

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-158

IN THE MATTER OF :
:
ALTHEAR A. LESTER :
:
AN ATTORNEY AT LAW :
:

Decision
Default [R.1:20-4(f)(1)]

Decided: January 22, 2001

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

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics (“OAE”) certified the record in this matter directly to the Board for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On March 16, 2000 the OAE forwarded a copy of the complaint to respondent’s home address by certified and regular mail. The certified mail was returned as “unclaimed/refused,” the regular mail was not returned. On April 6, 2000 the OAE forwarded a letter to respondent’s home address. The regular mail was not returned.

Additionally, on April 13, 2000 the OAE published a legal notice in the Newark Star-Ledger, a newspaper of general circulation in Essex County, New Jersey, where respondent's residence is located.

Respondent did not file an answer to the complaint. The matter was certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1969. He formerly maintained a law office at 38 East Park Street, Newark, N.J.

In 1989 respondent received a public reprimand for gross neglect in two matters, as well as for failure to carry out his contract of employment and failure to cooperate with disciplinary authorities. In re Lester, 116 N.J. 774 (1989). In 1992 respondent was privately reprimanded for a violation of RPC 1.4(a)(failure to communicate). In the Matter of Althear A. Lester, Docket No. DRB 92-110. In 1996 respondent was publicly reprimanded for violations of RPC 1.4(a)(failure to communicate), RPC 1.15(b)(failure to release a file), and RPC 5.3(b)(failure to supervise office staff). In re Lester, 143 N.J. 130 (1996).

On April 15, 1997 respondent was suspended for six months for violations of RPC 1.1(a)(gross neglect), RPC 1.1(b)(pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.16(d)(failure to surrender client papers), RPC 4.1(a)(knowingly making a false statement of material fact), RPC 8.1(b)(failure to cooperate), and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation). In re Lester, 148 N.J. 86 (1997).

On October 17, 2000 respondent was suspended for one year for violations of RPC 8.1(b), RPC 1.16(d), RPC 1.4(a), RPC 1.1(a). In re Lester, 165 N.J. 510 (2000).

* * *

After being suspended from the practice of law in April 1997, respondent failed to comply with R. 1:20-20, which regulates the future activities of suspended attorneys. Respondent did not close his attorney trust account and continued to use it for over two years, to the present time, for receipt and distribution of settlement proceeds to clients and disbursements of legal fees to himself, in violation of R. 1:20-20(b)(5). Respondent also failed to file the required affidavit detailing his compliance with R. 1:20-20. R. 1:20-20(b)(14).

Respondent formerly represented the estate of John Robinson and the estate's executrix, Leoyns Owens, the decedent's sister. On May 10, 1996 respondent deposited \$20,000 into his attorney trust account, to be escrowed for the sale of two real estate properties belonging to the estate. Although the real estate closings took place on July 8, 1996, respondent did not remit \$10,000 to Owens and her new attorney, Helen Cummings, Esq. (retained after respondent's suspension) until October, 1998 (while he was under suspension). The check was marked "balance of escrow." Although Owens and her attorney demanded that respondent account for the remaining \$10,000 of the escrowed funds, respondent failed to reply.

Owens stated to the OAE investigator that respondent was not entitled to retain the

escrowed funds as his legal fee or for any other reason, and that he had not used these escrowed funds to make payments on behalf of the estate.

As of November 30, 1999, respondent's attorney trust account balance was \$7,806.32, or \$2,193.68 less than \$10,000 belonging to the estate.

The complaint charged respondent with a violation of RPC 8.4(d)(conduct prejudicial to the administration of justice) based on his failure to comply with the provisions of R. 1:20-20, knowing misappropriation of client trust funds in violation of RPC 1.15(failure to safeguard client's property) and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation), and failure to safeguard client funds, in violation of RPC 1.15.

* * *

Service of process was properly made in this matter. Following a de novo review of the complaint, the Board found that the facts recited therein support a finding of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent's failure to comply with the requirements of R. 1:20-20(b)(5) and R. 1:20-20(b)(14), governing suspended attorneys, constituted a violation of RPC 8.4(d)(conduct prejudicial to the administration of justice). In addition, respondent's failure to file an answer to the complaint constituted a violation of RPC 8.1(b).

The complaint also recited facts sufficient to find both knowing misappropriation and a failure to safeguard client's property. For more than two years, respondent failed to deliver to Owens the funds she was entitled to receive, in violation of RPC 1.15(b). In the interim, he was suspended and, as charged in count one, continued to use his trust account for various matters. Even after two years, he transferred only half of the escrow funds due, having indicated that it was the entire amount owed, without accounting for the missing \$10,000.

Respondent clearly utilized at least a portion of the remaining escrow funds because his trust account balance fell short of the \$10,000 he should have been holding in behalf of the estate. Again, as set out in count one, he regularly used his trust account for various "clients" and for himself post-suspension. While some \$7,000 remained in the account at least as of November, 1999 (demonstrating taking by respondent of close to \$3,000), it would be unreasonable, given the activity in the account, to conclude that this was even Owens' money. More likely, those funds were long gone. At the same time, based on Owens' statement to the OAE investigator (contained in the investigative report), the entire \$20,000 deposit was to be returned to her, and respondent's use of the escrowed funds was unauthorized. These claims were unrebutted by respondent. Nor did his actions in returning only \$10,000 to Owens, marked as balance of escrow, rebut these claims, especially in view of his failure to account for the missing \$10,000. Given this record, the charge of knowing misappropriation of client funds in violation of RPC 1.15 and RPC 8.4(c), is supported and,

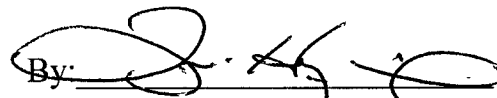
pursuant to R. 1:20-4(f)(1), admitted.

Clearly, the charge of failure to safeguard the client's property is substantiated here; indeed, it is subsumed in the charge of knowing misappropriation.

Conduct involving knowing misappropriation of client's funds invariably results in disbarment. In re Wilson, 81 N.J. 451. The Board unanimously determined to disbar respondent.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/22/01

By: 

LEE M. HYMERLING

Chair

Disciplinary Review Board

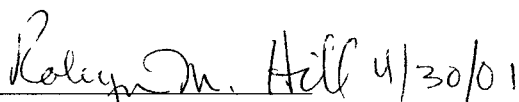
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Althea A. Lester
Docket No. DRB 00-158

Decided: January 22, 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						
Total:	9						


Robyn M. Hill
Chief Counsel