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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-388
District Docket No. XIV-06-627E

IN THE MATTER OF
JILL, RANDY EPSTEIN
AN ATTORNEY AT LAW

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Decision

Argued: February 21, 2008

Decided: April 16, 2008

Melissa Czartoryski appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler appeared on behalf of respondent.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The crux of this matter is respondent's continuing failure to

address certain trust account problems that were the subject of a prior disciplinary matter against her.

The OAE requests the imposition of a reprimand for respondent's stipulated violations of RPC 1.15(b) (failure to promptly deliver funds to a client or third person) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Respondent, in turn, seeks an admonition, claiming that numerous mitigating factors render a reprimand inappropriate.

For the reasons stated below, we determine that a reprimand is the appropriate form of discipline in this case.

Respondent was admitted to the New Jersey bar in 2000. At the relevant times, she maintained an office for the practice of law in Old Bridge. She is currently a law secretary for a judge in New York.

On September 19, 2006, the Court censured respondent in a default matter for lack of diligence, failure to communicate with the client, failure to promptly deliver funds to the client, failure to comply with recordkeeping requirements, and failure to cooperate with disciplinary authorities. In re Epstein, 188 N.J. 272 (2006). As a matter of reciprocal discipline, she received a censure in New York on December 11, 2007.

Since September 15, 2003, respondent has been on the Supreme Court list of ineligible attorneys due to nonpayment of fees to the New Jersey Lawyers' Fund for Client Protection.

The stipulated facts are as follows. As part of the ethics investigation underlying the matter that resulted in respondent's 2006 censure, the OAE conducted a demand audit of her trust and business accounts. Among other things, the audit uncovered inactive trust account balances.

On May 26, 2005, respondent provided the OAE with reconstructed reconciliations of her trust account, in which she identified the reasons for the inactive trust balances and the clients involved. The clients and balances were identified as follows: (1) Pietrosh, \$12,115; (2) Cushner, \$45; and (3) Shead, \$300. The inactive balances in these client matters were the subject of respondent's RPC 1.15(b) and RPC 1.15(d) violations that led to her 2006 censure.

The audit also detected \$2,293.53 in inactive trust balances in respondent's trust account, which represented funds owed to eleven clients. These balances, which were the result of respondent's "mathematical and other recordkeeping errors," also led to her 2006 censure.

Despite having identified the owners of the undisbursed funds in May 2005, respondent did not promptly remit the funds to them. As seen below, she did so almost two years later, and then only after the OAE had filed a second ethics complaint against her, in February 2007. Indeed, as of October 2006, five months after the May 2005 reconciliation, respondent still had failed to disburse promptly the funds to the clients and third persons identified in the reconstructed reconciliations that she had submitted to the OAE, in May 2005. As of October 31, 2006, \$14,391.41 remained in respondent's Valley National Bank trust account.¹ In addition, \$31 remained in respondent's business account, and \$4,750.51 remained in her JP Morgan Chase Bank (Morgan Chase) trust account.

On June 29, 2005, one month after receiving respondent's trust account reconciliation, OAE Deputy Ethics Counsel Melissa A. Czartoryski directed her to zero out her trust account. On October 6, 2005, the ethics complaint that led to the 2006 censure was mailed to respondent. As stated previously, she was censured on September 19, 2006.

¹ Respondent's October 31, 2006 trust account statement identifies a balance of \$14,391.42. The individual sums identified in the stipulation as having remained in the trust account total \$14,753.53. We cannot account for the \$362.12 difference.

On September 21, 2006, Czartoryski wrote to respondent, enclosed the Supreme Court's order of censure, and again directed respondent to disburse the funds from her trust account. The pertinent portion of Czartoryski's letter stated:

Please take any and all steps necessary to disburse those funds from your trust account to the rightful owners on or before October 31, 2006 and provide me with proof of same. If you do not do so, you are on notice that our office will be filing a new complaint against you and seeking your suspension from the practice of law. In the event that you are currently practicing in New York, or any other jurisdiction, those jurisdictions will also be notified of your suspension and would have the opportunity to petition the Court in that state for a reciprocal suspension of your law license. Please be guided accordingly.

Either on or just before December 1, 2006, Czartoryski called respondent at her place of employment and left a voice-mail message for her. According to the stipulation, "[r]espondent would testify she never received the phone message. The OAE cannot prove otherwise by clear and convincing evidence." When respondent did not return the call, Czartoryski sent her a letter addressed to her place of employment, informing her that, if she did not disburse the monies, the OAE would "have no choice but to institute another ethics complaint against you."

Despite respondent's knowledge of the OAE's directive for the disbursement of the funds, she failed to do so until after a formal ethics complaint was filed against her, on February 28, 2007. The complaint charged respondent with violations of RPC 1.15(b) (failure to promptly deliver funds to a client or third person) and RPC 1.15(d) (recordkeeping violations), based on her failure to "either promptly disburse the funds to clients or third parties or the Superior Court Trust fund in the event she could not locate them." The complaint also charged respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities), based on her failure to comply with the OAE's multiple directives for the disbursement of the funds.

On March 26, 2007, respondent filed a verified answer to the complaint. On the next day, she disbursed the unpaid funds to all clients and third persons, except for the funds "due to clients Novack and Pietrosh."

The stipulation does not explain why the funds were not disbursed to Novack and Pietrosh. Indeed, the stipulation does not identify an individual named "Novack" as one of the clients whose funds had remained in any of respondent's accounts. Nevertheless, the parties stipulated that all persons or

entities entitled to funds have been identified, and that "[t]here are no funds remaining which are unaccounted for."

At oral argument before us, respondent's counsel represented that "virtually" all funds had been disbursed, and agreed to send us a letter with an update on respondent's progress in making all disbursements. On March 1, 2008, counsel represented to us that respondent has distributed the funds in the Novak and Pietrosh matters as well. In addition, counsel informed us that the disbursed funds that were either returned to respondent or never negotiated will be forwarded to the Clerk of the Superior Court, pursuant to R. 1:21-6(j).

With respect to the funds left in the Morgan Chase trust account, the parties stipulated that they were the subject of a "dispute between two parties for whom respondent was assigned by the Court to act as Referee." According to the stipulation, "[t]he respondent wrote to both parties attempting to disburse the funds and has retained New York counsel to move to place the funds in court."²

Based on these facts, respondent stipulated to having violated RPC 1.15(b) (failure to promptly deliver funds to a

² The parties were not identified.

client or third person) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). With respect to the recordkeeping violation charge, the parties stipulated that, because all persons or entities entitled to the funds were identified, there was "no clear and convincing evidence that respondent violated RPC 1.15(d) via R. 1:21-6, which sets forth in subsection (j) the requirements for the handling of unidentifiable and unclaimed trust funds."

Following a review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical.

Respondent was disciplined in 2006 for her failure to disburse the funds in the Pietrosh, Cushner, and Shead matters, as well as \$2,293.53 owed to eleven other clients. Yet, she continued to violate one of the RPCs that caused her to receive a censure in 2006 (RPC 1.15(b)). In the process, she also violated another RPC (RPC 8.1(b)), by failing to comply with the OAE's numerous requests that she disburse the funds to their rightful owners.

Failure to promptly disburse trust funds ordinarily results in an admonition. See, e.g., In re Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance

of settlement proceeds to client after her medical bills were paid) and In re Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon, for three-and-a-half years, attorney held in his trust account \$4800 earmarked for the payment of a client's outstanding hospital bill).

In matters where an attorney has violated only RPC 8.1(b), either an admonition or a reprimand has been imposed. In the absence of an ethics history or default, the discipline is limited to an admonition. See, e.g., In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (failure to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (failure to reply to DEC's numerous communications regarding a grievance); In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (failure to comply with OAE's letters seeking a reply to a grievance and failure to file a timely answer to the complaint); and In the Matter of Robert P. Gorman, DRB 94-437 (February 8, 1995) (failure to submit a written response to the investigator's requests for information about a grievance).

If the attorney's lack of cooperation is particularly egregious, or the attorney either has an ethics history or has defaulted, a reprimand generally issues. In re Pierce, 181 N.J.

294 (2004) (ethics history included one reprimand for misconduct in three cases); In re Wood, 175 N.J. 586 (2003) (ethics history included an admonition for failure to cooperate with disciplinary authorities); In re Medinets, 154 N.J. 255 (1998) (attorney defaulted); and In re Macias, 121 N.J. 243 (1990) (reprimand for attorney's "extensive" lack of cooperation in matter where he was initially charged with technical recordkeeping violations; attorney ignored six letters and numerous telephone calls from the OAE, "recklessly prepared" an "inadequate" certification with respect to the status of his attorney accounts, and failed to file a formal answer to the ethics complaint; mitigation included respondent's status as a sole practitioner, his temporary lack of a secretary, and his admission of wrongdoing).

At times, if the attorney violates both RPC 1.15(b) and RPC 8.1(b), and the attorney has a disciplinary record of a non-serious nature, as here, a reprimand may still issue. See, e.g., In re Dorian, 176 N.J. 124 (2003) (reprimand for attorney who for months failed to satisfy a medical lien out of funds escrowed for that purpose and who failed to cooperate with the investigation of the grievance; prior admonition and reprimand).

Here, there are several aggravating factors: respondent has a prior censure; approximately four years transpired between her deposit of the Cushner and Shead funds into her attorney trust account and their disbursement; and the degree of difficulty in disbursing all of the funds to the recipients was so minimal because the trust account reconciliation had been done years before and respondent knew exactly how much money had to be disbursed to each person.³

On the other hand, there are several mitigating factors to consider: respondent's delay in disbursing the funds was the product of depression, rather than "lack of respect for the courts, her clients or the administration of justice;" she ceased her private practice of law when she realized that the responsibilities attached to it were overly burdensome to her at that particular time; she sought the New Jersey Lawyers Assistance Program's (LAP) help in understanding the reason for her procrastination and in disbursing the funds; and she regularly sees a mental health professional referred by the LAP.

After balancing the aggravating factors against the mitigating factors, we determine that the reprimand recommended

³ It is not known how long the funds paid to the other clients went without disbursement, though, respondent's counsel informed us, nearly all funds were disbursed prior to March 30, 2007.

by the OAE is the appropriate sanction in this case. We were persuaded that respondent's recalcitrance, albeit serious, was not the product of indifference to the disciplinary system, but the result of a mental health problem that has now been addressed.

Members Baugh, Lolla, and Neuwirth did not participate.

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
William J. O'Shaughnessy, Chair

By:



Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Jill Randy Epstein
Docket No. DRB 07-388

Argued: February 21, 2008

Decided: April 16, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh						X
Boylan			X			
Frost			X			
Lolla						X
Neuwirth						X
Stanton			X			
Wissinger			X			
Total:			6			3


Julianne K. DeCore
Chief Counsel