

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 90-125

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IN THE MATTER OF  
ROBERT F. HENN,  
AN ATTORNEY AT LAW

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 25, 1990

Decided: October 5, 1990

Thomas W. Dunn appeared on behalf of the District IIA Ethics Committee.

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

Robert F. Henn appeared pro se.

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

This matter is before the Board based upon a presentment filed by the District IIA Ethics Committee. Respondent was admitted as a member of the New Jersey bar in 1966, and currently has a sole practice in Midland Park, New Jersey.

THE GANGEL MATTER (IIA-88-33E)

In June 1985, Robert J. Gangel, "grievant", retained respondent to represent him with regard to an automobile accident. Just before the statute of limitations was to expire, respondent filed a formal complaint on February 9, 1987 (C-4 in evidence).

Thereafter, respondent did not have the defendant served (T12-T1)<sup>1</sup>, which led to the complaint being dismissed, first without prejudice on September 23, 1987 (C-6 in evidence), and then with prejudice on January 29, 1988 (C-5 in evidence).

Grievant testified that he regularly called and sent certified letters to respondent to discover how his case was progressing (T11-T12), and that respondent led him to believe all was going well. Respondent never told grievant that the case had been dismissed.

Respondent admitted the above facts in his answer (C-2 in evidence). The committee found clear and convincing evidence of failure to communicate, in violation of RPC 1.4(a), and failure to act with reasonable diligence in representing his client, in violation of RPC 1.3.<sup>2</sup>

#### TRUST ACCOUNT IRREGULARITIES (XIV-89-106E)

In February 1989, respondent was randomly selected for a compliance audit of his books and records. The random audit, which analyzed the funds being held in respondent's trust account as of January 30, 1989, revealed that respondent had not complied with the recordkeeping requirements of R. 1:21-6. On May 3, 1989,

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<sup>1</sup> T refers to the February 5, 1990 transcript of the hearing before the District IIA Ethics Committee.

<sup>2</sup> Although originally charged in the complaint with RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice), the presenter and the committee dismissed the RPC 8.4(d) charge as inappropriate (T14-T15).

respondent received a deficiency notice (CE-13 in evidence), requesting that the deficiencies be corrected and that he submit a certification indicating that the corrections had been made. Two additional letters were sent on July 17, 1989 and November 20, 1989, without any response from respondent. On December 27, 1989, the Office of Attorney Ethics filed a formal complaint (CE-1 in evidence) charging respondent with unethical conduct by failing to maintain proper books and records, in violation of R. 1:21-6 and RPC 1.15(d), and failing to cooperate with a disciplinary agency, in violation of RPC 8.1(b). Specifically, the following recordkeeping deficiencies were found:

1. Trust and business receipts books were not maintained.
2. Trust and business disbursement books were not maintained.
3. A running cash balance was not kept in the trust account check book.
4. Client's trust ledger sheets were not fully descriptive.
5. Client's ledger cards were found with debit balances.
6. A schedule of client's ledger accounts was not prepared and reconciled to the bank statement.
7. Inactive trust ledger balances remained in the trust account for an extended period of time.
8. The trust account bank reconciliation prepared by the auditor showed that total trust funds on deposit were in excess of the total trust obligations.

9. Attorney personal funds were commingled with trust funds.
10. Debit balances were found in the trust account ledger indicating advances were made on behalf of clients from attorney funds held in the trust account.
11. Checks were disbursed against uncollected funds.

It should be noted that it was clear from the auditor's testimony that there was no evidence that respondent took any funds for himself, or that he took one client's funds to pay for another client's expenses.

At the committee hearing and in his answer, respondent candidly admitted his failure to comply with the recordkeeping requirements. He stated he purposefully left legal fees in the trust account to make sure no client funds were misused (T50-T51). Respondent offered in mitigation that his failure to provide the certification coincided with his wife being recently diagnosed and treated for cancer (T55).

The committee found that respondent had violated RPC 1.15(d) and RPC 8.1(b). After taking into consideration that he received a prior private reprimand for similar conduct in 1985,<sup>3</sup> the committee recommended a public reprimand.

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<sup>3</sup> On October 2, 1985 respondent received a private reprimand for failure to give a timely accounting of funds held in trust for a client and to disburse those funds promptly when requested to do so by his client.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

In the Gangel matter, respondent did nothing to protect grievant's claim; he failed to serve the defendant and then he failed to respond to the court's dismissing the matter for lack of service. Once retained, respondent owed his client a duty to pursue his interests diligently. See Matter of Cullen, 112 N.J. 13 (1988); Matter of Smith, 101 N.J. 568, 571 (1986); In re Goldstaub, 90 N.J. 1, 5 (1982). The Board finds that respondent's conduct constituted lack of due diligence, in violation of RPC 1.3.

Not only did respondent fail to serve the defendant, but he told grievant that the case was progressing satisfactorily. Public confidence in the bar is diminished when an attorney represents to a client that the case is proceeding smoothly although the attorney knows that it is not. Clients should not continue to suffer the consequences of being told their case is under control when that is not true. In re Goldstein, 97 N.J. 545, 549 (1984). As stated by the Court recently, "truthfulness and professionalism are paramount in an attorney's relationship with the client". Matter of Mahoney \_\_\_N.J. \_\_\_, 1990 (slip opinion at 5). The Board finds that

respondent's misrepresentations to his client and failure to keep his client informed violated RPC 1.4(a).<sup>4</sup>

With regard to respondent's recordkeeping deficiencies, there is no factual dispute. Respondent concedes that he had not complied with the recordkeeping mandates of R. 1:21-6. He admits he kept poor records and that he intentionally left legal fees in the trust account to make sure that no client money was misused. Even without any intent of theft, attorneys are not allowed to be poor accountants with their clients' funds. Matter of Fucetola, 101 N.J. 5, 9 (1985) (attorney received a public reprimand for improper recordkeeping practices); Matter of Barker, 115 N.J. 30 (1989) (attorney received a public reprimand for grossly neglecting his accounting procedures).

Attorneys must recognize that part of their responsibility to the legal system is the maintenance and supervision of accounting records. There can be no excuse for inadequate recordkeeping particularly in light of the technological and relatively inexpensive means available today.

[In re Orlando, 104 N.J. 344, 350 (1981).]

The Board is particularly disturbed by respondent's lack of cooperation with the Office of Attorney Ethics. Respondent failed to correct the deficiencies revealed in the audit of February 1989; he did not correct them before the committee hearing of February

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<sup>4</sup> The Committee could have properly found that respondent violated RPC 8.4(c) in addition to RPC 1.4(a).

5, 1990, or before the Disciplinary Review Board hearing of July 25, 1990. The Board finds respondent's inaction a violation of RPC 8.1(b).

At the Disciplinary Review Board hearing, respondent offered little explanation for his failure to complete the certification to the Office of Attorney Ethics and stated he would complete the certification within the next two weeks. The Board notified respondent, by letter dated August 9, 1990, that he had thirty days to submit the certification showing the correction of the trust account deficiencies. To date, respondent has not done so. The Board considers this last instance of lack of cooperation an aggravating factor in recommending discipline. An attorney has an obligation to cooperate fully with the disciplinary authorities. Matter of Smith, 101 N.J. 568, 572 (1986); Matter of Winberry, 101 N.J. 557, 566 (1986); In re Gavel, 22 N.J. 248, 263 (1956).

The purpose of discipline is to protect the public from the attorney who does not meet the standards of responsibility required of every member of the profession. The appropriate quantum of discipline must accord with this purpose of discipline, taking into account the seriousness of the misconduct, in light of all the relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). Aggravating and mitigating factors are to be considered part of the relevant circumstances. In re Hughes, 90 N.J. 32, 36 (1982).

In this matter, the Board noted as mitigating factors, respondent's admission of wrongdoing, the lack of personal gain, and his personal problems related to his wife's recent illness. However, the Board viewed as aggravating factors, respondent's continuing lack of cooperation and his recent private reprimand.

Accordingly, the Board unanimously recommends that respondent receive a public reprimand.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate administrative costs.

Date: 10/5/1990

BY: Raymond R. Trombadore  
Raymond R. Trombadore  
Chair  
Disciplinary Review Board