

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-038
District Docket No. VB-07-035E

IN THE MATTER OF
JACQUELINE R. HARRIS
AN ATTORNEY AT LAW

Decision

Argued: May 21, 2009

Decided: August 25, 2009

James H. Forte appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.15(b) (failure to promptly notify a third party of the receipt of funds in which that party has an interest and failure to

promptly deliver funds that a third party was entitled to receive) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

At the beginning of the DEC hearing, respondent objected to the introduction of a number of documents into evidence, claiming that she had received them the day before the hearing and had not opened the packet until that morning. The DEC ruled that the documents could be admitted into evidence because they had also been forwarded to respondent over three weeks earlier, in the presenter's discovery response, and prior thereto, in other correspondence.

The DEC recommended discipline greater than an admonition. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. In 2001, she was admonished for practicing law while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. In the Matter of Jacqueline R. Harris, DRB 01-137 (June 29, 2001).

Count One

Beginning in 1998, respondent represented Valerie Cobb in a personal injury matter arising from a taxi cab accident.

Respondent was to receive one-third of Cobb's award in the case. Cobb and New Amsterdam Capital Partners LLC, d/b/a LawMax Legal Finance ("New Amsterdam"), entered into a claim investment agreement comprised of an assignment and an acknowledgment ("the agreement"). Respondent signed the acknowledgment on May 13, 2003; Cobb signed the assignment on May 15, 2003.

Pursuant to the agreement, New Amsterdam advanced to Cobb \$1,500 without recourse, in exchange for Cobb's assignment to New Amsterdam of a portion or all of Cobb's proceeds from her personal injury claim, in the amount of \$1,500, along with an initial fee of \$675 and an additional fee of fifteen percent (\$225) per month, beginning in August 2003, until the principal and other fees were paid in full.

Page three of the agreement contains a paragraph captioned "ACKNOWLEDGMENT," which reads as follows:

The undersigned [respondent] hereby acknowledges notice of the provisions of the foregoing Agreement, including without limitation the assignment and lien set forth therein, and agrees to disburse in compliance therewith the Proceeds, if any, recovered on behalf of Valerie Cobb with respect to the Claim. The undersigned hereby represents to New Amsterdam Capital Partners LLC that he has not been given any notice of liens, assignments, transfers or conveyances of any portion of the Proceeds of the Claim except as set forth

hereinabove. In the event the undersigned is terminated as Valerie Cobb's attorney of record with respect to the Claim, the undersigned shall give NAC immediate notice thereof by certified mail, return receipt requested, and state the name, address and telephone number of Valerie Cobb's new attorney of record. The undersigned hereby agrees to keep NAC updated regarding any changes affecting this case and to provide detailed updates regarding the case status. The undersigned hereby informs New Amsterdam Capital Partners that liability is contested in this case, there are no assurances that my client will prevail, and there is substantial uncertainty as to the amount, if any, my client may recover.

[Ex.C-2.]

Paragraph six of the agreement states:

Valerie Cobb hereby requests and instructs her attorney of record with respect to the Claim to sign this Agreement in the appropriate space provided below, to acknowledge notice of this Agreement and the rights created thereby, to disclose to NAC all assignments, conveyances and transfers of, and liens upon the Proceeds and to distribute the Proceeds to NAC in compliance with the provisions herein.

[Ex.C-2.]

Paragraph nine of the agreement states:

Valerie Cobb hereby represents and warrants to NAC that she does not have any notice or knowledge of any liens upon the Proceeds, and she has not assigned, transferred or conveyed any right to any portion of the

Proceeds to any person or entity, except as follows: (if none so state)

[Ex.C-2.]

In the space provided below, respondent inserted medical liens in the amount of \$14,000. She revised the acknowledgment before she executed it. She deleted language from the acknowledgement requiring her to advise New Amsterdam, if Cobb changed counsel, and inserted language shifting that obligation to Cobb. She also deleted the word "current" and replaced it with "superceeding" [sic], in a sentence that required her to provide written notice of a change in Cobb's attorney of record. After her revision, she imposed that obligation on the new attorney.

In April or May 2005, respondent received Cobb's personal injury settlement funds of approximately \$28,000. Cobb advised New Amsterdam of the settlement in the fall of 2005. According to New Amsterdam's business records and the testimony of Daniel Zolberg, New Amsterdam's director of compliance, respondent refused to communicate with New Amsterdam about Cobb's claim. Moreover, as of the date of the DEC hearing, September 25, 2008, respondent had not delivered the settlement proceeds to New Amsterdam to satisfy its lien. She had, however, disbursed

\$9,000 legal fee to herself and \$7,000 to Cobb. Respondent paid some portion of Cobb's medical bill, although the record does not reveal the amount. At oral argument before us, respondent stated that she was holding \$11,200 in connection with Cobb's matter.

Cobb's settlement from the personal injury case was insufficient to pay the medical lien and the debt to New Amsterdam. Respondent testified that she advised Zolberg's predecessor several times that New Amsterdam had to compromise its bill. In fact, respondent instructed Cobb to attempt to negotiate the amount owed. The record contains a number of letters from Cobb to New Amsterdam regarding the amount to be paid, along with two signed certified return receipts, which are attached to respondent's answer as exhibits.¹ New Amsterdam's business log reflects conversations between New Amsterdam and Cobb and also contains entries showing unsuccessful attempts to obtain information from respondent.

According to respondent, she confirmed the existence of Cobb's personal injury claim and informed New Amsterdam of the medical lien, but had no other role in their agreement.

¹ Zolberg testified that those letters are not in New Amsterdam's file.

Respondent pointed out that, at the time that she signed the acknowledgement, Cobb and New Amsterdam had not yet signed it. In respondent's view, although the agreement imposed a duty to communicate information about the case to New Amsterdam, it made no difference if the communications came from Cobb; Indeed, New Amsterdam's records indicate that respondent had advised it to communicate directly with Cobb.

Respondent contended that she did not disburse the funds to New Amsterdam because she was never advised of a specific amount that was owed and, in addition, did not have Cobb's authorization to disburse the funds. Respondent testified:

This is my defense purely. As an attorney, I cannot either without my client's consent regardless of anything that she signed, I cannot unilaterally cut a check to anyone, her medical providers or otherwise without Valerie Cobb saying, Jacqueline, this money belongs to them. I can't, it's law and that's one thing and I understand why this is confusing here. That's one thing that has to be decided. Of course I know they are owed and of course I've been telling Miss Cobb negotiate with them but I can't as an attorney - do you understand what I'm saying?

[Panel Chair]: Yeah.

[Respondent]: My client says, no, Miss Harris, I'm not cutting them \$20,000 or what their fees are up to.

[Panel Chair]: Your defense is that you had an obligation but you would take the direction of Miss Cobb?

[Respondent]: No, my defense is I cannot spend the client's funds without the client's consent.

[T180-15 to 181-11.]²

The complaint charged respondent with violating RPC 1.15(b).

Count Two

The second count of the complaint charged respondent with failure to cooperate with disciplinary authorities. Specifically, the complaint alleged that, despite a number of requests, respondent did not turn over to the DEC investigator any documentation indicating how much she had received or disbursed in Cobb's behalf.

Respondent argued that to provide the requested information without Cobb's consent would have violated the attorney-client privilege. She contended that there was no authority in "the rules" permitting her to release information about Cobb's settlement. In a letter to the investigator, she stated, "If

² T refers to the transcript of the DEC hearing on September 25, 2008.

there is authority, please provide me with the rule and I shall gladly abide by your request." Although the investigator directed respondent to R. 1:20-3(g)(3) (Duty to Cooperate), she continued to refuse to comply with the investigator's requests. She testified that she was unable to turn over her trust account records to the investigator because Cobb had told her not to do so. According to respondent, "Miss Cobb made it clear she thought her amount would go up if they [New Amsterdam] were privy to how much she had." At the time of the DEC's investigation, however, New Amsterdam already knew the amount of Cobb's settlement. New Amsterdam's records reveal a conversation with Cobb, in October 2005, wherein she disclosed the settlement of \$28,200.

In respondent's reply to the investigator's discovery request, she stated that certain documents were unavailable because her former office, where they had been stored, had been vandalized.³ Although respondent's letter to the presenter stated that a police report was to be provided, no such report was forthcoming. During the hearing, respondent claimed that it is difficult to gain access to the building in question because

³ It appears that respondent sent some documents to the investigator, but it is unclear what those documents were.

it is in receivership. She provided no documentation in support of this contention. She is in possession of the portion of Cobb's file dealing with funds that are still owed to third parties.

Respondent's failure to comply with discovery requests led to the DEC panel chair's issuing an order to compel her to do so.

The complaint charged respondent with violating RPC 8.1(b).

The DEC noted that respondent signed the acknowledgment, which was part of the agreement between New Amsterdam and Cobb, thereby obligating herself to safeguard the property of third party New Amsterdam, in compliance with RPC 1.15. The DEC found that none of the language respondent inserted in the agreement and none of her changes relieved her of her obligation to New Amsterdam. The DEC rejected respondent's claim that she was not a party to the agreement because she only signed the third page, without relation to the rest of the document.

The DEC concluded that respondent's failure to promptly notify New Amsterdam of her receipt of the settlement funds, her failure to promptly deliver the proceeds of the settlement to New Amsterdam to satisfy its lien, and her disbursement of funds to Cobb and to herself, prior to satisfying New Amsterdam's

lien, violated RPC 1.15(b). The DEC also found that respondent's failure to produce to the investigator her trust account records or any other records relevant to her maintaining the claim proceeds violated RPC 1.15(d).

As to count two, the DEC noted that, despite the ethics authorities' numerous requests, respondent failed to produce her file or any information regarding the settlement of the claim and disbursement of the proceeds, a violation of RPC 8.1(b).

In aggravation, the DEC considered respondent's history of failure to cooperate with disciplinary authorities by not producing requested documents and by various delaying tactics. The DEC also considered that respondent was argumentative toward certain panel members during the hearing. The DEC recommended discipline "greater than admonition."

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

The DEC found that respondent violated RPC 1.15(b), RPC 1.15(d), and RPC 8.1(b). With one exception (RPC 1.15(d)), we agree with the DEC's findings. That respondent did not turn over her attorney books and records to the DEC investigator/presenter does not constitute clear and convincing

evidence that she did not maintain them. We, therefore, reverse that finding.

Unquestionably, however, respondent violated RPC 1.15(b) when she failed to promptly notify New Amsterdam that Cobb's case had been settled. The fact that the information was conveyed by Cobb is not a viable defense for respondent. New Amsterdam was not informed of the settlement by Cobb until September 2005. Yet, respondent received the settlement funds in April or May of that year. Moreover, respondent failed to safeguard New Amsterdam's property, when she disbursed funds to Cobb.⁴ It is clear from the record that respondent did not understand her ethical obligations to New Amsterdam. Indeed, in a letter dated January 9, 2008 to the investigator, respondent stated: "I maintain that I have no fiduciary duty to any party herein other than my client, Ms. Valerie Cobb."

Respondent fails to recognize that, by signing the acknowledgment, she was bound by its terms. The acknowledgement stated: "The undersigned hereby acknowledges notice of the provisions of the foregoing Agreement, including without

⁴ We do not reach the issue of respondent's disbursing her legal fee to herself, which, if improper, would have violated RPC 1.15(c). That rule was not cited in the complaint.

limitation the assignment and lien set forth therein, and agrees to disburse in compliance therewith the Proceeds, if any, recovered on behalf of Valerie Cobb with respect to the Claim." If indeed there were, as respondent claims, insufficient funds to go around, then it is true that an attempt had to be made to negotiate with New Amsterdam. Respondent could not, however, hold the funds in her trust account (where we presume they are) indefinitely. Even if we were to accept respondent's argument that she was not a party to the agreement, she could not sit back and do nothing. She should have deposited the funds with the court until a resolution was achieved.

With regard to respondent's failure to cooperate with the DEC, a violation of RPC 8.1(b), here, too, she does not "get it." Had respondent read R. 1:20-3(g)(3), to which she was directed by the presenter, she would have seen that she was required to produce her file and accounting records. Had she gone on to read RPC 1.6, she would have learned that her revealing information pertaining to her representation of Cobb would not have violated the confidentiality rule because the revelation was in connection with her defense in a disciplinary proceeding. Indeed, respondent's argument that Cobb told her not to reveal the settlement amount for fear that New Amsterdam

would demand more money is without merit. As noted above, Cobb had advised New Amsterdam of the settlement amount, in 2005.

Ordinarily, failure to promptly deliver funds to clients or third persons, standing alone, will lead to an admonition. See, e.g., In the Matter of Craig A. Altman, DRB 99-133 (June 17, 1999) (attorney did not promptly pay a doctor's bill despite having signed a "letter of protection") and In the Matter of Cornelius W. Daniel, III, DRB 96-394 (January 16, 1997) (for a period of four years attorney failed to satisfy client's medical bills and an unrelated judgment against the client despite having escrowed funds for that purpose; the attorney also failed to adequately communicate with the client).

When an attorney makes improper distributions of escrow funds, a reprimand is the likely form of discipline. In re Milstead, 162 N.J. 96 (1999) (disbursement of escrow funds to client in violation of consent order) and In re Flayer, 130 N.J. 21 (1992) (attorney made unauthorized disbursements against escrow funds).

Respondent also failed to cooperate with disciplinary authorities. In In re Dorian, 176 N.J. 124 (2003), a reprimand was imposed on an attorney who, for months, failed to satisfy a medical lien out of funds escrowed for that purpose and, in

addition, failed to cooperate with the investigation of the grievance. Dorian had a prior admonition and a reprimand. Dorian combines respondent's failure to pay over funds to a third party and her failure to cooperate with disciplinary authorities, as well as her prior admonition. In light of Dorian, a reprimand would be the appropriate discipline for respondent's violation of RPC 1.15(b) and RPC 8.1(b). But there are aggravating factors to consider here.

The DEC found respondent's demeanor at the ethics hearing an aggravating factor. On the written record, it is difficult to independently conclude that respondent was belligerent toward the hearing panel. We, therefore, defer to the DEC's ability to assess her behavior during that proceeding. We note that the DEC's recommendation for discipline was unanimous and that, consequently, all members must have concurred in their judgment of respondent's demeanor. In addition, we considered, in aggravation, respondent's absolute lack of recognition of her wrongdoing. She either is unable or unwilling to acknowledge any impropriety on her part.


Taking into account the nature of respondent's ethics offenses and the above two aggravating factors, we determine that the appropriate degree of sanction here is a censure.

Also, we require respondent to take, within sixty days of the date of this decision, six hours of professional responsibility courses approved by the Office of Attorney Ethics ("OAE") and to submit to the OAE proof that she satisfactorily completed them. Further, we request that the OAE conduct an audit of respondent's trust account records to determine whether she kept intact the \$11,000 that she claims are being held in her trust account.

Vice-chair Frost voted for a three-month suspension, finding that respondent displayed a defiant attitude toward the ethics system.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

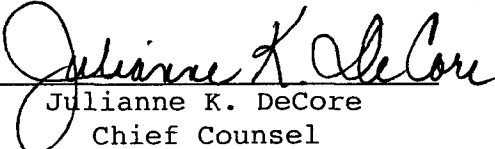
In the Matter of Jacqueline R. Harris
Docket No. DRB 09-038

Argued: May 21, 2009

Decided: August 25, 2009

Disposition: Censure

Members	Disbar	There- month Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost		X				
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:		1	8			


Julianne K. DeCore
Chief Counsel