

XIV-93-157E
RAP

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-023

IN THE MATTER OF :
WAYNE POWELL, :
AN ATTORNEY AT LAW :

Decision
of the
Disciplinary Review Board

Argued: March 15, 1995

Decided: May 23, 1995

Nitza Blasini 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 the Board based on a recommendation for
discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1985. He
maintains an office for the practice of law in Cherry Hill, New
Jersey.

On July 7, 1992, the Office of Attorney Ethics ("OAE")
conducted a random compliance audit of respondent's attorney books
and records. Subsequent audit visitations occurred on March 2 and
March 26, 1993. The OAE audit uncovered the following
recordkeeping deficiencies in connection with respondent's
accounts:

1. Client trust ledger cards were not fully descriptive.
2. Client ledger cards showed debit balances.

3. Separate ledger sheets detailing funds held for bank charges were not maintained.
4. Inactive trust ledger balances remained in the trust account for an extended period of time.
5. The business and trust account designations were improper.
6. A schedule of client ledger accounts was not prepared and reconciled quarterly to the trust account bank statement.

The audit further revealed that respondent's failure to reconcile his trust account records resulted in a shortage in excess of \$45,000. The trust account shortage was actually caused by three misdeposits of trust funds into respondent's business account. As respondent explained, it was his practice to keep pre-addressed deposit slips for both his business and trust accounts in a central location. On three occasions, he inadvertently used the wrong deposit slip, as a result of which the funds were deposited in his business account, instead of his trust account. It is unquestionable — and the OAE so acknowledged — that such funds remained intact in respondent's business account, thereby ruling out the possibility that he had intentionally taken the funds. Although respondent's trust account was never in a negative position because of the large balances that it carried, it is undisputed that other client funds were negligently misappropriated as a result of the three inadvertent misdeposits.

The accounting firm then employed by respondent to maintain his attorney records did not detect the trust account deficiency. This was so because, although the accounting firm submitted

quarterly statements to respondent showing his trust account receipts and disbursements as well as the reconciliations of the trust account statements to the trust account checkbook, it did not reconcile the trust account records to the client ledger cards. At the OAE audit, respondent's accountant admitted that he was unaware of that specific requirement. Respondent accepted full responsibility for his accounting firm's inadequate recordkeeping.

Immediately after being notified of the trust account deficiency, respondent took the necessary steps to cure it by depositing corresponding funds in his trust account. He also took appropriate action to ensure that his trust and business account recordkeeping fully complied with the rule requirements.

The OAE audit also disclosed that respondent advanced personal funds to eight clients whom he represented in personal injury matters. The total amount of the loans was approximately \$22,000. Each client repaid the loan to respondent upon settlement of the matter. Respondent conceded that he had extended such loans to his clients, explaining that he had been touched by their dire financial circumstances. O'Dessia Bowser, for instance, to whom respondent lent \$12,000 over the course of many years, had no food or utilities at home. In respondent's own words, "* * * she reminded me of my mother, it was real hard not to help her if I could." T6/16/1994 40.

* * *

At the conclusion of the ethics hearing, the DEC found that

respondent had failed to ensure that his accountants performed one of the specific requirements contained in R. 1:21-6, that is, the reconciliation of the trust account bank statement to a schedule of client balances. As a result, neither respondent nor his accountants detected the trust account shortage that occurred when trust funds were inadvertently deposited into respondent's business account. The DEC also found that respondent impermissibly advanced personal funds to clients, in violation of RPC 1.8(e).

The DEC recommended that respondent receive a reprimand, reasoning that his conduct was analogous to that exhibited by the attorney in In re Barker, 115 N.J. 30 (1989). The DEC considered several mitigating factors, such as his full cooperation with the OAE, his quick admission of wrongdoing, his immediate action to correct the trust account deficiency and, moreover, the fact that he at all times employed the services of professional accountants who should have been aware of each and every requirement of the recordkeeping rules.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. The facts are not in dispute. Respondent admitted each and every allegation of the formal ethics complaint. He accepted full responsibility for the inadvertent misdeposits in his business account as well as for his accountants' lack of knowledge of the

specific requirements of the recordkeeping rules. He was also forthright and cooperative with the OAE and the DEC.


The only issue remaining is, thus, the appropriate measure of discipline for respondent's violation of RPC 1.8(e) and RPC 1.15(d). The DEC recommended a reprimand, analogizing respondent's conduct to that displayed by the attorney in Barker. The Board agrees. Accordingly, the Board unanimously determined to reprimand respondent. Board members Michael R. Cole, Rocky L. Peterson and Barbara F. Schwartz did not participate.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated:

5/23/95

By:


Raymond R. Trombadore
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF WAYNE POWELL

DOCKET NO. DRB 95-023

HEARING HELD: March 15, 1995

DECIDED: May 23, 1995

	Public	Dis	Did Not
	Disbar	quali-	Partici-
	Suspension	fied	pate
	Reprimand		
	Admonition		
	Dismiss		
TROMBADORE _____	X		
BUFF _____	X		
COLE _____			X
HUOT _____	X		
HYMERLING _____	X		
PETERSON _____			X
RYAN _____	X		
SCHWARTZ _____			X
ZAZZALI _____	X		

Robyn M. Hill 6/19/95
ROBYN M. HILL
CHIEF COUNSEL

Archived: N

Last Update: 05/30/95

YEARLY SCREEN [Account # 0031008]

Attrny's Lastname: POWELL

Firstname: WAYNE

Year Admitted to Bar: 85 Specialty Cert:

Cert Date:

1. Social Security No.: 168-46-7900

2. Birthdate: 09/06/56

3. Home Address: 102 N BURNT MILL RD

City: CHERRY HILL

State: NJ

Zip: 08002

4. List of all other states where licensed: a) Year 1985

State PA

b) Year 19 State

c) Year 19 State

State

5. Private Practice? (Y/N) Y

BACK OF CARD : 1. Time: A (Full-time)

2. Firm Name: LAW OFFICE OF WAYNE POWELL, P.A.

Address: 811 CHURCH RD.

County: D (Camden)

City: CHERRY HILL

State: NJ Zip: 08002

3. Telephone: (609)428-8740

4. Nature: B (Sole Stockholder)

5. Size: B (Two)

6. Accounts: Primary Trust Account

Primary Business Account

Acc #: 611005026

611005034

Bank: UJB/SOUTH

UJB/SOUTH

City: PENNSAUKEN

PENNSAUKEN

Any key continues ...