SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-455

IN THE MATTER OF
ELLIOT D. MOORMAN
AN ATTORNEY AT LAW

Decision

Argued: February 6, 2003

Decided: May 5, 2003

Denzil R. Dunkley appeared on behalf of the District VB Ethics Committee.

Respondent did not appear, despite proper notice.

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 VB Ethics Committee (DEC). The two complaints alleged that respondent improperly endorsed his client's name to a settlement check, charged an unreasonable fee and deceived the client's prior attorney regarding the fee.

Respondent was admitted to the New Jersey bar in 1977. He was publicly reprimanded in 1990 for failure to maintain proper time records and to preserve the identity of client

funds. In re Moorman, 118 N.J. 422 (1990). In 1994 he was suspended for three months for gross neglect, lack of diligence, failure to keep a client informed about the status of the matter and failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions. In re Moorman, 135 N.J. 1 (1994). In 1999 he received another reprimand for lack of diligence, failure to provide a written retainer agreement, failure to comply with bookkeeping requirements and failure to cooperate with disciplinary authorities. In re Moorman, 159 N.J. 523 (1999). On January 30, 2003 the Supreme Court suspended respondent for three months for conduct prejudicial to the administration of justice, conflict of interest, release of escrow funds without the consent of the parties, withdrawal of fees without the client's consent and failure to utilize a retainer agreement. In re Moorman, N.J. (2003).

* * *

I. The Pennycooke Matter - District Docket No. VB-00-37E

In January 1997 Gorgetta Pennycooke, the grievant, retained respondent to represent her for injuries sustained in an automobile accident. Respondent and Pennycooke signed a retainer agreement. In August 1998 respondent negotiated a $12,500 settlement with State Farm Insurance Company ("SFI"), the other driver's insurance carrier. By letter dated August 17, 1998 respondent notified Pennycooke of the settlement. Respondent sent several more letters to Pennycooke, attempting to obtain her signature on the settlement documents. Finally, in October 1998 Pennycooke signed and returned those documents, including a

release of claims and a settlement statement.

In early November 1998 respondent received SFI's $12,500 settlement check, which named Pennycooke and respondent as co-payees. Respondent signed Pennycooke's name and his own, before depositing the check in his trust account on November 19, 1998. Thereafter, respondent disbursed the funds, including $8,056.50 to Pennycooke and a one-third fee to himself.

Pennycooke testified that she never authorized respondent to affix her signature to the settlement check. She recalled that respondent asked her if he could do so, and that she denied his request. Moreover, she stated, she was unaware of respondent's action until she contacted SFI in early December 1998.

On December 14, 1998 Pennycooke filed a complaint with the East Orange Police Department, which filed the following report:

> Victim states that the suspect her attorney cashed a check for settlement of a Motor Vehicle accident without her signature. The victim also states that the suspect asked her in November if he could indorse [sic] her settlement check when it came and the victim advised him 'No.'
> The victim further stated that the only way she found out that the Insurance Company had paid out was when she called the Insurance Company herself on December 4th or 5th due to the long wait and was advised that the check had been mailed and cashed on November 23, 1998. Victim referred to courts.

At the DEC hearing, respondent admitted signing Pennycooke's name to the settlement check, but claimed that Pennycooke had agreed to that arrangement in a voice-mail message left for him at his office. Respondent regretted that he had not saved the message or memorialized the purported agreement, citing deterioration in the attorney/client relationship with Pennycooke as the reason for that omission.

Respondent also testified that he was unaware that attorneys are prohibited from endorsing settlement checks for clients. He added that, during this period in his legal career, he was unaware of some of the procedure required of attorneys. He noted that he learned many things during a two-year proctorship served in another ethics matter, at about this time.[1] It should be noted, however, that in 1998 respondent had been an attorney in New Jersey for twenty-one years.

The ethics complaint charged respondent with a violation of RPC 8.4(c).

II. The Teitelbaum Matter - District Docket No. VB-00-35

Howard Teitelbaum, the grievant, was Pennycooke's prior attorney in the accident case. Teitelbaum represented Pennycooke for the six months immediately preceding his referral to respondent, which occurred in January 1997. Upon the referral of the matter to respondent, they agreed that respondent would pay Teitelbaum a one-third fee for work already performed in the case. Respondent's January 23, 1997 letter to Teitelbaum confirmed their understanding by stating, "I acknowledge and confirm our understanding that I will forward to your office a 1/3 referral fee for any recovery received."

On or about December 1, 1998 respondent disbursed the settlement proceeds, including the entire legal fee of $4,162.50 to himself.

On December 23, 1998 Teitelbaum wrote to respondent inquiring about the status of

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[1]Respondent believed that the proctorship spanned the two-year period 1998-2000. Our records show that the two-year proctorship was to become effective upon respondent's reinstatement to the practice of law, on November 21, 1994.

the matter, since he had not yet received a fee. Respondent did not reply to Teitelbaum's request for information. According to Teitelbaum, in February 1999 he had a chance encounter with respondent at the courthouse, at which time he questioned respondent about his fee. Teitelbaum testified that respondent assured him that he "had a check" for Teitelbaum on his desk and that he would send it to him.

Hearing nothing from respondent, on March 11, 1999 Teitelbaum wrote to him requesting the fee and warning him that his failure to forward it could have ethics ramifications. Respondent replied on March 17, 1999, accusing Teitelbaum of refusing to help him deal with Pennycooke in late 1998, "the most ill-mannered, obstreperous and foul-mouthed client I had ever met." Respondent further cautioned Teitelbaum to read RPC 1.5(e), the rule dealing with fee-splitting. The letter did not explain the significance of the rule or its effect on their agreement.

According to Teitelbaum, after several more letters to respondent and another chance meeting at the courthouse, Teitelbaum agreed to accept $750 in full satisfaction of his fee, tired of chasing respondent for payment. Teitelbaum testified that within weeks respondent reneged on this new agreement as well, lowering his "offer" to $500. Respondent never paid Teitelbaum. Over the course of the next year, Teitelbaum wrote six more letters to respondent, to which respondent did not reply.

On May 10, 2000 Teitelbaum filed the within grievance, troubled by respondent's actions:

> Because of the manner in which I was treated and misrepresentations and the lies and the sluffing me off, changing of stories and it was just – I reluctantly

> did that. I don't want to visit upon anyone any hardships, I just couldn't believe the manner in which I was treated.

For his part, respondent acknowledged that he had agreed to pay Teitelbaum a one-third fee. He claimed, however, that he later realized that Teitelbaum had not performed much work in the case and was not entitled to one-third of the fee. Therefore, respondent added, he negotiated with Teitelbaum and settled upon a figure of $750. Thereafter, respondent had a change of heart and unilaterally determined that Teitelbaum was entitled to only $500, an offer that Teitelbaum refused. Respondent's explanation for what occurred thereafter is vague. It appears, however, that he read RPC 1.5(e) in response to Teitelbaum's March 11, 1999 letter to him and was "shocked" to discover that the Supreme Court frowned on fee-splitting. Respondent stated that he then decided to pay Teitelbaum nothing and to wait for Teitelbaum to sue him or assert his claim to a fee in some official forum, such as a fee arbitration committee. Respondent conceded, however, that he never took action to settle the fee issue.

Another aspect of the Pennycooke case came under scrutiny at the DEC hearing — respondent's calculation of the fee on the gross settlement amount of $12,500. The DEC cited R.1: 21-7(d), which requires attorneys in tort recoveries to first deduct "disbursements in connection with the institution and prosecution of the claim," prior to calculating the legal fee. Respondent admitted that he had calculated the fee on the gross recovery, that he had done so in other matters, and that he had changed that practice in response to either his proctor's observations or an audit of his trust and business accounts, conducted by the Office of Attorney Ethics in February 2000. It is not known how many times respondent

miscalculated his fee.

The complaint alleged that respondent's conduct toward Teitelbaum violated RPC 8.4(c) (dishonesty or deceit). The complaint is silent about the improper fee calculations.

* * *

In Pennycooke, the DEC found that, by signing Pennycooke's name to the settlement check, respondent deceived her, the bank that issued the check and SFI, in violation of RPC 8.4(c). In Teitelbaum, the DEC found that respondent deceived Teitelbaum, concluding that he never intended to honor the one-third fee agreement or the later $750 compromised fee, despite his obvious agreements to do so. The DEC also found that respondent miscalculated his fee, in violation of R.1: 21-7(d). Finally, the DEC found a pattern of "fraud and deceit" in the two matters.

* * *

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.

Unquestionably, respondent mishandled the Pennycooke matter. First, he improperly signed Pennycooke's name to SFI's settlement check. It is well-settled in New Jersey that client authorizations to endorse tort settlement drafts are not allowed, barring extraordinary circumstances. In reversing an opinion from the Advisory Committee on Professional Ethics on the issue of such authorizations, our Supreme Court "[did] not perceive the advantage gained in client convenience as sufficient to outweigh the increased risk for the unscrupulous lawyer to victimize his or her clients." In re A.C.P.E. Opinion 635, 125 N.J. 181 (1991). That

matter focused on situations in which a lawyer would obtain a written authorization via a form sent to the client, as part of the settlement package. Respondent never even attempted to obtain a written authorization in this case. Therefore, he cannot claim any cover for his actions in this regard, even if they had been sanctioned by Pennycooke.

The DEC found Pennycooke to be the more credible witness. The DEC concluded that she never authorized respondent to endorse the settlement check in her behalf. We deferred to the DEC on this issue, as it was able to observe the witnesses' demeanor and assess their credibility. We, therefore, found that respondent deceived Pennycooke, the bank and SFI by forging Pennycooke's endorsement on the check.

In the Teitelbaum matter, too, respondent deceived Teitelbaum, to whom he had agreed to pay a partial fee for work performed before the case was referred to respondent. The DEC properly found that respondent had no intention of paying Teitelbaum any sums by way of legal fees. Indeed, respondent never notified Teitelbaum after the matter settled in August 1997; in December 1997 he received the settlement check and did not inform Teitelbaum that he had received it; rather, he deposited the check and disbursed the entire fee to himself; lastly, for the next several years, respondent stalled Teitelbaum, ignoring his letters and, only when pressed at face-to-face meetings with Teitelbaum, did he promise some sort of resolution. In effect, respondent tried to wear Teitelbaum down, "chiseling" away at the amount that he thought Teitelbaum would finally agree to receive, in the event that Teitelbaum did not relent.

Once the grievance was filed, respondent "switched gears," claiming the moral high

ground and asserting that his agreement with Teitelbaum violated the RPCs. Yet, he never advised Teitelbaum or anyone else of such alleged reservations. Moreover, RPC 1.5(e)(1) unambiguously states that lawyers who are not in the same firm may share legal fees if the division is proportionate to the services performed by each lawyer. We, therefore, found that respondent's intent was to ignore the fee agreement with Teitelbaum. In reality respondent "hoodwinked" Teitelbaum, in violation of RPC 8.4(c).

Lastly, respondent improperly calculated his fee over the gross settlement amount. R.1:21-7(d) requires attorneys to calculate a contingent fee in a tort action "on the net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim ...." Hard-pressed to explain his failure to do so here, respondent argued his ignorance of the rule, explaining that he had used the gross recovery method to calculate fees in other matters as well. That respondent may have been ignorant of his duties in this regard is irrelevant. "Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct." In re Berkowitz, 136 N.J. 134, 147 (1994). Although the complaint did not allege a violation of R.1:21-7(d), the issue was fully litigated below. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

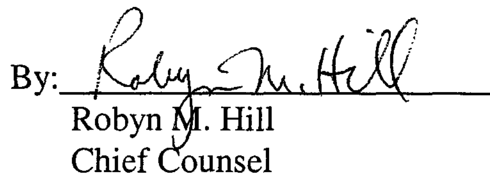
Cases involving false signatures on documents warrant at least a reprimand. See, e.g., In re Giusti, 147 N.J. 265 (1997) (reprimand for attorney who forged his client's name on a medical release form, forged the signature of a notary public to the jurat and used

the notary's seal); In re Simms, 151 N.J. 480 (1997) (reprimand for attorney who signed a client's name on both a settlement check and a release and then acknowledged the "signature" on the release, albeit with the client's authorization); and In re Robbins, 121 N.J. 454 (1990) (reprimand for attorney who, for the sake of expediency, affixed the signature of two grantors to a deed and then notarized the signatures). Here, respondent also acted with dishonesty and deceit toward Teitelbaum. Moreover, he is not a newcomer to the profession or to the disciplinary system. He had been practicing law for more than twenty years before he engaged in the within misconduct. His disciplinary history is extensive. He was publicly reprimanded in 1990 for failure to maintain proper time records and to preserve the identity of client funds. In 1994 he received a three-month suspension for gross neglect, lack of diligence, failure to keep a client informed about the status of the matter and failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions. At that point, he was required to practice under a proctorship for two years, upon his reinstatement in November 1994. Then in 1999 he received another reprimand for lack of diligence, failure to provide a written retainer agreement, failure to comply with bookkeeping requirements and failure to cooperate with disciplinary authorities. Finally, he was recently suspended for three months for conduct prejudicial to the administration of justice, conflict of interest, release of escrow funds without the consent of the parties, withdrawal of fees without the client's consent and failure to utilize a retainer agreement. Unquestionably, respondent has little regard for the rules governing New Jersey attorneys. We, therefore, unanimously determined to impose a three-month suspension, to be served consecutively to

his most recent suspension. One member recused himself. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Vice-Chair

By:

Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

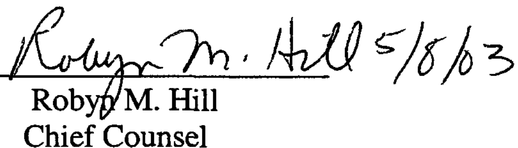
In the Matter of Elliot D. Moorman
Docket No. DRB 02-455

Argued: February 6, 2003

Decided: May 5, 2003

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson						X	
Maudsley		X					
Boylan							X
Brody		X					
Lolla							X
O'Shaughnessy		X					
Pashman		X					
Schwartz		X					
Wissinger		X					
Total:		6				1	2



Robyn M. Hill
Chief Counsel