

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-190

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IN THE MATTER OF  
WILLIAM C. GASPER JR.  
AN ATTORNEY AT LAW

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

Decided: May 7, 2001

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

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics (“OAE”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On March 20, 2000, the OAE forwarded a copy of the complaint to respondent’s counsel, who signed the acknowledgment of service. A copy of the complaint was also sent to respondent’s home address by regular mail. When respondent did not file an answer, the OAE sent respondent’s counsel a second letter, on May 22, 2000, by regular mail. A copy of the letter was also sent to respondent’s home address via regular mail. The letter advised

respondent that, if he did not file an answer within five days, the matter would be certified to the Board for the imposition of sanctions and the charges of the complaint would be deemed admitted.

Respondent did not file an answer to the formal ethics complaint. The record was then certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1979. At the relevant times he maintained an office in Whiting, New Jersey.

On March 14, 2000, respondent was temporarily suspended from the practice of law, following the discovery of trust overdrafts. In re Gasper, 163 N.J. 25 (2000). He remains suspended to date. Respondent also received a reprimand in 1997 for violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to communicate) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Gasper, 149 N.J. 20 (1997).

Docket No. DRB 00-217 is still pending before the Board.

The formal ethics complaint alleged four counts of unethical conduct.

### **Count One**

The first count of the complaint alleged that the respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.15(a) (failure to safeguard client funds) and 1.15(b) (negligent misappropriation of client funds).

Specifically, the first count alleged that respondent had represented Helen D. Knittel in the creation of four trusts for each of her granddaughters. The trusts were created in 1983 and gifted \$10,000 each. Respondent was named successor trustee and qualified as such upon Knittel's death in 1987.

By July 31, 1993, grievant Sasha Knittel's trust had grown to approximately \$26,881.31. Per the Deed of Trust, respondent began disbursing funds to the grievant from a Cash Management Account (CMA) on August 3, 1993, shortly after her eighteenth birthday. The Merrill Lynch CMA showed that respondent withdrew a total of \$26,519.50, of which \$24,010.80 was deposited into his attorney trust account. The balance was deposited in respondent's business account in two transactions: a \$508.70 check on August 4, 1995 and a \$2,000 check on October 30, 1995. That \$2,000 check was to reimburse respondent for a previous \$2,000 payment made to grievant from his personal account. However, respondent had no explanation for depositing the \$508.70 check into his business account.

Respondent then disbursed \$26,000 to grievant out of his attorney trust account against a client balance of only \$24,010.80. Such payment created a shortfall of \$1,989.20, and invaded the funds of other clients which were on deposit in the account. Moreover, respondent's trust account records showed that a negative balance was carried for the trust almost continuously from July 1994 to November 1995. Although required by law, respondent did not submit federal income tax K-1 forms, in both 1994 and 1995, for

grievant's trust.

On September 12, 1995, grievant wrote to respondent requesting that the trust be liquidated. Respondent failed to liquidate the trust in a timely fashion. Although respondent claimed he never received the letter, a copy was found in the Knittel file stamped as received by respondent's office on September 16, 1995.

The OAE also reviewed the available CMA account records for the Amy Knittel trust and the Arianna Knittel trust. The review disclosed three improprieties. First, \$10,000 was disbursed from the trust for Arianna Knittel on September 4, 1990 to Harry Knittel, Arianna's father. Second, on July 8, 1994, \$1,700 was disbursed from Arianna's trust to Sasha Knittel. Finally, also on July 8, 1994, \$2,300 was paid from the Amy Knittel trust to Sasha Knittel.

With respect to the \$10,000 disbursement, respondent issued the check to Harry Knittel from Arianna's trust as a loan when she was only seven years old. The trust instrument did not authorize disbursement at that time or in that manner. In fact, Harry Knittel filed for bankruptcy just six months after the disbursement and the loan was discharged. The money was never repaid to the trust. The two other disbursements were "borrowed" by respondent in order to help fund a \$5,650 payment to grievant on July 11, 1994.

### **Count Two**

In the second count, respondent was charged with violating RPC 1.15(a) (gross negligence and negligent misappropriation).

According to the complaint, two unauthorized client disbursements were made to respondent's payroll account. The payroll account reflects a \$1,000 deposit from the grievant's trust, as well as a \$2,693.04 deposit from funds respondent was holding in connection with a real estate closing for clients Su and Hu. Respondent explained both deposits as clerical errors that were never corrected.

### **Count Three**

The third count of the complaint charged respondent with violating RPC 1.15(d) (failure to comply with recordkeeping rule, R 1:21-6).

The OAE's investigation uncovered various recordkeeping violations. First, respondent was inconsistent in maintaining client ledger cards. In some cases, a new ledger card was prepared with each disbursement of funds from the trusts, while in other cases, several entries were made on the same ledger and a running balance was maintained. Second, respondent's disbursements journal was not in chronological order. Finally, respondent did not perform quarterly reconciliations.

#### **Count Four**

The final count of the complaint alleged that respondent violated RPC 1.4(a) (lack of communication), RPC 1.5(b) (failure to create written fee agreement), and RPC 1.15(b) (failure to safeguard client funds).

The grievant, Betty Lamonte, retained respondent in December 1994 to represent her in a claim against a moving company, Moving USA, which had lost her furniture and possessions in a September 1994 move from Florida to New Jersey. Respondent did not enter into a written fee agreement, nor did he provide a written memorandum of their fee arrangement before or within a reasonable time after commencing representation.

At their initial meeting, grievant gave respondent a \$500 check that she had received from Moving USA in September 1994. The check was deposited by respondent in his attorney trust account. Respondent advised Moving USA of his representation in a letter on December 8, 1994. On December 14, 1994, Moving USA sent respondent a copy of the police report regarding grievant's stolen property, as well as a \$426.30 check representing the balance claimed by the moving company to be owed the grievant. Again, that check was deposited in respondent's attorney trust account.

The grievant was not notified by respondent of either the correspondence with Moving USA or the receipt of funds on her behalf. She telephoned respondent throughout the years 1995 and 1996 to request information as to the status of her case. After a second office visit in January 1995, respondent refused to communicate with the grievant. It was

not until December 1996 that respondent turned over grievant's funds by issuing a \$926.30 check.

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Service of process was properly made in this matter. Following a de novo review of the record, we determined that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

In count one, respondent's mishandling of Sasha Knittel's trust and his failure to honor her request to liquidate in a timely manner constitute violations of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). Further, the carrying of a negative trust balance for over a year and the overdisbursement of funds from the Sasha Knittel trust represent an invasion of client funds and a violation of RPC 1.15(a) (failure to safeguard client funds). Respondent's unauthorized disbursement from Arianna's trust to Harry Knittel is a negligent misappropriation of funds and a clear violation of RPC 1.15(b).

In count two, funds from the Sasha Knittel trust and the Su/Hu real estate closing were deposited in respondent's payroll account. These transactions were unauthorized disbursements, and violated RPC 1.15(a) (negligent misappropriation of funds).

The facts referenced in the third count demonstrate that respondent was inconsistent in his recordkeeping, failed to keep his disbursement journal in chronological order, and

failed to perform quarterly reconciliations. This conduct was a clear violation of RPC 1.15(d) (failure to comply with recordkeeping requirements, R. 1:21-6).

Lastly, in the fourth count, respondent failed and refused to communicate with the grievant, in violation of RPC 1.4(a) (failure to communicate). Moreover, respondent failed to advise Ms. Lamonte that funds had been received in her behalf from Moving USA. It took respondent two years to deliver those funds to Ms. Lamonte, in violation of RPC 1.15(b) (failure to return client property). Respondent also did not enter into a written fee agreement with grievant or communicate a fee within a reasonable time after the representation began, contrary to RPC 1.5(b) (failure to reduce fee agreement to writing).

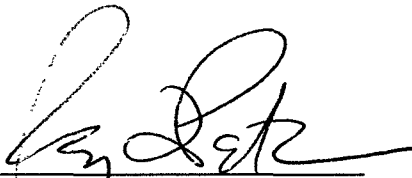
The discipline usually imposed in this type of matter is either a three-month suspension (In re Prado, 159 N.J. 928 (1999) (three-month suspension for negligent misappropriation, failure to deliver funds promptly, recordkeeping violations and lack of diligence; and In re Whitefield, 146 N.J. 480 (1996) (three-month suspension for negligent misappropriation, failure to maintain proper trust account records, improperly entering into business transaction with client, failure to communicate, and lack of diligence) or a six-month suspension (In re Uzodike, 159 N.J. 510 (1999) (six-month suspension for negligent misappropriation, gross neglect and pattern of neglect, lack of diligence, failure to communicate, failure to safeguard property, recordkeeping deficiencies, and false statement of material fact to disciplinary authorities). However, based on the default nature of this matter, and respondent's prior reprimand in 1997, a suspension of six months is appropriate.



Accordingly, we unanimously determined to suspend respondent for six months and until the conclusion of all ethics matters pending against him. We further unanimously determined to direct the OAE to consolidate all pending investigations and hearings.

Finally, we determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: May 7 2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

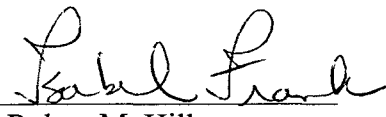
**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of William C. Gasper, Jr.  
Docket No. DRB 00-190**

**Decided: January 22, 2001**

**Disposition: Six-month suspension**

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
<b>Total:</b>		9					

By   
Robyn M. Hill  
Chief Counsel

5/16/01