he has either disbursed the trust account funds to the correct recipients or has deposited them with the court. In addition, we require that, for a two-year period, respondent submit quarterly reconciliations of his trust account records to the OAE.

Members Baugh and Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By:


Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

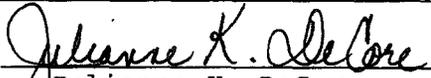
In the Matter of Ronald D. Barrett
Docket No. DRB 08-046

Argued: May 15, 2008

Decided: July 8, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Boylan			X			
Clark						X
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			7			2


Julianne K. DeCore
Chief Counsel