SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-368

IN THE MATTER OF :
:
PAUL W. SONSTEIN :
:
AN ATTORNEY AT LAW :

Decision

Argued: December 20, 2001

Decided: May 10, 2002

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Philip B. Seaton appeared on behalf of respondent.

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

This matter was before us based on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violations of RPC 1.3 (lack of diligence), RPC 1.5(c) (fee overreaching), RPC 1.15(b) (failure to notify a third party upon receipt of settlement funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1973. He maintains an office for the practice of law in Voorhees, Camden County. He has no history of discipline.

On November 5, 1992, Paula Brannon retained respondent to represent her in a workers' compensation claim arising out of an accident that occurred while she was employed at Burdette Tomlin Memorial Hospital ("Burdette"). The accident was allegedly caused by the negligence of a maintenance contractor hired by the hospital, ServiceMaster Corporation ("ServiceMaster"). Respondent filed both a workers' compensation claim petition and a third-party negligence suit against ServiceMaster.[1] Alfred H. Katzman represented Burdette and its workers' compensation insurance carrier, Princeton Insurance Company ("Princeton"). ServiceMaster and its insurance carrier, Home Insurance Company ("Home") had separate counsel.

By letter dated February 25, 1994, Princeton advised respondent that it had a workers' compensation lien in the amount of $29,025.96 for medical and temporary disability payments made in Brannon's behalf. Princeton further advised respondent that the amount paid for permanent disability had yet to be determined. Respondent acknowledged the lien, in a March 1, 1994 letter to Princeton, and assured it that its interests would be protected.

In late October 1995, respondent entered into settlement negotiations with ServiceMaster. On November 7, 1995, Brannon released any and all claims against ServiceMaster, in exchange for the payment of $388,000. In the release, Brannon agreed "to satisfy any liens against the proceeds of settlement."

[1] On December 6, 1995 respondent transferred the workers' compensation matter to another attorney.

On November 13, 1995, Home sent to respondent a $388,000 settlement check in behalf of ServiceMaster, payable to "Paula Brannon, her attorney, Paul Sonstein, and the Princeton Insurance Company." Respondent did not notify either Princeton or its attorney, Katzman, that he was in receipt of the settlement funds and did not present the settlement check to Princeton or Katzman for endorsement. The following day, respondent deposited the settlement check into his attorney trust account, after endorsing Brannon's signature, presumably without her consent, and writing "Princeton Ins. Comp." on the check. Respondent proceeded in this fashion without Princeton's knowledge or consent. According to respondent, his intent was to expedite the disbursement of the funds to Brannon.

On November 15, 1995, respondent prepared a settlement disbursement sheet for Brannon's signature. The document indicated that the $388,000 recovery was to be distributed as follows: $128,728.36 to respondent as fees and $1,814.92 as expenses; $242,456.72 to Brannon; and $15,000 to be held in escrow for Princeton's lien.[2]

On November 17, 1995, respondent disbursed the settlement funds in the amounts listed above. At the time of the disbursements, respondent had not ascertained the current amount of Princeton's lien. He stipulated that he should not have disbursed the settlement funds until he had satisfied the lien or reached an agreement with Princeton on its amount.

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[2] Respondent estimated that Princeton was entitled to two-thirds of the $29,025.96 lien amount reflected in its November 25, 1994 letter. Respondent, however, escrowed slightly more than half of that amount.

On November 28, 1995, Princeton informed respondent that the balance of the workers' compensation lien was $101,584.99. By letter dated December 7, 1995, respondent advised Katzman that the third-party action against ServiceMaster had been settled and that the proceeds had been disbursed. In March 1996, respondent issued a check to Princeton in the amount of $15,000. On April 1, 1996, Katzman acknowledged receipt of the $15,000 check, as partial payment of Princeton's lien.

The balance due to Princeton for its workers' compensation lien, after the $15,000 payment, was $55,311.33.[3] Respondent failed to fully satisfy Princeton's lien out of the third-party settlement proceeds. For her part, Brannon refused to voluntarily repay the lien out of her share of the proceeds. Princeton then filed suit against respondent and Brannon to recover the balance of its lien. Brannon was required to retain separate counsel to defend her in that matter. The record is silent about the outcome of that suit.

Altogether, respondent disbursed $128,728.36 to himself as fees, or one-third of the net recovery of $386,185.08, after the payment of expenses. Pursuant to R.1:21-7, in effect at that time, respondent's fee was limited to one-third of the first $250,000 recovered and one-fourth of the next $250,000. Accordingly, respondent's fee should have totaled $117,379.60. He exceeded that amount by $11,348.76.[4] Brannon retained new counsel and filed a civil action against respondent for collecting excessive fees. Ultimately, the parties agreed to settle the claim for a $7,000 reimbursement on account

[3] The record does not reveal how this figure was calculated.
[4] The fee calculation was accurately reflected in respondent's retainer agreement.

of the excess fees and a $2,000 payment toward Brannon's legal fees in connection with that lawsuit.

Respondent stipulated that he violated RPC 1.3, RPC 1.5(c), RPC 1.15(b) and RPC 8.4(c).

The OAE recommended the imposition of a reprimand, citing In re McKinney, 139 N.J. 388 (1995) (reprimand for failing to notify client of receipt of settlement funds and disbursing funds that the attorney knew were in dispute) and In re Brooks, 169 N.J. 221 (2001) (reprimand for failing to safeguard funds, failing to maintain required trust account records and endorsing a client's name on a check, without authorization).

* * *

Following a de novo review of the record, we found that the stipulated facts support a finding that respondent's conduct was unethical, with one exception. There is no indication that respondent lacked diligence in handling the underlying negligence claim. In addition, although it appears that there was a delay in respondent's disbursement of the $15,000 to Princeton, the stipulation does not explain the delay, which might not have been respondent's fault. Accordingly, despite respondent's admission, we dismissed the allegation of a violation of RPC 1.3 as unsupported by the facts. Unquestionably, however, respondent violated RPC 1.5(c), RPC 1.15(b) and RPC 8.4(c). The only issue remaining is that of the appropriate form of discipline.

We are not persuaded that a reprimand is sufficient discipline for respondent's ethics infractions. He mishandled a number of aspects of this matter, in some instances displaying serious unethical conduct: (1) he overreached his client by over $11,000 and admitted knowing that his fee was limited to one-third of the first $250,000 and one-fourth of the next $250,000; (2) he signed his client's name to the settlement check, ostensibly without her consent; (3) he wrote "Princeton Ins. Comp." on the back of the settlement check, without Princeton's knowledge or consent; (4) he failed to advise Princeton, who had an interest in the settlement funds, that the funds were in his possession; and (5) although he assured Princeton that he would protect its lien, which he knew to be $29,025.96 as of February 25, 1994, he escrowed only $15,000, slightly more than one-half of the $29,025.96 he had agreed to protect. Furthermore, he failed to take into account that the sum owed Princeton would ultimately be greater than $29,000. Indeed, eventually Princeton claimed entitlement to over $101,000. Respondent should have safeguarded the funds until either the satisfaction of the lien or a compromise of its amount.

In recommending a reprimand, the OAE likened this matter to In re McKinney, supra, 139 N.J. 388 (1995), where the attorney failed to notify his client of the receipt of settlement funds and disbursed his legal fee notwithstanding his knowledge that the client disputed the fee. Respondent's conduct was more serious than McKinney's, however. He disbursed the settlement funds despite having assured Princeton that he would protect its lien. Indeed, the funds were not in dispute; there was no question that they belonged

to Princeton. Furthermore, respondent endorsed not only his client's name on the check, but also Princeton's.

The OAE also pointed to In re Brooks, supra, 169 N.J. 221 (2001). There, the attorney deposited settlement proceeds into his trust account. On the same date, before the check cleared, the attorney issued and cashed a trust account check payable to his client and himself. The attorney endorsed the client's name, without consent, allegedly as a convenience to his client. Brooks had been previously reprimanded for failure to cooperate with ethics authorities.

Like Brooks, respondent argued that his intent was to expedite the distribution of the settlement proceeds to his client. Respondent's conduct, however, was more serious. He endorsed Princeton's name on the check, without permission, and assured Princeton, in writing, that he would protect its lien. He then failed to do so. In this regard, respondent's conduct was deceitful.

In light of the foregoing, we unanimously determined that a three-month suspension more properly addresses the seriousness of respondent's actions.

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

Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Paul W. Sonstein
Docket No. DRB 01-368

Argued: December 20, 2001

Decided: April 19, 2002

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley						X	
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy		X					
Pashman		X					
Schwartz		X					
Wissinger		X					
Total:		8				1	

Robyn M. Hill
Chief Counsel