SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-460

IN THE MATTER OF

PAUL J. URBANIA,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 27, 1993

Decided: March 18, 1993

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter alleging negligent misappropriation was before the Board based upon a Disciplinary Stipulation entered into by the Office of Attorney Ethics ("OAE") and respondent. The respondent's misconduct came to light during a random compliance audit, which revealed an apparent $12,366.25 shortage in respondent's trust account. Pertinent portions of the Stipulation read as follows:

> 1. Respondent is an attorney-at-law of the State of New Jersey, admitted to practice in 1984, and maintains and [sic] office for the practice of law at 150 Broad Street, Red Bank, Monmouth County, New Jersey.
>
> 2. Respondent admits that he negligently misappropriated $9,979.39 of client trust funds in the following manner in violation of RPC 1.15: [sic]

a. On May 22, 1991 he erroneously deposited $5,000 of trust funds belonging to a client named Vlaemynek into his business account, and thereafter used the money to pay personal expenses.

b. On December 17, 1990 he paid himself a fee from his trust account in the amount of $3,000 allegedly owed to him by his client Davies, when he knew he had no Davies funds on deposit; rather, he attributed this disbursement to a client known as HRC Partnership, of which Davies was one of two partners, as he mistakenly believed he had funds on hand for HRC, when, in fact, there were no funds on deposit for HRC.

c. During the period June 15, 1989 to August 30, 1991, respondent negligently overdisbursed a total of $4,476.07 in fees to himself and overdisbursements to clients from client ledger accounts; however, this figure was subsequently reduced to $1,979.39 when fees and costs due to him were credited to the shortage.

3. Due to respondent's failure to take fees in amounts specifically identified to client ledger balances and also due to his practice of grouping fees from several different accounts into a single disbursement check, it is difficult to completely verify his assertions that the overdisbursements in item 2(c) above were $1,979.39 as opposed to $4,476.07. However, based upon an overall analysis of respondent's books and records, the OAE is satisfied that respondent's explanation is rational and should be accepted. The OAE is also satisfied that the account is now in trust.

4. Attached hereto are two schedules. The first schedule, 'Trust Account Reconciliation as of 8/30/91', shows the shortage as originally discovered by the OAE. The second schedule, 'Overdisbursements, Schedule A', shows those client accounts which were affected by the shortage. The $109.82 difference between the shortage figure of $12,366.25 and the overdisbursement figure of $12,476.07 is attributable to respondent's lack of records.

5. Respondent attributes the overdisbursements to his failure to maintain books and records in the manner required by R.1:21-6 and RPC 1.15.

6. Specifically, respondent failed to comply with R.1:21-6 and RPC 1.15 by not maintaining proper cash receipts and cash disbursements journals, detailed deposit slips, client ledger cards for all clients, and a ledger card for attorney funds for bank charges; he

also failed to deposit all professional fees to his business account; and he failed to make quarterly reconciliations of his client ledger card balances to his bank statement balances.

7. Respondent therefore admits to the negligent misappropriation of client trust funds in the amount of $9,979.39 in violation of RPC 1.15(a), and failure to observe the recordkeeping requirements of R.1:21-6 in violation of RPC 1.15(d).

. . .

Within the stiplulation, respondent specifically waived his right to counsel as well as to the filing of a formal complaint and hearing before the district ethics committee. The matter therefore proceeded directly to the Board.

During the Board hearing, respondent maintained that, while he did not have a clear recollection of the circumstances surrounding the Vlaemynek misdeposit of $5,000.00 into his business account, that misdeposit was completely unintentional. To support this contention, respondent advised the Board that it was he who correctly identified to the OAE auditor the source of the trust account shortage. According to respondent, in trying to determine the source of the trust account shortage, the OAE auditor originally advised respondent that he had overpaid a client by $5,000. Respondent then, independently, investigated the shortage and found the source, in fact, to be his misdeposit of the Vlaemynek funds into his business account. He, therefore, advised the OAE auditor of that fact, as opposed to allowing the auditor to continue to operate under the misimpression that a client had been overpaid. Respondent suggested that, had he intentionally

deposited the funds into his business account, he "could have been more clever than to do it the way (he) did."[1] Respondent also advised the Board that, while he did, indeed, deplete the misdeposited funds, he did not use those funds wholly for his own purposes. Rather, some of those funds were used as disbursements on behalf of clients.[2]

Similarly, respondent maintained that, when he withdrew a $3,000 fee from the trust account, as set forth in paragraph 2(b) of the Stipulation, he believed that such fee was, indeed, on deposit in the trust account. According to respondent, he was handling approximately sixteen lawsuits on behalf of his clients, Davies and Chafy, and their assorted affiliated entities, which included HRC Partnership. These clients paid retainers to him from time to time. When respondent made this particular withdrawal, he believed that accumulated earned fees attributable to a certain matter were on deposit in the trust account. In reality, however, respondent had already withdrawn those earned fees several weeks or a month earlier.[3]

Respondent attributed these errors, essentially, to the poor condition of his books and records. He explained that he unexpectedly became a sole practitioner at a time when he was financially unprepared to do so. In fact, he described the origin

---

[1] See transcript of Board hearing at 11-12.

[2] Id. at 11.

[3] Id. at 10-11.

of his practice as one of "unprepared infancy."[4] Because he had to run his business on limited funds, he did everything himself, including typing and bookkeeping. As time progressed, he found himself physically unable to do everything and so, according to respondent, "some things got postponed" and his records were, ultimately, neglected. Respondent offered this explanation not by way of excuse but, rather, as background.[5] He accepted full responsibility for his actions.

CONCLUSION AND RECOMMENDATION

Upon an independent review of the full record, the Board found that the record clearly and convincingly supports a finding of unethical conduct by respondent. Specifically, respondent admittedly[6] failed to maintain proper cash receipts and disbursement journals, and client ledger cards for all clients, including a card for attorney funds for bank charges and detailed deposit slips, all in violation of RPC 1.15(d) and R. 1:21-6. In addition, respondent failed to deposit all fees into his business account, in violation of RPC 1.15 and R. 1:21-6. Finally, respondent failed to perform quarterly reconciliations of his client ledger card balances to his bank statement balances, in violation of RPC 1.15(d) and R. 1:21-6. All of these failures

---

[4] Id. at 3-4.

[5] Id. at 4.

[6] See Stipulation, paragraphs 6 and 7.

resulted in the negligent invasion of client funds, in violation of RPC 1.15(a).

The Board's independent review of the record disclosed no evidence of knowing misappropriation on respondent's part. Nevertheless, respondent's transgressions were serious and merit at least a public reprimand. See, e.g., In re Lazzaro, 127 N.J. 390 (1992) (public reprimand for negligent misappropriation caused by recordkeeping deficiencies and attorney's mistaken belief that trust account contained sufficient earned fees to cover the shortage) and In re Hennessy, 93 N.J. 358 (1983) (public reprimand for negligent misappropriation caused by shoddy bookkeeping practices).

The Board recognizes that the purpose of discipline is not the punishment of the offender but, rather, "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline imposed must comport with the seriousness of the ethics infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982). In deciding the appropriate form of discipline, therefore, the Board has taken into consideration several mitigating factors. Specifically, respondent fully cooperated with the ethics investigator. He replenished his trust account within a brief period of being advised by the OAE auditor

that the account was short. He has brought his books and records into compliance with the recordkeeping rule and it appears that no client has suffered injury as a result of respondent's actions. Finally, respondent has enjoyed an unblemished ethics history during his nine years of practice.

The Board is of the opinion that respondent's conduct, in light of all the relevant circumstances, warrants the imposition of a public reprimand. The Board unanimously so recommends. Three members did not participate.

In addition, the Board recommends that respondent submit an annual audit of his books and records for a period of two years.

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

DATE: 3/18/93

BY: Elizabeth L. Buff
Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board