

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 05-100, 05-106,
05-118 and 05-137
District Docket Nos. IIB-03-030E,
IIB-03-019E, IIB-04-010E,
XIV-02-448E, XIV-03-217E,
XIV-04-0321E and XIV-05-0002E

IN THE MATTER OF
LARRY J. McCLURE
AN ATTORNEY AT LAW

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

Decided: July 8, 2005

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

These matters were before us on certifications of default
filed by the Office of Attorney Ethics ("OAE") and the District
IIB Ethics Committee ("DEC") pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1971. At
the relevant times, he maintained a law office in Hackensack,
New Jersey.

In 1999, respondent was admonished for misconduct in two
matters, including gross neglect, lack of diligence, failure to

communicate with clients, failure to provide client with a written retainer agreement, and failure to cooperate with disciplinary authorities. In the Matter of Larry J. McClure, Docket No. DRB 98-430 (February 22, 1999).

In 2003, respondent was suspended for six months, effective May 21, 2003, for misconduct in two matters, including gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, failure to communicate the basis or rate of the fee in writing, and misrepresentation to a client. In re McClure, 176 N.J. 121 (2003). Respondent received an additional, concurrent six-month suspension in 2004, in a default matter, for gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, and failure to communicate the basis or rate of the fee in writing. In re McClure, 180 N.J. 154 (2004). The Court further ordered that respondent remain suspended until the conclusion of all ethics matters pending against him as of March 10, 2004.

In another default matter, respondent received a one-year suspension for failure to comply with R. 1:20-20, thereby violating RPC 8.4(d) (conduct prejudicial to the administration

of justice), and failure to reply to a lawful demand for information from a disciplinary authority, violating RPC 8.1(b). In re McClure, 182 N.J. 312 (2005).

In March 2005, in yet another default matter, we voted to suspend respondent for an additional one-year period for failure to communicate with a client, failure to communicate the basis or rate of a fee in writing, and failure to cooperate with disciplinary authorities. In the Matter of Larry J. McClure, Docket No. DRB 04-395 (March 2, 2005). That matter is pending with the Court.

The following month, we considered respondent's fourth default, in which he was found guilty of having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities). We determined to impose a one-year suspension. In the Matter of Larry J. McClure, Docket No. DRB 05-069 (April 20, 2005). That matter is also pending with the Court.

DRB Docket No. 05-137 – District Docket Nos. XIV-02-448E, 03-217E, 03-321E, and 05-002E

On March 2, 2005, the OAE mailed the complaint to respondent at his last known office address listed in the Attorney Registration System, 58 Main Street, Hackensack, New Jersey 07601, by regular and certified mail, return receipt requested. The certified mail was returned stamped

"UNDELIVERABLE AS ADDRESSED FORWARDING ORDER EXPIRED." The regular mail was returned stamped "RTS" RETURN TO SENDER, and "NOT DELIVERABLE AS ADDRESSED."

Also on March 2, 2005, the OAE mailed a copy of the complaint to respondent's home address, 912 Mt. Holly Road, P.O. Box 55, Stillwater, New Jersey 08785, by regular and certified mail, return receipt requested. The certified mail was returned showing that it had been forwarded to respondent's South Carolina address, 4 Indigo Run Drive, Apt. 1623, Hilton Head Island, South Carolina 29926, but was returned unclaimed. The regular mail was not returned.

On that same date, the OAE had also mailed a copy of the complaint to the South Carolina address by regular and certified mail, return receipt requested. The certified mail was returned stamped "UNCLAIMED." The regular mail was not returned. Respondent did not file an answer.

On April 6, 2005, the OAE sent respondent a second letter to his home address in Stillwater, New Jersey, as well as to the Hilton Head Island, South Carolina address by regular and certified mail, return receipt requested. The letter notified respondent that, if he did not file an answer within five days the matter would be certified directly to us for the imposition of sanction and the complaint would be amended to include a

violation of RPC 8.1(b) (failure to reply to a lawful request for information from a disciplinary authority). As of the date of the certification of the record, neither the regular nor the certified mail had been returned. Respondent did not file an answer.

The four-count complaint charged respondent with violating RPC 1.15(a) (knowing misappropriation of trust funds) and the principles of In re Wilson, 81 N.J. 459 (1979); R. 1:20-20(b)(1) (practicing law while suspended), thus, presumably RPC 5.5(a) (unauthorized practice of law); RPC 8.1(a) (false statement of material fact to a disciplinary authority); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer — theft of client funds); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Count one of the complaint alleged that respondent maintained a trust account (No. 1019503) and business account (No. 1019937) at the Interchange Bank.

By letter dated September 13, 2002, the OAE scheduled a demand audit for September 24, 2002, to investigate a grievance filed by Anthony Scarola. Respondent was instructed to produce his client ledgers, bank statements, cancelled checks, deposit

slips, cash receipts, and cash disbursements journals for his trust and business accounts from October 1, 2000 to June 30, 2002. At respondent's request, the audit was rescheduled to September 26, 2002. On that date, respondent arrived at the audit without any of the requested documents.

Between October 25, 2002 and April 2003, the OAE repeatedly requested that respondent produce various records, including client files, client ledgers, reconciliations, and cash receipt disbursement journals, to no avail. As a result, on April 11, 2003, OAE Disciplinary Auditor Gary K. Lambiase went to respondent's office to review the requested documents. The materials Lambiase reviewed included a photocopy of respondent's December 2001 bank statement, which respondent had altered to conceal the misappropriation of trust funds. The OAE subpoenaed documents from the bank. A copy of that particular bank statement showed that respondent had deleted from it the December 28, 2001 balance of \$11,940.47 and check number 1333 in the amount of \$6,000.

The second count of the complaint stated that, on January 2, 2001, respondent deposited \$15,616.56 into his trust account for his client Anthony Scarola. On December 18, 2001, respondent had issued trust account check number 1331 for \$8,000 to "Choices" to prepay Scarola's funeral expenses. The check was

not negotiated until January 4, 2002. Respondent should have had \$15,616.56 in his trust account from January 2, 2001 to January 4, 2002, but he did not. On December 28, 2001, respondent had only \$11,940.47 in his trust account. Therefore, he had a trust account shortage of \$3,676.09. As noted above, respondent had deleted the December 28, 2001 balance of \$11,940.47 from the photocopy of the bank statement he had provided to the OAE at the April 11, 2003 demand audit.

Respondent also issued a \$6,000 check to Symphony Foster on December 28, 2001, which cleared his trust account on that same day, before he had deposited any funds into his trust account in her behalf. Respondent's trust account balance fell below the \$15,616.56 that he should have been holding for Scarola. Prior thereto, on December 24, 2001, he had deposited Foster's \$7,500 settlement check into his attorney business account, and used the entire amount by December 31, 2001, to pay his personal obligations. By that point, respondent had overdrawn his business account by \$457.71.

The complaint charged that respondent used the Scarola and Foster funds without either client's knowledge or consent.

Count three alleged that, on April 25, 2003, the day after the Supreme Court suspended respondent, but before the effective date of the order (May 21, 2003), respondent deposited \$28,000

into his trust account from his client Jonce Jovanoski in connection with a real estate refinancing.

On June 26, 2003, respondent received \$4,000 from Jovanoski's daughter, which he deposited into his business account, even though the check was made payable to his trust account. Thus, as of June 26, 2003, respondent should have had \$32,000 in his trust account for Jovanoski.

From May 23 through September 18, 2003, respondent engaged in a series of transactions in which he used Jovanoski's funds for his own personal obligations and to pay other client obligations. Therefore, as of September 18, 2003, his trust account balance was \$96.48, and his business account balance was \$117.32.

Respondent had written one trust account check, dated August 13, 2003, to Countrywide Home Loans for \$10,919.76, to pay off the mortgage on his residence in Stillwater, New Jersey.

Respondent utilized the \$32,000 deposited on behalf of Jovanoski without his client's knowledge or consent, and did not return any of the monies to Jovanoski.

Finally, count four alleged that, on August 6, 2003, while suspended from the practice of law, respondent met with Janeen Schultze and her son, Andrew Schultze, in connection with Andrew's municipal court matter. Janeen paid respondent a \$1,500

retainer. Respondent deposited Janeen's check into his trust account and, thereafter, converted it to his own use.

Janeen and Andrew appeared in municipal court, but respondent was not there. Another attorney informed them that respondent had been suspended from the practice of law. Although that attorney was not formally representing Andrew, he was able to obtain a reduced charge for Andrew.

Respondent did not refund any portion of the retainer, nor did he inform the Schultzes that he had been suspended from the practice of law.

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent failed to produce the information requested in connection with the OAE demand audit arising from the Scarola grievance. He also failed to file an answer to the complaint. This conduct constitutes a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

When respondent finally produced documents for the OAE's review, he included a copy of his trust account bank statement, which he had altered by eliminating evidence of a \$6,000 check

and the balance in the account as of December 28, 2001. Respondent altered the document to conceal the fact that he had misappropriated trust funds, thereby violating RPC 8.1(a) (false statement of fact to a disciplinary authority); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

Counts two and three of the complaint establish that respondent misappropriated client trust funds, in violation of RPC 1.15(a), In re Wilson, 81 N.J. 451 (1979), and RPC 8.4(c). Respondent misappropriated funds from his clients Anthony Scarola, Symphony Foster, and Jonce Jovanoski, using these clients' funds for personal and other clients' obligations.

The final count established that respondent accepted a fee after he was suspended from the practice of law, violating R. 1:20-20, and failed to inform his client about his suspension. His suspension prohibited his appearance on his clients' behalf, but he never refunded the client's retainer. Moreover, respondent's acceptance of a fee and representation that he was an attorney in good standing violated RPC 5.5(a) (unauthorized practice of law). His failure to return the unearned fee also violated RPC 1.16(d) (upon termination of representation, failure to return an unearned fee). Although the complaint did

not specifically charge respondent with violating RPC 5.5(a) and 1.16(d), it alleged sufficient facts to give respondent notice of such charges and an opportunity to defend against them.

In sum, respondent's conduct constituted violations of RPC 1.15(a) (knowing misappropriation of trust funds), and the principles of In re Wilson, 81 N.J. 459 (1979); R. 1:20-20(b)(1) (practicing law while suspended), thus, presumably RPC 5.5(a) (unauthorized practice of law); RPC 1.16(d) (failure to return an unearned fee); RPC 8.1(a) (false statement of material fact to a disciplinary authority); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(b) (commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer - theft of client funds); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

DRB Docket No. 05-100 - District Docket No. IIB-03-30E

On January 26, 2005, the DEC mailed the complaint to respondent at 912 Mt. Holly Road, P.O. Box 55, Stillwater, New Jersey 07875, by regular and certified mail, return receipt requested. The regular mail was not returned; the certified mail was returned stamped "unclaimed." Respondent did not file an answer to the complaint.

On March 11, 2005, the DEC sent a second letter to respondent at 4 Indigo Run Drive, Apt. 1623, Hilton Head Island, South Carolina, 29926-4116, by regular mail. The letter notified respondent that, if he did not file an answer to the complaint within five days, the matter would be certified to us for the imposition of discipline. The letter also informed respondent that the letter served as an amendment to the complaint to include a violation of RPC 8.1(b). The letter was not returned and respondent did not file an answer.

Patricia Pizarro retained respondent to represent her in a divorce matter. The retainer agreement provided for an initial retainer of \$5,000 against which Pizarro would be billed at a rate of \$225 per hour. The agreement further provided for a minimum fee of \$2,500, regardless of the amount of time that respondent spent on the matter, unless Pizarro reconciled with her husband or discharged respondent.

After Pizarro reconciled with her husband, she made a number of requests for an accounting of respondent's time and for respondent to consider the reconciliation as a modification of his minimum fee. Pizarro was unable to obtain a reply from respondent or a refund of the fee. We find that Pizarro's various unsuccessful attempts to contact respondent for an accounting of the fee violated RPC 1.4(a) (failure to

communicate with a client). We further find that respondent's failure to return the unearned portion of Pizarro's fee violated RPC 1.16(d) (failure to refund an unearned fee). In addition, we find that charging a minimum fee, \$2,500, regardless of the amount of time spent on the matter, violated RPC 1.5(a) (reasonable fee). Although this rule was not charged in the complaint, we find that the facts recited therein gave respondent sufficient notice of this allegedly improper conduct and of a potential finding of this RPC.

DRB Docket No. 05-106 – District Docket No. IIB-03-19E

On January 26, 2005, the DEC mailed a copy of the complaint to respondent at his address in Stillwater, New Jersey, by regular and certified mail return receipt requested. The certified mail was returned stamped "unclaimed;" the regular mail was not returned. Respondent did not file an answer.

On March 23, 2005, the DEC sent a second letter to respondent, by regular mail, to his address in Hilton Head, South Carolina. Again, this letter gave respondent five days to file an answer to the complaint and amended the complaint to include a violation of RPC 8.1(b). The regular mail was not returned. Respondent did not file an answer to the complaint.

In January 2003, Mr. and Mrs. LaPatinca retained respondent in connection with an adverse outcome in a lawsuit relating to the termination of their commercial lease by their new landlord. Respondent was to file an appeal on their behalf, for which they paid him \$1,500. Respondent filed a notice for a stay and a notice of appeal, but apparently took no further action in the matter.

The Appellate Division's scheduling order required the filing of a brief and appendix no later than June 2, 2003. In connection with respondent's earlier ethics matter, however, the Court had suspended him effective May 21, 2003, a week before the appellate brief was due. On May 23, 2003, respondent wrote to the LaPatincas to notify them of his suspension from the practice of law. The LaPatincas, therefore, had sufficient time to make an application to the Appellate Division for an extension to file a brief and/or to retain new counsel. We, therefore, find no ethics violations in this regard.

Respondent, however, failed to keep the LaPatincas informed about the status of their appeal, in violation of RPC 1.4(a) (failure to communicate with a client). Respondent also violated RPC 8.1(b) (failure to cooperate with disciplinary authorities) for his failure to reply to the DEC's requests for information about the grievance and failure to answer the ethics complaint.

DRB Docket No. 05-118 – District Docket No. IIB-04-10E

On February 18, 2005, the DEC mailed a copy of the complaint to respondent at the Stillwater, New Jersey address by regular and certified mail, return receipt requested. As in the other matters, the certified mail was returned as unclaimed, but the regular mail was not returned. Respondent did not file an answer to the complaint. Thus, on March 28, 2005, the DEC sent a second letter, by regular mail, to respondent at the Hilton Head, South Carolina address. The letter notified respondent that he was required to file an answer to the complaint within five days or the matter would be transmitted to us for the imposition of discipline and the complaint would be amended to include a violation of RPC 8.1(b). The letter sent by regular mail was not returned. Respondent did not file an answer.

Exhibits attached to the certifications of the record in DRB Docket Nos. 05-100, 05-106 and 05-118 show that the post office forwarded the initial certified letters to respondent at his South Carolina address. Those exhibits indicate that the letters were also returned stamped "unclaimed."

In January 2001, Mary Beaudin retained respondent to represent her son, Michael Ryan, who was incarcerated in the Sussex County jail because of six unanswered tickets issued to him in Teaneck, New Jersey. Beaudin paid respondent \$3,500 and

believed that he would resolve all of the charges pending against her son. Respondent resolved some, but not all of the charges. Because respondent did not provide Beaudin a written agreement setting forth the services he would render, there is no clear and convincing evidence that he failed to provide the services for which he was paid. The allegations, however, prove that respondent violated RPC 1.5(b) by failing to supply his client with a writing setting forth the basis or rate of his fee. Respondent also failed to reply to the ethics grievance in this matter, despite having been given multiple opportunities to do so, thereby violating RPC 8.1(b).

In sum, respondent's misconduct in these four matters constituted violations of RPC 1.15(a) (knowing misappropriation of trust funds) and the principles of In re Wilson, 81 N.J. 459 (1979) in the Scarola, Foster, and Jovanoski matters; R. 1:20-20(b)(1) (practicing law while suspended), RPC 5.5(a) (unauthorized practice of law), and RPC 1.16(d) (failure to return an unearned fee) in the Schultze matter; RPC 8.1(a) (false statement of material fact to a disciplinary authority), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer - theft of client funds), and RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit or misrepresentation) (DRB 05-137); RPC 1.4(a), RPC 1.5(a) and RPC 1.16(d) in the Pizzaro matter (DRB 05-100); RPC 1.4(a) and RPC 8.1(b) in the LaPatinca matter (DRB 05-106); and RPC 1.5(b) and RPC 8.1(b) in the Beaudin/Ryan (DRB 05-118) matter.

For misappropriating client trust funds alone, under In re Wilson, 81 N.J. 451 (1979) and its progeny, respondent must be disbarred and we so recommend to the Court. We, therefore, need not reach the issue of the appropriate discipline for respondent's other ethics offenses.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel


**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Larry J. McClure
Docket Nos. DRB 05-100, DRB 05-106, DRB 05-118 and DRB 05-137

Decided: July 8, 2005

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O' Shaughnessy	X					
Boylan	X					
Holmes	X					
Lolla	X					
Neuwirth	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	9					


Julianne K. DeCore
Chief Counsel