

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-007

---

IN THE MATTER OF  
LOUIS B. BERTONI,  
AN ATTORNEY AT LAW

---

Decision

Argued: March 16, 2000

Decided: May 10, 2000

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

Thomas G. Griggs appeared on behalf of respondent.

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

This matter was before us based upon a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent was admitted to the New Jersey bar in 1970 and maintains an office for the practice of law at 1135 Clifton Avenue, Clifton, Passaic County.

In or about February 1997 respondent represented two clients in unrelated real estate transactions. Real estate settlements were held on February 12, 1997 and February 27, 1997. The title company to both transactions, Stewart Title, filed a grievance against respondent, alleging that, as of April 1997, he had failed to record the deed and mortgage in both matters and had failed to return the respective "title packages" in those matters to the title company. Several months later, and after an inquiry by the DEC, respondent ultimately completed his post-closing obligations, including the recordation of the deeds and mortgages.

As a direct result of the Stewart Title grievance, the OAE conducted an audit of respondent's attorney trust and business accounts. Over the following one-year period, respondent repeatedly failed to cooperate with the OAE. In at least ten instances, respondent either failed to reply to the OAE's letters or sent inadequate information to the OAE. Respondent's failure to cooperate led to the filing of a motion for his temporary suspension, which was granted by the Supreme Court on March 25, 1999. Respondent was reinstated to the practice of law on July 30, 1999, after complying with the OAE's numerous requests for information.

Once the audit was complete, it became clear that respondent was guilty of several recordkeeping deficiencies that, according to the OAE, have since been rectified. With the aid of an accountant, respondent brought his books and records into compliance with the recordkeeping requirements of Rule 1:21-6 and provided reconciliations of his trust account,

which, according to the OAE, did not indicate any misappropriation, (neither knowing or negligent) of client funds.

In the disciplinary stipulation, respondent admitted recordkeeping violations under R. 1:21-6 and failure to cooperate with the disciplinary authorities, in violation of RPC 8.1(b).

Finally, in a letter dated January 13, 2000, respondent's counsel urged the Board to adopt the OAE's recommendation of a reprimand for respondent's misconduct. Counsel noted respondent's ultimate cooperation with the OAE and his compliance with the recordkeeping rule. Counsel also argued that the temporary suspension was not only highly embarrassing, but expensive. Counsel also argued that respondent's temporary suspension, when added to a reprimand, constituted sufficient discipline for respondent's misconduct.

\* \* \*

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

The facts admitted by respondent amount to clear and convincing evidence of the alleged violations. Respondent conceded that he had violated R. 1:21-6 by virtue of his inadequate recordkeeping and that he failed to cooperate with the OAE in its investigation and audit of his books and records. Respondent did not try to excuse his misconduct or to

present mitigating factors. Therefore, the only remaining issue is the degree of discipline to be imposed.

Cases involving recordkeeping deficiencies (with or without negligent misappropriation) will normally warrant either an admonition or a reprimand. In the Matter of Raymond A. Brown, Jr., DRB 95-212 (April 3, 1996) (admonition imposed for recordkeeping violations, including failure to perform quarterly reconciliations and the improper use of a facsimile rubber stamp to sign trust account checks); In the Matter of Joseph Caruso, DRB 96-076 (May 21, 1996) (admonition imposed for numerous recordkeeping violations, which resulted in the negligent misappropriation of \$1450); In re Zavodnick, 139 N.J. 607 (1995) (reprimand imposed for recordkeeping violations under R. 1:21-6 and failure to correct deficiencies found by an OAE audit, in violation of RPC 1.15(d) and R. 1:21-6); In re Imperiale, 140 N.J. 75 (1995) (reprimand imposed where the attorney failed to maintain proper trust and business account in fifty separate client matters. Respondent's efforts to bring the accounts into compliance with rules were considered as mitigating factors); and In re Lewinson, 126 N.J. 515 (1992) (reprimand imposed where the attorney negligently invaded client trust funds as the result of reckless disregard of trust and business account obligations.)

Similarly, failure to cooperate with the disciplinary authorities, without more, normally warrants either an admonition or a reprimand. In the Matter of Hardge Davis, Jr., DRB 98-126 (April 22, 1998) (admonition imposed for attorney's failure to reply to several

requests for information from the Office of Attorney Ethics and failure to file an answer for a period of eight months); In the Matter of Robert P. Gorman, DRB 94-437 (February 8, 1995) (admonition imposed for failure to submit a written response to the investigator's repeated requests for information regarding the underlying matter); In re Fody, 139 N.J. 432(1997) (reprimand imposed for failure to cooperate with the district ethics committee during the processing of an ethics matter); and In re Macias, 121 N.J. 243 (1990) (reprimand imposed where the attorney ignored, for a period of six months, three OAE letters regarding recordkeeping deficiencies uncovered in an audit.)

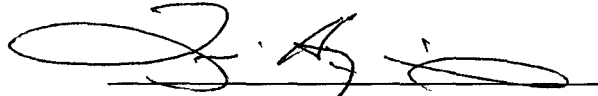
At times, depending on the circumstances of the case, recordkeeping violations and failure to cooperate may merit only an admonition. See In the Matter of James R. Lisa, DRB 95-124 (May 23, 1995) (admonition imposed for recordkeeping violations and failure to cooperate with the ethics authorities; the attorney used his attorney trust account as a personal business account and failed to certify to the OAE that various deficiencies had been corrected, despite several requests by the OAE for that information.)

Here, respondent violated both R. 1:21-6 and RPC 8.1(b). Furthermore, his refusal to cooperate with the DEC was so protracted that it led to the OAE audit and the need to file a motion for his temporary suspension. That suspension elevates this case above the admonition cases cited herein. By the same token, there are no additional aggravating factors or ethics history to consider. Therefore, we unanimously determined to impose a reprimand for respondent's misconduct.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated:

5/10/00



LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Louis B. Bertoni  
Docket No. DRB 00-007**

**Argued: March 16, 2000**

**Decided: May 10, 2000**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>			9				

*By* Label Frank 5-25-00  
Robyn M. Hill  
Chief Counsel