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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-277

IN THE MATTER OF :
: EDWARD H. ZALESKI, :
: AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 23, 1991

Decided: December 9, 1991

William R. Wood 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 upon a recommendation for public discipline filed by the District VI Ethics Committee.

This disciplinary matter arose out of a demand audit by the Office of Attorney Ethics ("OAE") that took place on March 5, 1991. The audit stemmed from the OAE's receipt of notification that respondent's trust account check No. 1024, which had been used to pay his \$115 annual registration fee to the Lawyers' Client Protection Fund, had been returned for insufficient funds.¹

¹ Respondent explained that, after he had written a trust account check to the Client Protection Fund, he decided to send a money order instead. In the interim, however, his mother went to his office, located in the basement of his residence, and mailed the check to the Fund without his knowledge. The reason the check bounced is that he had already withdrawn equivalent funds for the money order.

Accordingly, by letter dated February 21, 1991, the OAE demanded that respondent produce all books and records required to be maintained in accordance with R. 1:21-6 (Exhibit 2). The audit was to cover the period from February 1990 through February 1991.

Although respondent appeared at the audit, he did not produce all of the records listed in the audit notice. More specifically, respondent brought only trust account bank statements from January 1990 through January 1991, with some cancelled checks and deposit slips.

At the audit, respondent conceded that he was not very familiar with the recordkeeping rules. He also admitted that he did not know that he was required to maintain a business account; hence, he deposited both his fees and business expenses in his trust account. Respondent explained, however, that he "at no time [held] any clients['] funds in trust because [he] at no time [] handled a sort of case that would involve clients' funds. Any deposits that were put into that trust account were either fees from the few clients [he] had handled or personal capital which [he] put into to keep, basically, to keep the account open. . . ." (T28-29)².

As respondent testified at the DEC hearing, although he was admitted to the New Jersey bar in 1984, he never really practiced law. After a ten-year employment at the Internal Revenue Service ("IRS"), he became a "tax preparer" with a New York accounting

² T denotes the transcript of the DEC hearing on June 18, 1991.

firm, with which he was employed at the time of the within alleged infractions. He is not a Certified Public Accountant.

On June 14, 1989, respondent was privately reprimanded for his failure to maintain a bona fide office in New Jersey, to keep the books and records required by R. 1:21-6 and to communicate with a client in an IRS matter. After his private reprimand in 1989 and through early 1991, respondent represented a "handful" of clients who were either personal friends or family members, by preparing tax returns for them or making administrative appearances before the IRS. Respondent does not advertise or list himself as an attorney in the telephone directory.

Specifically, in 1989, respondent attended an IRS audit with an aunt, at which time he conducted the examination of her records with her. Respondent explained that he was familiar with that procedure because, during his employment with the IRS, he had worked as an examiner for five years. In another instance, respondent filed a tax petition on behalf of the proprietor of a business. Respondent did not prepare that proprietor's business tax returns. It was only after the proprietor became dissatisfied with his regular accountant's representation that he turned to respondent because he knew that respondent had worked for the IRS. As respondent explained at the DEC hearing, "[p]eople tend to think that you are anointed or something special happens because you worked for the Internal Revenue Service. . . ." (T42). In a third matter, respondent represented the owner of a luncheonette who had "continuing problems with depositing employment taxes and

continuing collection difficulty with [the] Internal Revenue Service"(T43). Lastly, in one or two other cases, respondent prepared individual income tax returns.

Respondent summarized the essence of his representation of the above individuals by explaining that, aside from the preparation of personal tax returns, his role was limited to "negotiating payment agreements, [installment] loan payments with [the] Internal Revenue Service. . . . dealing with the revenue collection division, not the criminal division"(T44). Respondent testified that, in 1989, he grossed between \$1,500 and \$2,000 from the above representations and, in 1990, \$900. Respondent admitted that he did not maintain a bona fide office and the required books and records.

At the DEC hearing, the complaint was amended to include a violation of RPC 8.1(b) for respondent's failure to file an answer to the formal complaint. At the conclusion of the hearing, the DEC found that ". . . respondent's conduct was clearly unethical in that respondent's continued [] practice of law without a bona fide law office and without the required bank account and attorney records, subsequent to the date of the respondent's prior private reprimand for the same misconduct, constitutes knowing purposeful misconduct in violation of R.P.C. 1.15(d) and R. 1:21-1(a). Respondent's failure to appear at the demand audit without the required accounting records constitutes a violation of R.P.C. 8.1(b); further respondent's failure to file an answer constitutes a violation of R.1:20-3(i)." Hearing Panel Report at 5.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Indeed, the ink on the June 14, 1989 letter of private reprimand was barely dry when respondent committed the same infractions for which he had been previously disciplined. He continued to represent clients without maintaining a bona fide office and continued to violate the rules requiring proper accounting procedures. He also displayed indifference toward the disciplinary system by failing to file an answer to the formal complaint. As the Court stated in In re Kern, 68 N.J. 325, 326 (1975), "[a]n ethics complaint should be considered -- as it certainly is by the vast majority of all practicing attorneys -- as entitled to a priority over any other matter the lawyer may have in hand that can possibly be postponed."

Although the Board is aware that respondent represented only a few clients, it unanimously recommends that respondent receive a public reprimand. This recommendation is based on the Board's conviction that respondent refused to learn from his prior mistakes. The Board, however, is unable to conclude that respondent's failure to produce at the audit all records requested by the OAE constituted a violation of RPC 8.1(b). More appropriately, his failure to submit the records is a violation of the recordkeeping rules, and not of the rule requiring cooperation

with the ethics authorities. Respondent apparently produced all he had.

One member would have dismissed the finding of a violation of the bona fide office rule. In that member's view, the record did not clearly and convincingly establish that respondent was acting as an attorney when he represented his clients before the IRS. Hence, he was not required to maintain a bona fide office if he was not practicing law. One member did not participate.

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

Dated: 12/9/1991

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board