SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 88-227 and
89-142

IN THE MATTER OF :
DAVID LaROSEE, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: April 11, 1990

Donald S. Driggers, James J. McLaughlin, and Albert B. Kahn, Jr. appeared on behalf of the District VII Ethics Committee.

Edward Hunter appeared on behalf of respondent, who was also present.

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

This matter is before the Board based on a presentment filed by the District VII Ethics Committee and a report filed by a Special Ethics Master, appointed pursuant to R. 1:20-3 and Guideline 17 of the Office of Attorney Ethics.

DOCKET NO. DRB 88-227

THE PETITT MATTER
District Docket No. VII-87-19E

In December 1985, Richard and Barbara Petitt retained respondent to represent them in an action for negligence and fraud against the builder of their house and other co-defendants. After respondent instituted suit, he ceased practicing law in New Jersey

and moved to Massachusetts in April 1986, without giving notice to his clients.

After the receipt of a trial notice, one of the co-defendants offered $1,500 in settlement of the Petitts' claim. Respondent testified that he communicated the settlement offer to Mrs. Petitt by telephone on that same day, October 2, 1986, and that she accepted the offer for herself and her husband. Respondent did not inform Mrs. Petitt of the upcoming trial date. Mrs. Petitt, in turn, testified that she did not accept the offer; rather, she told respondent that she would discuss the offer with her husband and then advise respondent of their decision.

After the October 2, 1986 conversation with Mrs. Petitt, respondent accepted the settlement offer in the Petitts' behalf. No settlement documents were ever prepared, however. It was respondent's belief that the documents would be drafted by another attorney to whom respondent had entrusted the file before he left for Massachusetts. A substitution of attorney was never signed, however, and respondent did not consult with his clients before turning the file over to the attorney.

Approximately one week after respondent's conversation with Mrs. Petitt, Mr. Petitt unsuccessfully attempted to contact respondent by telephone. He was informed that the telephone had been disconnected and that no further information was available. Thereafter, Mr. Petitt drove by respondent's house, which displayed a "For Sale" sign. He rang the bell, but there was no answer. The house appeared to be vacant.

One month later, after he talked to a painter who was working on respondent's house, Mr. Petitt discovered that respondent had moved to Massachusetts. Mr. Petitt then contacted respondent in Massachusetts and advised him that the $1,500 sum was not acceptable to him. Thereafter, respondent made no efforts to vacate the settlement and have the matter relisted for trial.

At the conclusion of the ethics hearing, the panel found that respondent (1) had been grossly negligent in handling the matter, in violation of R.P.C. 1.1(a); (2) had failed to abide by his clients' decision to defer acceptance or to reject the settlement offer,[1] in violation of R.P.C. 1.2(a); (3) had failed to communicate with his clients, to advise them of his move to Massachusetts, to obtain their consent to the transfer of their file to another attorney, and to inform them of the trial date, in violation of R.P.C. 1.4(a).

DOCKET NO. DRB 89-142

The Dillon Matter
District Docket No. VII-84-29E

On March 13, 1983, Kenneth Dillon retained respondent to represent him in connection with charges of conspiracy to smuggle marijuana. Mr. Dillon and three co-defendants had been arrested in New Jersey as a result of a warrant issued by the United States

[1] One panel member believed that there was a misunderstanding between respondent and Mrs. Petitt with regard to the acceptance of the settlement offer.

District Court for the Northern District of Illinois ("The Illinois Court").

Respondent's fee arrangement called for the payment of a $5,000 fee by each client plus expenses, including the cost of purchasing some federal law books necessary to the representation.

After Mr. Dillon's sentencing, the Illinois court returned the bail monies to respondent, by way of a $2,500 check payable to Mr. Dillon. Because Mr. Dillon still owed him a fee balance, respondent scheduled an appointment for Mr. Dillon to come to his office to endorse the check, which would then be applied toward the outstanding fee balance. On the scheduled date, Mr. Dillon did not appear or otherwise contact respondent. A second meeting was scheduled. Before it took place, however, respondent discovered that his wife, who worked as a secretary in his office, had deposited the check in respondent's business account. The stamped endorsement read "For Deposit Only, David R. LaRosee, Attorney At Law in the State of New Jersey." On the back of the check, respondent's wife handwrote "For the account of Kenneth Dillon." Respondent's wife testified that she deposited the check in respondent's business account for safekeeping purposes; she did not wish the check to remain in the office during the upcoming holidays. After a dispute over the fee arose, respondent transferred the $2,500 amount to his trust account.

The ethics complaint charged respondent with violation of R.P.C. 8.4(c), for having deposited the check without the endorsement or knowledge of Mr. Dillon (first count), and violation

of R.P.C. 1.5(a)(3), for having assessed the cost of the law books against his client (second count).

At the conclusion of the ethics hearing, the Special Master found that respondent's deposit of the check did not violate R.P.C. 8.4(c) and that, although the charge for the law books was unusual, it did not constitute an ethics violation because respondent's client's had knowledge thereof and had consented thereto. The Special Master recommended that the matter be dismissed.

Recordkeeping Deficiencies (THE DuFOUR MATTER)
District Docket No. VII-84-32E

As a result of an ethics complaint filed by respondent's former law partner, Richard Hale (See The Hale Matter below), the Office of Attorney Ethics ("OAE") retained Jeffrey D. DuFour, a Certified Public Accountant, to conduct an audit of respondent's trust account records. After an initial meeting with respondent on November 3, 1982, Mr. DuFour requested that respondent produce certain records for his review as soon as possible. When respondent failed to submit the records requested, by letter dated November 24, 1982, the OAE demanded that respondent do so by December 3, 1982. Respondent complied with the above demand on December 2, 1982. On January 18, 1983, Mr. DuFour asked respondent to furnish him with additional information concerning his trust account activity by no later than the end of January. When respondent failed to comply with his request, by letter dated

February 14, 1983, Mr. DuFour reminded respondent of his promise to deliver the documents to Mr. DuFour's office on February 10, 1983. Mr. DuFour urged respondent to contact him as soon as possible to resolve the matter. It was not until March 2, 1983, that respondent submitted the requested information. After reviewing it, on July 26, 1983, Mr. DuFour asked respondent to clarify certain discrepancies and explain an apparent trust account shortage. Although respondent replied shortly thereafter, Mr. DuFour noted that several questions contained in his July 26, 1983 letter remained unanswered. He so notified respondent by letter dated February 10, 1984. Respondent wrote to Mr. DuFour on February 28 and March 8, 1984, but, as pointed out in Mr. DuFour's subsequent letter of March 12, 1984, some items still remained unexplained.

The audit conducted by Mr. DuFour encompassed the period from October 1981 through October 1982. On June 6, 1984, Mr. DuFour submitted an affidavit detailing certain recordkeeping violations -- including the failure to maintain client ledger cards and to reconcile the trust account balances with the individual ledger cards -- and an apparent trust account shortage of $8,841.15 (Exhibit P-1 introduced into evidence at the hearing on July 23, 1986).

At the conclusion of the ethics hearing, the Special Master found that there was no clear and convincing evidence of an invasion of client trust funds or of knowing misappropriation. The Special Master did find, however, that respondent's bookkeeping

practices were deficient, in violation of R. 1:21-6.

THE BENDER MATTER
District Docket No. VII-84-39E

The facts are as stated in the Special Master's report:

> In 1978 respondent represented one Terry Bender and his corporation, Continental Independent Security, Inc. (CIS), the later [sic] being a private investigative agency licensed by the State Police. Some time during that year one William Dey negotiated and purchased shares of stock in CIS and became an employee of the corporation. Subsequently Bender and Day had a falling out. Amidst charges and countercharges there was a settlement of the difficulties and a judgment entered in the Superior Court under which Dey was to be paid certain amounts of money and Bender was to continue to operate CIS. The judgment included a provision for a resort to security which included the stock of CIS in the event of Bender's default.
>
> Apparently one of the bones of contention between Bender and Dey was Bender's claim that Dey was doing investigative work on his own, not for the benefit of the corporation, and being paid directly for it. In this regard, the Complaint alleges in Paragraph 2 that respondent entered into a business relationship with Dey under which Dey performed independent investigation for LaRosee's law firm and respondent paid fees directly to Dey and not to CIS.
>
> At about this time, Bender allegedly defaulted in his payments to Dey and Dey sought to resort to the stock of CIS which was held in escrow to satisfy the judgment he held. Legal proceedings were commenced in the Chancery Division, Mercer County and as a result, the assets of CIS were frozen pending a hearing on the appointment of a receiver. As the result of the asset freeze, the bank accounts of CIS were frozen and consequently paychecks issued to employees of CIS were dishonored when presented to be cashed. The First Count of the Complaint also charges, in Paragraph 3 (and incidently [sic] there are two paragraph 3's [sic] to this Count) that respondent wrongfully represented employees of CIS in their efforts to collect their paychecks.
>
> The Complaint in the legal proceedings was filed and an Order to Show Cause issued on a short date which

> indicated that the court was requested to appoint a receiver. In the interim respondent on the first occasion, together with Dey, went to the corporate offices where they were admitted by one of the employees and checked the mail that was there. On a second occasion respondent together with the corporate accountant came to the premises and were [sic] barred from admission by the landlord of the building who operated a small restaurant on the first floor. In an effort to regain admission, respondent showed the landlord the pending Order to Show Cause with the intent apparently that the landlord accept that document and permit admission into the premises.
>
> [Report of Special Master at 2-3.]

At the conclusion of the ethics hearing, the Special Master found that there was no clear and convincing evidence of unethical conduct on respondent's part and recommended that the Bender matter be dismissed. Specifically, the Special Master concluded as follows:

> I find that with respect to the claim of the Committee under the First Count that respondent entered into separate agreements with Dey and paid him directly not to be proved. There is nothing in the testimony of any of the witnesses that satisfies me that such an arrangement ever existed. An inference may be drawn that Dey on at least one occasion picked up a check which was made out to CIS and perhaps Dey, and may have converted that check to his own benefit. There is nothing, I repeat, to sustain the claim of double dealing.
>
> With respect to the claim or charge that respondent represented creditors adverse to the corporate client, I find that this charge is not sustained either. Apparently, several employees contacted respondent with respect to their paychecks. He did not give them any advise [sic] except that they file complaints in the local municipal court against CIS and Bender because of the stop-payment on their paychecks.
>
> It should be noted that at the time period with which we are presently concerned, respondent no longer represented CIS or Bender, there having been a falling out some time before these dates. In addition, the claims of the former employees were not of such nature as to involve a compromise in the legal relationship formerly held between respondent, CIS and Bender. In

addition, it should be noted that at all times relevant to these proceedings, Dey was represented by independent counsel. The record does not establish clearly what arrangements, if any, respondent made with the CIS employees for the collection of their wages. There is testimony that respondent was to receive a portion of the pay as a fee from each employee but there is no evidence as to what actually happened. In any event, all of the employees filed municipal court complaints against CIS and Bender individually because of the stop-payment on their salary checks. This was certainly not the way to collect back pay. Nor, I might add, a way to get a fee from the employees. The Second Count of this Complaint has to rely, I would think, on some sort of subsisting or continuing relationship of legal representation on the part of respondent, CIS and Bender. Since it has been established that there was no lawyer-client relationship at the time of the events complained of in Count Two, as I have noted heretofore, it is difficult to understand just why respondent was there at all. Dey, a claimant of some magnitude against CIS, at least had reason to go to the corporate offices in view of the default and the fact that Bender had left the immediate area for places unknown. Nevertheless, the accompanying of Dey to the corporate premises does not in my judgment constitute a violation of the RPC as suggested by the Complaint. Nor, in my judgment, does the use of the Order to Show Cause in an attempt to enter the premises on the second occasion constitute a violation of the RPC's [sic] mentioned in the Complaint. First of all, the Order to Show Cause was reviewed by an attorney other than respondent at the insistence of the landlord who was informed that the Order did not permit entry. In any event, all of the events amounted to nothing more that [sic] a tempest in a tea pot since no detriment was incurred by CIS or Bender and it is clearly established that no files were compromised nor was any property taken from the premises on either occasion.

[Report of Special Mater at 4-5.]

THE BERTLES MATTER
District Docket No. VII-84-41E

Late in 1981 or early in 1982, respondent represented Timothy Bertles in several matters, including a criminal case in Middlesex County. As part of the representation of Mr. Bertles, respondent

appeared at a probable cause hearing before the Sayreville municipal court.

According to the formal ethics complaint, in January 1982, Mr. Bertles retained another attorney to represent him in the above criminal matter. In his answer, respondent contended that the new attorney had been hired by Mr. Bertles' parents and that, in fact, Mr. Bertles had requested that respondent continue to represent him.

The above conflicting statements notwithstanding, it is undisputed that, on February 2, 1982, respondent wrote and forwarded the following letter to Mr. Bertles at the Yardville Youth Reception and Correction Center:

> Dear Timmy:
>
> I received a very interesting call from [co-defendant] Mike the other day. He suggests that if $500.00 were deposited to his account at Yardville he will "take the fall" for all Middlesex County charges.
>
> I don't know what you want to do, it's up to you and Mr. Schragger [Bertles' new attorney]. However, if you tell [Mr. Schragger] about it he'll probably say that you shouldn't do it, it's unethical, etc.
>
> Mike now contends that he said "the jacket is mine" rather than that the "ludes" were his. He also said that Conetto asked him to write the letter where he said they were his.
>
> Please call collect to discuss this and other matters.
> [See Stipulation, Exhibit J-1 introduced into evidence on July 23, 1986.]

The within ethics matter was submitted to the Special Master on stipulation. The Special Master found as follows:

> In my judgment the letter in question which is attached to the stipulation presents a fairly serious violation of the ethics of the profession. Without mentioning any specific Rule of Professional Conduct, it is apparent from the face of the letter that there is at least an attempt to suborn perjury. On the other hand, it seems almost unbelievable that an attorney-at-law would write a letter suggesting perjury such as this letter before us. Viewed from this approach, the letter presents nothing more than a report of something that has transpired and which respondent wanted to communicate to his former client.
>
> I believe that some disciplinary action is required because of this letter. I leave the extent of that discipline to the Committee.
>
> [Report of Special Master at 17.]

THE HALE MATTER
District Docket No. VII-84-42E

This matter arose out of a complaint filed by Richard Hale, respondent's law partner from September 1981 through the spring of 1982. The formal ethics complaint charged respondent with "misappropriation of partnership funds." During the period of the partnership, respondent borrowed $7,000 from a client, Thure Wegener, as evidenced by two checks in the amount of $3,500 each (Exhibit P-6 introduced into evidence at the hearing on July 23, 1986). Although those checks were made payable to the law firm of Hale and LaRosee, respondent signed his name on the back of the checks and deposited them in his personal account. At the ethics hearing, respondent testified that he did not realize that the checks had been made payable to the partnership because the "[loan] arrangement was between Mr. Wegener and myself" (T7/24/1986 88-1 to 9). Respondent reiterated that he had borrowed those funds for

his own purposes, not the partnership's.

Sometime after the law partnership was dissolved, Mr. Wegener demanded repayment of the loan from Mr. Hale, alleging that it was a debt of the partnership. Mr. Hale denied responsibility for the loan. Thereafter, Mr. Hale contacted respondent, who ultimately reached a satisfactory settlement with Mr. Wegener.

The complaint also charged respondent with the failure to pay the balance of a fee to the appraiser of realty belonging to the estate of Mr. Wegener's father, as a result of which the appraiser filed suit against the estate to collect the fee. It is undisputed that Mr. Wegener paid a sum of $6,320 to respondent. The check bore the notation "Payment in Full E. Wegener Estate." See Exhibit P-5 introduced into evidence at the hearing on July 23, 1986. Respondent contended, however, that those monies were not designed to pay fees or expenses, but his legal fees. The purpose of the check notwithstanding, it appears that, ultimately, the matter was satisfactorily resolved (T7/31/1986 91, 92).[2]

The Special Master recommended that this complaint be dismissed.

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[2] Paragraph 6 of the complaint alleged unethical conduct in connection with the representation of another client, William Weeks. No competent testimony was elicited in the matter, which is not mentioned in the report of the Special Master.

THE IRISH MATTER
District Docket No. VII-85-34E

As fully set forth in the report of the Special Master,

> [t]his complaint arises out of the representation by respondent of one Robert S. Pierce and Shangle and Hunt, Inc. in a special civil part action against Ten Pin, Inc. and George Irish. Respondent obtained a judgment against the defendants. He then made provisions [sic] to execute upon the judgment. During this period the defendant contacted respondent's client directly and worked out a compromise of the judgment for the sum of $748.12. $500 in cash was paid directly to the client, and, in addition, defendant Irish extended to the client a bar credit at Irish's place of business which was a bowling alley bar for the balance. Respondent refused to prepare a warrant for satisfaction of judgment at the request of Irish and Pierce because it was his belief that the judgment was not in fact satisfied until all the bar credit was used by his client. Because of this refusal, Pierce went to another attorney who was recommended by counsel for Irish who then prepared a warrant for satisfaction and caused it to be filed. After the warrant for satisfaction was filed, Irish canceled Pierce's bar credit thus bringing to fruition what respondent had predicted to Pierce.
>
> Rather than this being a violation of an RPC, I think that the facts establish that respondent represented his client well even in refusing to prepare a warrant for satisfaction.
>
> This complaint also states that respondent had $400 in his trust account on account of the monies owed by Irish and his corporation to Pierce. This is simply not so. A sum of $100 was deposited before all of the events described herein took place, and that fund remained in respondent's trust account except for the use of some of the funds amounting to $20+ for filing fees in connection with the judgment obtained in the special civil part and later docketed in the Superior Court.
>
> There is no substance to this complaint whatsoever. It should be dismissed.
>
> [Report of Special Master at 13-15.]

THE SEBASTO MATTER (Counts one and two of the complaint)
District Docket No. VII-85-14E

THE SAPNAR MATTER (Count three of the complaint)
District Docket No. VII-85-21E

The first count of the complaint charged respondent with creating a conflict of interest situation by acting as the agent for the sellers of a business and as the purchaser (or the purchaser's agent) in the same transaction. The facts are as follows:

Stanley and Bernadette Fagans and William and Ann Breining owned an interest in a restaurant/bar business known as Heavens II. The business was managed by the Mican, Inc. ("Mican") corporation. The land upon which the business was located was owned by a partnership named Redland Realty ("Redland"). Mrs. Fagans was a stockholder in Mican and Mr. Fagan was a partner in Redland. The status of the Breinings with regard to those two entities is irrelevant to the within matter.

When it became clear that the restaurant/bar business was foundering, at a meeting of the directors of Mican, the parties decided to sell the business and the real estate. Respondent was not counsel for the business; he attended the corporate meeting, however, as attorney-in-fact for Mrs. Fagans.

Pursuant to agreement by all concerned parties, respondent was retained to sell the business, for which he would receive a commission upon sale. After respondent announced that he had successfully obtained a buyer, respondent and corporate counsel prepared agreements of sale, which respondent signed, ostensibly

as the agent for an undisclosed buyer.

The Special Master, who believed that respondent was acting in his own behalf and not that of an undisclosed buyer, found that, under either set of facts, a conflict of interest situation had not arisen. He pointed out that the parties had knowingly agreed that respondent would act as their agent for the sale of the business assets, after having signed a "no conflicts letter" and having been advised that "independent counsel could be obtained at any time." The Special Master recommended that count one of the complaint be dismissed.

Count two of the complaint charges respondent with violation of RPC 1.15 and R. 1:21-6. It alleges that respondent wrote a trust account check in the sum of $15,000 as the initial payment for the purchase of the business, without having corresponding funds on deposit in his trust account. The evidence adduced at the hearing shows that respondent delivered a $15,000 trust account check to corporate counsel, written on September 18, 1984, with the following handwritten cover letter:

> Enclosed please find a check in the amount of $15,000 for deposit on the Mican-Redland matter. Please do not disburse without authority from all parties.

Respondent testified that corporate counsel had indicated that he needed a check from respondent, who replied ". . . I could give you one [check] to hold, but you can't deposit it . . . I have to get everything clear with my people" (T6/23/1988 47).

During later testimony, respondent acknowledged that the above cover letter might not have accompanied that $15,000 check, but

that the agreement was that corporate counsel would not deposit the check in his trust account until so authorized by respondent. Respondent conceded that, at the time the $15,000 check was issued, there were no corresponding trust funds on deposit to cover the check (T6/23/1988 48).

Corporate counsel, in turn, testified that the check had been delivered to him prior to the execution of the agreements of sale and that he had held the check for a period of time because of respondent's above handwritten letter. He explained that:

> [I]t wasn't quite clear to me what that meant except I shouldn't disburse the funds without authority from all parties. [Respondent] and I subsequently had a discussion. I advised him that I would not deposit the check until he approved the terms of the contract. There came a point in time prior to November 8, 1984 [the date of the execution of the contract] where [respondent] approved the terms of the contract and on or about that time the check was negotiated and deposited into my trust account . . . I never quite understood what ["do not disburse without authority from all parties"] meant because [respondent] was representing [respondent] here . . . I presumed that meant really him.
> [T3/22/1988 54 to 56.]

After the contracts were approved by respondent -- sometime shortly before the date of their execution, on November 8, 1984 -- corporate counsel deposited the $15,000 in his trust account. The check was honored by the bank. Approximately five weeks later, corporate counsel received a telephone call from respondent demanding the return of the $15,000 deposit, by way of a check from corporate counsel's trust account, to "cover funds in [respondent's] trust account" [T3/22/88 58]. Corporate counsel did so, after he obtained the consent of his clients. Respondent then

forwarded to corporate counsel a $15,000 check from respondent's business account.[3] Shortly thereafter, respondent deemed the transaction cancelled and stopped payment on the replacement check.

Respondent testified that he had received $18,000 cash from undisclosed principals to cover the initial payment, which monies he had not deposited either in his trust or business account, at the direction of the principals. He kept those monies in his safe deposit box or at home (T6/23/1988, 15, 17, 48, 49, 50, 51).

At the conclusion of the hearing, the Special Master found that respondent's conduct had violated RPC 1.15 and R. 1:21-6. The report stated that "[a]lthough there was no loss to any client whose funds were in his trust account, the fact that [respondent] pledged those funds for a personal transaction cannot be condoned" (Report of Special Master at 9).

The subject matter of count three of the complaint (the Sapnar matter) is fully set forth in the Special Master's report:

> In this count, Count Three, it is alleged that respondent ordered insurance for the premises owned by Mican from N. Gerald Sapnar Company, Inc., Insurance Agents. Sapnar had insured the premises to a point shortly before the attempted sale, but had cancelled the policy for failure to pay the premium.
>
> The Count continues by claiming that respondent issued a check in an amount to cover both the downpayment on the new policy and the premium due on the old policy. Respondent, it is also contended, represented that the premises would be occupied immediately by new owners and the policy was issued on that basis.

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[3] Respondent's business account, too, did not contain the $15,000 on deposit.

> I have heard the testimony in this matter and have looked at the grievant's complaint which was sent to the ethics committee. It is obviously an attempt by the insurance agent to collect an old debt through the ethics process. Although respondent did issue a check in the amount of $3,000+ to cover the insurance premiums, payment was stopped on that check at or about the same time that the deal fell through. If the company was on the risk for any period of time, it was a very short one. Although the premises were subsequently damaged because of water damage from frozen pipes, Sapnar's company was not called upon to pay that damage as far as the record before me shows. There is apparently civil litigation involving this aborted sale and purchase of the premises in question. Consequently, I do not choose to speculate on just what the motivations were with respect to any party. I recommend that the Third Count of this Complaint be dismissed. [Report of Special Master at 10].

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the Special Master that respondent was guilty of unethical conduct are fully supported by clear and convincing evidence. The Board also agrees with the Special Master that the Dillon, Bender, Hale, Irish, Sebasto (count one), and Sapnar matters should be dismissed for lack of clear and convincing evidence of improper conduct.

In the matter captioned "DuFour", respondent violated the recordkeeping provisions of R. 1:21-6, by failing to maintain client ledger cards and to reconcile the trust account records with the individual ledger cards. His conduct was unethical and violative of DR 9-102(C). In addition, respondent failed to comply with the auditor's numerous requests for information, as set forth in detail in the factual recitation above, in violation of R. 1:21-6(g) and (h) and DR 9-102.

In the Petitt matter, respondent failed to advise his clients that he had turned over the file to another attorney. He never discussed the transfer of the file with the Petitts or obtained their consent thereto. Respondent simply abdicated his responsibility to handle the matter, which had been entrusted to him, not to the other attorney.

Furthermore, respondent ceased to practice law in New Jersey and never advised his clients of his move to Massachusetts. Thereafter, he failed to keep the Petitts apprised of the status of their matter, except for the October 2, 1986 telephone call communicating the settlement offer to Mrs. Petitt. Even then, he did not disclose to her the upcoming trial date. The Board finds that respondent's conduct was inexcusable and in violation of R.P.C. 1.3, 1.1(a) and 1.4(a).

In the Sebasto matter, respondent was guilty of the most serious ethics violation that may be committed by an attorney-at-law. There, respondent issued a $15,000 trust account check, representing the initial payment on the purchase of a business, knowing that there were no equivalent funds on deposit in his trust account. Respondent attempted to justify the issuance of the check by alleging that he had an agreement with counsel for the sellers that the check would not be deposited in the latter's trust account prior to the consent of "all parties." It was the understanding of counsel for the sellers -- as is the suspicion of the Special Master and of this Board -- that respondent himself was the purchaser of the business, rather than "undisclosed principals,"

as alleged by respondent.

Counsel for the sellers, in turn, testified that it was his strong belief that the $15,000 was to be held only until respondent approved the contracts. The check was, thus, held until respondent approved the agreements of sale, at which time counsel deposited it in his trust account.

Regardless of the existence of an agreement not to deposit the check until the occurrence of an event -- whether it be the authorization of "all parties", or the approval of the contract -- the conclusion is inescapable that respondent knowingly misappropriated other clients' funds.

To be sure, when respondent wrote the $15,000 check and, reasonably or not, relied on an agreement to withhold deposit of the check, his conduct smacked of dishonesty, for he represented to counsel for the sellers that his trust account contained equivalent funds earmarked for that particular purpose. Simply put, he used other clients' credit to show the good faith of the undisclosed principals in the negotiations of the transaction. It cannot be said, however, that, at the moment he drew the check, his conduct constituted knowing misappropriation. By believing that the agreement with counsel would be honored, respondent lacked the requisite intent, at that time, to invade other clients' funds. Clearly, respondent's conduct was reckless; he should have known that other clients' funds would be utilized in the event that the check was deposited. But it did not amount to a knowing misappropriation because one of its essential elements -- the

actual invasion of other clients' funds held in trust -- still had not occurred.

The event that triggered the knowing misappropriation was the later deposit of the check and the consequent invasion of other clients' funds. When the initial intent to utilize other clients' funds, as reflected by the drawing of the check with knowledge that corresponding funds were not available, combined with the actual invasion of clients' funds, a knowing misappropriation occurred.

This is not the case where an attorney improperly draws a trust account check against uncollected funds. In the latter instance, the attorney issues the check against funds "in transit," i.e., in the process of being cleared through the banking system. Here, respondent admitted that the funds were not in his trust account at the time that he issued the check or at the time of its deposit in counsel's trust account. In fact, respondent testified that there was never a point in time when he was authorized to "put the monies in the bank" (T6/23/1988 16). In view of the foregoing, the Board must find that respondent knowingly misappropriated clients' funds, in violation of RPC 1.15.

In the Bertles matter, respondent's conduct was nothing short of atrocious. It is clear from the record that respondent aided and abetted the commission of subornation of perjury. N.J.S.A. 2C:28-5; N.J.S.A. 2C:2-6. Indeed, in his letter to his former client, he relates the willingness of his client's co-defendant to "take the fall" for the charges against both of them, provided that $500 be deposited in the co-defendant's account. Astonishingly,

respondent suggests to his former client, Bertles, that he "call [respondent] collect to discuss this . . . matter," because, if Bertles were to discuss it with his new attorney, that attorney would advise Bertles against accepting the co-defendant's proposal, on the basis that it was "unethical." A more abominable course of conduct is difficult to fathom.

Respondent's outrageous acts are similar to those found in In re Rosen, 88 N.J. 1 (1981), where an attorney was convicted of two counts of attempted subornation of perjury. There, respondent Rosen attempted to procure false testimony favorable to his client by offering to provide free legal representation to the assault victim, in exchange for that testimony. In imposing a three-year suspension, the Court remarked that "[a]ttempted subornation of perjury is an inexcusable and reprehensible transgression. It is an obstruction of the administration of justice. Respondent's actions project a public image of corruption of the judicial process." (citations omitted). Id. at 3.

In a more recent case, Matter of Edson, 108 N.J. 464 (1987), the Court disbarred an attorney who counseled his client to fabricate a defense involving material facts that were known to be false, participated as defense counsel while the client perjured himself, and personally lied to the prosecutor. In that matter, a five-member majority of this Board recommended that respondent Edson be suspended from the practice of law for a period of three years. After its independent canvass of the record, the Court concluded that disbarment was the only appropriate discipline. As

pointed out by the Court,

> [t]the majority in the DRB was apparently dissuaded from recommending disbarment on the strength of this Court's decision in In re Rosen, 88 N.J. 1 (1081). But our opinion in In re Verdiramo, 96 N.J. 183 (1984), casts doubt on whether, had Rosen come up after Verdiramo, it would have been decided the same way, see 96 N.J. at 186-87; for although Rosen bears factual similarities to this case (there, a criminal conviction of two counts of attempted subornation of perjury, respondent suspended for three years), we gave unmistakable warning that henceforth "ethical misconduct . . . involving the commission of crimes that directly poison the well of justice []is deserving of severe sanctions and would ordinarily require disbarment." 96 N.J. at 186 (citing In re Hughes, 90 N.J. 32 (1982).
>
> [Matter of Edson, supra, 108 N.J. at 471-472.]

The following eloquent words found in the Edson opinion apply with equal force to the situation at hand:

> The members of this Court are not babes in the woods. We are invested with at least minimally acceptable levels of sophistication, of worldliness. Our professional backgrounds have exposed us, in varying degrees, to some of life's seamier aspects. We have travelled different roads in our professional careers. We practiced in different fields and encountered, collectively, all kinds of lawyers -- most very good, some perhaps indifferent, and a mere handful bad. In short, we have been around enough that not much surprises us. But rarely have we encountered in our colleagues at the bar the kind of shocking disregard of professional standards, the kind of amoral arrogance, that is illustrated by this record. There could hardly be a plainer case of dishonesty touching the administration of justice and arising out of the practice of law.
>
> As we observed in In re Wilson, 81 N.J. 451, 455 (1979), the bond of trust so essential to the legal profession is built on centuries of honesty and faithfulness. Sometimes it is reinforced by personal knowledge of a particular lawyer's integrity or a firm's reputation. The underlying faith, however, is in the legal profession, the bar as an institution.
>
> And as we have recently declared, members of the bar must possess a certain set of traits -- honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the

> administration of justice. These personal characteristics are required to ensure that lawyers will serve both their clients and the administration of justice honorably and responsibility.
> [Matter of Edson, supra, 108 N.J. at 472-473 (quoting Application of Matthews, 94 N.J. 59, 77 (1983)).]

As to the appropriate discipline for this respondent, in light of his knowing misappropriation of client funds, the Board must recommend that he be disbarred. In re Wilson, 81 N.J. 451 (1979). Absent the Wilson violation, however, the Board would still recommend that respondent's name be removed from the roll of attorneys of the State of New Jersey on the basis of his egregious conduct in the Bertles matter alone. The Board cannot envision more despicable conduct. As the Court observed some twenty-eight years ago,

> [s]ome basic conditions of privilege of membership in legal professional are good moral character, capacity for fidelity to interests of clients, and fairness and candor in dealing with courts; when such conditions are broken, the privilege is lost.
> [In re Pennica, 36 N.J. 401, 402 (1962).]

Respondent's conduct was an affront to all respectable members of the profession and intended to demean the judicial process, the integrity of which respondent swore to uphold. In the Board's view, said conduct was so immoral and revealed such a deficiency of character, that the public interest requires that respondent be ousted from the honorable profession of attorneys-at-law. The Board unanimously so recommends. Three members did not participate.

The Board also considered that, on June 7, 1988, the Court temporarily suspended respondent until further order, pending the disposition of the within matters. The Court had before it, at that time, and heard oral argument on, a presentment charging respondent with, among other things, altering a document received from the Immigration and Naturalization Service. The Board's recommendation, in that matter, was that respondent be suspended for a period of two years.

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

Dated: 4/11/1990

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board