SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-435

IN THE MATTER OF :
:
RUPERT A. HALL, JR. :
:
AN ATTORNEY AT LAW :

Decision

Argued: February 13, 2004

Decided: April 22, 2004

John McGill, III 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 disbarment filed by Special Ethics Master Robert A. Hicken. For the reasons expressed below, we are persuaded that an indeterminate suspension is sufficient discipline in this case.

The complaint charged respondent with a violation of RPC 1.8(a) (prohibited business transactions with clients), RPC 1.15(a) (failure to safeguard client property), RPC 8.1(a) (misrepresentation to disciplinary authorities), RPC 8.1(b)

(failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1983. He maintains an office for the practice of law in Moorestown, Burlington County. He was reprimanded in 2003 for gross neglect, failure to communicate, and misrepresentation in a civil matter. Respondent allowed the complaint to be dismissed, and then made a misrepresentation by silence when he failed to advise his clients of the dismissal. In re Hall, 176 N.J. 515 (2003).

Count One

In November 1995, Thomas Phillips retained respondent to represent him in connection with a personal injury matter. Although respondent initially pursued the matter and prepared a draft complaint, he failed to file the complaint. In early 2001, respondent advised Phillips that the matter had settled for $3,500. At the time respondent made that statement, he knew it to be false. Respondent gave Phillips a trust account check for $3,500, representing the alleged settlement proceeds. Phillips deposited the check at Farmers & Mechanics Bank, and, on April 5, 2001, was notified by the bank that the check had

been returned for insufficient funds. The previous day, the bank had notified both respondent and the Office of Attorney Ethics ("OAE") that the check had been returned. Respondent's trust account balance at that time was $220.

At this point, the testimony of Phillips and respondent diverged. Phillips testified that, after the check was returned, respondent advised him that he would give him a replacement check. According to Phillips, respondent never paid him the promised $3,500. Respondent testified, to the contrary, that he had paid Phillips $3,500 in cash on April 10, 2001, after Phillips had threatened to notify the police about the returned check. Respondent stated that, due to a long-standing professional relationship with Phillips' wife, he did not believe that he needed to obtain a receipt for the $3,500 payment.

After the OAE received notice of the overdraft, it scheduled a select audit of respondent's attorney accounts for June 2001. During the audit, respondent represented to the OAE that he had settled the personal injury matter in Phillip's behalf for $3,500, in 1999. Respondent further stated that the settlement proceeds had been deposited into his then law firm's account. At the time respondent made those representations to the OAE, he knew that they were false. Respondent also stated

that, after he had been notified of the overdraft, he had paid Phillips $3,500 in cash. As noted above, there is a dispute in the record as to whether that statement was true.

Respondent was the subject of a demand audit in October 2001, after the OAE learned that his earlier statements about the Phillips matter had been untrue. During the October audit, respondent conceded that he had neglected Phillips' case and had allowed the statute of limitations to expire. He further admitted that, when Phillips called for information about the case in late 2000 or early 2001, he panicked and told him that he had settled the case for $3,500. Respondent admitted that, at the time he gave Phillips his trust account check for $3,500, he knew that he did not have the funds to cover the check. Respondent represented to the OAE that, in order to obtain funds for the $3,500 check, he contacted a client, Good Shepherd Community Development Corporation ("Good Shepherd") to collect a fee. According to respondent, he presented Good Shepherd with an invoice for $3,500 and obtained a check for that amount on or about April 10, 2001. Respondent stated further that he immediately cashed the check, proceeded to Phillip's house, and gave him the money. Respondent's statements were not truthful. In actuality, on or about April 10, 2001, respondent contacted the Reverend J. Evans Dodds, Sr., at Good Shepherd, and

requested $3,500 to be used as a deposit on real estate Good Shepherd was interested in purchasing, located at 7 Magnet Lane, Willingboro, New Jersey.[1] On April 10, 2001, Reverend Dodds issued a check payable to respondent for $3,500. The notation "7 Magnet" appears in the memo portion of the check. Reverend Dodds understood that the check would be used as a deposit on the real estate, and did not authorize its use for any other purpose.[2] Respondent cashed the check and did not deposit the proceeds into either of his attorney accounts.

The complaint charged respondent with a violation of RPC 1.15(a), RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c). Respondent conceded his misconduct in this matter.

Count Two

Between May and November 2000, respondent entered into business transactions with clients on three occasions.

---

[1] Reverend Dodds could not recall if respondent had stated that the funds would be used for the deposit or if he had stated that he had already made the deposit, and the funds were to reimburse him.

[2] At that time, the contract for the sale of the property, which called for a $1,000 deposit, had not yet been signed.

Specifically, respondent borrowed money from three clients, as follows:

Client	Loan Amount	Date Borrowed	Date Repaid
Derrick Johns	$22,000	May 2000	November 2000
Charles Dahm t/a Teddington Inc.	$20,000	November 2000	Outstanding[3]
Greater Faith Community Church	$ 7,250	September 2000	Outstanding

RPC 1.8 requires that, in connection with a business transaction with a client, the attorney disclose to the client, in writing, the terms of the transaction, advise the client of the desirability of seeking the advice of another attorney regarding the transaction, and obtain the client's written consent to the transaction.

The complaint charged respondent with a violation of RPC 1.8(a). Respondent admitted that he did not comply with the mandates of the rule.

Although respondent admitted the charges set forth in both counts of the complaint, he contended that he had, in fact, paid Phillips $3,500 in cash. The special master found that

> the Respondent did not pay Mr. Phillips $3,500.00 in that under the circumstances testified to by both Mr. Phillips and the respondent it is virtually inconceivable that the respondent would not have gotten a receipt, a release or some other document

[3] Respondent used the Dahm loan to repay the loan from Jones.

from Mr. Phillips evidencing the payment of that money.

The special master found that respondent knowingly misappropriated client funds, made a false statement of material fact in connection with a disciplinary matter, knowingly failed to reply to a demand for information from a disciplinary authority, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, and improperly engaged in business transactions with three clients, in violation of RPC 1.15(a), RPC 8.1(a), RPC 8.1(b), RPC 8.4(c), and RPC 1.8(a). The special master concluded that respondent violated In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985) – even though respondent was not acting as an escrow agent – and recommended that respondent be disbarred.

Upon a de novo review of the record, we agree with the conclusion of the Special master that respondent is guilty of unethical conduct.

Respondent admitted the allegations against him, including his misappropriation of Good Shepherd's funds. He took issue only with whether he had paid $3,500 in cash to Phillips. The special master determined that respondent had not made the payment, finding not credible his contention that he had failed to obtain a receipt for the payment. At oral argument before us, respondent asked to be allowed time to submit an original

check that would evidence his payment to Phillips. We allowed respondent time to supplement the record. Although he was unable to locate the document he wanted to submit, he directed our attention to other documents to support the contentions that he had given $3,500 to Phillips. For our purposes, however, what respondent did with the funds is irrelevant to a finding of knowing misappropriation. What is relevant is respondent's admission that he took the money from Good Shepherd and used it for an unauthorized purpose.

As to the remaining allegations against respondent, as noted above, he admitted that he made misrepresentations to Phillips and to the OAE, and entered into business transactions with clients without taking the required precautions.

Sadly, the record affords the conclusion that respondent was entitled to at least $3,500 for work he had already completed for Good Shepherd. Had he simply asked Reverend Dodds for the fees he was owed, it is likely that he would have received them. In his answer, respondent referred to the work he had completed for the church, stating, "[he] has performed at least $3,500.00 worth of legal services for The Good Shepherd Development Corporation over approximately a (2) two year period." He reiterated that claim in this post-argument

submission to us, stating that the value of his services exceeded $3,500.

During the hearing before the special master, Reverend Dodds' testimony established respondent's entitlement to a fee for work he had performed for the church, and for which he had not been compensated:

> [Reverend Dodds] He was actively involved in the development of that corporation. He served as attorney, knew him as a member of the church, and actively involved in helping to develop that nonprofit organization. And his responsibilities were to develop and file all of the papers, documents, as we tried to do, make it work.
>
> [T51.][4]
>
> [Reverend Dodds] . . . And in most instances he would be the representative between ourselves and the real estate agent. We've had other – other houses that we had contacted with the agents and so on, and he always represented us in that way.
>
> [T59.]
>
> [Special Master] Okay. I think you said that [respondent] had been involved in other real estate transactions on behalf of the corporation.
>
> [Reverend Dodds] Well, as we negotiated to find houses and buyers, he represented us as well.
>
> [Special Master] In about how many transactions?
>
> [Reverend Dodds] We had not done any. We had just begun our corporation and trying to find houses, and so he worked along with us trying to do that.
>
> [T60.]

[4] T denotes the transcript of the hearing on October 7, 2003.

[Respondent] Reverend Dodds, what was your understanding – for the record could you state my involvement with the CDC more specifically?

[Reverend Dodds] You were involved with the CDC from its inception. You helped us to develop the papers for the State of New Jersey and for the IRS. All along the way you counseled and led us through the process.

[Respondent] Prior to April of 2001 had I submitted a bill for legal services?

[Reverend Dodds] No.

[Respondent] What was the understanding regarding the payment of legal fees?

[Reverend Dodds] That once funds were made available to us, we would in the future pay you.

[T58-T59.]

[The Presenter] And after the deal fell through, what did you understand he would do in terms of holding the monies?

[Reverend Dodds] Well, we did not have any problem with him holding it, because we know that in the past he had done work for us, and using [sic] his own funds to pay, so we did not have a problem with that.

[T57-T58.]

When attorneys are owed legal fees and take them from the trust account without the client's authorization, that conduct is unethical (RPC 1.15(c)), but it does not constitute knowing misappropriation. In In re Banas, 144 N.J. 75 (1996), the attorney was retained to represent a defendant in the retrial of a homicide case following the reversal of the conviction. A co-

defendant paid the attorney $10,000 toward a $25,000 fee. In the face of the attorney's unwillingness to proceed with the representation until the full $25,000 fee was paid, the defendant's mother gave the attorney an additional $5,000 sum, which she borrowed from two banks. At that time, the attorney gave her a receipt with the following words: "[received] on behalf of Carl Grant to be held for bail application. Money is to be returned to M. Grant if bail not obtained." The receipt also bore the notation that the balance due was "zero." Ultimately, bail was set at $100,000. The defendant, however, was unable to post bail. The attorney, who had placed the $5,000 in his business account, applied the money to his fees. Eventually, the defendant's mother asked the attorney for the return of the $5,000 sum, as her son had not been released from jail, that is, "bail had not been obtained." The attorney replied that the $5,000 was not returnable and was to be applied to his $25,000 fee. The attorney's interpretation of their agreement was that "obtained" meant "set," and that his fee was earned once bail was set.

In that case, we found that the attorney improperly and knowingly retained the $5,000 as a fee. The Court agreed. We concluded that the $5,000 had been entrusted to the attorney for the purpose of obtaining the defendant's release from prison;

otherwise, the $5,000 was to be returned to the defendant's mother. We also determined that the attorney improperly had the defendant sign an affidavit stating that the $5,000 was to be credited against the $25,000 fee. We found that the preparation of the affidavit was belatedly contrived, six months after the mother had asked for the return of the $5,000. Although we determined that the attorney should receive a six-month suspension, the Court imposed a reprimand. The Court considered the attorney's unblemished ethics record, the aberrational nature of his conduct, and the attorney's previous assistance in devising a Central Judicial Processing System for the courts, while an assistant Essex County prosecutor.

Unlike respondent, Banas obtained the funds legitimately: they were given to him by his client's mother, to be applied toward a bail application. Here, although respondent might have had a claim to the $3,500 as a fee for past services rendered, he panicked and lied to Reverend Dodds, rather than simply ask for what might have been owed to him. Otherwise put, he obtained the funds by false pretenses.

At the conclusion of his testimony, Reverend Dodds asked to make an additional statement:

> . . . reading recently, back on my way from — home coming from a funeral of my grandmother, and I was just reading of this person who was notorious [sic] character, notorious thief. And he was going to

be hanged because of the things that he did. And he told them how he had this secret, which he learned from his father, which he would like to share with them. Secret that they kept for years, and it was how to make a pomegranate tree grow overnight and produce fruits.

They walked with this man through the town, through different towns, as a matter of fact. And as they walked along, they picked up the governor, they picked up the important officials in the state, and walked through the last town and got to the place where they agreed that this man, who had this secret, would demonstrate to them, before he was put to death, how to grow a pomegranate tree and have the fruits produced overnight.

So the man dug the hole, and they did find pomegranate seeds. The man dug the hole, and then called all of the people together to see how this had to be planted. He called. He said to them that the secret is — really, my father said that the only way that this could happen is that someone who had never done wrong would plant the seed. I could only dig the hole.

So the governor called every other official who was there and asked for someone to plant the seed, and one by one they came along and said they could not plant the seed because each one in his own life had done something wrong.

The governor himself said, I could not plant the seed because in my own life I too had done something wrong.

And I cannot tell you what to do with Mr. Hall. But I could only ask that you will have some kind of leniency in dealing with a man whom I believe may have made some foolish mistakes, foolish — I'm sorry. Foolish mistakes. And sometimes we can learn from our mistakes and become better persons.

[T62-T63.]

Even the presenter, in his closing statement to the special master, recognized that respondent was not unsalvageable:

> However, I will say that as a man, I am struck and admire the Respondent's ability to be candid in

> his admissions and come to this ethics hearing and own up and stand up like a man. And so it convinces me that there is, you know, clearly some room for redemption, as a human being, in Respondent's character.
>
> [T79.]

Since 1979, attorneys who knowingly misappropriate client funds have been disbarred. In re Wilson, supra, 81 N.J. 451. Recently, the Court revised the rules to allow for the imposition of an indeterminate suspension in matters that may otherwise require disbarment. R.1:20-15A(a)(2). We are persuaded that this respondent merits another chance, and that an indeterminate suspension is appropriate in this case. Although respondent knew that he was using his client's funds in an unauthorized manner, we are convinced that he did not understand the significance and the gravity of his actions. Neither do we find that future clients' funds will be at risk by allowing him the privilege of continued membership at the bar. Respondent's single misstep was the result of poor judgment, prompted by panic. There is no evidence of any venality or ill motivation on respondent's part. We, therefore, unanimously agree that an indeterminate suspension sufficiently addresses the nature of his offenses and the need to maintain the public's confidence in the bar. Two members did not participate.

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 Rupert A. Hall, Jr.
Docket No. DRB 03-435

Argued: February 13, 2004

Decided: April 22, 2004

Disposition: Indeterminate suspension

Members	*Disbar*	*Indeterminate Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla							X
Pashman							X
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		7					2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel