SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-151

IN THE MATTER OF

ADAM H. GLICK

AN ATTORNEY AT LAW

Decision

Argued: July 19, 2001

Decided: January 29, 2002

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Patrick T. Collins appeared on behalf of respondent.

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

This matter was before us based on a stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent acknowledged in the stipulation that he violated *RPC* 1.15(b) (failure to safeguard funds of a third party) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) by taking fees without the consent or

knowledge of the law firm by which he was employed. He disputed, however, the OAE's contention that he improperly solicited the firm's clients, in violation of *RPC* 8.4(c).

Respondent was admitted to the New Jersey bar in 1984. He has no disciplinary history.

* * *

On January 1, 1994 respondent became employed by the law firm of Kern, Augustine, Conroy & Schoppman, P.C. ("the firm"). Respondent, who had formerly maintained a solo practice, had developed an expertise in the field of personal injury protection ("PIP") medical arbitration. While employed with the firm, he continued to maintain an attorney business account to deposit fees earned from his solo practice. Respondent's agreement with the firm provided for a one year term, beginning January 1, 1994, subject to automatic renewal unless notice of termination was given. Under the agreement, respondent received a base annual salary of $85,000 plus benefits, reimbursement of expenses and profit sharing. The agreement also contemplated that respondent would oversee a unit concentrating on personal injury cases and PIP medical arbitration work. The firm's medical clients formed the client base for the PIP arbitration cases.

Almost immediately, respondent and the firm disagreed about the unit's productivity. In October 1994 the firm conveyed to respondent its concerns about the low revenues generated by his unit. Respondent replied in an October 31, 1994 memorandum to the firm,

outlining his view of the cause of the low revenues: primarily insufficient staff, computer equipment and advertising. At the end of 1994 the firm notified respondent that his unit had operated at a net loss of approximately $100,000, without providing any calculations or documentation. Respondent did not participate in profit sharing.

Although respondent's unit was profitable in 1995, the firm calculated his profit share at $750, applying his unit's 1994 losses to the 1995 profit. Respondent disagreed with the back charging of the unit's 1994 losses. The disagreement continued in 1996 when, after negotiations, respondent and the firm agreed that respondent's profit share was $15,000.

In February 1997 the firm paid respondent $7,500 of the $15,000 profit share. After respondent complained, on May 12, 1997, that he had not received the full amount of his profit share, the firm paid him the $7,500 balance.

On May 21, 1997 respondent informed the firm that he was resigning effective August 19, 1997, in accordance with the agreement's provision requiring notice of ninety days. The next day, May 22, 1997, the firm notified respondent of the procedures that it expected respondent to follow during his remaining period of employment. On that same date, respondent informed the firm that he considered its May 22, 1997 letter to be a breach of the employment agreement. He, therefore, left the firm on that date. In a May 28, 1997 memorandum to the firm, respondent provided more detail about his claim of breach of the employment agreement.

Respondent eventually sued the firm for breach of contract and constructive discharge. The firm filed a counterclaim for breach of contract, breach of loyalty and other causes of

action. On October 30, 1998 the court entered an order awarding the firm $12,747.50 in fees that respondent had improperly taken during his employment. The court also apportioned, between respondent and the firm, fees to be received from pending cases.

Specifically, from 1994 through 1997 respondent had deposited checks totaling $12,747.50 in his own attorney business account. Because these checks were written to respondent as payee, he negotiated the checks under his own signature. Although respondent had earned the majority of these fees for services performed as an arbitrator on insurance matters originated by him, he acknowledged that the fees were due to the firm and that he had taken them without the firm's knowledge or consent. Respondent retained the fees as a form of self-help to compensate him for what he perceived as the firm's failure to properly calculate his profit share under the employment agreement. As noted above, respondent admitted in the stipulation that, by taking the fees without the firm's knowledge or authorization, he violated ***RPC*** 1.15(b), ***RPC*** 8.4(c) and the principles set forth in *In re Bromberg*, 152 *N.J.* 382 (1997).

In addition, beginning in April 1997, while still employed by the firm, respondent photocopied thirty-seven client files and contacted the firm's clients in an effort to retain them as his clients, upon his departure from the firm. These actions were taken without the knowledge or consent of the firm. With few exceptions, all of the clients had been introduced to the firm by respondent, who had handled their cases exclusively. Respondent denied the OAE's contention that photocopying client files and soliciting firm clients while employed by the firm constituted the improper solicitation of clients, contrary to ***RPC*** 8.4(c) and the

principles set forth in *In re O'Grady*, 92 *N.J.* 623 (1983). Respondent maintained that his actions in this regard were ethical.

Contending that this matter is more serious than in *In re Bromberg*, 152 *N.J.* 382 (1997), the OAE argued that the proper discipline ranged from a reprimand to a six-month suspension. Respondent, in turn, asserted that a reprimand is the appropriate discipline for his infractions.

* * *

Based on our review of the record, we are satisfied by clear and convincing evidence that respondent's conduct was unethical when he took fees due and owing to the firm. We declined, however, to find that, by photocopying client files and soliciting firm clients, respondent engaged in unethical conduct.

The facts are not in dispute. The presenter and respondent disagree, however, on whether respondent's conduct was improper.

It is undisputed that, once respondent became disenchanted with the firm, he began to retain fees payable to him, but due and owing to the firm. Respondent had earned these fees for performing arbitration services in insurance cases that he had originated. He kept these fees as a form of self-help, after he and the firm disagreed about the calculation of his profit share. Both parties point to *In re Bromberg, supra*, 152 *N.J.* 382 (1997) as precedent. Indeed, *Bromberg* is similar to this matter. In both cases, an attorney and a law firm entered into an

employment agreement. The attorney soon became dissatisfied with the financial arrangements and, resorting to self-help measures, retained fees due to the firm. Here, the presenter argued that respondent's conduct was more serious, because he engaged in this pattern for more than three years, while the attorney in *Bromberg* took fees on only one occasion. That distinction, however, must be considered in conjunction with another factor that makes this respondent's actions less serious than in *Bromberg*. There, the attorney forged the endorsement, while this respondent signed his own name to the checks. The attorney in *Bromberg* also made misrepresentations about the fees to his firm. Respondent did not. Moreover, respondent retained fees in matters originated by him in which he had acted as an arbitrator, while the attorney in *Bromberg* intercepted fees earned by the firm.

It is also undisputed that, shortly before leaving the firm, respondent arranged to have thirty-seven client files photocopied and informed those clients of his plans to establish his own practice. Respondent had introduced most, if not all, of those clients to the firm and had handled their cases exclusively. The presenter maintained that respondent's conduct amounted to the improper solicitation of clients, akin to that of the attorney in *In re O'Grady, supra*, 92 *N.J.* 623 (1983). We found substantial differences, however, between respondent's and O'Grady's actions. In *O'Grady*, the attorney took the original files and bookkeeping records for twenty-three client matters, upon his departure, without notice to the firm. Moreover, in twenty-one of the files, the attorney improperly filed with the court substitutions of attorney on behalf of the firm, naming him as the attorney of record. O'Grady conceded that, had the firm been aware of his actions, it would not have agreed to the

substitutions. Here, respondent did not take original files, but made photocopies of client files that he had originated. He did not execute substitutions of attorney. Respondent notified the clients of his intent to leave the firm, giving them the choice of retaining either him or the firm. By photocopying the files, respondent did not deprive the firm of the opportunity to keep the clients, all or most of whom had been exclusively represented by respondent.

We are unable to conclude that respondent improperly solicited clients. In anticipation of his impending departure, respondent took steps to allow the clients to choose their counsel. He did not "steal" files. We, thus, found that his conduct did not rise to the level of an ethics violation.

In light of the foregoing, we unanimously determined that a reprimand is the appropriate discipline for respondent's infractions in this matter. Two members did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Adam H. Glick
Docket No. DRB 01-151

Argued: July 19, 2001

Decided: January 29, 2002

Disposition: Reprimand

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

Robyn M. Hill 2/7/02
Robyn M. Hill
Chief Counsel