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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-047  
District Docket No. IIB-04-017E

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IN THE MATTER OF  
IAN J. HIRSCH  
AN ATTORNEY AT LAW

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Decision

Argued: April 20, 2006

Decided: June 27, 2006

Geri Squire appeared on behalf of the District IIB Ethics Committee.

Steven V. Schuster 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 recommendation for discipline (censure) filed by the District IIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1972. He has no prior discipline.

A five-count complaint alleged that respondent purposely ignored court orders so that he could favor his client in a

divorce matter. In his answer to the complaint, and in testimony before the DEC, respondent admitted the essential facts of the case, disputing only that some of his conduct rose to the level of ethics infractions.

According to a five-count complaint, respondent represented Joseph Witkowski, Jr. in his divorce from the grievant, Sandra Witkowski. A final judgment of divorce was entered on January 13, 2003. Pursuant to the judgment, the marital home was sold, and certain set-offs were made against Joseph's share, in favor of Sandra. In addition, the judgment named respondent as trustee for the remainder of Joseph's share. Because Joseph was unemployed at the time of the divorce, respondent was supposed to make payments for certain ongoing obligations directly to Sandra, using Joseph's remaining funds.

Specifically, respondent was ordered to pay from the fund the cost of the parties' daughter's remaining two and one-half years of college. Allowable costs included tuition, room and board, books and supplies, utilities, miscellaneous college expenses, and reasonable travel to and from college. Respondent was also ordered to send Sandra weekly alimony payments of \$288 from the escrow funds until Joseph obtained a job, at which time his wages would be executed for that purpose.

In his answer to the complaint, and again at the ethics hearing, respondent conceded that he had failed from the start to provide Sandra with alimony checks in a timely fashion. In fact, he fell behind several payments at a time, and, in some instances, sent checks for improperly low amounts.

Sandra sent respondent numerous letters in 2003, regarding his failure to issue timely alimony checks. In May 2003, she wrote to respondent, complaining that he was thirty-nine days delinquent in his duties as trustee. Sandra's attorney also wrote to respondent on July 28, 2003, complaining that he had "shortchanged" Sandra in two months that contained five weeks each, by sending only four weeks' alimony.

For his part, respondent conceded that some payments were lower than they should have been, but claimed that this was unintentional. He explained that the reduction was caused by his mathematical errors in calculating the amounts due.

On November 21, 2003, the family court granted Sandra's post-judgment motion requiring respondent to issue the alimony checks to her one week in advance of the due date. The court order also required respondent to provide Sandra with an accounting of payments made by him out of the trust.

In December 2003, respondent complied with the court order, and gave Sandra copies of his trust account ledger for the

period of January 24, 2003 to March 16, 2004. The ledger revealed that he had made numerous unauthorized payments to Joseph out of the trust account. Those expenditures, totaling almost \$15,000, included payments to the IRS for taxes, payments for storage, telephone, credit cards, health insurance, and automobile insurance bills, none of which were allowed under the terms of the divorce judgment.

On March 10, 2004, the family court ordered Joseph to place almost \$10,000 from his retirement funds into the trust account to reimburse it for the improper payments to him. The order also relieved respondent as trustee and named a replacement trustee.

Joseph apparently failed to comply with that directive because, on December 3, 2004, after a hearing, he was again ordered to replenish the trust account. Ultimately, Sandra received all funds owed to her.

Sandra testified briefly at the DEC hearing. She was still upset with respondent's handling of the trust:

I do feel that all this, you know, my sending him, him sending me, it was to add to his account. It was to add to the money that he charged the trust.

If he had a problem he could have just - I don't see what the problem is. I just don't see why it took so much time, so much

trouble every single month to get my one little check.

[T45-22 to T46-6.]<sup>1</sup>

And I just feel that he should be punished to the highest that you can have because he has been a lawyer for 32 years, he knows what he's supposed to do, he knows what he's not supposed to do and I just feel that he did it on purpose. It was just a way of playing a game and he wanted to see - he wanted to show me that he had the power.

[T47-6 to 18.]

Finally, Sandra also stated that, had respondent simply done what he was supposed to do, "nobody ever would have heard from me."

The complaint alleged a pattern of neglect (RPC 1.1(b)) for respondent's "failure to make alimony payments to Grievant in a timely fashion and wrongful disbursements from the trust fund"; a violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), by his "knowing disobedience of the terms of the Order" and "his unilateral disbursement of funds to or on behalf of his client in violation of the terms of the Court Order"; failure to safekeep property (RPC 1.15(b)), by improperly disbursing trust funds to Joseph, and failing to make the required alimony payments to Sandra in a timely fashion; and

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<sup>1</sup> "T" refers to the transcript of the October 6, 2005 DEC hearing.

a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), by concealing his payments to Joseph until a court order required the disclosure.

Respondent conceded at the DEC hearing that his conduct was improper, and, through his attorney, admitted "the allegations of the complaint." Respondent also apologized for his actions, in Sandra's presence:

Firstly, in mitigation of some of the things that I determined to do I accept full responsibility for the decisions that I made, albeit, some of those decisions were not in accordance with the court order. In conjunction with that, I apologize to [Sandra] for any distress that I may have caused her by what I consider to be my negligence in this matter.

[T23-8 to 16.]

Respondent also advanced other mitigating factors. He stated that he had represented Joseph's family in various matters for twenty-five years, before representing Joseph in his divorce. He recalled that he had allowed himself to become emotionally involved in the matter and should not have accepted the assignment as trustee because 1) he was the attorney for one of the parties to a bitter divorce; 2) Sandra "could not distinguish between [respondent] and her husband"; 3) he was too close to the Witkowski family; and 4) he allowed emotions and sympathy for his client to cloud his judgment.

Respondent further claimed that Joseph acted irrationally throughout the representation, staying for hours at respondent's office, often without an appointment, in order to obtain money from the trust. Joseph had also made threatening remarks to him and his staff, such as, "[w]hen you girls go to the ladies room, you should always go together, never alone, because you never know what could happen to you," and "[d]o you girls walk to your cars together, everyday?" According to respondent, "most of the statements were made to staff about Respondent, and what could happen to the Respondent if he didn't cooperate." Respondent continued:

He made threats to me, but I would just discount them because I wasn't particularly afraid of him, but the girls were afraid of him because he was strange and weird . . . [a]nd he put a lot of pressure on us, and he put a lot of pressure on me so a lot of the times I paid bills to get rid of him, get him out of the office.

[T30-24 to T31-6.]

The DEC found respondent guilty of the charged violations, and recommended the imposition of a censure, without furnishing legal support for the recommendation.

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.

Respondent admitted that he engaged in unethical conduct in this matter. Initially, he failed to abide by a court order requiring him, as trustee, to make timely alimony payments to his client's ex-wife, Sandra. Respondent was repeatedly late with those payments, on which Sandra relied for her support. The complaint characterized respondent's conduct as a pattern of neglect. We dismiss that charge as inapplicable, however, because, among other things, respondent's conduct in this matter was intentional, not negligent.

The DEC correctly determined, however, that the late payments to Sandra violated RPC 1.15(b). That rule required respondent's timely delivery of the alimony funds to her. So, too, the judgment of divorce and post-judgment orders clearly spelled out respondent's obligations as trustee. Yet, in violation of the orders, respondent made continued late and infrequent payments to Sandra, a violation of RPC 3.4(c).

Furthermore, while denying Sandra timely access to the alimony funds to which she was entitled, respondent made repeated, improper payments to Joseph, totaling over \$15,000. Ultimately, the court required Joseph to replenish the trust with his retirement funds. Because, however, respondent improperly released those funds, or failed to safeguard them, he



violated RPC 1.15(a), a more applicable section of the rule than (b), as charged in the complaint.

Finally, the complaint alleged that respondent concealed his misconduct from Sandra, and that, only upon the filing of a motion to compel an accounting, did he disclose the improper payments to Joseph. Although the record is unclear on which aspect of the rule - dishonesty, fraud, deceit, or misrepresentation - is implicated here, concealment connotes deceitful conduct, which is a violation of RPC 8.4(c). Respondent, through counsel, admitted "the allegations of the complaint," without regard to specific RPCs. Presumably, that statement would include the RPC 8.4(c) charge.

In his answer to the ethics complaint, however, respondent denied concealing from Sandra the payments to his client, stating that he had disclosed the payments to her immediately upon receiving the November 21, 2003 court order for an accounting. Respondent was not required to provide an accounting prior to that date. Furthermore, respondent gave Sandra an accounting immediately afterwards, in December 2003, bearing out his claim that he did not engage in concealment. Therefore, respondent's global mea culpa notwithstanding, we find no clear and convincing evidence to support a finding that he concealed

the payments from Sandra. We, thus, dismiss the RPC 8.4(c) charge.

In sum, respondent failed to make timely and accurate alimony payments to Sandra and improperly distributed escrow funds to his client, in violation of his duties as trustee/escrow agent and in contravention of court orders. His conduct violated RPC 1.15(a), RPC 1.15(b), and RPC 3.4(c).

Ordinarily, failure to comply with court orders will yield an admonition or reprimand. See, e.g., In the Matter of Santo J. Bonanno, DRB 97-238 (September 30, 1997) (admonition for attorney who failed to comply with a court order and failed to act diligently in another client matter); In re Kersey, 170 N.J. 407 (2002) (reprimand on motion for reciprocal discipline for attorney who failed to comply with court orders on three occasions in his own divorce matter).

Likewise, failure to promptly deliver funds to clients or third persons will lead to an admonition. In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon attorney who, for three-and-a-half years, held in his trust account \$4,800 earmarked for the

payment of a client's outstanding hospital bill).

The improper release of trust or escrow monies without a reasonable belief that the disbursement is appropriate generally results in a reprimand. See, e.g., In re Milstead, 162 N.J. 96 (1999) (reprimand for attorney who disbursed escrow funds to his client, in violation of a court order) and In re Flayer, 130 N.J. 21 (1992) (reprimand for attorney who, when purchasing real estate for himself, made unauthorized disbursements against escrow funds he had agreed to hold in escrow pending his builder's completion of repairs to property; the attorney had been frustrated in his attempts to deal with an unresponsive builder and counsel).

An aggravating factor here was the financial and emotional stress inflicted on Sandra. Not surprisingly, she asked the DEC to "throw the book" at respondent. We do not view as mitigation the circumstances advanced by respondent — the contentious nature of the divorce proceedings, Sandra's alleged inability to distinguish between respondent and her husband, respondent's close relationship with Joseph's family, and the clouding of his judgment by emotions and sympathy for Joseph.

In light of the foregoing, we determine that respondent's overall misconduct warrants a three-month suspension. We are mindful that this is respondent's first brush with the

disciplinary system. Nevertheless, lesser discipline would not comport with the seriousness of his conduct, which spanned almost a year. During that time, respondent continuously violated the court order and abdicated his duties as trustee for Sandra. Harsh consequences could have befallen Sandra when respondent released from the escrow funds \$15,000 to pay for Joseph's expenses. Luckily, Joseph's retirement plan and, presumably, other sources, contained sufficient funds to pay Sandra all sums to which she was entitled.

Chair O'Shaughnessy voted for a reprimand. Vice-Chair Pashman did not participate.

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

Disciplinary Review Board  
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Ian Hirsch  
Docket No. DRB 06-047

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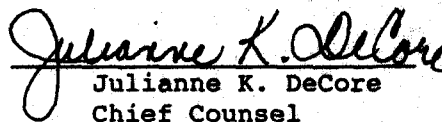
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Argued: April 20, 2006

Decided: June 27, 2006

Disposition: Three-month suspension

Members	Three-month 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:	7	1			1

  
Julianne K. DeCore  
Chief Counsel