

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-379

IN THE MATTER OF
LAURENCE A. HECKER
AN ATTORNEY AT LAW

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Decision

Argued: December 16, 1999

Decided: August 15, 2000

John McGill appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 IIIA Ethics Committee ("DEC"). The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.15 (negligent misappropriation), RPC

1.15(a) (failure to safeguard client funds), RPC 1.15(d) and R.1:21-6 (recordkeeping violations) and RPC 5.3 (failure to supervise a nonlawyer assistant).

Respondent was admitted to the New Jersey bar in 1965 and maintains an office for the practice of law in Toms River, New Jersey. In 1988, respondent was suspended for six months for (1) having billed his client, a municipality, for services not rendered; (2) filing a meritless appeal for the sole purpose of delay; (3) acquiring tax sale certificates while serving as a municipal attorney without filing the required disclosure statement; (4) withholding files for sixteen months after he “resigned” as municipal attorney; (5) suing township officials just before a general election to force them to rehire him; (6) hiding assets so that the municipality could not recover on its \$110,000 judgment; and (7) frustrating efforts to take his deposition in supplementary proceedings by flying to Las Vegas on a gambling junket. In re Hecker, 109 N.J. 539 (1988).

* * *

The Smith Estate Matter

In 1994, Gregory Purish, a clerical employee in respondent’s office, stole \$15,000 from respondent’s trust account. Purish made out a \$15,000 trust check to himself, forged respondent’s name on the check and cashed it. Shortly thereafter, he was arrested for an

unrelated criminal offense, bank robbery. Purish received a five-year prison sentence.¹

Respondent filed a claim with Summit Bank asserting that the bank had wrongfully paid the trust check over a forged signature. Summit Bank allowed the claim and re-credited \$15,000 to respondent's trust account.

In June 1996, Purish was released from prison, apparently as part of an early release program. In July 1996, respondent rehired Purish to do clerical work in his office. Five months later, Purish reverted to his criminal activities.

Specifically, between December 7 and 24, 1996, Purish issued to himself and some of his friends ten checks, totaling \$6,850, from an estate checking account maintained in respondent's office.² Respondent had been appointed administrator of the George Smith estate by the Superior Court, Ocean County, in February 1993. Purish signed respondent's name on the estate account checks.

As in 1994, respondent filed a claim with Summit Bank, seeking reimbursement for the forged Smith estate checks. Summit Bank denied the claim based on its attorney's

¹ The record is not clear as to whether Purish was convicted for the bank robbery and the \$15,000 theft or just the bank robbery.

² Seemingly, in 1996, Purish availed himself of respondent's personal funds as well. Respondent's statements in this regard were inconsistent. In a March 17, 1997 letter to a Smith estate heir, respondent stated that "the losses were not limited to the estate, and [Purish] virtually helped himself to my personal checks, which, again, were cleared by the bank notwithstanding that each check was a forgery...." In September 1997, respondent told the OAE investigator that he had discovered the theft of the estate account checks during a review of his accounts, after he had found unauthorized advances on his personal credit card. During a March 1999 deposition, respondent testified that Purish had only stolen from the Smith estate in 1996 and that the unauthorized advances on respondent's credit card had occurred in 1994. During the ethics proceedings, respondent indicated that Purish's unauthorized use of respondent's credit card occurred in 1994.

opinion that respondent's decision to re-hire Purish constituted "negligence substantially contributing to the unauthorized signatures."

In 1998, respondent filed a civil action on behalf of the Smith estate against Summit Bank, seeking reimbursement of the \$6,850. In turn, Summit Bank filed a third-party complaint against respondent and Purish. At oral argument before us, it was revealed that the Smith estate obtained summary judgment against the bank and that the bank's third-party action against respondent is continuing.

In the DEC's case management order, respondent stipulated that, if there were an ultimate finding by the disciplinary authorities that he had failed to safeguard the estate checking account, he "would be barred from assessing any estate costs, expenses or fees incurred in connection with the recovery of funds lost due to thefts by Purish."

Respondent claimed that he rehired Purish because he believed that Purish was entitled to a second chance. According to respondent, Purish communicated with him while in prison, attributed his thefts to drug and alcohol problems and the influence of wrong friends, expressed remorse for his actions and vowed that he had learned his lesson. Respondent believed that Purish was sincere when he promised that "when he got out of jail he was going to be a changed person."

Respondent testified that, when he rehired Purish, it was on the condition that Purish be prohibited from handling any financial records or accounts. Respondent instructed his secretary to keep all attorney trust and business account checkbooks, as well as respondent's

personal checkbook, locked in her desk drawer, which she did. According to respondent, he had forgotten that the Smith estate checkbook was in the client file, where Purish apparently found it.

Respondent testified that, between July and December 1996, Purish was a responsible employee and that there was no evidence that he had returned to his former friends and lifestyle. In December 1996, Purish disappeared for a week. According to respondent, that was “the time during which [Purish] took the Smith estate checks and started passing them out like candy without our knowing that he even had access to the checkbook.” Respondent testified that he later learned that Purish’s actions had been precipitated by his discovery that an intimate friend had the HIV virus.

Respondent maintained that his decision to rehire Purish was in keeping with “state policy” to give criminals who had served their time a second chance and that his instruction to his secretary to lock the checkbooks in her desk drawer was adequate protection against future wrongdoing by Purish.

The complaint alleged that respondent’s conduct in the Smith estate matter constituted a failure to safeguard client funds, in violation of RPC 1.15(a), and failure to supervise a nonlawyer employee, in violation of RPC 5.3(a), (b) and (c)(2) and (3).

The Chambers Matter

On March 15, 1995, respondent received a \$32,000 settlement check on behalf of a

client, Godfrey Chambers. Thereafter, respondent made the following disbursements:

DATE	PAYEE	AMOUNT	BALANCE
5/26/95	L. Hecker	\$ 7,285.46	\$ 24,714.54
5/26/95	Godfrey Chambers	15,994.54	8,720.00
5/31/95	Janice S. Mironov	10,500.00	(1,780.00)
6/13/95	Godfrey Chambers	1,220.00	(3,000.00)

Respondent admitted that the excess disbursements from the Chambers funds invaded other clients' funds and left respondent out-of-trust from June 1995 until January 9, 1998. According to respondent, one of his employees made a mistake in calculating the amount to be paid from the Chambers funds. The shortage was discovered after the OAE directed respondent to reconstruct his trust account records.

Respondent admitted that he had not discovered the excess disbursements because he had not kept his trust records in accordance with R.1:21-6 and had not conducted quarterly reconciliations of his trust account. In January 1998, respondent repaid the trust account with funds obtained from Chambers.

The complaint alleged -- and respondent admitted -- that his conduct in the Chambers matter constituted negligent misappropriation of client trust funds, in violation of RPC 1.15(a).

The Richardson Estate Matter

Nellie Richardson died sometime prior to 1967. Respondent's former employer, Ezra Karkus, represented the Richardson estate until he died, in 1967, whereupon respondent took

over the representation.

During the OAE's audit of respondent's records, the investigator discovered that there was \$471 in the Richardson estate account. Respondent admitted that the \$471 had been in the account since 1967. According to respondent, he attempted to locate Richardson's heirs in 1967, but was unsuccessful. Respondent added that, because he did not know what to do with the \$471 and because it was a small amount of money, he did nothing.

Respondent told the OAE investigator that he had not seen the Richardson estate file for several years and was unable to locate it. Respondent later testified that he was not certain if he had ever seen the estate file.

According to respondent, after the OAE's audit, he contacted the Monmouth County Surrogate's office and "the state" about the proper handling of the funds, but did not obtain any guidance. As of the date of oral argument before us, December 16, 1999, the funds remained in the Richardson account.

The complaint alleged that respondent's conduct in the Richardson estate matter constituted gross negligence, in violation of RPC 1.1(a), and lack of diligence, in violation of RPC 1.3.

Recordkeeping Violations

According to the OAE investigator, respondent's office was in "deplorable" condition, with piles of unopened mail, miscellaneous papers, client files and old newspapers covering

every flat surface. Respondent admitted that the photographs taken by the investigator accurately depicted his office. However, he explained that the photographs did not show his secretary's office, where his books and records were maintained. Respondent denied that the condition of his office contributed in any way to his recordkeeping problems.

The OAE's audit of respondent's attorney books and records revealed the following deficiencies:

- a. respondent was unable to fully account for \$20,956 in client funds he was holding at the beginning of the audit;³
- b. client ledgers were not fully descriptive and inactive trust ledger balances remained in the account for extended periods of time;
- c. a separate client ledger sheet was not maintained for each client; and
- d. a schedule of client ledger accounts had not been prepared and reconciled quarterly to the trust account bank statements since 1994.

The complaint alleged -- and respondent admitted -- that he failed to comply with the attorney recordkeeping rules, in violation of RPC 1.15(d) and R. 1:21-6.

* * *

The DEC found respondent guilty of all of the charges in the complaint and recommended that respondent be suspended from the practice of law for six months. The DEC also recommended that respondent be precluded from assessing any fees or costs

³ Apparently, during the course of the audit, respondent was able to account for all of the client funds in his trust account.

against the Smith estate in connection with the recovery of funds stolen by Purish.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Respondent admitted that he negligently misappropriated client trust funds in the Chambers matter and that he did not comply with the attorney recordkeeping rules.

Respondent also admitted all of the factual allegations with respect to the Richardson estate matter. However, he denied that his failure to do anything with the \$471 in the estate account since 1967, other than his initial attempts to locate the heirs, constituted gross negligence or lack of diligence. Respondent contended that he did nothing because he did not know what to do with the funds and the small amount did not justify any additional efforts. Furthermore, respondent contended that, after he was told by the OAE that the matter had to be resolved, he had contacted the surrogate's office and some unspecified state office, but had received no guidance in the matter.

Respondent failed to do anything to resolve the issue of the Richardson estate funds for thirty-two years. It was only after the OAE told him that the funds could not remain in the estate account that respondent made any attempt, albeit ineffectual, to resolve the matter. Respondent has never even attempted to make an application to the court regarding the issue.

Respondent's failure to take any action for thirty-two years with regard to the Richardson estate funds violated RPC 1.1(a) and RPC 1.3.⁴

With respect to Purish's theft from the Smith estate, respondent maintained that by rehiring Purish he did not violate any ethics rules and that his instruction to his secretary to lock the checkbooks in her desk drawer was adequate protection against future thefts by Purish.

There is no question that respondent's failure to appropriately safeguard the Smith estate funds violated RPC 1.15(a). It is hardly a defense for respondent to argue that he had forgotten about the Smith estate checking account when he told his secretary to lock up the other checkbooks and that he had forgotten that he kept the Smith estate checkbook in the client file. Respondent had only one other estate account beside Smith; namely, the Richardson account, which had been inactive since 1967. In contrast, the Smith estate file was active because respondent had not concluded his administration of the estate.

In finding that respondent violated RPC 1.15(a) in these circumstances, we do not intend to establish a per se rule that every attorney who hires a former prisoner runs afoul of the disciplinary rules. For example, an attorney could hire an individual who had been convicted of a crime that did not involve theft or similar offense and who had been rehabilitated. Conceivably that individual could even be trusted, given proper evidence of

⁴ The record was silent as to whether or not the administration of the Richardson estate has been concluded.

rehabilitation, to deal with an attorney's trust account.

Purish's crimes involved theft from a trust account and bank robbery. Furthermore, respondent was aware that Purish had a history of addiction to drugs and alcohol. By rehiring Purish, respondent placed his clients' funds at extreme risk. Even if respondent had remembered to tell his secretary to lock the Smith estate checkbook in her desk drawer, it was foreseeable that Purish could have forced the drawer or gained access to it while the secretary was away from her desk. Moreover, respondent's decision to rehire Purish was not based on any objective evidence that Purish had been rehabilitated. Rather, his decision was based merely on Purish's statement that he was a "changed person." Therefore, we find that respondent failed to safeguard his client's funds.

For the same reasons, we find that respondent also violated RPC 5.3(a) and (b). Pursuant to RPC 5.3(a) and (b), respondent had an obligation to make "reasonable efforts to ensure" that Purish's conduct was "compatible with the professional obligations of [respondent]." Having rehired Purish with knowledge of Purish's prior thefts, especially the theft of a trust check, respondent had a duty to properly supervise him. Respondent failed to do so and his meager effort to protect his clients' funds was unreasonable under the circumstances. Therefore, we find that respondent failed to properly supervise a nonlawyer employee, in violation of RPC 5.3(a) and (b).

With respect to the alleged violation of RPC 5.3(c)(3), the issue is whether respondent "failed to make reasonable investigation of circumstances that would disclose past instances

of conduct by [Purish] incompatible with the professional obligations of [respondent], which evidence a propensity for such conduct.” Here, respondent did not have to make any investigation of Purish -- he knew that Purish had previously stolen trust funds and had robbed a bank. Therefore, we find that RPC 5.3(c)(3) is inapplicable to this matter.

With respect to the alleged violation of RPC 5.3(c)(2), there is no evidence that respondent knew of Purish’s theft of the estate checks “at a time when its consequences [could] be avoided or mitigated” and “failed to take reasonable remedial action.” Apparently, respondent did not learn of the theft until after the checks had been cashed. Therefore, the consequences could not have been avoided or mitigated and we found no violation of RPC 5.3(c)(2).

In summary, respondent violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence) in the Richardson estate matter; RPC 1.15(a) (negligent misappropriation) in the Chambers matter; RPC 1.15(a) (failure to safeguard client funds) and RPC 5.3(a) and (b) (failure to supervise a nonlawyer assistant) in the Smith estate matter, as well as RPC 1.15(d) and R.1:21-6 (recordkeeping violations).

There remains the issue of discipline. Generally, discipline limited to an admonition or reprimand has been imposed where nothing more than a negligent misappropriation occurred and the client did not sustain financial loss. See In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (admonition); In re Blazek, 154 N.J. 137 (1998) (reprimand); In re Gilbert, 144 N.J. 583 (1996) (reprimand).

Similarly, reprimands have been imposed where attorneys violated RPC 5.3. See, e.g., In re Perkins, 143 N.J. 139 (1996) (reprimand); In re Weiner, 140 N.J. 621 (1995) (reprimand); In re Bonanno, 135 N.J. 464 (1994) (reprimand).

However, suspensions have resulted where attorneys have been grossly negligent in safeguarding trust funds and/or failing to supervise employees, clients sustained financial loss or there were other violations of the Rules of Professional Conduct. See In re Tompkins, 155 N.J. 542 (1998) (three-month suspension where attorney negligently misappropriated client funds, failed to comply with recordkeeping requirements, did not keep running balances of his trust and business accounts and relied on his bank to advise him of overdrafts); In re Whitefield, 146 N.J. 480 (1996) (three-month suspension where attorney negligently misappropriated trust funds, commingled fee and trust funds, failed to keep adequate records, improperly engaged in a business transaction with a client, failed to communicate with a client and failed to handle a client matter with diligence); In re Chasan, 157 N.J. 29 (1999) (six-month suspension for failing to supervise a nonlawyer employee, gross neglect, failing to communicate, sharing legal fees with a nonlawyer, failing to return a client's file on termination of representation and recordkeeping violations; attorney had previously received a reprimand and a three-month suspension); In re Stern and Weiss, 118 N.J. 592 (1990) (six-month suspension where attorneys failed to supervise their accountant and failed to educate the accountant concerning attorney trust accounts, which resulted in the accountant's failure to advise the attorneys of negative balances in their trust account; the

attorneys also failed to review their trust records and their bank did not provide notices of the negative trust balances because the bank provided automatic overdraft coverage); In re Librizzi, 117 N.J. 481 (1990) (six-month suspension for negligent misappropriation of trust funds due to grossly negligent recordkeeping practices, which resulted in attorney's trust account being out-of-trust for two years).

In light of respondent's grossly negligent handling of his trust and estate accounts and his failure to properly supervise an employee who had previously stolen trusts funds from him, a seven-member majority of the Board determined that a six-month suspension was the appropriate discipline. Two members voted for a three-month suspension.

Finally, there is the issue of whether respondent should be precluded from charging the estate for his time and expenses in the Summit Bank litigation. In the case management order, respondent stipulated that, if there were an "ultimate finding of misconduct" that respondent failed to safeguard the Smith estate funds, respondent "would be barred from assessing any estate costs, expenses or fees incurred in connection with the recovery of funds lost due to thefts by Purish." Generally, we do not require attorneys to make restitution to aggrieved clients or to otherwise permit the disciplinary process to be employed as a collection agency or as an alternative to recourse to the courts. Here, however, there is a case management order entered by the DEC, an arm of the Supreme Court, and respondent consented to the terms of the order. Therefore, the case management order should be enforced and respondent should be prohibited from charging the Smith estate for any fees,

costs or expenses incurred in his efforts to recover the funds stolen by Purish, including any fees, costs or expenses incurred in the Summit Bank litigation.

After oral argument before us, the OAE filed a motion to supplement the record to include respondent's March 10, 2000 letter to a beneficiary of the Smith estate. The letter enclosed a \$8,800 bill for legal services from the attorney who replaced respondent in the Summit Bank litigation and stated that "I am not sure that I can find any reason why the estate should not satisfy [the attorney's] bill from the proceeds that will be recovered from the bank." The OAE also requested that we order respondent to pay his successor attorney's legal bill, rather than deducting that amount from the Smith estate's recovery from Summit Bank.

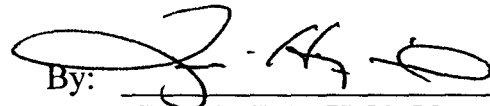
In respondent's reply to the motion, he stated that he would present the issue to the Superior Court, Ocean County, when he files his accounting of the estate.

We granted the OAE's motion to supplement the record. However, we declined to order that respondent be required to pay the legal fees and costs of his successor attorney.

As set forth above, the disciplinary process should not be used as an alternative to the courts. We prohibited respondent from charging the Smith estate for his fees, costs or expenses because he had consented to those terms of the case management order. Respondent has represented that he will present the issue of the payment of his successor attorney's fees to the appropriate tribunal – the court that appointed him the executor of the Smith estate. The court will properly address the issue.

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

Dated: 8/15/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

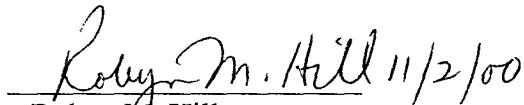
**In the Matter of Laurence A. Hecker
Docket No. DRB 99-379**

Argued: December 16, 1999

Decided: August 15, 2000

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Three- month suspension	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Cole		X					
Boylan				X			
Brody		X					
Lolla		X					
Maudsley		X					
Peterson				X			
Schwartz		X					
Wissinger		X					
Total:		7		2			


Robyn M. Hill
Chief Counsel