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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-197

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IN THE MATTER OF :  
: :  
JAMES T. DAVIS, II :  
: :  
AN ATTORNEY AT LAW :  
:

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

Decided: November 13, 2002

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.

Respondent was admitted to the New Jersey bar in 1984. He formerly maintained an office for the practice of law in Upper Montclair, Essex County. He was transferred to disability inactive status (DIS) by order dated May 20, 1997. In re Davis, 149 N.J. 345

(1997). That status was continued by order dated October 28, 1997. In re Davis, 151 N.J. 503 (1997). Respondent remains on DIS at this time.<sup>1</sup>

On January 18, 2002 the OAE sent a copy of the complaint by regular and certified mail to respondent's last known address: 2801 Clearview Place, Doraville, Georgia 30341. The address is a rehabilitation facility where respondent had been receiving treatment for some time. A certified mail receipt was returned to the OAE, but it was neither signed nor dated. The certified mail envelope was returned on February 26, 2002, marked as "unknown," after it had been readdressed twice to different New Jersey locations. The regular mail was not returned. The OAE also sent a copy of the letter to an attorney believed to be respondent's counsel.

On February 28, 2002 the OAE sent a copy of the complaint to an unidentified individual who had contacted the OAE on that date, on behalf of respondent. The OAE's cover letter, however, stated that the complaint had been sent to respondent's mother.<sup>2</sup> Thereafter, on March 4, 2002, respondent called John J. Janasie, the OAE's First Assistant Ethics Counsel, and stated that he had received a copy of the complaint at the Georgia address. Respondent told Janasie that he would attempt to contact his attorney to see if he would represent him. Respondent also told Janasie that he would contact the OAE by the end of that week, but had no subsequent communications with that office.

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<sup>1</sup> Although respondent is on disability inactive status, there is no indication that he is unable to defend himself against these charges. Therefore, the matter has proceeded on course. R.1:20-12(e).

<sup>2</sup> Respondent advised the OAE that his mother had passed away in September 2001. Thus, it is not clear who contacted the OAE and who received the letter.

On April 3, 2002 the OAE sent a letter to respondent's Georgia address via certified and regular mail. The letter advised respondent to file an answer, lest the case proceed on a default basis. The certified mail receipt was returned, indicating delivery on April 11, 2002. The accepting agent, K. Barrett, is not identified in the record. The regular mail was not returned.

On April 16, 2002 the OAE received a copy of an April 11, 2002 letter from respondent's former attorney to respondent, advising him that he would not represent him in this proceeding.

Respondent did not file an answer to the complaint.

By letter dated May 21, 2002 the OAE certified the record directly to us. A copy of the OAE's letter was sent to respondent and to his former counsel.

### **The Hauben Matter**

In or about September 1995 respondent represented Anne Marie Hauben, the grievant, in a claim against National Union Fire Insurance Company. In connection with that matter, respondent received a settlement check in the amount of \$12,500, payable to Hauben and respondent. Respondent instructed Hauben to endorse the settlement check. On September 22, 1995 the endorsed settlement check was deposited into respondent's trust account. Prior to the deposit of that check, respondent's trust account balance was zero.

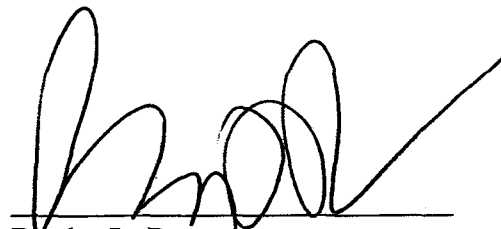
On September 28, 1995 respondent disbursed \$4,166 to himself as his fee in the matter. Therefore, as of October 3, 1995, respondent should have been holding \$8,334 in

\* \* \*

Service of process was proper. Despite respondent's promise to the OAE that an answer to the complaint was forthcoming, he supplied no defense to the allegations that he misappropriated client funds and that he practiced law while ineligible. Therefore, the matter may proceed as a default. Pursuant to R.1:20-4(f)(1), the allegations of the complaint are deemed admitted.

Respondent deposited the Hauben settlement check in his trust account and did not turn over the funds to Hauben, but withdrew them for his own use. Hauben did not consent to respondent's use of the funds. Respondent, therefore, knowingly misappropriated Hauben's funds. He also practiced law while ineligible. Under In re Wilson, supra, 81 N.J. 451 (1979), respondent must be disbarred. We unanimously so recommend. One member did not participate.

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



Rocky L. Peterson  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of James T. Davis, II  
Docket No. DRB 02-197

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Decided: November 13, 2002

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>	X						
<i>Maudsley</i>	X						
<i>Boylan</i>	X						
<i>Brody</i>	X						
<i>Lolla</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Pashman</i>							X
<i>Schwartz</i>	X						
<i>Wissinger</i>	X						
<b>Total:</b>	8						1

*Robyn M. Hill* 11/28/02  
Robyn M. Hill  
Chief Counsel