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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 93-065

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IN THE MATTER OF :  
:   
RAYMOND H. LEAHY, :  
:   
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: April 21, 1993  
Decided: August 10, 1993

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Respondent neither appeared nor waived his appearance before the Board.<sup>1</sup>

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

This matter is before the Board based upon a recommendation for public discipline filed by Special Ethics Master Charles H. Mandell, Esq. The Special Master concluded that respondent had practiced law while under suspension and was also guilty of knowing misappropriation of client funds while under suspension.

The underlying facts are as follows:

In 1981, respondent represented Barbara and Henry Rutherford in a civil action against Giovanni Gravanti to recover funds paid

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<sup>1</sup> Due to extensive difficulties in notifying respondent, notice by publication was made in the New Jersey Law Journal and the Asbury Park Press. Respondent contacted the Office of Board Counsel on April 20, 1993, the day prior to the Board hearing to request an adjournment. He was directed to telephone Chair Trombadore, but he failed to pursue the request for adjournment. He gave his address as Holiday Motel, 1505 Ocean Avenue, Seaside Park, New Jersey 08752.

by the Rutherfords to Gravanti in a commercial transaction. A default judgment was secured in favor of the Rutherfords and against Gravanti. The judgment was entered, on May 27, 1981, in the amount of \$2,450. That judgment was not immediately satisfied.

In November 1988, Gravanti attempted to refinance the mortgage on his residence. A title search performed by his then counsel, the firm of Starkey, Kelly, Blaney and White, disclosed the open default judgment against Gravanti. Respondent was listed as attorney for the Rutherfords on that judgment. Thereafter, an employee of the Starkey firm, Diane H. Soden, wrote to respondent on November 15, 1988, and requested a payoff figure. That payoff figure was to include, as well, the per diem interest rate for the open judgment against Gravanti.

At the time of Ms. Soden's inquiry, respondent was under suspension from the practice of law. That suspension had commenced August 1, 1988, and was to run for a period of one year, pursuant to the Supreme Court's Order. In re Leahy, 111 N.J. 127 (1988). Respondent was suspended for knowing invasion of client funds. He was saved from disbarment due to the fact that his conduct occurred prior to In re Wilson, 81 N.J. 451 (1979). Respondent was under that suspension when contacted by Ms. Soden.

Following receipt of Ms. Soden's November 15, 1988 correspondence, respondent telephoned Ms. Soden on November 17, 1988. At that time, he requested that Ms. Soden's firm calculate the interest computations to arrive at a judgment payoff figure. He did not advise Ms. Soden or anyone else involved in the

refinancing transaction that was then serving a suspension from the practice of law.

Thereafter, by letter dated January 17, 1989, Gravanti's counsel forwarded to respondent trust account check #29309 payable to "Raymond Leahy Trust." That check was made in the amount of \$4,378.77, and was mailed to respondent's then current post office box (P.O. Box 216, Sea Girt, New Jersey 08750) as satisfaction of the recorded judgment against Gravanti. In addition to forwarding the check, Gravanti's counsel requested that Leahy execute, in return, a warrant to satisfy judgment.

On January 17, 1989, when respondent received the check in question, he immediately opened account #8750-0-00378 at the First Fidelity Bank, N.A., in the name of "Raymond H. Leahy, Special Escrow Account." He deposited the \$4,378.77 check into that account. Immediately thereafter, respondent began to disburse the funds from that account to himself, without any authorization from the Rutherfords. Between January 17, 1989 and February 17, 1989, respondent made seven separate disbursements from the account in question, for a total of \$4,370.05. A balance of less than \$10 remained in the account, following those withdrawals.

Respondent failed to appear at the subsequent hearing before Special Master Mandell. As a result of difficulties encountered in notifying respondent of the pending hearing, notice was sent in care of respondent's sister, Karen O'Brien, at 149 Woodgate Road, Middletown, New Jersey. When respondent failed to reply to those notices, notice of the hearing was published in the Asbury Park

Respondent clearly obtained funds on behalf of the Rutherfords under false pretenses. His conduct was calculated to obtain the Rutherford funds for his own use, first by failing to advise Soden of his continuing suspension from the practice of law and, second, by opening the "Special Escrow Account" to facilitate negotiation of the \$4,378.77 check, which represented the payoff of the Rutherford's judgment. The funds were depleted by respondent within one month of the deposit, all for respondent's benefit and without the authorization of his former clients.


Respondent's failure to specifically advise Soden of his suspension clearly constituted misrepresentation, contrary to RPC 8.4(c). "In some situations, silence can be no less a misrepresentation than words." Crispen v. Volkswagonwerk, A.G., 96 N.J. 336, 347 (1984). This is just a situation.

Respondent's unethical conduct was further compounded by the fact that he was under an active suspension from the practice of law when he obtained the Rutherford funds. In holding himself out as the Rutherfords' attorney, he engaged in the practice of law while under suspension. See Guideline No. 23, RPC 3.4(c). See also In re Kasdan 132 N.J. 99 (1993) (where the attorney was suspended for three years based, inter alia, on the fact that she practiced law while under suspension, and following specific denial by the Court of her request for a stay of that order). The Court also ruled that non-compliance with Guideline No. 23 added to the gravity of a particular ethics violation and might also constitute a separate violation of RPC 3.4(c)(a).

In addition to the above-noted violations, respondent failed to cooperate with the ethics authorities, in violation of RPC 8.1(b), and specifically avoided attempts to notify him of the proceedings before the Special Master.

Respondent's conduct as a whole violated RPC 8.1(b), RPC 8.4(c), RPC 1.15 and RPC 3.4(c). Knowing misappropriation of client funds is one of these violations. Given this scenario, disbarment is the only appropriate discipline. In re Wilson, 81 N.J. 451 (1979). The Board unanimously so recommends.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 8/10/1993 By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board