

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-506

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IN THE MATTER OF  
JOSEPH F. FLAYER,  
AN ATTORNEY AT LAW

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Decision  
Default [R.1:20-4(f)(1)]

Decided: August 18, 1998

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

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline following respondent's failure to file an answer to the formal ethics complaint. A copy of the complaint and cover letter dated August 13, 1997 were sent by certified and regular mail to respondent's last known addresses: 630 Old York Road, Neshanic Station, New Jersey 08853 and Post Office Box 553, Neshanic Station, New Jersey 08853. The certified mail and the

regular mail sent to the street address were returned. The regular mail sent to the post office box was not returned. In addition, notice of the complaint was served by publication in the November 11, 1997 issue of the *Courier News* in Bridgewater Township, Somerset County and in the November 17, 1997 issue of the *New Jersey Law Journal*. Respondent did not file an answer, prompting the certification of the record by the OAE to the Board as a default.

Respondent was admitted to the New Jersey bar in 1976. He has an extensive ethics history. On July 7, 1992 respondent was publicly reprimanded for the improper release of escrow funds without the consent of the seller in a real estate transaction and for failure to cooperate with ethics authorities. On December 6, 1994 he was again publicly reprimanded for gross neglect, failure to act with diligence, failure to communicate with his client, failure to explain a matter to his client and failure to expedite litigation. On April 17, 1998 the Board determined to suspend respondent for six months for gross neglect, pattern of neglect, lack of diligence, failure to keep client informed about the status of a matter and to promptly comply with reasonable requests for information, failure to explain matter to extent reasonably necessary to permit client to make informed decisions, fee overreaching, failure to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process, and failure to cooperate with disciplinary authorities. The Court has not yet acted on that matter. Respondent was temporarily suspended on May 9, 1995 for failure to comply with a fee arbitration determination and remains suspended to date.

Respondent was retained in March 1988 to represent Michael and Camille Miller in

a personal injury matter. Although respondent settled the case in November 1992, because of a freeze on Joint Underwriting Association settlements, he did not receive and deposit the \$27,560 settlement proceeds until November 9, 1993. On November 18, 1993 respondent issued two checks to the Millers totaling \$15,873.33. He issued two checks to himself totaling \$9,186.67 - one-third of the settlement amount - ostensibly as his fee. After those disbursements, \$2,500 in Miller funds remained. Respondent told the Millers the \$2500 was earmarked to pay Dr. Louis Bouillon's expert witness fee. Before the case had settled, respondent had informed the Millers in an October 21, 1992 letter that he required \$2,500 to retain Dr. Bouillon. As it turned out, however, respondent never retained Dr. Bouillon, who wrote a letter stating that, although respondent paid him \$150 for an expert report, Dr. Bouillon did not appear at trial and did not receive \$2,500. On April 6, 1994, respondent issued a check to himself for \$2,500. On May 23, 1994 he closed his trust account. Respondent never replied to the Millers' repeated requests for the return of the funds. The ethics complaint charged respondent with knowing misappropriation of client funds in violation of RPC 1.15 and RPC 8.4(c).

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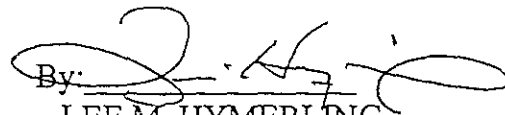
Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's

unethical conduct. Respondent improperly retained his client's funds, misrepresenting to them that he would use those monies to pay an expert witness. Instead, respondent disbursed the funds to himself. He, thus, knowingly misappropriated \$2,500.

Respondent's conduct included violations of RPC 1.15(b) (knowing misappropriation of client funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Under In re Wilson 81 N.J. 451 (1979) (knowing misappropriation of client trust funds mandates disbarment), respondent must be disbarred. The Board unanimously so recommends.

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

Dated: 8/18/98

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board