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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-299
District Docket No. XIV-03-425E

IN THE MATTER OF
FREDERICK R. PALUMBO
AN ATTORNEY AT LAW

Decision

Argued: January 18, 2007

Decided: April 26, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Michael Kingman appeared on behalf of respondent.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following the OAE's discovery, in 2006, that the Supreme Court of California had disciplined respondent on three separate

occasions in the 1990s, culminating in his 1996 voluntary resignation from the California bar. In 1991 and 1995, respondent received two-year suspensions in California, as the result of separate domestic violence incidents in which respondent was involved. In November 1995, he was suspended for three years for the misappropriation of client and escrow funds in six client matters. Finally, in February 1996, respondent voluntarily resigned from the California bar after he was about to be formally charged with the misappropriation of client and escrow funds in six additional client matters. Respondent did not report any of those matters to the OAE, as required by R. 1:20-14(a)(1).

The OAE seeks respondent's disbarment in New Jersey. In respondent's letter brief in opposition to the OAE's motion for reciprocal discipline, he requested that we conduct a hearing for the purpose of establishing the factual circumstances underlying his 1996 voluntary resignation from the California bar, inasmuch as the resignation "was for reasons other than the intentional misappropriation of client funds." For the reasons stated below, we recommend respondent's disbarment for the knowing misappropriation of client funds. Our recommendation is

not based on respondent's 1996 voluntary resignation, but on the conduct that led to his 1995 three-year suspension.

Respondent was admitted to the California bar in 1980 and the New Jersey bar in 1982. He maintains an office for the practice of law in Morristown. He has no disciplinary history in New Jersey.

In June 2006, the OAE started an investigation, following notification of an overdraft in respondent's New Jersey attorney trust account. Respondent failed to provide the OAE with a satisfactory explanation for the overdraft. Accordingly, on August 15, 2006, the OAE conducted a demand audit of respondent's attorney records.

During the audit, respondent told the OAE investigator that he had declared bankruptcy in California a number of years before. After the investigator had returned to the OAE's office, he conducted an internet search to determine whether respondent had practiced law in California and, if so, whether he was ever disciplined in that state. As a result of the search, the investigator learned of respondent's three suspensions, the fourth disciplinary action pending against him, and his voluntary resignation from the California bar.

I. THE FIRST SUSPENSION

On October 30, 1991, the Supreme Court of California suspended respondent for two years. The execution of the suspension was stayed, however, and respondent was placed on probation for two years, "on the condition that he actually be suspended thirty days." Respondent's suspension was predicated on a stipulation between respondent and the Office of Trial Counsel for the State Bar of California, which stated that a jury had convicted respondent, in a domestic violence case, of one count of violating a court order, one count of unlawful entry, and two counts of battery. The victim was respondent's wife, Natalie Palumbo.

II. THE SECOND SUSPENSION

On December 17, 1995, respondent was suspended for three years, although the execution of the suspension was stayed in favor of five years' probation, "on condition that he be actually suspended for two years and until he makes restitution" to three clients in the total amount of \$4,735.40. The suspension was based on a stipulation between respondent and the Office of the Chief Trial Counsel for the State Bar of California. A review of the stipulation shows that the parties

negotiated a compromise of the disputed allegations and agreed upon the discipline to be imposed.

The stipulation encompassed separate complaints involving six client matters, the misappropriation of client and escrow funds, and the unauthorized practice of law. We describe these matters below.

A. The Escobar Matter

On February 5, 1988, Diana Escobar retained respondent to represent her in a personal injury matter. In October 1988, respondent settled the case for \$7180. He deposited the settlement check into his general checking account, rather than his attorney trust account. Respondent stipulated that he commingled personal funds and the Escobar settlement proceeds.

On November 2, 1988, respondent sent Escobar a check in the amount of \$2,207.50, which represented her share of the settlement proceeds, together with a letter identifying the disbursement of the settlement funds. The disbursement letter misrepresented that respondent had satisfied a \$2423 medical lien in favor of AAA. In fact, respondent did not satisfy the lien until three years later (December 23, 1991), and only after the local bar association had intervened on AAA's behalf.

The funds were taken from respondent's trust account, which he had opened on October 19, 1990 (two years after his receipt of the Escobar settlement check), at the Bank of Southern California (BSC), with a \$100 deposit.

On three separate occasions, between March and June 1989, the balance in respondent's general checking account (where the Escobar settlement proceeds had been deposited) dipped below \$2423. The account was closed in June 1989. Respondent stipulated that he had "misappropriated client trust funds for his own use and benefit."

Respondent further stipulated to having willfully violated the following: California Business and Professions Code § 6091 (obligations of financial institutions to report overdrafts), California Business and Professions Code § 6106 ("[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension"),¹ and California Rules of Professional Conduct 4-

¹ In McKnight v. State Bar, 53 Cal. 3d 1025, 1029, 1034 (Cal. 1991) (citation omitted), the Supreme Court of California declared that "[t]here is no doubt that the willful misappropriation of a client's funds involves moral turpitude."

100(A) (duty to maintain client funds in an account separate from attorney's funds), 4-100(B)(3) (recordkeeping violations), and 4-100(B)(4) (failure to turn over client funds, as requested by the client).

B. The Geller-Gatewood Matter

On January 21, 1992, respondent signed a lien in favor of Dr. Anne B. Geller for medical services provided to respondent's client, Charlie C. Gatewood. In April 1992, respondent settled Gatewood's action for \$11,225. He deposited the settlement check into his BSC trust account, withholding sufficient funds to pay the \$1385 lien in favor of Dr. Geller. On April 20, 1992, respondent paid Gatewood his share of the settlement proceeds. However, despite the requests of Gatewood and Dr. Geller, respondent failed to satisfy the medical lien.

On June 1, 1993, respondent closed his BSC trust account and was paid the \$26,683.32 balance by cashier's check. Respondent stipulated that he had "misappropriated the funds owed to Dr. Geller."

On June 18, 1993, respondent opened an attorney trust account at Union Bank. The first deposit into the newly-opened trust account was made on June 21, 1993, in the amount of

\$17,500. In August 1993, respondent finally paid the \$1385 owed to Dr. Geller out of the newly-opened trust account, but only after the doctor had sued him, and the State Bar had intervened on her behalf.

Based on these facts, respondent stipulated to having willfully committed the following violations: committing an act involving moral turpitude, dishonest or corruption, commingling, and failure to turn over client funds.

C. The Taddeo Matter

In March 1990, Roberto and Katherine Taddeo retained respondent to represent them in a personal injury matter. In November 1990, respondent settled Roberto's case for \$7000 and deposited the settlement check into his BSC trust account. On November 28, 1990, respondent sent Roberto a disbursement sheet and a \$4,149.97 check. Respondent advised Roberto that his medical provider, Dr. Boffman, would be paid \$494.70 out of the settlement proceeds to satisfy a medical lien.

The check that respondent sent to Dr. Boffman was returned because the amount of the check was insufficient to cover the amount of the lien. Respondent never sent another check to Dr. Boffman, and he did not give the \$494.70 to Roberto.

In January 1991, respondent settled Katherine's case for \$13,000 and deposited the settlement check into his BSC trust account. Respondent's paralegal, identified in the stipulation as "Ms. Schwaeber," informed Katherine that all medical bills and liens would be satisfied from the settlement proceeds. Specifically, \$974.40 due to a Dr. Dulin would be withheld from the settlement proceeds and paid directly to the doctor. Dr. Dulin was never paid.

In January 1991, respondent sent a \$4000 trust account check to Katherine. On February 26, 1991, the balance in respondent's BSC attorney trust account dropped to \$763.33. In March 1991, he sent Katherine another trust account check in the amount of \$3,649.44.

Between January and April 1991, the Taddeos called respondent's office on numerous occasions, requesting a copy of their file. They also wrote to respondent several times, requesting that he reply to a complaint filed by Dr. Boffman, presumably against the Taddeos. Respondent ignored all of the Taddeos' communications.

As stated previously, on June 1, 1993, respondent closed his BSC trust account and received the \$26,683.32 balance. Later that month, he opened another trust account at Union Bank

with a \$17,500 deposit. On August 12, 1993, respondent's Union Bank trust account was overdrawn by \$6,392.55. Respondent stipulated that he had (1) "failed to maintain the funds in his trust account received for the benefit of his client" and (2) "misappropriated client trust funds for his own use and benefit."

Based on these facts, respondent stipulated to having willfully committed the following violations: failure to communicate with the client (California Business and Professions Code § 6068(m)), committing an act involving moral turpitude, dishonesty or corruption, commingling, recordkeeping violations, and failure to turn over client funds.

D. The Shiota Matter

In May 1992, Kinuki Shiota retained respondent to represent her in a personal injury action. In March 1993, respondent settled the case for \$5500 and deposited the proceeds in his BSC trust account.

On April 2, 1993, respondent sent Shiota a trust account check in the amount of \$1,416.30, which represented her proceeds from the settlement. He also sent a disbursement sheet stating

that he would pay out of the proceeds \$1,387.50 for medical bills.

On May 29, 1993, Shiota wrote to respondent and informed him that she had paid all but one medical bill, "leaving an outstanding balance of \$687.50." Therefore, Shiota claimed, respondent had overbilled her for his legal services. Shiota also informed respondent that, because the amount of the trust account check issued to her was incorrect, she would not cash the check. According to the stipulation, Shiota should have received \$2,116.30 in net settlement proceeds. Shiota attempted to communicate with respondent about this issue by mail and telephone, but she was unsuccessful.

Respondent's Union Bank trust account, which he opened in June 1993, was overdrawn by \$6,392.55 on August 12, 1993. Here, too, respondent stipulated that he "misappropriated [Shiota's] client trust funds for his own use and benefit."

Based on these facts, respondent stipulated to having willfully committed the following violations: failure to communicate with the client, committing an act involving moral turpitude, dishonesty or corruption, commingling, recordkeeping violations, and failure to turn over client funds.

E. The Conley Matter

In July 1991, Anne M. Conley retained respondent to represent her in a personal injury action that arose out of a May 28, 1991 automobile accident in New York State. Conley and respondent entered into a written fee agreement, but "[t]he copy provided to her was changed to reflect higher fees charged by respondent."

On June 10, 1993, respondent settled Conley's action for \$10,000 and received a check made payable to him and Conley. He did not tell Conley about the settlement, and he did not seek her endorsement on the check. In fact, between June 14 and August 10, 1993, Conley made repeated attempts to discuss her case with respondent by telephone, but she could never reach him, and he did not return her calls.

On August 10, 1993, Conley received from respondent a \$6425 Union Bank trust account check, which represented her portion of the settlement proceeds. When Conley deposited the check into her bank account, it bounced. Nine days later, the check cleared. Respondent stipulated that he had failed to maintain his client's funds in his trust account and, again, that he "misappropriated [Conley's] client trust funds for his own use and benefit."

In addition, as in the other matters, respondent sent Conley a settlement disbursement sheet that reflected the payment of \$1150 in settlement proceeds to "Future Health" to satisfy an outstanding balance. In fact, respondent did not pay the bill until October 15, 1993.

Based on these facts, respondent stipulated to having willfully committed the following violations: failure to communicate with the client, committing an act involving moral turpitude, dishonesty, or corruption, commingling, recordkeeping violations, and failure to turn over client funds.

F. The Howard Gorbach Matter

On October 31, 1990, Howard Gorbach retained respondent to represent him in an uninsured motorist personal injury action against USAA Insurance Company. On December 2, 1991, respondent settled the case for \$17,000, which was to be offset by \$5,000 that the company had advanced Gorbach to cover "costs and fees," pursuant to the terms of a stipulation dated October 30, 1991.

Respondent sent Gorbach an \$8,523.71 check, which represented his share of the settlement proceeds. Respondent informed Gorbach that he had withheld \$2,571.95 of the settlement proceeds so that he could satisfy a medical lien in

favor of Principal Financial Group (PFG). Yet, respondent never informed PFG that Gorbach's case had settled.

On January 2, 1992, PFG wrote to Gorbach, asked whether the case had settled, and reminded him of the outstanding lien. On September 17, 1993, a collection agency wrote to Gorbach and demanded payment of the \$2,571.95 lien within seven days. Although Gorbach left a number of telephone messages for respondent, his calls were never returned. Finally, a member of respondent's staff (identified as Ms. Kimber) told Gorbach that "the matter would be taken care of immediately." Despite this representation, the PFG bill was not paid until October 4, 1993, and then only after the State Bar had filed an ethics complaint against respondent.

On at least three occasions prior to the payment of the PFG lien, respondent's attorney trust account balance fell below the amount required to pay the lien.

Based on these facts, respondent stipulated to having willfully committed the following violations: failure to communicate with the client, committing an act involving moral turpitude, dishonesty or corruption, commingling, recordkeeping violations, and failure to turn over client funds.

G. Bounced Trust Account Checks

Respondent stipulated that, as a result of his failure to maintain, in his Union Bank trust account, funds received for the benefit of his clients, and of his misappropriation of client trust funds for his own use and benefit, the following checks were returned unpaid:

1076	08-12-93	Anne Conley	\$6,425.00	NSF	\$6,392.55
1065	08-13-93	Roy Huvala	485.00	NSF	462.55
1081	08-19-93	Jeffrey Seymour	200.00	Overdraft	111.35
1236	02-16-94	Respondent's Trust Account	2,000.00	NSF	4,750.98
1233	02-16-94	Respondent's General Acct.	4,300.00	NSF	4,750.98
1222	02-18-94	J. Fair Assoc.	1,937.40	NSF	398.38
1255	03-24-94	Sharon Cole	5,402.34	NSF	4,876.96
1244	03-29-94	Navy Legal	3,000.00	NSF	2,484.62

Based on these facts, respondent stipulated to having willfully committed the following violations: committing an act involving moral turpitude, dishonesty or corruption, commingling, recordkeeping violations, and failure to turn over client funds.

H. Unauthorized Practice of Law

According to the stipulation, from July 19, 1993 until August 2, 1993, respondent was "enrolled as an inactive member

of the State Bar of California due to his failure to comply with the Mandatory Continuing Legal Education . . . credit requirements." Nevertheless, respondent held himself out as an active member of the bar when, in an arbitration matter, he rescheduled the arbitration in a letter dated July 19, 1993, prepared and executed a brief dated July 27, 1993, and participated in the arbitration proceeding on July 28, 1993.

Based on these facts, respondent stipulated to having willfully violated his duty to support the Constitution and laws of the United States and California, as well as the law criminalizing the practice of law while an inactive member of the bar, in violation of California Business and Professions Code §§ 6068(a), 6125, and 6126(b).

III. THE THIRD SUSPENSION

On December 22, 1995, respondent was suspended from the practice of law for two years. The suspension was stayed, however, and respondent was placed on three years' probation, subject to the condition that he serve an actual sixty-day suspension. The suspension arose out of another domestic

violence incident between respondent and his (presumably second) ex-wife, Karin Guillame-Palumbo. (In the previous domestic violence action, respondent's wife was identified as Natalie Palumbo.)

IV. RESPONDENT'S RESIGNATION FROM THE CALIFORNIA BAR

On February 14, 1996, respondent resigned from the California bar "without prejudice to further proceedings in any disciplinary proceeding pending against him should he thereafter seek reinstatement." At the time of respondent's resignation, several matters were under investigation. A complaint had been drafted, charging respondent with misappropriation of client trust funds, among other improprieties. Again, however, our decision does not depend in any way on respondent's 1996 resignation from the California bar or the facts alleged in the draft complaint that led to his resignation. The resignation pre-empted the filing of the draft complaint; and, therefore, the alleged ethics violations were never conclusively established, either by a disciplinary proceeding or by stipulation.

We stress this point because respondent, in his brief, supporting affidavit, and at oral argument before us (through

counsel) repeatedly contended that a hearing should be conducted in New Jersey to establish mitigating factors underlying his 1996 resignation. In particular, respondent stressed that his former wife embezzled more than \$600,000 from his law firm during the 1990's, forcing him into bankruptcy and causing a bitterly contested divorce and child custody proceeding that "virtually destroyed" his practice.

Our decision, however, is based on the second, December 17, 1995 suspension and the stipulations underlying it: on respondent's admission in three cases (Escobar, Shiota, and Conley) that he "misappropriated client funds for his own use and benefit," and on his use of what were essentially escrow funds, funds subject to medical liens.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), however, respondent's misconduct "warrants substantially different discipline," as the stipulated facts and violations that led to the second suspension establish that respondent's misconduct in California, which resulted in a three-year suspension there, requires disbarment in New Jersey.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

The OAE seeks respondent's disbarment based on his knowing misappropriation of trust funds in the matters that resulted in his second suspension. That suspension was based on a stipulation of the facts and discipline, and was the subject of a court order. The facts in that matter were, therefore, conclusively established.

In 1995, respondent stipulated that he had misappropriated client funds "for his own use and benefit." The stipulation mentions no defense and no mitigating circumstance (such as, for example, poor recordkeeping practices) that would have led to some mistaken belief that the funds belonged to him. The admissions underlying respondent's December 17, 1995 suspension are clear and unqualified. They convincingly establish that he knowingly misappropriated client and escrow funds within the meaning of governing New Jersey case law.²

In the Escobar matter, the account into which respondent had deposited the client's settlement proceeds dipped below the \$2423 retained for the purpose of paying a medical lien on three

² In California, knowing misappropriation does not always lead to disbarment. See, e.g., John H. Edwards III v. State Bar of California, 801 P.2d 396, 402 (Cal. 1990) (noting that, in the absence of "clearly extenuating circumstances," an attorney who engages in willful misappropriation, whether intentional or negligent, is subject to disbarment); McKnight v. State Bar, supra, 810 P.2d at 1003.

occasions. In the Geller-Gatewood matter, respondent closed his BSC trust account in which he held \$1385 that was to be used to satisfy a medical provider's lien. In the Taddeo matter, respondent's trust account dipped to \$763 at a time when he should have held more than \$3000 of his client's settlement proceeds. In the Shiota matter, respondent never paid the \$2100 due his client and, while the funds should have remained in his trust account, on August 12, 1993, the account was overdrawn by \$6300.

In the Conley matter, respondent's client received a \$6425 settlement check on August 10, 1993, which bounced. (The account was overdrawn on August 12.) The check cleared nine days later, presumably because respondent replenished the account. In the Gorbach matter, respondent withheld more than \$2000 from the client's settlement to satisfy a medical lien. While the funds should have been maintained in respondent's trust account, the account's balance dipped below \$2000 on three occasions before the bill was finally paid (and then only under the impulse of an ethics complaint). Finally, a number of trust account checks bounced between August 12, 1993 and March 29, 1994.

Parenthetically, even if we were to consider respondent's claim of embezzlement on the part of his former wife, it would not serve to spare him from a finding of knowing misappropriation. He contends that his former wife's misdeeds occurred during the 1990s. However, the misappropriation in the Escobar matter took place in 1989. There, respondent did not open an attorney trust account until October 1990. Thus, when he received the settlement check in October 1988, it was deposited into his personal checking account. After he paid the client, at least \$2423 should have remained intact in his checking account. However, respondent did not pay that amount to the medical provider until December 1991. In the meantime, however, his personal checking account was "out of trust" on three occasions during the year 1989. Simply stated, the funds were not kept intact.

To summarize, in light of respondent's stipulation in 1995 that he misappropriated client and escrow funds for his own use and benefit, and his persistent failure and refusal to pay medical liens until pressured to do so, some times years after the fact, satisfies us that respondent's invasions of client and escrow funds were deliberate and knowing under New Jersey disciplinary law.

Under In re Wilson, supra, 81 N.J. at 455 n.1, 461, and In re Hollendonner, 102 N.J. 21, 26-27 (1985), respondent must be disbarred. We so recommend to the Court. See, e.g., In re Cavuto, 160 N.J. 185 (1999) (attorney disbarred for misappropriating escrow funds that were to be used to pay medical bills).

Members Baugh and Lolla 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
William J. O'Shaughnessy
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

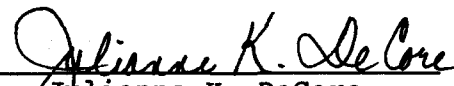
In the Matter of Frederick R. Palumbo
Docket No. DRB 06-299

Argued: January 18, 2007

Decided: April 26, 2007

Disposition: Disbar

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


Julianne K. DeCore
Chief Counsel