Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-110
District Docket No. XIV-2018-0487E

In the Matter of	:
Michael Peter Guido	:
An Attorney at Law	:

Decision

Argued: June 20, 2019

Decided: October 29, 2019

Hillary Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's one-year suspension in Florida, for his violation of the Florida equivalent of New Jersey RPC 1.3 (lack of diligence); RPC 8.4(b) (criminal act that reflects adversely on

the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation);[1] and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE urges us to recommend respondent's disbarment. For the reasons set forth below, we agree with this recommendation.

Respondent was admitted to the New Jersey bar in 1986, the Pennsylvania bar in 1987, and the Florida bar in 2013. He retired from the practice of law in New Jersey on February 27, 2018. He has no history of discipline.

On February 19, 2018, counsel for the Florida Bar filed a complaint in the Supreme Court of Florida, alleging that respondent violated Rules Regulating the Florida Bar (RRTFB) 3-4.3 (the commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline); RRTFB 4-1.3 (lawyer shall

---

[1] Although the complaint alleged knowing misappropriation, it did not charge respondent with having violated RPC 1.15(a) (failure to safeguard funds).

act with reasonable diligence and promptness in representing a client); RRTFB 4-8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RRTFB 4-8.4(d) (lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice).

Respondent did not file an answer to the complaint, but appeared on January 10, 2017, for a deposition before the disciplinary committee in Florida. He subsequently failed to appear at the April 18, 2018 disciplinary hearing before the Honorable Donald G. Jacobsen. Therefore, the conduct alleged in the disciplinary complaint was deemed admitted. Those facts are as follows.

In 2005, respondent drafted an irrevocable life insurance trust (ILIT) for his mother-in-law, Rosa Maria Bocco. Respondent served as trustee for the ILIT and performed legal work on behalf of the trust as attorney for the trustee. In his deposition, respondent denied providing legal services to the trust, asserting that he served only as trustee.

Rosa died in October 2011. At the time of her death, the trust was worth more than $1.5 million, funded by her life insurance policy. In November 2011, Veronica Bocco, respondent's wife at the time, paid respondent $30,000 as his

fee, using funds from her initial trust distribution.[2] This fee payment was made on behalf of the four trust beneficiaries: Veronica and her siblings Donna, Dominic, and Richard. Thereafter, respondent ignored the beneficiaries' inquiries regarding the status of the trust tax returns, and their requests for an accounting of the trust proceeds. He failed to file tax returns or complete an accounting for the trust. Respondent and Veronica divorced in March 2012.

In March 2013, through Veronica, the beneficiaries asked respondent to provide all trust documents and to resign as trustee. Respondent refused to resign until the beneficiaries "prepared the required legal documents." He also refused to produce trust documents until July 2014, when he provided Veronica with documents that were disorganized and incomplete.

Eight months later, in March 2015, after reviewing the documents that respondent provided, the beneficiaries noticed discrepancies in the account. They requested a full accounting from the trust company, Phoenix Charter Oak Trust Company (Phoenix). Phoenix provided documents revealing that, between March and October 2013, respondent issued to himself four checks totaling $35,748.33.

---

[2] Veronica was admitted to the New Jersey bar in 1988 and remains active with an office address in Haddonfield, New Jersey.

Respondent noted on these checks that they were for fees and administrative costs. The beneficiaries had been unaware of these distributions, despite their repeated requests for information and an accounting. An account statement from Phoenix revealed a fifth check, payable to respondent on December 23, 2013, for $3,500.

At his deposition, respondent claimed that, between 2005 and 2012, he had not disbursed any funds to himself for fees or costs. He admitted, however, that, between 2012 and 2015, he had written checks to himself at Veronica's direction. According to respondent, Veronica controlled Rosa's estate generally, and the trust funds, including how the funds were disbursed and which bills were paid. Respondent claimed that his role was limited to the signatory on the account, and that, at Veronica's direction, he drafted and endorsed the checks. Eventually, respondent turned over all funds to Veronica, and at her request, pre-signed all the blank checks. Veronica denied having authorized respondent to issue checks to himself and asserted that she previously had paid respondent a $30,000 fee on behalf of the beneficiaries for his services in connection with the ILIT.

In turn, respondent claimed that these checks represented either a loan from Veronica, or payment of his fees in accordance with the terms of the trust.

As of 2017, he had not reported these monies as income on his federal tax return. The record contains information regarding only one loan from Veronica to respondent, made on July 14, 2014. The promissory note memorializing the loan terms indicates that Veronica loaned respondent $14,438 for medical treatments and fifty percent of the tax penalties accrued for the tax year 2011. The loan was a non-interest-bearing loan unless there was a default in payments. In the event of a default, interest would accrue at five percent compounded annually.

In a September 12, 2015 text message, Veronica informed respondent that she had learned of his "offer to Dom [Veronica's brother] of $3000 & $500/mo. On what you stole from the trust. Since, it seems U have money, my personal loan to you supersedes any theft of $40,000 from my parents & Mom's trust."[3] She later referred to the loan monies as funds that respondent supposedly needed for cancer treatment and tax penalties. Veronica notified respondent that she was "imposing the acceleration clause of the note," adding that $14,000 of the loan is still outstanding.

Via a text reply to Veronica, respondent admitted making an offer to Veronica's brother, Dom, but claimed that he never had the money to satisfy its

---

[3] The record provides no context to respondent's offer to Dom. Based on Veronica's text messages, the offer apparently was meant to repay the money she believed respondent had stolen from the trust.

terms and that the offer was contingent on a job that he hoped to obtain, but ultimately did not. In the final text message, Veronica stated: "I will sue you for the money I lent you."

On February 29, 2016, Veronica filed a civil complaint against respondent for fraud, seeking full repayment of the loan. Respondent eventually settled the matter with Veronica and, on March 17, 2016, they stipulated to a voluntary dismissal of the complaint with prejudice.

Thereafter, in June 2016, Veronica filed a lis pendens against the home of Elaina Martini, respondent's wife at the time. Shawn Berry, Esq., an employee of Real Estate Closing Solutions (RECS) in Orlando, Florida told the Florida Bar investigator that a closing had been scheduled for the sale of Martini's home but was delayed when RECS discovered the lis pendens. Respondent explained to Berry that he had borrowed money from Veronica to pay for cancer treatment and household bills. Berry determined that the lis pendens was improper because respondent had no ownership or claim to the property. Berry filed a motion to dismiss the lis pendens and a hearing was scheduled.

In the meantime, Berry reached out to Veronica to negotiate a settlement of the lien, but she refused to return his phone calls. Prior to the lis pendens hearing, respondent informed Berry that Veronica had agreed to dismiss the lis

pendens in exchange for a compromised payment of the loan. The lis pendens hearing was canceled, and the buyers closed on the property a few weeks later. Martini told the investigator that she had paid Veronica $7,500 to settle the lis pendens and that she believed it was extortion. On November 16, 2016, Veronica and the other beneficiaries of the trust filed a civil complaint for theft against respondent. The record does not reveal the outcome of that litigation.

Respondent admitted that he had not kept records for the trust beyond the checkbook and the monthly statements he received from Phoenix. He compared the statements to the check registry and sent all documents to Veronica. Respondent believed that he was satisfying his fiduciary duty to all the beneficiaries because he had no reason to believe that Veronica was in breach of her duty to them. Later, however, he acknowledged that, if Veronica's use of trust monies had been inappropriate, he would bear the blame. In his view, the civil complaint filed against him, along with the underlying ethics complaint, are evidence that this is exactly what has happened.

As of the date of the disciplinary complaint in Florida, respondent remained trustee, despite the beneficiaries' repeated requests for him to resign. Although he complained several times that the beneficiaries had not presented him with a formal resignation document, he had difficulty explaining why he

had not prepared and signed a resignation document himself. Respondent claimed that he had lost all contact with the Boccos after July 2014, but the September 2015 text messages discussed above establish that respondent had communicated with Veronica and her brother Dominic.

Respondent contended that he had served the Bocco family for many years; that he took care of Rosa and was more of a son to her than Richard or Dominic; that the estate and trust were handled the way all family business was handled; and that the family has done everything it could to destroy him because he married Martini, who had been Veronica's best friend.

By way of mitigation, respondent explained that, after their divorce, Veronica and his children moved to Florida. Therefore, he relocated to Florida to be near his children. After taking the Florida bar exam in March 2013, respondent was diagnosed with stage three Hodgkin's lymphoma, immediately began aggressive chemotherapy, and was clear of cancer by January 2014. During that period, he could not work, and was quarantined in his home.

Finally, in February 2014, respondent became employed at Walt Disney World as a tram operator, where he still worked as of the date of his deposition. Since his admission in 2013, he performed no legal work in Florida because he had not completed the "basic skill requirement courses," and is considered

ineligible to practice law. Subsequently, in March 2016, he suffered a heart attack and required a stent.

In addition to his medical concerns, respondent explained that he did not take steps to protect himself from the potential for these accusations because he was under extreme duress. Veronica regularly threatened him with lawsuits, sent harassing e-mail and text messages and made harassing phone calls. Respondent claimed that Dominic and Donna would also threaten him, but that he never heard from Richard. Veronica eventually asked him to turn over all trust-related documents in July 2014, which he did.

On May 25, 2018, the referee issued a report finding that respondent violated RRTFB 3-4.3, RRTFB 4-1.3, RRTFB 4-8.4(c), and RRTFB 4-8.4(d). Notably, the referee referred to the money respondent paid to himself from the trust as a "misrepresentation" to the beneficiaries. In aggravation, he considered respondent's selfish motive; a pattern of misconduct found through multiple checks; and respondent's refusal to acknowledge the wrongful nature of his conduct. In mitigation, the referee noted that respondent has no prior disciplinary record in Florida and was suffering from a serious medical problem during some of the period of his misconduct. The referee found that the

aggravating factors outweighed the mitigating factors. He recommended a one-year suspension and proof of rehabilitation.[4]

On August 23, 2018, the Supreme Court of Florida issued an order suspending respondent from the practice of law for one year, effective September 22, 2018.

In its motion, the OAE argues that respondent's unethical conduct in Florida equates to violations of the following New Jersey Rules of Professional Conduct:

1. RRTFB 1.3 is equivalent to RPC 1.3;
2. RRTFB 4.3 is similar but not identical to RPC 8.4(b);
3. RRTFB 8.4(c) is equivalent to RPC 8.4(c); and
4. RRTFB 8.4(d) is equivalent to RPC 8.4(d)

The OAE recommends respondent's disbarment for his misconduct while serving as trustee to the ILIT. Respondent issued four checks totaling $35,748.33, to himself from the trust, for which he had no justification or permission. Although respondent was not charged with violating RRTFB 4-1.15 (compliance with trust accounting rules), he was charged with RRTFB 3-4.3 (criminal conduct), which could include theft and knowing misappropriation. Thus, the OAE argues, respondent has knowingly misappropriated $35,748.33

[4] The record does not explain the type of rehabilitation the referee required.

from the ILIT, and must be disbarred. In support of this recommendation, the OAE cited In the Matter of Peter B. Silvia, DRB 96-087 (March 10, 1997) and In the Matter of Robert D. Meenen, DRB 97-406 (June 29, 1998).

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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." 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). In Florida, the standard of proof is clear and convincing evidence. Florida Bar v. Forrester, 916 So.2d 647 (2005).

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.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

Respondent is guilty of violations of RPC 1.3, RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d). Specifically, without permission or justification, respondent distributed trust funds to himself. He attempted to justify these monies as administrative costs and portions of his fee as trustee, but provided no documentation supporting any expenses or work that he provided on behalf of the trust. Moreover, his former wife, Veronica, paid him $30,000 as a fee. Therefore, by issuing trust monies to himself, respondent knowingly misappropriated funds entrusted to him.

The complaint refers to respondent as both trustee of the ILIT and attorney for the trustee. Essentially, respondent was representing himself as trustee, and

denied performing any legal work on behalf of the trust. The Court has held that an attorney-client relationship between an attorney and the beneficiaries of a trust is not a prerequisite for a finding of knowing misappropriation. In In re McCue, 153 N.J. 365 (1998), the attorney was appointed trustee of a trust valued at over one million dollars. Throughout his term as trustee, McCue neither gave the beneficiaries an accounting of the trust assets nor filed the fiduciary income tax returns for the trust, and he breached his fiduciary duties. In the Matter of William T. McCue, DRB 97-086 (February 17, 1998) (slip op. at 3-4). The beneficiaries petitioned a court in Virginia to remove McCue as trustee. Id. at 3. The court determined that the trust suffered a loss of $655,000 because of McCue's fraud and misappropriation. Id. at 4.

McCue subverted the OAE's investigation by refusing to provide his records, but it was established that, at a minimum, McCue had misused more than $500,000 of trust funds. Ibid. McCue transferred most of those funds by issuing forty-three checks payable to a separate and unrelated trust with no connection to the first. Id. at 3. The matter was before us by way of default and McCue did not appear for the Order to Show Cause issued by the Court. In re McCue, 153 N.J. 365.

Similarly, an attorney appointed as the administrator of an estate in 1988 where the sole beneficiary was confined to a nursing home was disbarred when he "misappropriated and wasted more than $308,000 in estate funds." In re Meenen, 156 N.J. 401 (1998). Meenen made a series of improper loans from the estate without security or documentation, invested $205,580 in limited partnerships and speculative companies that were either defunct at the time of the investment or went out of business shortly thereafter, and improperly advanced to himself fees of $39,000. In the Matter of Robert D. Meenen, DRB 97-406 (June 29, 1998) (slip op. at 3). Meenen was unable to substantiate his entitlement to the fees taken. He also failed to file appropriate tax returns on behalf of the estate until March 1996, during a tax amnesty period established by the State of New Jersey. Id. at 4.

We determined that, even though Meenen had served as administrator, rather than attorney, the appropriate discipline, in that client matter alone, was disbarment. Id. at 5. Accordingly, for his theft from the estate, we recommended Meenen's disbarment. Id. at. 6. As in McCue, the matter was before us by way of default and Meenen did not appear for the Order to Show Cause issued by the Court. In re Meenen, 156 N.J. 401.

Thus, it matters not whether respondent was the trustee, or had an attorney-client relationship with the trust or its beneficiaries. He was entrusted with safeguarding the corpus of the trust and failed to do so when he improperly advanced $35,748.33 in costs or fees to himself without a scintilla of documentation to substantiate his entitlement. Consequently, because respondent knowingly misappropriated trust funds, we determine that disbarment is the only appropriate sanction. Therefore, we need not address the appropriate quantum of discipline for his additional ethics violations.

Member Joseph 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
Bruce W. Clark, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Peter Guido
Docket No. DRB 19-110

Argued: June 20, 2019

Decided: October 29, 2019

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph			X
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

Ellen A. Brodsky
Chief Counsel