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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-279
District Docket Nos. XIV-03-209E
and IV-04-900E

IN THE MATTER OF :
:
BRUCE C. HASBROUCK
:
AN ATTORNEY AT LAW :

Decision

Argued: November 17, 2005

Decided: December 13, 2005

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Angelo Falciani 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 on a recommendation for an admonition filed by the District IV Ethics Committee ("DEC"), which we determined to bring on for oral argument.

Respondent was admitted to the New Jersey bar in 1977. He has no prior discipline.

The conduct that gave rise to this disciplinary matter occurred in the context of respondent's representation of a defendant in a matrimonial case. The judge who presided over the case reported respondent's actions to the Office of Attorney Ethics ("OAE").

The first count of the complaint charged respondent with violations of RPC 1.15(a) (failure to safeguard client's or third person's funds), RPC 3.3(a)(5) (failure to disclose to a tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure), RPC 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists), RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client), RPC 8.4(a) (violation of the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the admonition of justice). The second count of the complaint charged respondent with willful disregard of the recordkeeping rules, a violation of RPC 1.15(d) (inadvertently cited as RPC 1.15(a)).

The Grzechowiak Matter

Respondent represented John Grzechowiak, the defendant in a matrimonial action filed by Susan Grzechowiak, who was represented by Thomas Hurley. Respondent testified that, at the time, matrimonial matters comprised twenty-five to fifty percent of his practice. He considered himself an experienced matrimonial lawyer.

On September 10, 2001, the trial court entered a pendente lite order providing for, among other things, child and spousal support, restraints on the dissipation of the marital assets, maintenance of the status quo until further order of the court, and written notice to the other party before the invasion of the marital assets. Said notice was to identify the specific asset and its monetary value. One of the marital assets was $600,000 in T-Bills.

During the course of John's deposition, he admitted that, in June 2002, nine months after the court directed him to refrain from dissipating the marital assets, he had gone to Las Vegas and had taken $600,000 with him. Hurley then filed an order to show cause seeking, among other things, to compel John to reveal the whereabouts of the $600,000.

On June 14, 2002, the court entered an order directing John to give respondent a $600,000 cashier's check from PNC Bank,

dated December 31, 2002, which, according to John's representation to the court, was in his home, in a drawer.[1] The court gave John until 4:00 p.m. of that day to comply with its direction, lest a warrant issue for his arrest. In addition, the order provided as follows:

> **DEFENDANT John's Counsel shall deposit the cashier's check in an interest bearing account of HIS selection, under BOTH parties social security numbers, and under BOTH Counsel's names, by Monday, June 17, 2002, at the close of business. DEFENDANT John's Counsel shall thereafter provide PLAINTIFF Susan's Counsel with the name of the banking institution, and all other relevant information relating thereto. The Court is not determining the equitable distribution of the $600,000. This Order is for maintenance purposes only to ensure the money is housed in a safe facility.**
>
> **IT is further ORDERED that DEFENDANT John's ability to withdraw the funds is NOT being determined today, and HIS Counsel is free to make any applications that he deems appropriate.**
>
> [Ex.OAE-14 at 5-6¶1.]

Four days later, on June 18, 2002, respondent sent a letter to Hurley, reporting the difficulty he had encountered in opening a bank account with the court order's exact specifications:

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[1] Presumably, John had converted the T-Bills into a cashier's check.

> The soonest I could get to a bank with my client was noon today.
> After almost 2 hours of agonizing discussion with a financial consultant of PNC investments, I was informed that while they could open an account in two names (John's and mine), they would not "guarantee" that John would not be able to access the account for purposes of trading.
> It is John's intention to invest the money in 31 day T Bills. I will attempt to contact someone who can be more accommodating in accepting the $600,000.
>
> [Ex.OAE-2.]

According to respondent, PNC had told him that it could not open an account the way the order was phrased, that is, with the names of the parties and their attorneys and the parties' social security numbers. Furthermore, the bank could not restrict John's access to the account.

For the next eight months, the check remained undeposited, under a blotter on respondent's desk. Respondent testified that he so informed Hurley "on every occasion we were in court," and that he even asked Hurley if he wanted to deposit the check in his trust account, an offer that Hurley declined.

Respondent acknowledged that the court order obligated him to deposit the check in an interest-bearing account and that the word "shall" contained in the order made such deposit mandatory. He also acknowledged that he did not make an application to modify the order, but merely informed Hurley of the

impossibility of complying with its terms. Respondent explained his understanding of modification of court orders: "As practice goes, that [sic] those things are between the attorneys and the clients, not the court. I mean, it's like if they want to modify that, either in writing or orally or you know, or whatever, that's fine."

Respondent did not believe that he was in violation of the court order, because he had notified Hurley of the problem with the account. Respondent had no concerns about the safety of the check.

With regard to his failure to inform the judge that he was unable to deposit the $600,000 in the manner ordered by the court, respondent offered the following explanation: "That's not the practice. The practice isn't going and running back to the court, the practice is telling your adversary, because maybe that's okay with your adversary. Which was here the case."

Hurley did not reply to respondent's correspondence of June 18, 2002, because they "started the trial within the next month." The case was tried on seven non-consecutive days (with one exception) from July 2002 to January 2003. Hurley presumed that respondent was "holding the funds during that period of time. I mean, he was required to by court order."

At the conclusion of the trial, on January 27, 2003, the judge placed her decision on the record. In evidence is an eighty-three page transcript of that decision. As to the disposition of the $600,000, the court ruled as follows:

> The court finds that the sum of $600,000 is marital property and shall be equally distributed.
>
> . . . .
>
> The court hereby awards equitable distribution of that asset equally to the plaintiff and to the defendant and shall be paid within 30 days.
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> Further, it is ordered that defendant shall produce proof that the account or source from the source of account [sic] of the $600,000 which is currently to be held by his attorney, if the account or entity or whatever vessel held the $600,000 held [sic] contains more than that amount, the remainder shall be redivided as well.
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> [Ex.OAE-5 at 35-36.]

When the judge finished putting her decision on the record, respondent made a "request to extend," which the judge denied. Presumably, respondent was requesting a stay of the judge's decision.

Thereafter, Hurley prepared the proposed form of final judgment of divorce, to which respondent did not object.

On February 5, 2003, the judge signed the final judgment of divorce. As to the $600,000, the final judgment provided:

> An asset known as the $600,000.00 "T-Bill" Check is being held by Counsel for the defendant. The Court finds that this asset is marital and subject to equitable distribution. The defendant has failed to adduce any creditable [sic] evidence to prove that the $600,000.00 is exempt from equitable distribution. The Court awards the plaintiff the sum of $300,000.00 from this sum of money. This sum of money shall be payable on or before February 28, 2003. In the event the payment is not made by the defendant to the plaintiff, interest shall accrue upon this sum of money at the judgment rate of interest.
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> [Ex.OAE-16¶13.]

A review of the final judgment of divorce shows that the $600,000 was the most significant asset subject to a potential equitable distribution. The marital home was valued at $240,000 (each party received $120,000) and John's business was appraised at $50,000, of which Susan received $15,000. The few other remaining assets were unsubstantial.

To secure John's payment of support the final judgment required him to establish an escrow account:

> The Plaintiff's application to secure all future payments of support by the maintenance of an interest bearing account is granted. The Court hereby Orders that the sum of $83,980 shall be sequestered in an interest bearing account. The Court orders that the defendant shall not invade or take from that account other than for the satisfaction of support. This is the sum of

> money that would satisfy five (5) years of support payments based upon the Court's Final Judgment.
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> [Ex.OAE-16¶19.]

When John did not pay Susan her $300,000 share of the $600,000 by February 28, 2003, Hurley wrote to respondent, but no payment was forthcoming. Hurley, therefore, filed a motion to enforce litigant's rights. Respondent's response to the motion did not disclose that he had disbursed the $600,000 to John. Hurley was unaware of this critical circumstance.

On April 10, 2003, the day before the return date of the motion, when Hurley telephoned respondent to ask if he was going to accept the judge's proposed decision on the motion, respondent revealed to Hurley that he had already released the $600,000 to John.

Respondent testified about a conversation with John between the date that the judge placed her decision on the record (January 27, 2003) and the entry of the final judgment of divorce (February 5, 2003):

> Well, I have a consultation with my client and he says, now that the final judgment is rendered and I have until February 28th in which to pay a lot of these things, there's nothing — nothing was there that said he had to pay anything immediately, -- can I have the money? And I said, well, John, I'm going to have to look up some law first, just to be sure. I think

> I know what the law is – all right? – about the law of merger of pendente lite orders.
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> [T189-13 to 22.][2]

At the DEC hearing, respondent was asked to explain his understanding of the concept of merger. Respondent stated:

> [I]t's a basic tentative [sic], not only in matrimonial law but the – all of the other areas of law, and it's been almost like black letter law that a pendente lite order, which means like – I don't know, if there's a . . . [p]ending litigation . . . it evaporates upon the issuance of a final order. In other words, it no longer exists, unless the final order specifically states that the pendente lite order of so and so shall merge with this final judgment but shall survive.
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> [T189-25 to T190-11.]

Respondent claimed that " . . . all Pendente Lite Orders [in the Grzechowiak matter] were superceded by the Final Judgment in that all preceding Orders to the Final Judgment are terminated upon entry of the final decree." Respondent told the panel chair that he had conducted some research before he disbursed the funds to John. Respondent's position was that, if any provision of the pendente lite order was to survive the

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[2] T refers to the transcript of the DEC hearing on April 27, 2005.

final judgment of divorce, it had to be referenced in the latter.

On February 5, 2003, respondent wrote a letter to John:

> Enclosed please find the proposed Final Judgment of Divorce as prepared by Tom Hurley, Esq. I have received it and it appears to be what the Judge ordered and have so informed the Court.
>
> As previously explained, I cannot file the appeal and a motion to stay the Order pending until such time as I have a signed Order in my hand.
>
> Also, as you are aware, I have been holding a $600,000 cashier's check in my office. Once the Final Judgment is signed, I can release the funds to you, as the Pendente Lite Orders are vacated upon the issuance of a Final Order. I must remind you, unless and until a stay is issued by the Appellate Division, you are guided by the Final Judgment.
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> [Ex.R-2.]

The letter then proceeded to give a breakdown of respondent's legal fees for services performed, projected costs for transcript and appellate filing fees, and a retainer for the appeal, for a total of $53,133, which respondent deducted from the $600,000. According to respondent, John had told him to take his fee from the funds.

On February 10, 2003, respondent sent John a trust account check for $546,867. John negotiated the check on February 13, 2003.

Respondent provided the following explanations for having released the $600,000 to John: (1) the final judgment provision that one-half of the fund was to be paid to Susan was binding only on John, not on him, (2) the payment did not have to be made from "any particular fund," and (3) he had advised John that, if the payment were not made on time, John would have to pay "judgment interest". According to respondent, he had no reason to believe that John would not comply with the final judgment of divorce, because John was trustworthy and had never lied to him.

The OAE's position is that respondent's reliance on John's trustworthiness was unreasonable because John was having financial difficulties at the time. Indeed, respondent testified that John had no income at the time, was unable to work since February 2002 because of injuries, was declared totally disabled by the Social Security Administration effective February 2002, and had child support and alimony arrearages. In fact, when respondent opposed Hurley's motion to enforce litigant's rights, respondent's position was that John had "no ability to pay . . . [b]ecause he was 100 percent totally disabled."

On April 11, 2003, the return date of the motion, the court issued the following order:

> **Counsel for PLAINTIFF SUSAN informed the Court today, on the record, that counsel for DEFENDANT JOHN gave a check to DEFENDANT JOHN from HIS client trust account. Counsel for DEFENDANT JOHN notified the Court today, on the record, that HE in fact disbursed these monies to DEFENDANT JOHN, in February 2003, just after the FINAL Judgment of Divorce was entered, after he deducted his fee of $50,000.00. HE then indicated that HE gave a check to DEFENDANT JOHN in the sum of approximately $600,000.00, not including the amount deducted for counsel for DEFENDANT JOHN'S fee. The Court finds that this is in violation of the Court's Order of June 14, 2002, restraining that money, and the Final Judgment of Divorce, which distributed the assets of the marriage. The Court finds that this case began on an emergent application brought by PLAINTIFF SUSAN to have the $600,000.00 T. bill funds restrained, which was GRANTED and the Court finds that fund was the basis for DEFENDANT JOHN'S ability to pay HIS share of the Equitable Distribution, support arrears, and counsel fees, pursuant to the Final Judgment of Divorce.**
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> **The Court initially heard this matter at approximately 11:00 a.m., April 11, 2003, and continued it to 2:00 p.m. on April 11, 2003, and ORDERED DEFENDANT JOHN to appear with the $600,000.00 in hand or a BENCH WARRANT would issue for HIS arrest. At approximately 2:10 p.m., counsel for DEFENDANT JOHN reported to the Court that he attempted to call he [sic] client four different times and that he drove to HIS house and the [sic] HE did not appear to be at home. The Court does find that DEFENDANT JOHN was aware of this enforcement proceeding scheduled for today, April 11,**

> **2003, and that HE contacted HIS attorney and advised him that HE was ill and would not be appearing in Court.**
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> **IT IS further ORDERED that counsel for DEFENDANT JOHN provide to the Court a copy of all disbursement records from his client trust account, regarding the account for his client, DEFENDANT JOHN, no later than Monday, April 14, 2003 at 12:00 p.m. The Court shall then redact any information that may be pertaining to any other client and provide the appropriate information to counsel for PLAINTIFF SUSAN.**
>
> **IT IS further ORDERED that the Court issued a *BENCH WARRANT* today, April 11, 2003 at approximately 2:20 p.m., with the amount to purge HIS contempt being $619,000.00.**
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> [Ex.OAE-18¶1.]

On April 15, 2003, respondent filed an emergent application with the Appellate Division. The Appellate Division denied the application for a stay of the order, pending appeal, but granted a stay of the warrant for John's arrest, on the condition that (1) $325,000 be turned over to Hurley's law firm forthwith to be held in trust "pending allocation by the trial court as to the various outstanding obligations," and (2) $325,000 be secured by cash or corporate surety deposited with the Clerk of the Appellate Division within ten days. That was done.

On October 28, 2004, the Appellate Division affirmed the final judgment of divorce in all respects "for the reasons articulated by Judge Cohen in her cogent and comprehensive oral decision of January 27, 2003."

Thereafter, respondent filed a petition for certification with the Supreme Court, which was denied. Hurley testified that, as of the date of the DEC hearing, April 27, 2005, Susan still had not received her share of the $600,000, and the parties were due back in court in May 2005.

As stated above, the first count of the complaint charged respondent with lack of candor toward the court, lack of fairness to opposing party and counsel, truthfulness in statements to others, violation of the Rules of Professional Conduct, conduct involving dishonesty, fraud, deceit or misrepresentation, conduct prejudicial to the administration of justice, and failure to safeguard trust funds.

Recordkeeping Charges

The second count of the complaint charged respondent with violations of the recordkeeping rules.

Specifically, the complaint stated that, in November 1988, an OAE random audit of respondent's books and records uncovered certain deficiencies outlined in a 1989 letter to respondent. On February 6, 1989, respondent submitted a letter to the OAE, certifying that the noted deficiencies had been corrected. Nevertheless, at a subsequent audit conducted on June 23, 2003, the OAE discovered that some of the deficiencies previously

found -- failure to maintain trust receipt and trust disbursement books and failure to reconcile trust account records -- were still occurring.

At the DEC hearing, respondent testified that, several months before the second audit, he had switched from a "stone and chisel" method to a computerized system. He claimed that, during the OAE auditor's visit to his office, he had been unable to produce receipts and disbursements journals, individual client ledger sheets, and a reconciliation of his trust account, but that he had all those records. According to respondent, he had asked his secretary to print individual ledger sheets, but she could not figure out "which button to push to send out that information in one line, rather than sending it out . . . into each individual client ledger." Respondent added that the secretary worked late that day and that the requested records were on his desk the next day. Respondent attached some of those records to his answer, although most of them are for the period January to March 2003. Asked by the panel chair if he regularly performed quarterly reconciliations of his trust account, respondent replied "yes," but admitted that he had not performed them between January and June 2003.

Respondent advanced several mitigating factors, such as his civic and community activities, as well letters from many

individuals attesting to his good personal and professional reputation.

At the conclusion of the hearing, the DEC found that, in light of the "care and precision" with which the cashier's check was treated in the judge's pendente lite order, and the obvious concern that the judge had for the safekeeping of the funds, as inferred by her pendente lite order and her treatment of the matter post-trial, respondent's failure to deposit the check in an interest-bearing account "was to Judge Cohen a material fact, and that . . . materiality was or should have been known to Respondent," and, therefore, "Respondent's failure to disclose to Judge Cohen that the Cashier's Check had not been deposited in a bank account . . . was an omission reasonably certain to mislead Judge Cohen (who otherwise believed, and reasonably so, that the money had been safeguarded as ordered)." The DEC concluded that such conduct violated RPC 3.3(a)(5).

On the other hand, the DEC found that respondent was candid with Hurley about his failure to deposit the check in a bank account. The DEC, therefore, dismissed the charged violation of RPC 3.4(c).

As to RPC 8.4(c), the DEC found that "the only possible dishonesty, fraud, deceit or misrepresentation involved the conduct pertaining to the failure to deposit the Cashier's Check

in a bank account arises from the failure to disclose the circumstances to Judge Cohen, and, as such, is more accurately and appropriately dealt with under the findings . . . regarding a violation of RPC 3.3(a)(5)."

With respect to the charged violation of RPC 1.15(a), the DEC found that

> [r]espondent's attempt to "safeguard" the Cashier's Check by storing it under his blotter for a period of over seven months, without receipt delivered to the client, without trust accounting required in connection with handling the property of other, and without, in the view of the Committee, adequate safeguards for the security and safekeeping of the property (in light of its value, materiality to the underlying case, and easy portability), constitutes a violation of RPC 1.15(a) with regard to the actual Cashier's Check itself (as distinct from the funds or bank account reflected therein) . . . .
>
> [HPR7.][3]

In addition, the DEC determined that respondent's distribution of the $600,000 to John violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). The DEC found that

> Judge Cohen was ignorant of the fact that the check was not already deposited in a bank account. She believed, therefore, incorrectly, that the funds were being held subject to the signatory veto of Susan or her counsel Hurley. Had she been aware of

[3] HPR refers to the hearing panel report.

> the true fact, we find, she would likely have made provisions pertaining to the safekeeping of such funds or the check.
>
> [HPR9.]

The DEC disagreed with respondent's argument that Susan's share of the $600,000 did not have to be satisfied out of those funds. The DEC concluded that the final judgment of divorce "can be read to identify the specific source of funds for payment, contradicting Respondent's interpretation: 'The Court awards the Plaintiff the sum of 300,000 from this sum of money.'"

On the other hand, the DEC found that respondent's disbursement of the $600,000 to John did not constitute a failure to safeguard funds, because

> [w]hen the check was finally deposited by Respondent into his attorney trust account . . . the accounting was performed properly, the distribution of the proceeds was made properly, and Respondent's client ended up with the funds belonging to him. The Committee finds that no failure to safeguard client funds was committed in connection with the *disbursement* of the $600,000 from the trust account to client John.
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> [HPR10.]

The DEC dismissed the charge that respondent violated RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or

fraudulent act by the client). The DEC found no evidence of a criminal or fraudulent act by John.

As to the charge that respondent violated the recordkeeping rules, the DEC found that respondent's admitted failure to perform reconciliations between January and June 2003 violated R. 1:21-6. The DEC found no clear and convincing evidence of any other recordkeeping violations.

In sum, the DEC found that respondent's failure to bring to the judge's attention the failure to deposit the check in a bank account constituted lack of candor toward a tribunal, a violation of RPC 3.3(a)(5); his failure to safeguard the check while in his custody violated RPC 1.15(a); his distribution of the $600,000 to his client after the trial, without notice to Hurley and the judge, violated RPC 3.4(c); and his failure to perform trust account reconciliations between January and June 2003 violated R. 1:21-6. The DEC dismissed all the other charges.

The DEC recommended an admonition.

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

Unquestionably, respondent failed to safeguard the $600,000 cashier's check when he left it under his blotter for eight

months, undeposited and exposed to a risk of being stolen or otherwise misused. At a minimum, faced with difficulties in strictly complying with the court order, respondent should have deposited it into his trust account. Like the DEC, thus, we find that respondent's failure to safekeep that important asset violated RPC 1.15(a).

Furthermore, respondent's failure to disclose to the court his difficulties in following her specific instructions about the deposit of the check constituted a lack of candor toward the court, a violation of RPC 3.3(a)(5). The judge's pendente lite order made it clear that safekeeping the funds until her final decision was paramount: "this ORDER is for maintenance purposes only to insure the money is housed in a safe facility." (Emphasis added). That Hurley was aware of the check's whereabouts is relevant only as to respondent's obligation to keep Hurley informed of any developments affecting the substantial asset that the check represented. Just as critical as Hurley's knowledge and acquiescence was the need to apprise the judge that strict compliance with her order was either difficult or impossible. Because of the judge's obvious concern in preserving the $600,000 until she was in a position to decide whether it was subject to equitable distribution, respondent had the utmost duty to reveal to her his difficulty in complying

with her precise instructions. His failure to do so violated RPC 3.3(a)(5), in addition to RPC 8.4(d) (conduct prejudicial to the administration of justice).

More egregious was respondent's disbursement of the $600,000 to John after the court made its ruling that those funds were subject to equitable distribution. Following seven days of trial spread over a six-month period, the judge painstakingly placed her decision on the record, awarding to Susan, among other things, one-half of the $600,000. The source of Susan's share was the $600,000 funds themselves: "The Court awards the plaintiff the sum of $300,000.00 from this sum of money." (Emphasis added). The final judgment of divorce made it clear that there were no other significant assets from which payment of the $300,000 could be made. Moreover, according to respondent's own testimony, John was experiencing financial difficulties: he was unable to work because of injuries, had no income, and had accrued support arrearages. In fact, the court, too, was concerned about John's economic situation; it ordered him to set aside $84,000 in an interest-bearing account to secure future support payments for five years.

In light of the foregoing, respondent's position that John was not obligated to use those precise funds to pay the $300,000 to Susan was disingenuous at best. The record leaves no doubt

that there were no other assets to fund Susan's share of the $600,000, that respondent and the court were fully aware of this circumstance, and that the judge's orders clearly mandated that the $600,000 be preserved for the purpose of satisfying her equitable distribution rulings. Yet, respondent unconcernedly surrendered the funds to the very person from whom they had to be guarded.

For the same reasons, respondent's alleged reliance on the doctrine of merger was not only unreasonable in this instance, but not grounded on good faith. The court's pendente lite order required that the funds be safeguarded in a bank account; the court's oral decision after the trial required John to show proof that the $600,000 was kept intact in an "account or entity or . . . vessel;" when the judge entered the final judgment of divorce, she believed that respondent was keeping the $600,000 in escrow ("[a]n asset known as the $600,000 "T-Bill" Check is being held by Counsel for defendant") and, finally, the judgment of divorce required the payment of the $300,000 to Susan "from this sum of money."

The court, thus, made it clear -- and respondent had to know -- that the $600,000 were not "fungible;" those were the precise funds that had to be preserved until trial and the precise funds that were to be used for equitable distribution.

Respondent's position that the provision in the final judgment of divorce bound only John, not him, is hollow and specious. He was the keeper of the funds at the time of the final judgment of divorce. We find, thus, that respondent deliberately breached the provisions of the final judgment of divorce when he released the $600,000 to John, a violation of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), as well as RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent's failure to disclose to Hurley that he had disbursed the $600,000 to John, too, was improper, and a violation of RPC 8.4(c) (misrepresentation). In some situations, silence can be no less a misrepresentation than words. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). After the entry of the final judgment of divorce, the judge imposed a February 28, 2003 deadline for John to pay the $300,000. When that deadline expired and no payment was forthcoming, Hurley wrote to respondent, to no avail. Hurley was forced to file a motion to enforce litigant's rights. Respondent submitted a response to that motion, but did not report that he no longer had the funds under his custody. It was only on the return date of the motion that respondent revealed to Hurley and to the judge that he had allowed John to take possession of the funds.

Knowing that Hurley, like the court, reasonably assumed that respondent was still the custodian of the funds, respondent had the duty to inform Hurley that they were now under John's control. His failure to do so constituted a misrepresentation by silence, a violation of RPC 8.4(c).

We concur, however, with the DEC's dismissal of the charged violation of RPC 4.1. There is no evidence that respondent's lack of disclosure to Hurley was intended to assist a criminal or fraudulent act by his client.

On the other hand, we are unable to agree with the DEC's finding of no failure to safeguard client funds after respondent deposited the $600,000 in his trust account, in February 2003, and disbursed them to John. At that juncture, at least one-half of the $600,000 was no longer client funds; they were not John's monies entirely, but Susan's monies too, because the judge had awarded her $300,000. RPC 1.15(a) requires attorneys to safeguard not only client monies, but monies that belong to third persons as well. Therefore, respondent's disbursement of the $600,000 to John clearly constituted a failure to safekeep funds of a third person — Susan.

As to recordkeeping irregularities, we agree with the DEC that, with the exception of respondent's failure to perform reconciliations between January and June 2003, the evidence does

not clearly and convincingly establish that he failed to maintain the records cited in the complaint (trust receipt and trust disbursement books). Although respondent did not produce those records on the day of the OAE audit, he testified that they were being properly maintained and that he was unable to show them to the OAE because of his secretary's unfamiliarity with the computer program. Respondent attached at least some of those records to his answer to the complaint. Under these circumstances, we find that respondent's failure to reconcile his trust account records, between January and June 2003, was the only violation of R. 1:21-6 and, therefore, RPC 1.15(d) (a rule mistakenly cited in the complaint as RPC 1.15(a)).

Nevertheless, the above recordkeeping impropriety should not be taken lightly. In 1988, during a prior audit, the OAE identified respondent's lack of reconciliation as one of his accounting problems. After that audit, respondent certified to the OAE that all noted deficiencies had been remedied. Therefore, the recurrence of this particular problem must not be viewed with indulgence.

Lack of candor toward a tribunal leads to discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition where the attorney failed to reveal her client's

real name to a municipal court judge when her client appeared in court using an alias, thus resulting in a lower sentence because the court was not aware of the client's significant history of motor vehicle infractions; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand where a municipal prosecutor failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a charge of driving while intoxicated intentionally left the courtroom before the case was called, resulting in the dismissal of the charge; the attorney did not have an improper motive and "may not have clearly seen the distinct line that must be drawn between his obligations to the court and his commitment to the State, on the one hand, and, on the other, his feelings of loyalty and respect for the police officers with whom he deals on a regular basis." Id. at 480); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Chasan, 154 N.J. 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing

that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee and then misled the court into believing that he was retaining the fee in his trust account; attorney misled his adversary also, failed to retain fees in a separate account, and violated recordkeeping requirements); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a charge of driving while intoxicated; although the attorneys represented to the municipal court that the arresting officer did not wish to proceed with the case, they did not disclose that the reason for the dismissal was the officer's desire to give a "break" to someone who supported law enforcement); In re Forrest, 158 N.J. 429 (attorney suspended for six months for failure to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); In re

Cillo, 155 N.J. 599 (1998) (one-year suspension where, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension where attorney, who had been in an automobile accident, misrepresented to the police, her lawyer, and a municipal court judge that her babysitter had been operating her vehicle and presented false evidence in an attempt to falsely accuse another of her own wrongdoing; two members of the Court voted for disbarment).

Release of trust or escrow monies in contravention of a court order generally results in a reprimand. See, e.g., In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who was required to hold in trust a fee in which she and another attorney had an interest; instead, the attorney took the fee, in violation of a court order) and In re Milstead, 162 N.J. 96 (1999) (reprimand for attorney who disbursed escrow funds to his client, in violation of a court order). But see In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who held in escrow

$3,900 until a fee dispute with prior counsel was resolved; we considered the attorney's belief that prior counsel had either waived or forfeited her claim to the fee). Unlike respondent, however, attorney Spizz had a good faith belief that he could have released the funds to his client.

For failure to reconcile his trust account records, without more, an admonition would be appropriate. See, e.g., In the Matter of Scott A. Liebling, DRB 03-182 (September 17, 2003) (admonition for attorney who did not maintain his attorney records in accordance with R. 1:21-6 by, among other things, not reconciling his trust account) and In the Matter of Arthur D'Alessandro, DRB 01-247 (June 17, 2002) (admonition where random audit found recordkeeping deficiencies). Here, however, there is an aggravating factor: respondent was not attentive to his recordkeeping responsibilities as he should have been after his 1988 audit.

Other aggravating factors are respondent's experience in matrimonial matters at the time of his misconduct in the Grzechowiak matter; the harmful consequences of his conduct, such as, the unnecessary taxing of judicial resources, and Susan's non-receipt of her share of the equitable distribution, at least as of the date of the DEC hearing, April 27, 2005; and respondent's steadfast refusal to acknowledge any wrongdoing.

Mitigating factors are respondent's lack of a disciplinary record, his numerous civic and community activities, and several letters attesting to his good personal and professional character.

Respondent's conduct was more analogous to that exhibited in In re Chasan, supra, 154 N.J. 8. There, the attorney represented to prior counsel, in writing, that he would satisfy an attorney's lien out of settlement proceeds. In the Matter of Michael A. Chasan, Docket No. 96-478 (DRB June 3, 1997) (slip op. at 3). It was understood that the issue of the apportionment of the fee would be resolved by the trial court. Ibid.

In a certification in support of his motion for the division of the fee, the attorney stated that he had attempted to resolve the apportionment of the fee with prior counsel and that the entire legal fee ($12,000) was being kept in his trust account. Id. at 4. Because of the attorney's failure to serve a copy of the motion on prior counsel, the trial court denied the motion. Id. at 5.

A couple of months after the attorney filed his motion, he disbursed the entire fee to himself without informing prior counsel, who believed that the fee was being safeguarded in the attorney's trust account. Ibid.

After negotiations between the attorney and prior counsel failed to resolve the fee issue, the assignment judge conducted a conference to settle the dispute. Ibid. At that time, the judge directed the attorney to deposit the $12,000 with the court within twenty-four hours. Id. at 5-6. The attorney did not comply with the judge's instruction. Instead, his office informed the judge that the fee matter had been resolved. Id. at 6. At this juncture, the judge believed that the attorney was still holding the $12,000. Ibid.

When the assignment judge learned that there had not been a resolution of the fee dispute, he ordered the attorney to appear before him to explain why the $12,000 deposit had not been made. Id. at 7. At that time, the attorney admitted to the assignment judge that he did not have the $12,000 and skirted the issue of its whereabouts. Id. at 8.

At the ethics hearing, the attorney asserted a belief that he had complied with the assignment judge's direction, id. at 12-13, an assertion that we found disingenuous. Id. at 14. We found that the attorney had led both the trial court judge and the assignment judge to believe that he was still in possession of the $12,000. Id. at 15-16. We also found that this lack of candor continued when the attorney dodged the judge's questions about the location of the funds. Ibid.

Other violations were the attorney's misrepresentation to prior counsel that he would pay off the attorney's lien out of the settlement proceeds, failure to disclose to prior counsel that he had released the $12,000 to himself, failure to safeguard the funds in his trust account, and recordkeeping improprieties uncovered during an audit performed by the OAE. Id. at 15-16.

The attorney was suspended for three months for the above violations. He had received a prior reprimand for improperly endorsing a client's check in order to collect his legal fee. In re Chasan, 91 N.J. 381 (1982).

Like attorney Chasan, respondent made misrepresentations to a court and to his adversary, breached the recordkeeping rules, failed to safeguard trust funds, and violated a court's instructions to hold funds intact (in Chasan, a judge's directive; here, a final judgment of divorce). That Chasan had been reprimanded before and respondent has no record of discipline is counterbalanced by the circumstance that, in Chasan, the prior counsel was awarded the return of the disputed fee, whereas, in this matter, Susan still has not received her share of the $600,000, more than two years after the entry of the final judgment of divorce. Furthermore, respondent's release of the monies could have caused even graver consequences to

Susan: because the $600,000 were necessary to distribute her share of the marital assets, if John had dissipated them she would have suffered considerable, if not irreparable, economic injury.

We, therefore, conclude that the discipline meted out in Chasan, a three-month suspension, is also the appropriate sanction for respondent's serious unethical behavior.

Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Louis Pashman, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bruce Hasbrouck
Docket No. DRB 05-279

Argued: November 17, 2005

Decided: December 14, 2005

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy					X
Boylan	X				
Holmes	X				
Lolla	X				
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel