

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-054

IN THE MATTER OF :
HERBERT R. EZOR :
AN ATTORNEY AT LAW :

Decision

Argued: May 11, 2000

Decided: October 18, 2000

Andrew Venturelli appeared on behalf of the District XI Ethics Committee.

Herman Osofsky 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 on a recommendation for discipline filed by the District XI Ethics Committee ("DEC"). The formal complaint charged respondent with gross neglect, in violation of *RPC* 1.1(a) and *RPC* 3.2, failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information, in violation of *RPC* 1.4(a), failure to explain a matter to the extent reasonably necessary to permit the

client to make informed decisions regarding the representation, in violation of *RPC* 1.4(b), failure to safeguard funds, in violation of *RPC* 1.15(a), and failure to promptly deliver funds to a client, in violation of *RPC* 1.15(b) (count one); knowing and negligent misappropriation¹ (count two); gross neglect, in violation of *RPC* 1.1(a) and *RPC* 3.2, lack of diligence, in violation of *RPC* 1.3, and failure to communicate, in violation of *RPC* 1.4(a) and (b) (count three); and, finally, failure to cooperate with the disciplinary authorities, in violation of *RPC* 8.1(b) (count four).

At the beginning of the hearing, the presenter withdrew count three of the complaint, stating that he could not present clear and convincing evidence of the charged violations. In addition, at the hearing the presenter withdrew the charge of knowing misappropriation of client funds.

Respondent was admitted to the New Jersey bar in 1971. He has no disciplinary history.

* * *

In 1993 and 1994 respondent was retained to represent numerous owners of condominium units in a building in North Bergen Township (“the township”), in connection with property tax assessment appeals. One such owner was the grievant, Burt E. Dalton, for

¹ No specific *RPC* was cited for this violation.

whom respondent filed tax appeals in connection with two condominium units. Ultimately, the township sent to respondent a \$30,255.97 check, dated August 29, 1997, representing the tax refunds for the condominium unit owners. Although the check stub contained a list of the individual refunds and invoice numbers, the township did not include any information identifying the owners or the amount of the refund to which each owner was entitled. The invoice numbers appearing on the check stub did not correspond to any information in respondent's possession. As a result, respondent reviewed his own records to determine the amount of each owner's refund. He also had several telephone conversations with staff at the township tax assessor's office.

On September 12, 1997 respondent deposited the check from the township in his trust account. Between September 18 and October 24, 1997 he issued checks to the condominium owners for their tax refunds, to appraisers for their fees and to himself for his attorney fees². Dalton's tax refund was \$811.23. On October 6, 1997, after deducting \$50 for the appraiser, \$10 for disbursements and \$250.01 for his attorney fees, respondent issued a \$500.82 check to Dalton. Almost one year later, in a September 21, 1998 letter to respondent, Dalton claimed that respondent owed him an additional \$784.62 for his 1995 tax refund and \$841.10 for his 1996 tax refund. The letter mentioned several telephone conversations in which Dalton had requested these refunds. According to the letter, respondent denied receiving those monies and suggested that Dalton contact the township. Dalton did so and

² Although no evidence was presented concerning fee agreements, the settlement sheets introduced for each refund indicate that respondent was entitled to one-third of each refund.

was informed the funds had been sent to respondent. Dalton then sent respondent an October 27, 1998 letter threatening to contact the DEC if he did not hear from respondent.

Respondent stated that in 1993 he represented Dalton in tax appeals for both condominium units and in 1994 for one unit. Dalton proceeded *pro se* for tax appeals in 1995 and 1996. During the ethics hearing, respondent acknowledged that, although he was not aware of it at the time, the township had included Dalton's \$784.62 tax refund for 1995 in the August 29, 1997 check. He also agreed that, when the township sent him another wholesale refund check dated October 10, 1997, an additional \$841.10 for Dalton's 1996 tax refund had been included, although respondent was unaware of it then. At the hearing, respondent gave the presenter two checks payable to Dalton for the two tax refunds, plus interest.

Although respondent acknowledged receiving the September 21, 1998 letter from Dalton, he did not recall seeing the October 27, 1998 letter. He acknowledged not replying to Dalton's letter, but did not remember failing to return Dalton's telephone calls.

After all of the disbursements were made to the owners, appraisers and respondent, a balance of \$1,843.84 remained from the \$30,255.97 check. On January 6, 1998 respondent disbursed the balance to himself. Respondent testified that, because all of the refunds had been disbursed, he believed that the balance represented his fees. He could not explain why a balance remained or why he believed that he was entitled to fees in excess of those already disbursed to himself. Respondent also could not explain why he waited six weeks to issue

a check to himself for the balance in the account, speculating that, for tax purposes, perhaps he wanted to postpone his receipt of income until the following year.

Finally, toward the end of the hearing, it was discovered that, although the check that the township had sent to respondent contained forty-nine invoice numbers, respondent issued only forty-seven refunds. The overage resulted from respondent's failure to disburse two tax refunds. Respondent learned of his mistake at the hearing and testified as follows:

It appears and I can't offer any refutation that there was a grievous error made here by me and that although I believed that all of the money to the various unit owners had been disbursed, you gentlemen have shown me that apparently this was not the case and this is not something that I take lightly and certainly not something that has happened to me before. . . .

An error was made. I've already given to [the presenter] checks for Mr. Dalton to make him whole. I certainly would like to go back and go through these records to see who, if anyone, is entitled to any additional money that they didn't get and make them whole.

[T137-138]³

In mitigation, respondent argued that the township should have provided him with more specific information regarding the identity of the condominium owners and the amount of their refunds. While acknowledging that the error was his, respondent contended that the condition of the township records contributed to his mistake. The presenter agreed that, during his investigation, the township had a difficult time identifying the amount of each unit's refund.

³ T refers to the transcript of the November 4, 1999 hearing before the DEC.

With respect to the charge of failure to cooperate with the disciplinary authorities, respondent conceded that he failed to reply to two letters from the DEC secretary and two letters from the ethics investigator. According to respondent, he was going through a divorce and could not deal with the ethics grievance. Respondent admitted that he retained counsel and filed an answer to the complaint only after the Office of Attorney Ethics sought his temporary suspension.

* * *

The DEC found that respondent violated *RPC 1.1(a)*, *RPC 3.2*, *RPC 1.4(a)* and (b) and *RPC 8.1(b)* (for which it recommended an admonition) and *RPC 1.15(a)* and (b) (for which it recommended a three-month suspension). The DEC recommended that respondent's trust account be audited.

* * *

Following a *de novo* review, we are satisfied by clear and convincing evidence that respondent committed ethics violations. Respondent represented numerous condominium owners in appeals of their property tax assessments and received one \$30,255.97 check from the township in behalf of his clients. The township did not provide sufficient information to allow respondent to identify the condominium owners and the amounts of the refund to

which each was entitled. After depositing the township check in his trust account, respondent issued checks to the condominium unit owners for their refunds (including \$500.82 to Dalton), to appraisers for their fees and to himself for his attorney fees. Respondent was left with a balance of \$1,843.84. Concluding that he was entitled to the balance as additional fees, respondent disbursed \$1,843.84 to himself. Respondent offered no explanation for his belief that he was entitled to additional fees. In light of respondent's receipt of one-third of each refund as his fee, his belief that he could collect additional fees was not reasonable. Although it might be true that the township provided insufficient information, respondent was not excused from investigating the reason for the unexpected balance. His failure to seek an explanation for the balance, particularly after Dalton questioned his receipt of two refunds, and his distribution of the balance to himself constituted violations of *RPC 1.15(a)* (failure to safeguard funds) and *RPC 1.15(b)* (failure to promptly deliver funds to a client). It was only at the hearing that the panel conducted the necessary review of records to determine that, although respondent received forty-nine tax refunds, he disbursed only forty-seven. Respondent should have conducted such a review both when he discovered the overage and when Dalton claimed that respondent had received additional refunds belonging to him. Because respondent received forty-nine tax refunds and disbursed only forty-seven, his disbursement of the \$1,843.84 balance to himself constituted a negligent misappropriation of client funds.

Also, by failing to reply to Dalton's inquiries about the receipt of his other tax refunds, respondent violated *RPC 1.4(a)* (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information). In addition, respondent's failure to reply to the DEC secretary's and investigator's letters constituted a violation of *RPC 8.1(b)* (failure to cooperate with the disciplinary authorities).

We dismissed the following charges: (1) *RPC 1.1(a)* because respondent's failure to investigate the source of the balance remaining in his trust account did not amount to gross neglect; (2) *RPC 1.4(b)* because, although respondent did not reply to Dalton's requests for information, there was no evidence that respondent failed to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation; and (3) *RPC 3.2* because there was no evidence that respondent failed to expedite litigation.

In sum, respondent failed to communicate with a client, negligently misappropriated client funds, failed to safeguard funds and failed to promptly deliver funds to a client.

Ordinarily, attorneys who commit misconduct similar to respondent's will receive reprimands. *See, e.g., In re Blazsek*, 154 *N.J.* 137 (1998) (reprimand where attorney negligently misappropriated client funds and failed to comply with recordkeeping requirements); *In re Imperiale*, 140 *N.J.* 75 (1995) (reprimand where attorney negligently misappropriated \$9,000 in client trust funds); *In re Mitchell*, 139 *N.J.* 608 (1995) (reprimand

where attorney negligently misappropriated client funds and failed to maintain required records).

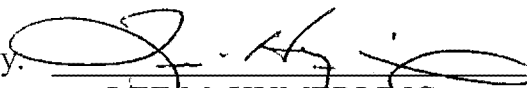
Here, respondent has enjoyed an unblemished legal career of almost thirty years. His misconduct occurred because he was careless, not venal. Accordingly, we unanimously determined that a reprimand is appropriate discipline for respondent's misconduct. One member did not participate.

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

Dated: _____

10/16/00

By. _____



LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Herbert R. Ezor
Docket No. DRB 00-054**

Argued: May 11, 2000

Decided: October 18, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz							X
Wissinger			X				
Total:			8				1

Robyn M. Hill 2/1/01
Robyn M. Hill
Chief Counsel