

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-146

IN THE MATTER OF :
:
JAMES F. MC COOLE :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: June 10, 1999

Decided: November 17, 1999

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

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's July 29, 1997 and March 19, 1998 guilty pleas to the felony of grand larceny, in violation of New York Penal Law §155.40(1).

Respondent was admitted to the New Jersey and New York bars in 1986. Although he has no independent New Jersey disciplinary history, respondent was temporarily

suspended by the Court on September 24, 1997, following notification of his disbarment in New York.

According to a Superior Court information filed in Westchester County, New York, respondent deposited into his bank account \$147,000 belonging to a client, Catherine Kraus, and used the funds for his own purposes, without his client's permission. On July 29, 1997, respondent pleaded guilty to one count of grand larceny in the second degree, in violation of New York Penal Law §155.40(1). At the plea hearing, respondent admitted that he deposited into his operating account money that had been entrusted to him and used those funds to pay office expenses.

On March 19, 1998, respondent pleaded guilty to a second Superior Court information charging him with two counts of grand larceny in the second degree. According to the information, respondent deposited into his bank account \$125,000 belonging to Ronald Szcypkowski and \$100,000 belonging to the Estate of Dorothy Perlow, both of whom were his clients. Respondent then used the funds for his own purposes, without his clients' permission.

The judge in New York sentenced respondent on June 4, 1998 to an aggregate indeterminate prison sentence of three years to nine years and directed respondent to pay restitution as follows:

Ronald Szcypkowski	\$96,000
Estate of Dorothy Perlow	100,000
Estate of Norman Hyman	40,000
Carlton House	25,000

Estate of Ann Regan	73,283
Ann Formoso	100,000
Zola Bailey	12,000
Estate of Antoinette Fatato	25,000

On August 25, 1997, respondent was disbarred in New York as a result of his guilty plea.

The OAE urged us to recommend respondent's disbarment.

* * *

Following a review of the full record, we determined to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. *R. 1:20-13(c)(1); In re Gipson*, 103 *N.J.* 75, 77 (1986). Respondent's guilty plea to three counts of second degree grand larceny constituted a violation of *RPC* 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and of *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. *R. 1:20-13(c)(2); In re Lunetta*, 118 *N.J.* 443, 445 (1989).

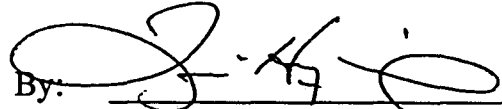
Respondent knowingly misappropriated client funds on at least three occasions. He used those funds for his own purposes, including payment of office expenses. Respondent's knowing misappropriation of client funds mandates his disbarment. *In re Wilson*, 81 *N.J.* 451

(1979). No amount of mitigation will be sufficient to excuse misappropriation that was knowing and volitional. *In re Noonan*, 102 N.J. 157 (1986). It is enough that respondent used his clients' money without their consent, knowing that he had no authority to do so. *In re Wilson, supra*, 81 N.J. 451 (1979); *In re Noonan, supra*, 102 N.J. 157 (1986).

We unanimously recommend respondent's disbarment.

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

Dated: 11/17/88

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of James F. McCoole
Docket No. DRB 99-146**

Argued: June 10, 1999

Decided: November 17, 1999

Disposition: Disbar

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:	9						

*Member Thompson is on a temporary leave of absence

Robyn M Hill 12/7/99
Robyn M. Hill
Chief Counsel