SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 00-056

IN THE MATTER OF

JOEL F. SHAPIRO

AN ATTORNEY AT LAW

Decision

Argued: June 15, 2000

Decided: January 31, 2001

Mallary Steinfeld appeared on behalf of the District X Ethics Committee.

Raymond Barto 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 based on a recommendation for discipline filed by the District X Ethics Committee (DEC). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the DEC), arising out of his representation of a party to an automobile lease. Approximately eight months after the DEC hearing, the presenter filed an amended complaint charging respondent with violations of RPC 1.5(b) (failure to provide a written retainer agreement) and RPC 1.15 (failure to safeguard client funds). These last two allegations were based on respondent's testimony

during the hearing. Respondent filed an answer admitting the additional allegations.

Before us, respondent filed a motion to supplement the record with a psychiatric report. We granted the motion, considering the contents of the report only in mitigation of respondent's conduct.

This is not respondent's first brush with the disciplinary system. On January 16, 1997 he was admonished for failure to return a client file or to recommend to his superiors that the file be turned over to the client. In the Matter of Joel F. Shapiro, Docket No DRB 96-343. Respondent was admitted to the New Jersey bar in 1989. He is currently employed as an associate at the law offices of Robert Blackman, in Edison, Middlesex County. During the time relevant to the within matter, respondent was a sole practitioner (until March 1, 1997). Respondent then closed his practice and performed per diem work at McCarter & English. Beginning on or about May 15, 1997 respondent worked first on a per diem basis and then as an associate at the law offices of James DeZao.

The facts are as follows:

On or about October 29, 1996 John Parker consulted with respondent about a claim that he owed over $5,000 on a previously leased vehicle. According to respondent, he told Parker at that time that, although Parker might not have a defense to the demand for payment, there might be a basis for a third-party complaint for consumer fraud. Respondent never presented Parker with a written retainer agreement or discussed his fees with Parker.

Parker received a notice of debt, dated January 20, 1997, and a complaint filed by

WSFS Credit Corporation ("WSFS"), dated January 24, 1997, which he delivered to respondent's office. Respondent testified that, after looking into the matter, he decided not to file an answer because he believed that it would be frivolous to do so. Respondent stated that he so advised Parker. According to respondent, he never told Parker about the consequences of not filing a responsive pleading.

According to Parker, in or about early February 1997 respondent told him that he needed money for a "filing fee." On or about February 10, 1997 respondent went to Parker's place of business to pick up a check for $175. Parker wrote "file fee" on the memo line of the check. On February 24, 1997 respondent deposited the check in his business account. At the time that respondent received the check, he had not yet decided to go ahead with the third-party proceeding. When respondent was asked at the ethics hearing what he intended to do with the money if the complaint was not filed, he replied that he "honestly didn't know." As to what respondent told Parker about the complaint, respondent stated in his answer that he told Parker that he would research the consumer fraud issue and determine how to proceed. At the DEC hearing, however, respondent testified that he had told Parker that he would file a complaint, which he did not do.

When respondent did not file an answer to the WSFS complaint, a default was entered against Parker on March 3, 1997. A judgment was docketed on May 15, 1997. Thereafter, in June 1997, Parker received notice of an application for wage execution, which Parker "faxed" to respondent's office. According to Parker, respondent told him that he

would contact WSFS' attorney and take care of the matter.

In August 1997 a sheriff's officer came to Parker's place of employment and served him with a wage execution. The total amount of the wage execution, including interest and sheriff's fees, was $6,200. According to Parker, when he called respondent, respondent suggested that he file for bankruptcy. Respondent, in turn, did not recall having made that suggestion.

On an undisclosed date prior to September 10, 1997, Parker retained another attorney to attempt to vacate the judgment and the wage execution. It was respondent's contention that, until Parker retained other counsel, he could have proceeded with the consumer fraud action. The record does not disclose why respondent failed to do so. As it turned out, new counsel's motion to vacate was denied.

The wage execution detrimentally affected Parker, who has been unable to meet his monthly financial obligations. Parker testified that, if respondent had advised him early on that there were no defenses to the WSFS complaint, he would have made arrangements to pay off the debt.

As to the $175 filing fee Parker gave respondent, in or about June 1997, during the course of the above proceedings, Parker sought respondent's help with a landlord/tenant matter. Apparently, Parker moved into a new house and his former landlord was seeking additional money from him. Parker testified that he asked respondent about his fee for the representation and that respondent never told him that he was using the $175 for his fee in

the landlord/tenant matter. To the contrary, Parker continued, he thought that respondent had utilized the $175 in connection with the vehicle lease case. Respondent, on the other hand, testified that he told Parker that he would apply the $175 toward his fee in the landlord/tenant matter.[1] During his opening statement, however, respondent stated that

> . . . it should have been clear to Mr. Parker that when he came to me to ask me to deal with his former landlord, who was seeking damages on the rental unit before they bought a home, that by applying the filing fee, that we were abandoning the potential third-party complaint. I did not ever put that in writing.
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> [T9/10/99 at 18]

This statement is at odds with respondent's testimony that he could have filed the third-party complaint until Parker retained other counsel.

With regard to communication, Parker and respondent apparently had two meetings: the first meeting in October 1996 and the second in February 1997, when respondent picked up the $175 check. Although the details are not well fleshed out in the record, they apparently had a few brief phone conversations. Respondent sent no written communication to Parker about the case.

* * *

By letters dated December 31, 1997 and February 3, 1998 the DEC investigator asked respondent for a reply to Parker's grievance. The investigator also made more than one call

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[1]Respondent sent a letter to the landlord in Parker's behalf. The record does not reveal what else, if anything, respondent did in this matter. The landlord/tenant dispute is not the subject of this ethics proceeding.

to respondent. The complaint alleged that no reply to the grievance was ever received.

Respondent introduced into evidence a letter dated February 13, 1998, in which he replied to the grievance. Respondent contended that he "faxed" and mailed the letter to the investigator. Inexplicably, she did not receive it. Respondent admitted that he was less than diligent in complying with the investigator's requests for information about the grievance.

* * *

The DEC found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b) [the DEC report mistakenly cited section (d)], RPC 1.15(b) and RPC 8.1(b). The DEC was concerned about the deposit of the $175 filing fee into respondent's business account:

> Mr. Shapiro, upon receiving a check, noted that it was for filing fees, promptly deposited same into his business account. When he deposited that, he had not earned any of these fees. Moreover, he did not do any work. Further, he kept the monies without doing any work and did not inform the client. Frankly, it is the opinion of this Hearing Panel, that Mr. Shapiro's conduct borders on a negligent misappropriation. This was not alleged in the Complaint or the Amended Complaint. Plainly, under the allegations in the Complaint which this panel deals with, Mr. Shapiro violated this Rule.

In mitigation, the DEC considered that respondent showed remorse, "recognized the gravity of his errors," was engaged in various community service activities and, lastly, served as a borough councilman and on the planning board, both without compensation.[2]

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[2]For unknown reasons, the DEC mistakenly considered in aggravation that at the time of the representation, respondent did not have an attorney trust account. Respondent testified that he had a trust account.

Taking all of the factors into account, two of the three panel members recommended that respondent be suspended for six months. The third member suggested that a three-month suspension was sufficient discipline.

* * *

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

At the outset, we note that the DEC's concern about respondent's deposit of the $175 for filing fees in his business account was unfounded. It is well-settled that advances for costs that are received from clients may be deposited into the attorney's business account or trust account. In re Stern, 92 N.J. 611 (1983).

As to the handling of the complaint filed against Parker, respondent displayed gross neglect and lack of diligence and also failed to communicate with his client. Parker was not kept apprised of any developments in his case, including respondent's decision not to file an answer. Parker testified that, had he known the default would be entered if the complaint went unanswered, at a minimum he could have taken steps to pay off the debt to the leasing company. In addition, there is no question that respondent should have advised Parker, in writing, that he was not filing an answer to the complaint. Respondent, thus, not only neglected this matter, but also did not see to it that Parker had an understanding of the case. Respondent, therefore, violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a).

Respondent's violation of RPC 1.5(b) is also clear. He admitted that he did not give

Parker a written retainer agreement and that there was no discussion of fees for his representation in the vehicle lease matter.

As to respondent's alleged failure to reply to the DEC, respondent produced a letter on his former employer's letterhead that, he contended, he had sent to the DEC investigator. He could not explain why she had not received it. Considering that respondent cooperated with the DEC after the filing of the first complaint, we dismissed the alleged violation of RPC 8.1(b).

As to the consumer fraud complaint, it is difficult to determine what respondent discussed with Parker. In one breath, respondent stated that he told Parker that he would research the matter; in the next, he testified that he told Parker that he would file a complaint. Although respondent may have misrepresented the status of the complaint to Parker, we are unable to conclusively make that finding on this record.

As to the $175 advanced for filing fees, whether respondent told Parker that he was using the $175 as his fee in the landlord/tenant matter poses a credibility question. Although, given the rest of respondent's communication with Parker, it is unlikely that that information was conveyed clearly, if at all, we are unable to find clear and convincing evidence of a violation in this regard and dismissed the allegation of a violation of RPC 1.15.

In sum, we found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 1.5. We cannot agree, however, with the DEC's recommendation for a six-month

suspension, which we find unduly harsh. We recognize, though, that it may have been premised on the DEC's mistaken beliefs that respondent did not have a trust account and that the $175 had to be deposited into respondent's trust account.

There remains the question of the proper quantum of discipline. Respondent has a prior admonition, which was imposed in January 1997, during the course of the within events. Respondent, thus, should have been on his guard and mindful of his conduct.

By way of mitigation, respondent supplemented the record with a report from Kenneth Lichtman, M.D., his current treating psychiatrist. Although Dr. Lichtman did not treat respondent during the relevant time, October 1996 through June 1997, he opined that it was during that time that respondent suffered from his first bout of major depression. His report states that major depression would make it impossible for respondent to have functioned as an attorney. According to the report, respondent currently takes wellbutrin, is depression – free and is performing well.

As additional mitigation, the DEC pointed to respondent's numerous civic activities, both political and youth-oriented. Besides the activities cited by the DEC, respondent has volunteered his time for legal services in Somerset County and Sussex County. Indeed, respondent testified that, several years earlier, he received the Sussex County Bar Association's pro bono public service award.

Respondent presented persuasive mitigation. In light, however, of (1) the seriousness of his neglect of Parker's matter and (2) his previous admonition, we unanimously

determined to impose a reprimand. See, e.g., In re Gavin, 153 N.J. 356 (1998) (reprimand imposed where an attorney grossly neglected a personal injury matter, resulting in the running of the statute of limitations; the attorney also failed to communicate with his client) and In re Paradiso 152 N.J. 466 (1998) (reprimand imposed where the attorney failed to act with diligence and failed to communicate with the client in a personal injury matter. The attorney had been the subject of a diversion for minor misconduct).

In addition, respondent is to practice law under the supervision of a proctor for a period of one year and is to complete the skills and methods courses offered by the Institute for Continuing Legal Education. Finally, respondent is required to return the $175 to Parker.

One member recused himself.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 1/31/01

By _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joel F. Shapiro
Docket No. DRB 00-056

Argued: June 15, 2000

Decided: January 31, 2001

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy						X	
Schwartz			X				
Wissinger			X				
Total:			8			1	

Robyn M. Hill 2/15/01
Robyn M. Hill
Chief Counsel