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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-115

IN THE MATTER OF
ANTOINETTE HOLLAND
AN ATTORNEY AT LAW

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Decision

Argued: July 8, 1999

Decided: November 16, 1999

Walton W. Kingsbery, III appeared on behalf of the District VI Ethics Committee.

Bernard K. Freamon 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 on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). A two-count complaint charged respondent with violations of RPC 1.15(c) (failure to keep property that is in dispute separate until the dispute is resolved), RPC 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation),

and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count one); and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations) (count two).

Respondent was admitted to the New Jersey bar in 1993. She currently is in-house counsel to a corporation in Medford, New Jersey. Respondent has no history of discipline.

After her admission to the bar, respondent shared office space with other attorneys and performed per diem work for attorneys, including James Brady, Esq. Apparently respondent became acquainted with Brady earlier while working as a law clerk at the law firm of Ian Stuart. Respondent stated that they became friends and she considered him to be a mentor.

According to respondent, on April 14, 1994 she was retained by Mary Campbell in connection with a personal injury matter. James Brady was retained as her co-counsel. Respondent and Brady had taken over the case from Bruce Compaine, Esq. Once relieved as counsel, Compaine filed an attorney's lien against the recovery in the Campbell matter for forty percent of the contingency fee.

At some point a conflict arose between respondent and Brady that prevented them from jointly representing Campbell. Campbell chose respondent to continue representing her.

Respondent settled the Campbell matter in October 1994 for \$28,500. Thereafter, a dispute arose between respondent and Brady over the division of the remaining legal fee, prompting a number of motions and a great deal of acrimony between the two attorneys. Respondent filed an order to show cause that resulted in an order by Judge Rudolph J.

Rosetti, dated November 21, 1994, discharging Brady as co-counsel, naming respondent as the attorney of record for Campbell and denying Brady's request to escrow the disputed fee, but permitting the attorneys to pursue their remedies in a separate fee action unrelated to the Campbell case.

Thereafter, respondent filed another order to show cause. An order from Judge Francis J. Orlando, Jr., P.J.S.C., dated January 9, 1995, directed, among other things, that respondent disburse to Bruce Compaine his forty percent share of the contingency fee upon receipt of all settlement funds and that respondent "hold the remaining attorney fees in her attorney trust account pending either agreement between Attorney Holland and Attorney Brady or further order of this Court."

According to respondent, the personal injury matter was settled in October 1994. The bulk of the settlement proceeds was received in December 1994 and the remainder in early January 1995. On January 5, 1994 respondent disbursed sums due to medical providers and fees and costs to Compaine. Notwithstanding Judge Orlando's order to escrow the disputed fee — approximately \$5,344 — as of January 31, 1995 respondent had only \$2,604.38 in her attorney trust account. By February 28, 1995 respondent's trust account balance was only \$247.38. Respondent had taken the disputed fee without seeking to modify the judge's order or have it reconsidered.

At some unknown point, respondent filed an action against Brady for the fees. Brady filed a motion to compel discovery. Respondent filed a cross-motion seeking a protective

order. Following oral argument on October 13, 1995, the Honorable Samuel L. Supnick, J.S.C. issued an order on November 28, 1995, which stated in relevant part:

(1) Attorney Cavanaugh [respondent's attorney] shall either review attorney Holland's trust account records in order to determine whether attorneys' fees ordered by Judge Orlando to be maintained there have in fact been maintained there and attorney Cavanaugh shall provide a Certification to Mr. Brady that said attorneys' fees have been so maintained in Ms. Holland's trust account, or in the alternative, attorney Cavanaugh shall provide any and all bank records as requested by attorney Brady's Demand for Production of Documents; and

(2) Attorney Cavanaugh shall place all such funds in a separate interest-bearing trust account following review of Ms. Holland's trust account. If attorney Cavanaugh does not or cannot comply with this direction to place aforesaid funds into a separate interest-bearing account, attorney Cavanaugh shall notify attorney Brady of said failure. . . .

[Exhibit P-19]

In a certification dated May 8, 1996, filed in support of a cross-motion to reinstate her complaint and in opposition to Brady's order to show cause, respondent certified that

[t]he monies to which Judge Orlando referred in his January 9, 1995 Order are no longer in my attorney trust account. I withdrew the monies. I submit myself to this Court for whatever penalties It deems necessary and sincerely apologize for my actions.

[Exhibit 5 to Exhibit J-1]

The matter was referred to the Office of Attorney Ethics ("OAE"). On August 12, 1997 the OAE conducted a demand audit of respondent's books and records relating to the Campbell matter. The audit revealed the following deficiencies:

1. a trust receipts journal was not maintained;
2. a trust disbursement journal was not maintained;
3. a running cash balance was not kept in the trust account checkbook;
4. a client ledger card was not maintained; and
5. required quarterly trust account reconciliations were not prepared.

Respondent admitted her recordkeeping violations. According to respondent, however, she believed that she had prepared a client ledger card for the Campbell matter, but could not locate it in her file after the file was returned from the OAE demand audit.

Although respondent admitted that her conduct violated RPC 1.15(c) and RPC 3.4(c), her testimony was less than forthright. She asserted that Judge Supnick's order modified Judge Orlando's order and that she was not required to escrow the attorney's fees. She also claimed that she was confused by the two earlier orders from Judge Rosetti and Judge Orlando and that she believed that she was entitled to the monies. Respondent further testified that she had an oral agreement with Brady permitting her to take monies from the settlement as payment for per diem work she had performed for him in the amount of \$775.50. When questioned by the presenter, however, respondent admitted that she did not have Brady's consent to withdraw the fees.

The DEC determined from respondent's testimony and admissions that she improperly disbursed the disputed fees to herself during the months of January and February 1995. The DEC rejected respondent's belief that she was entitled to the funds based on Judge Rosetti's

order of November 21, 1994. The DEC pointed to Judge Orlando's subsequent order, instructing respondent to hold the disputed fees until the parties reached an agreement or until further order of the court. The DEC, therefore, discounted respondent's claim that she was confused about which order was valid. The DEC found that respondent's conduct was not the product of malice, but the result of inexperience. Nevertheless, the DEC determined that respondent's conduct violated RPC 1.15(c) and RPC 3.4(c).

The DEC further found that respondent's failure to maintain required trust account records was a violation of RPC 1.15(d) and R. 1:21-6. In fact, respondent admitted these violations. The DEC found no violation of RPC 8.4(c) or RPC 8.4(d). The DEC recommended the imposition of a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence.

Respondent admitted that she improperly withdrew the attorney's fees from her trust account. Her explanation that she was confused by the conflicting orders of Judge Orlando and Judge Rosetti is not believable. Judge Orlando's order, which followed Judge Rosetti's order, clearly directed respondent to "hold the remaining attorney fees [after deducting Compaine's forty percent] in her attorney trust account pending either agreement between

Attorney Holland and Attorney Brady or further order of this Court." This language is unambiguous. Respondent could have withdrawn the fees only if she had the court's permission or had reached an agreement with Brady. She had neither. Although at one point she testified that she had obtained Brady's approval to offset fees owed her for per diem work, she later admitted that she did not have his consent to disburse the funds to herself. Respondent, thus, violated Judge Orlando's order by resorting to self-help.

At the DEC hearing, respondent painted a bleak picture of her finances during the time that she took the fees. In fact, in a certification filed with the court, respondent indicated, among other things, that she had been treated for depression on and off for four years and that, because of the depression, she had to resign from her employment with a law firm.

Notwithstanding respondent's financial difficulties, she was required to comply with Judge Orlando's order or to avail herself of proper remedies in order to be relieved of her responsibility as escrow agent. Her failure to do so violated RPC 1.15(c) and RPC 3.4(c).

The only issues remaining are whether respondent violated RPC 8.4(c) and RPC 8.4(d). There is no evidence in the record that respondent made any misrepresentations to the courts or to Brady, either explicitly or implicitly. Therefore, a violation of RPC 8.4(c) cannot be supported by the record. We find, however, a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice) for respondent's knowing violation of the judge's order.

Finally, respondent admitted her recordkeeping deficiencies, in violation of RPC 1.15(d) and R. 1:21-6.

In a more serious matter involving the improper withdrawal of attorney's fees, an attorney received a three-month suspension. In re Chasen, 154 N.J. 8 (1998). There, the attorney was involved in a fee dispute with a firm with which he was formerly employed. The attorney continued to represent a client after leaving the firm. The firm filed an attorney's lien on the proceeds of any future settlement or judgment. During certain court proceedings, the attorney represented that all outstanding liens would be satisfied out of the settlement proceeds and that he would file a motion with the court for the apportionment of fees between himself and his former firm. These representations were also confirmed in a letter to the defendants' attorney. After having received the settlement proceeds, the attorney filed a motion for the apportionment of legal fees. The attorney's motion was denied by the court for failure to serve a party, his former law firm. Up until that time he had maintained the disputed fee in his trust account. Notwithstanding the attorney's representations that the liens would be satisfied out of the proceeds of the settlement, he disbursed the entire fee to himself. The former firm was not informed of the disbursements and believed that the attorney still maintained the fees in his trust account. The attorney continued to negotiate the fee with his former firm. Eventually, a conference was conducted before the assignment judge, at which time the attorney was directed to deposit the fee with the clerk of the court. The attorney failed to inform the judge that he had already withdrawn the fee. Once the

judge learned that the settlement had not been achieved, he issued an order to show cause sua sponte. At the hearing, respondent admitted that he did not have the fee, but attempted to skirt the issue concerning its whereabouts. The Board and the Court found that the attorney violated RPC 3.3(a)(1), RPC 8.4(c) for an affirmative misrepresentation and misrepresentation by silence, RPC 1.15(d) and R. 1:21-6 (recordkeeping violations) and RPC 1.15 for failure to maintain the fees in a separate account pending the final resolution of the fee dispute.

We recently voted to impose a reprimand in In the Matter of Richard M. Milstead, Docket No. DRB 98-459 (decided June 9, 1999).¹ The attorney was required, by court order, to hold approximately \$103,000 in escrow until further order of the court. He breached both the court order and his fiduciary duty as escrow agent when he released funds to his client before obtaining court approval. A reprimand was also imposed in In re Flayer, 130 N.J. 21 (1992). There, the attorney who was the purchaser of real property, released escrow funds to himself after the builder failed to complete work, contrary to a previous agreement. But see In re Spizz, 140 N.J. 38 (1995) (admonition where attorney agreed to hold funds in escrow until resolution of a dispute over fees of prior counsel and then disbursed funds to his client without prior counsel's knowledge).

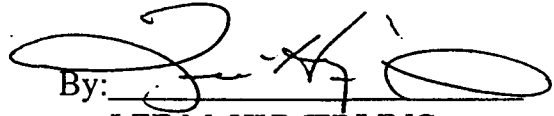
After a careful review of the record, we find that respondent's actions were not as serious as that of attorney Chase, who received a three-month suspension. Unlike Chasen,

¹ The Court has not yet decided this case.

respondent admitted to the court her wrongdoing, showed contrition for her conduct and did not attempt to avoid the issue of the funds' whereabouts. We are not persuaded, thus, that a suspension is required in this matter. More appropriately, a reprimand constitutes adequate discipline for respondent's infractions here, particularly because respondent was an inexperienced attorney at the time. We, therefore, unanimously determine to reprimand respondent. One member did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/16/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Antoinette Holland
Docket No. DRB 99-115

Argued: July 8, 1999

Decided: November 16, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Cole			x				
Boylan			x				
Brody			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz							x
Wissinger			x				
Total:			8				1

* Member Thompson is on a temporary leave of absence

Robyn M. Hill 12/6/99
 Robyn M. Hill
 Chief Counsel