

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
DOCKET NO. DRB 00-143

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IN THE MATTER OF : :  
: :  
GLENDON G. BELL : :  
: :  
AN ATTORNEY AT LAW : :  
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: :

Decision

Argued: October 19, 2000

Decided: March 26, 2001

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Christopher C. Cona 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 pursuant to R.1:20-6(c)(1) and arose from respondent's knowing misappropriation of settlement proceeds belonging to a client.

The three-count complaint charged respondent with (1) knowing misappropriation of client trust funds, in violation of RPC 1.15 and RPC 8.4(c) (count one); (2) failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b) (count two) and (3) recordkeeping improprieties, in violation of RPC 1.15(d) and R.1:21-6(b) (count three). Respondent filed an answer admitting the allegations of the first and third counts of the complaint and admitting in part and denying in part the allegations of the second count.

On March 30, 2000 the special master who was assigned to hear this matter held a telephone conference with the Office of Attorney Ethics ("OAE") and respondent's counsel. During the conference, the OAE agreed to dismiss the allegations of the second count of the complaint. In addition, respondent's counsel acknowledged respondent's earlier admissions as to counts one and three and indicated that he had no intention of amending the answer to deny the allegations in those counts. Furthermore, counsel represented that he did not intend to seek a hearing on the issue of mitigation.

Although respondent apparently suffered from some psychological problems, at least at the time of the scheduled demand audit, respondent's counsel admitted to the OAE that respondent did not have a mental illness defense to knowing misappropriation, sufficient to meet the standard of In re Jacob 95 N.J. 132 (1984). Counsel wanted to raise as mitigating factors respondent's lack of a disciplinary record, the fact that only one client's funds were involved and respondent's "complete or near-complete restitution." Because of the absence of any dispute of material fact or request from either party to be heard in mitigation or in aggravation, the record was forwarded directly to us without a hearing before the special master, pursuant to R.1:20-6(c)(1).

Respondent was admitted to the New Jersey bar in 1978. He previously maintained an office in Woodbury, Gloucester County.

By letter dated September 7, 1999 the OAE notified respondent that he was going to be the subject of a demand audit of his attorney books and records. The audit was prompted

by a claim of misappropriation made by Robert W. Keller, a former client of respondent. The OAE's letter advised respondent that the audit would be conducted on September 14, 1999, that he should be present in his office and that he had to present his trust and business records for inspection at that time. On September 13, 1999 the OAE confirmed the scheduled audit with respondent's secretary/paralegal. However, when an OAE attorney and an auditor arrived at respondent's office at the scheduled time, neither respondent, nor the Keller file or the attorney trust account records related to that matter were available.<sup>1</sup>

On September 15, 1999 the OAE petitioned the Court for respondent's immediate temporary suspension. Respondent was temporarily suspended on September 21, 1999. He remains suspended to date.

### **Count One**

In July 1998 respondent settled a civil matter in Keller's behalf for \$13,500. Respondent was entitled to \$2,000 as his fee; the remaining \$11,500 was to go to Keller. In fact, although Keller's civil suit was settled for \$13,500, respondent received only \$9,833.32 in settlement funds. The original terms of the settlement required defendant Myers & Son Home Remodeling to contribute \$1,000; \$4,166.66 was to be paid by each of the three remaining defendants: Bugs Or Us Termite & Pest Control, Glocker Realty and Margaret

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<sup>1</sup>Earlier that morning, respondent was seen leaving his office taking with him what was possibly the Keller file and his attorney account records. Respondent left behind a suicide note. Exhibit 5. He was located later that day by the police.

Kiefer. Kiefer, however, refused to contribute to the settlement. In an attempt to resolve the matter, the attorney for Glocker Realty agreed to contribute an additional \$500. The total settlement was, therefore, reduced by \$3,666.66 (\$4,166.66 due from Kiefer less the additional \$500 paid on behalf of Glocker Realty). Respondent made no attempt to enforce the settlement against Kiefer.

The OAE's investigation revealed that, on September 30, 1998, respondent began writing "fee" checks to himself from the \$9,833.32 settlement proceeds that had been entrusted to him. Respondent was entitled to only a \$2,000 fee and had no authority to take any funds in excess of that amount. The "fee" checks were deposited either in respondent's attorney business account to pay operating expenses or in respondent's personal account. By November 20, 1998 respondent had used all of Keller's money.

Following the settlement, Keller pressed respondent for the funds for one year. After hearing nothing but excuses from respondent, on August 17, 1999 Keller finally asked him if he had spent the settlement money. Respondent admitted that he had. He asked Keller for time to repay the funds. To that end, respondent prepared and signed a promissory note that he gave Keller. On August 20, 1999 respondent wrote a \$500 check to Keller, drawn on his attorney business account. Keller did not cash the check. He filed a claim with the New Jersey Lawyer's Fund for Client Protection ("CPF"), which referred this matter to the OAE.

\* \* \*

The complaint charged respondent with knowing misappropriation of client trust funds, in violation of RPC 1.15 (failure to safeguard client funds) and RPC 8.4(c) (conduct

involving dishonesty, fraud, deceit or misrepresentation).

Respondent admitted the misconduct alleged in the complaint and added that he has reimbursed the CPF for funds disbursed to Keller.

### **Count Three**

Respondent failed to maintain his trust and business account records in compliance with the requirements of R.1:21-6. According to the complaint, the following violations were found:

(a) A trust receipts book was not maintained [R.1:21-6(b)(1)].

(b) A trust disbursements book was not maintained [R.1:21-6(b)(1)].

(c) A business receipts book was not maintained [R.1:21-6(b)(1)].

(d) A business disbursements book was not maintained [R.1:21-6(b)(1)].

(e) Clients' trust ledger sheets were not fully descriptive. [R.1:21-6(b)].

(f) A schedule of clients' ledger accounts was not prepared and reconciled to the trust account bank statement [R.1:21-6(b)(8)].

\* \* \*

The complaint charged respondent with a violation of RPC1.15(d) by his failure to comply with the provisions of R.1:21-6.

Respondent admitted his misconduct in this count.

\* \* \*

Following a de novo review of the record, we found that the record clearly and convincingly establishes that respondent knowingly misappropriated Keller's funds and also violated the recordkeeping rules. Under In re Wilson, 81 N.J. 451 (1979), respondent must be disbarred. It matters not that he has repaid the stolen funds:

When restitution is used to support the contention that the lawyer intended to 'borrow' rather than steal, it simply cloaks the mistaken premise that the unauthorized use of clients' funds is excusable when accompanied by an intent to return them. The act is no less a crime. [Citations omitted]. Lawyers who 'borrow' may, it is true, be less culpable than those who had no intent to repay, but the difference is negligible in this connection.

[In re Wilson, supra, 81 N.J. at 458]

In In re Noonan 102 N.J. 157 (1986), the Court again announced that the attorney's intent and motives are irrelevant:

It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment.

[In re Noonan, supra, 102 N.J. at 160]

Under Noonan, no amount of mitigation will save from disbarment attorneys who knowingly misappropriate trust funds.

Neither will respondent's prior unblemished record spare him from being disbarred:

The inexperience or, conversely, the prior outstanding career, of the lawyer, often considered a mitigating factor in disciplinary matters, seems less important to us where misappropriation is involved. This offense against common honesty should be clear even to the youngest; and to distinguished

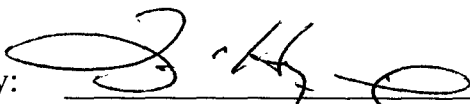
practitioners, its grievousness should be even clearer.

[In re Wilson, supra, 81 N.J. at 459-460]

In light of respondent's admission that he knowingly misappropriated Keller's funds, we unanimously recommend that he be disbarred. One member did not participate.

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

Dated: 3/26/01

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

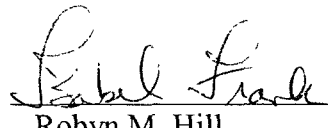
**In the Matter of Glendon G. Bell  
Docket No. DRB 00-143**

**Argued: October 19, 2000**

**Decided: March 26, 2001**

**Disposition: Disbar**

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						
<b>Total:</b>	<b>8</b>						<b>1</b>

By  6/6/01  
Robyn M. Hill  
Chief Counsel