

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 00-292

IN THE MATTER OF :
: :
WALTER D. NEALY :
: :
AN ATTORNEY AT LAW :
: :

Decision

Argued: November 16, 2000

Decided: April 3, 2001

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Bernard K. Freamon 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 disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent, in which respondent admitted a violation of RPC 1.15(a) and (d) (failure to safeguard funds and failure to maintain required attorney trust account records) and R.1:21-6 (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1984. He maintains an office for the practice of law in Hackensack, Bergen County. He was privately reprimanded on June 22, 1990 for misconduct in a real estate matter. Specifically, he failed to pay real estate taxes and a homeowner's insurance bill in a timely fashion and to remit certain closing documents

to the mortgagee, despite numerous requests by his client, the attorney for the mortgagee and the title company.

This matter arose from allegations made by Shirley Green that respondent did not account for \$8,000 in settlement proceeds that he withdrew from a special account established for Green's disabled adult son, for whom she is the legal guardian.¹ Respondent drew three checks totaling the \$8,000 in question: \$1,500 on October 12, 1994, \$2,500 on October 14, 1994 and \$4,000 on November 30, 1994. According to Green, she did not authorize those payments to respondent.

The OAE's investigation and demand audit revealed deficiencies in respondent's trust accounting practices concerning his representation of Green's son and his trust account generally. The details of respondent's misconduct were set out in the report of the OAE's investigative auditor, John M. Dillon ("the investigator,") which was incorporated into the stipulation.² The investigator found that respondent had negligently misappropriated \$4,000 in client trust funds.

Respondent asserted that the three checks in question represented authorized and approved attorney's fees for legal services he had provided to Green, as guardian for her son. Respondent stated that the \$8,000 fee encompassed a divorce proceeding and a personal

¹This matter was referred to the OAE by the attorney who represented Green after she terminated respondent's services.

²The stipulation in this matter is sparse, with no specific information about respondent's misconduct.

injury matter. Respondent contended that he had discussed his fees with Green and that she had authorized him to withdraw \$4,000 for his services in the divorce proceeding and other related work. According to respondent, the \$1,500 check drawn on October 12, 1994 and the \$2,500 check drawn on October 14, 1994 were payments for his fees. Respondent claimed that the check drawn on November 30, 1994 for \$4,000 was part of an enhanced fee awarded by the court for the personal injury action.

Green, in turn, stated that, although she had not signed a retainer agreement for the personal injury case, she may have signed one for the matrimonial matters. Although she was unable to recall a specific discussion with respondent about his fees, she conceded that they may have discussed them at some point. She was uncertain about the amount of fees owed to respondent, but acknowledged that he was owed fees for his services, as well as a contingency fee for the personal injury matter.

Indeed, respondent gave the investigator a copy of a signed retainer agreement in the personal injury case. Furthermore, Margaret Holbrook, Esq., who served as a consultant on the personal injury matter, was contacted by the investigator. Holbrook recognized Green's signature on the document, as well as her own signature. When Green was told that respondent had given the OAE a signed retainer agreement in the personal injury case, she conceded that it was possible that she did not recall signing the retainer agreement due to the strained situation with her son.

As to the matrimonial matter, as noted earlier, Green did not recall authorizing the two

October 1994 checks. She stated, however, that she may have discussed those fees with respondent in general terms. As also noted above, respondent asserted that he discussed those fees with Green and that she had authorized the \$4,000 withdrawal. According to the investigator, due to respondent's inadequate recordkeeping, it is unclear if respondent advised Green that two checks totaling \$4,000 were drawn against the special account. The investigator added that "[g]rievant's concession that she may have discussed fees with respondent adds to the uncertainty of the circumstances under which the two checks were drawn by respondent." In his brief, the presenter concluded that respondent should have the benefit of the doubt as to whether he was entitled to the \$4,000 in fees in the divorce proceeding.

As to the fee in the personal injury matter, Green recalled testifying at a hearing about the award of an enhanced fee to respondent. Respondent supplied to the OAE a court order dated November 29, 1994, awarding him an enhanced fee of \$363,200 as his justification for drawing the \$4,000 check, which was part of the fee.

During the audit, respondent was shown three checks from Green to him. One check, dated December 10, 1994, was for \$100,000; the other two checks, both dated February 16, 1995, totaled \$13,200, for an aggregate of \$113,200. When that amount is added to the \$250,000 fee respondent received from settling Green's son's personal injury suit, plus the \$4,000 respondent withdrew (\$113,200 plus \$250,000 plus \$4,000 equal \$367,200), it is clear that respondent received \$4,000 more than the \$363,200 enhanced fee awarded by the court.

According to respondent, he had been unaware of the total amount he had received and did not realize that he had received \$4,000 more than the court's award until he was confronted with the information during the audit. Respondent claimed that he had forgotten about the \$4,000 check drawn on November 30, 1994 and had assumed that Green had paid him only what was owed to him, when she gave him the three checks in December and February.

At the audit, respondent disclosed that Green had initiated legal proceedings against him to recover the \$4,000 overpayment, along with other funds she claimed he owed her. Respondent indicated that he was willing to reimburse Green and had retained an attorney to settle the claim. On May 24, 2000 Green confirmed that she had settled the matter with respondent for the full amount she claimed he owed her.

According to the investigator,

[respondent's] inadequate record keeping obviously contributed to his failure to recognize that grievant had over paid him by \$4,000. Had he maintained an accurate client ledger and reconciled his trust account and the special account set up for grievant's case, he would have known that he had been over paid. Respondent failed to adequately safeguard the funds held in his possession for his client by not realizing that he was over compensated for his fees.

During the demand audit, respondent was advised that, in 1996, he had not reconciled two attorney trust accounts. Respondent admitted that his trust account had not been reconciled for the audit period, June 1992 to April 1999. Also, he stated that his files were in disarray because he had moved to a new office location. Despite assurances by respondent

and his counsel that a trust account reconciliation would be performed, it was never submitted to the OAE.

Lastly, respondent failed to maintain proper client ledgers, did not keep copies of statements to clients evidencing disbursements made in their behalf, did not keep copies of bills to clients, did not keep copies of deposit slips and did not reconcile his trust accounts on a quarterly basis. The investigator stated that, due to the passage of time since the transactions and the disarray of respondent's records, it was unlikely that a complete reconciliation of respondent's trust accounts could be performed.

Respondent stipulated that he negligently misappropriated \$4,000 in client trust funds in connection with the personal injury matter, in violation of RPC 1.15(a), and failed to maintain his trust account records in accordance with R.1:21-6 and RPC 1.15(d). The OAE acknowledged that the evidence did not support a finding of negligent misappropriation in the divorce matter.

The OAE recommended that respondent receive a reprimand. In addition, the OAE suggested that respondent be required to attend a continuing legal education course on attorney trust and business accounting within one year of the Court's order in this case and that he submit to the OAE quarterly reconciliations of his trust accounts for a period of two years.

* * *

Upon a de novo review of the record, we are satisfied that respondent's conduct, as stipulated, was unethical. The interesting twist in this matter was that, at the time that respondent took the \$4,000, he was, in fact, entitled to it, pursuant to the court's award of an enhanced fee. The fact that the withdrawal took place the day after the award lent support to respondent's explanation for the \$4,000 withdrawal. The negligent misappropriation actually occurred later, when respondent received the balance of his fee and failed to inform Green that he had already received a \$4,000 advance.

In support of its recommendation for a reprimand, the OAE cited In re Lazzaro, 127 N.J. 390 (1992), and In re Hennessy, 93 N.J. 358 (1983). In Lazzaro, the attorney was publicly reprimanded for recordkeeping violations that resulted in the negligent misappropriation of client funds. The attorney's accounts were not in order and were primarily personal or family accounts. The misappropriation was not willful, but the result of inadequate recordkeeping. In addition, the attorney had no prior discipline and no clients were harmed. In Hennessy, the attorney was publicly reprimanded for "flagrant record keeping errors combined with an apparent lack of comprehension of the proper operation of an attorney's accounts." An audit of the attorney's records revealed relatively minor shortages in his account, which were not attributable to any client. The attorney had a previously unblemished record, conducted a limited practice out of his house and had installed a bookkeeping system in compliance with the auditor's instructions.


Generally, an admonition or a reprimand is the appropriate discipline for recordkeeping deficiencies and negligent misappropriation, even if accompanied by other minor misconduct. See, e.g., In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (admonition imposed where the misrecording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed where the attorney had deficient recordkeeping practices and failed to prepare quarterly reconciliations of client ledger accounts, resulting in negligent misappropriation of client trust funds in eleven instances); In re Goldstein, 147 N.J. 286 (1997) (reprimand where the attorney negligently misappropriated client funds as a result of recordkeeping deficiencies) and In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where the attorney negligently misappropriated client funds after commingling personal and client funds).

In support of its recommendation that respondent receive a reprimand, the OAE cited as aggravating factors respondent's prior private reprimand and his inability to reconcile his trust account because of the poor state of his records. We agree that these are aggravating circumstances that must be considered in assessing the proper measure of discipline. Respondent's records were in quite a state of disarray due to respondent's failure to reconcile them for years. Nothing in the record explains the reason for respondent's shoddy accounting practices.

In light of the foregoing, we unanimously determined that a reprimand is the appropriate form of discipline for respondent's negligent misappropriation of \$4,000. In addition, we agreed with the requirements proposed by the OAE, that is, an attorney accounting course and the submission to the OAE of quarterly reconciliations of his trust account for two years. The reconciliations are to be prepared by an accountant approved by the OAE.

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

Dated: April 3 2001

By: 

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Walter D. Nealy
Docket No. DRB 00-292**

Argued: November 16, 2000

Decided: April 3, 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:			9				

Robyn M. Hill 7/12/01
Robyn M. Hill
Chief Counsel