

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-112

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IN THE MATTER OF :  
:   
A. THOMAS PALAMARA, :  
:   
AN ATTORNEY AT LAW :  
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Decision of the  
Disciplinary Review Board

Argued: May 17, 1995

Decided: August 11, 1995

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based upon a recommendation for discipline filed by the District VI Ethics Committee (DEC). The formal complaint charged respondent with recordkeeping violations and lack of diligence, in violation of R.1:21-6(b) and (c)(i), RPC 1.3 and RPC 1.15(a), (b) and (d). Respondent admitted the material allegations of the complaint.

Respondent was admitted to the New Jersey bar in 1951 and has been in private practice in Jersey City, Hudson County. He has no history of discipline.

Respondent was the subject of random compliance audits on January 22 and February 26, 1986. By letter dated March 12, 1986, Samuel I. Gerard, then Auditor-in-Charge for the Random Audit

Program of the Office of Attorney Ethics, enumerated eleven recordkeeping violations found as a result of the audits. There were no allegations of misappropriation.

During the February 26, 1986 audit, the auditor, Chris McKay, with respondent's assistance, prepared a schedule of clients' ledger sheets. Respondent informed the auditor that he was holding \$7,500 in his trust account in the Pauline Daab estate matter.

A third audit was conducted on November 6, 1986. A new schedule of clients' ledgers was prepared with respondent's assistance. Respondent did not include the \$7,500 Daab funds in the new schedule of client ledgers.

By letter dated January 14, 1987, respondent provided the auditor with additional information, including a list respondent had prepared of all funds then being held in his trust account. The Daab funds were not among those listed. Respondent, in fact, still held the majority of the Daab funds.

According to a reconstructed disbursements journal prepared by respondent, only one disbursement was made between the two audits in the Daab matter for a May 2, 1986 payment of New Jersey inheritance taxes in the amount of \$963.09. Respondent did not disburse the remainder of the estate funds. As a result, the substituted administrator, C.T.A., instituted proceedings in Superior Court, on February 14, 1991, to compel respondent to turn over the funds. On March 15, 1991, respondent turned over the balance due in Daab of \$6,536.91.

As a result of respondent's actions in the Daab estate matter, a demand audit of his attorney books and records was conducted on January 12, 1994. Respondent contended that he had failed to disburse the Daab funds because he had been unaware that he had the funds in his trust account. According to respondent's answer and testimony, on an unspecified date, Dennis L. McGill, Esq., substituted as counsel in the Daab estate matter and respondent turned over the file to him. At that time, respondent had no records to remind him that he held the Daab funds and respondent then seemingly forgot about them until the court action. During the DEC hearing, respondent admitted that he was not diligent in disbursing the funds, attributing his lack of diligence to the fact that he had already been dismissed as counsel and had turned the file over to Mr. McGill.

The last bank statement for respondent's trust account produced at the January 12, 1994 audit was from November 1993. It showed an ending balance of \$32,441.18. At the time of the audit, respondent was unable to explain to whom the funds belonged. Respondent contended that a portion of the funds in his trust account represented earned fees, but had no idea of the dollar amount involved. During the audit, respondent also admitted that he had not reconciled his trust account in five years and did not maintain client ledgers in all matters. He further conceded that he did not maintain receipts and disbursement journals and did not maintain a running balance in his trust account checkbook.

By letter dated January 24, 1994, respondent was asked to provide the OAE with certain information, including copies of bank statements for his trust account from July 1993 to January 1994 together with a then-current reconciliation of his client ledger balances to his trust account balance. As of April 12, 1994, respondent had failed to produce that information. Respondent stated in his answer that, at the time he received the OAE's request to produce the documents, he was in Florida receiving treatment for arthritis and was unable to reply due to his condition.

During the DEC hearing, respondent stated that he wished to dispose of this matter as expeditiously as possible and had no defense to any of the charges in the complaint. In beginning his statement to the DEC, respondent noted that it was his "lucky day" because he was being divorced after forty-eight years of marriage and had received a complaint in foreclosure on his home and office.

By way of mitigation, respondent stated that he suffers from, among other ailments, Parkinson's disease. Indeed, as noted by the DEC, he had "a great deal of difficulty even removing his coat and hat and finding his seat." Hearing panel report at 4. Respondent explained that he is semi-retired and his practice is limited to municipal court appearances and a small amount of real estate work. He further stated that he stopped using his trust account in January 1994.

The DEC determined that respondent had failed to properly maintain his trust and business account records since at least the first random audit in 1986. Although he cooperated with the OAE and tried to reconstruct trust records and account for funds held, he was unable to produce sufficient information to do so. Respondent, thus, violated R.1:21-6(b) and (c)(i), RPC 1.3 and RPC 1.15(a), (b) and (d).

The DEC noted respondent's cooperation and stated that it was "sympathetic to his medical problems and believe that had he been in better health, he may have been able to properly prepare those accounts and documents whose absence form [sic] the basis of the grievance." Hearing panel report at 4-5. Further, the DEC noted that respondent had maintained an unblemished record during forty-three years in private practice. The DEC recommended the imposition of "a public reprimand as it is the minimal discipline which may be imposed." (Hearing panel report at 5). It is unclear whether the DEC meant that a reprimand was the minimum discipline warranted under existing case law or whether it mistakenly believed that a reprimand is the lowest level of discipline imposed on errant attorneys.

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


Whether because of his failing health or some other reason, respondent has, since an audit in January 1986, nine and one-half years ago, failed to bring his records into compliance with the requirements of the rules. The Board recognizes, however, that this is an elderly, ailing individual who did not have disciplinary difficulties until age and infirmity took their toll. In light of his lack of previous discipline and current circumstances, the Board unanimously determined that an admonition is sufficient discipline for his recordkeeping infractions.

At the DEC hearing, respondent produced an October 31, 1994 bank statement showing his trust account balance to be \$29,027.84. Respondent produced a list of amounts in his trust account that he had been able to identify as, for example, a "Judgment Collection" or "Survey" that accounted for all but \$3,673.65 of the \$29,027.84 balance. Despite respondent's ability to identify the source of the majority of the funds, he was unable to allocate the funds to specific files. It is possible that at least a portion of the money, in fact, belongs to respondent. There are no complaints pending against him nor are any clients asking for their funds. These factors lend some credence to respondent's belief that the funds are his. That issue must be resolved and the funds distributed, if so required. Therefore, the Board also determined that a proctor, approved by the Office of Attorney Ethics, be

appointed for the limited purpose of assisting in closing respondent's practice and in closing out his trust account.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/11/95

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board