

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-132
District Docket No. XIV-2016-0241E

IN THE MATTER OF :
QUEEN E. PAYTON :
AN ATTORNEY AT LAW :
:

Corrected Decision

Argued: June 15, 2017

Decided: October 12, 2017

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us pursuant to R. 1:20-6(c)(1), which provides that a "hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation." Respondent's answer admitted the allegations of the ethics complaint, which charged her with recordkeeping

deficiencies, in violation of RPC 1.15(d) and R. 1:21-6. We determine to impose no additional discipline.

Respondent was admitted to the New Jersey bar in 2001. On November 3, 2005, she received an admonition for practicing law between August 2003 and September 2004, in violation of the Court's Order declaring her ineligible to practice and in violation of RPC 5.5(a), based on her failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). In the Matter of Queen E. Payton, DRB 05-250 (November 3, 2005).

On July 14, 2011, respondent was reprimanded for again violating the Court's Order declaring her ineligible, again based on her failure to pay the 2010 CPF annual attorney assessment, a violation of RPC 5.5(a). In re Payton, 207 N.J. 31 (2011).

On November 17, 2016, respondent received a second reprimand for violating RPC 5.5(a)(2) (assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law), RPC 8.4(a) (knowingly assisting another to violate the RPCs), and RPC 8.4(d) (conduct prejudicial to the administration of justice) by failing to comply with R. 1:20-20(e). Respondent had assisted her husband, a suspended attorney, in the unauthorized practice

of law, and she failed to file a compliance affidavit, although she was an affiliated lawyer of the law firm during his suspension. In re Payton, 227 N.J. 158 (2016).

At all relevant times herein, respondent maintained an attorney trust account (ATA) at TD Bank, and an attorney business account (ABA) at Beneficial Bank.

On April 19, 2016, TD Bank notified the OAE of an overdraft in respondent's trust account. Therefore, on May 5, 2016, the OAE directed respondent to provide a written explanation for the overdraft, which she accomplished on May 18, 2016.

Thereafter, on August 9, 2016, the OAE conducted a demand audit, which identified several recordkeeping violations, as follows:

- a. Failure to maintain ATA three-way reconciliations on a monthly basis, in violation of R. 1:21-6(c)(1)(H) (respondent was reconciling only quarterly);
- b. Failure to maintain an ATA cash receipts journal, in violation of R. 1:21-6(c)(1)(A);
- c. Failure to maintain an ATA cash disbursements journal, in violation of R. 1:21-6(c)(1)(A);
- d. Failure to maintain copies of ATA deposit slips, in violation of R. 1:21-6(c)(1)(A);
- e. Failure to maintain a client ledger card identifying attorney funds designated for bank charges, in violation of R. 1:21-6(d);
- f. Failure to include the correct designation of the law firm, instead of "Payton & Payton Attorneys at Law, LLP," on ATA and ABA bank statements, in violation of R. 1:21-6(a) [Ex.5a and 5b];

g. Failure to deposit earned legal fees into [the] ABA, in violation of R. 1:21-6(a)(2) [Ex.6];

h. Failure to include proper image processed checks, limited to four images, front and back, per page on her ABA bank statements, in violation of R. 1:21-6(b) [Ex.7]; and

i. Failure to include proper account designation of "Attorney Business Account," "Attorney Professional Account," or "Attorney Office Account" on ABA bank statements, in violation of R. 1:21-6(a)(2) [Ex.5b].

[1C110.]^{1,2}

According to the complaint, as of July 31, 2016, respondent had corrected all of the recordkeeping deficiencies.³

In addition to admitting the above facts and RPC violations, in her answer, respondent offered mitigation for her conduct, as follows. Specifically, respondent was the sole, at-home caregiver to her terminally ill husband and former law partner, Ben Payton, for three years prior to his death. At the same time, she sought to maintain their two-person law practice. Ben passed away on August 14, 2015.

Respondent further urged us to consider that the "exhaustive responsibilities" associated with Ben's care taxed her physically, mentally, and emotionally, and resulted in an

¹ C refers to the formal ethics complaint, dated March 6, 2017.

² The complaint erroneously designated TD Bank as respondent's ABA bank.

³ This date pre-dated the demand audit by three weeks.

"inadvertent disregard" of the recordkeeping rules. In addition, respondent asserted, she corrected the recordkeeping violations in a timely manner.

Respondent closed her law office on October 15, 2015. She has been semi-retired since then and expected, as of March 27, 2017, to complete the wind-down of her law practice within six to nine months. Respondent pledged to maintain proper books and records in the interim.

Respondent urged that no discipline be imposed for her misconduct.

At oral argument before us, the OAE recommended a reprimand.

* * *

Following a de novo review of the record, we are satisfied, to a clear and convincing standard, that respondent's conduct was unethical.

Respondent admitted that she failed to: (1) perform monthly three-way reconciliations of the ATA; (2) maintain ATA cash and receipts journals; (3) maintain copies of ATA deposit slips; (4) maintain a client ledger card identifying attorney funds designated for bank charges; (5) correctly designate the law firm name for ATA and ABA bank statements; (6) deposit earned fees in the ABA; (7) provide pictures of ATA checks, front and

rear, in an approved form; and (8) properly designate the ABA on bank statements. Respondent's actions in this regard violated RPC 1.15(d) and R. 1:21-6.

As noted, respondent urged us to consider, in mitigation, that she cared for Ben, in their home, during the final years of his terminal illness, which led to her own unspecified health issues and an "inadvertent" disregard of the recordkeeping rules.

In respondent's November 2016 reprimand matter, we found similar mitigation, as follows:

In mitigation, respondent's husband was terminally ill over the last several years of his life. Respondent then became responsible for all aspects of the law firm, having previously acted only in a part-time capacity. It is possible, as she suggests, that her husband's poor health, as well as her own medical issues, played a role in poor decision-making when confronted with Ben's continued practice of law and her own expedient, but misleading, affidavit of compliance to the Court. Finally, respondent entered into a disciplinary stipulation, thereby saving disciplinary system resources by acknowledging her misconduct.

In our view, the significant mitigation – a terminally ill husband of forty-four years, the additional duties respondent assumed when running the law firm for the first time, and her own medical issues – outweighs the aggravation.

[In the Matter of Queen E. Payton, DRB 15-380 (July 11, 2016) (slip op. at 13).]

In addition, we considered that

respondent was employed primarily in the health care field after her 2001 admission to the bar. Her involvement with Payton & Payton had been as a part-time attorney. More recently, when Ben became terminally ill and was no longer able to run the law firm, respondent was compelled to take on more and more of those duties. In addition, since the filing of the ethics grievance, respondent experienced several "health incidents" and hospitalizations of her own.

[Id. at 6.]

Here, in further mitigation, respondent promptly complied with the OAE's requests for information, swiftly cured all of the deficiencies, and admitted her misconduct, thereby saving disciplinary resources.

In respect of respondent's request that we impose no additional discipline, we consider it likely that the misconduct here occurred around the same time as in the 2016 matter, wherein the OAE conducted a December 2, 2014 demand interview. A timeline is helpful.

Ben passed away in August 2015. Respondent struggled for two months to keep the office open, but closed it in October 2015.

In April 2016, an overdraft in the ATA triggered an OAE investigation. Although the overdraft produced no ethics charges, a subsequent, August 2016 demand audit disclosed several deficiencies. Without the benefit of any definitive

dates to work with, we, nevertheless, reasonably conclude that the deficiencies occurred after the December 2014 demand interview in the earlier discipline matter, and during the final months or so of Ben's life, when respondent was caring for him.

We know, from the 2016 matter, that respondent had been working part-time at Payton & Payton until Ben's illness, at which time she also became responsible for the administrative aspects of their two-person firm, a likely scenario for unintentional recordkeeping mistakes.

Here, some additional mitigation is present. Respondent intends to wind down her practice; swiftly cured the recordkeeping deficiencies; and readily admitted her wrongdoing, saving disciplinary resources.

Finally, had we been able to consider these seemingly less serious recordkeeping deficiencies along with the 2016 matter, we likely still would have imposed a reprimand for the totality of respondent's conduct, inasmuch as minor recordkeeping deficiencies, alone, ordinarily result in an admonition. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

Under all of these unusual, but compelling circumstances,
we determine to impose no additional discipline.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: No additional Discipline

<i>Members</i>	No additional Discipline	Did not Participate
Frost	X	
Baugh	X	
Boyer	X	
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	9	


Ellen A. Brodsky
Chief Counsel