

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
DOCKET NO. DRB 00-183

---

IN THE MATTER OF  
FREDERIC H. BROOKS  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:  
:

Decision

Argued: September 21, 2000

Decided: January 31, 2001

Tangerla Mitchell Thomas appeared on behalf of the Office of Attorney Ethics.

Ronald S. Sampson 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 disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent, in which respondent admitted a violation of RPC 1.15(a) and (d) (failure to safeguard funds and failure to maintain required attorney trust and business account records), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and R.1:21-6 (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1982. During the time relevant to this matter, he maintained an office for the practice of law in East Orange, Essex County. At the time of the stipulation, respondent was in the process of closing his law practice in New Jersey. He planned to relocate to Washington, D.C.

On March 23, 1999, respondent was reprimanded for failure to cooperate with the disciplinary authorities in eight matters. In re Brooks, 157 N.J. 640 (1999).

The facts are as follows:

In connection with his law practice respondent maintained the following bank accounts: an attorney trust account at PNC Bank from 1982 until January 2000 [previously Midlantic National Bank (“Midlantic”)]; an attorney trust account at Summit Bank from 1988 until 1999 (previously Crestmont Federal Savings Bank); an attorney trust account at Provident Bank from January 2000 to the present; an attorney business account at Midlantic from 1982 until 1996; and an attorney business account at Provident Bank from 1996 to the present.

On August 11, 1999, the OAE conducted a demand audit of respondent’s attorney trust and business accounts. The audit initially focused on respondent’s handling of \$4,000 in connection with his representation of Charles Brooks.<sup>1</sup> Although the audit disclosed no misuse of Brooks’ funds, the OAE investigator assigned to the matter, Yvonne Norment,

---

<sup>1</sup>The record does not reveal if Charles Brooks is related to respondent.

noted improprieties in respondent's handling of the funds and in his trust account generally. Accordingly, the audit continued on January 19, 2000.

Norment's audit revealed that respondent had a) negligently misappropriated client funds; b) commingled personal and client funds; c) disbursed checks against uncollected funds; d) negotiated checks without proper endorsements; and e) failed to perform quarterly reconciliations of his attorney accounts and to maintain his records in accordance with the requirements of R.1:21-6 and RPC 1.15.

Norment determined that, as of December 31, 1997, respondent's client ledgers in connection with his trust account at Midlantic revealed debit balances for twenty-four clients, in the total amount of \$21,157.74. In addition, respondent commingled funds by leaving earned legal fees in the trust account and also depositing personal funds into the account. Respondent also used the trust account to pay personal debts, as well as those of family members.

As of December 31, 1997, respondent had \$15,608.15 in personal funds in the Midlantic trust account. Norment, however, identified a \$5,549.59 shortage in the account, which resulted in the invasion of client funds. Specifically, on December 31, 1997 respondent should have been holding \$20,195.15 in client funds in the Midlantic account. The account balance, however, was only \$14,645.56.

During the audit on January 19, 2000, respondent advised the OAE that he had reconstructed his trust account records from 1992 through 1999 and had deposited

\$17,115.98 in the account to replace client funds that had been invaded. Respondent also informed the OAE that he had zeroed out all the inactive client balances in the trust account.

During the audit, Norment also discovered that respondent had made trust account disbursements against uncollected funds. Specifically, in connection with the Brooks matter, respondent deposited \$71,237.43 in settlement proceeds into his Midlantic attorney trust account on January 5, 1996. On the same date, before the check cleared, respondent issued and cashed a trust account check in the amount of \$5,000, payable to Charles Brooks and Fred Brooks. Respondent endorsed Brooks' name on the check by writing "Charles Brooks/FB." F.B. are respondent's initials.<sup>2</sup> Respondent did not have Brook's consent to the endorsement, but argued in his brief that his action was "an act of convenience to a former client."<sup>3</sup>

Also, on March 28, 1995, respondent issued a Midlantic trust account check payable to R. Richardson, in the amount of \$2,300. On March 27, 1995, the check was negotiated through First Fidelity Bank and cleared respondent's trust account on March 28, 1995. Respondent did not deposit the \$2,300 in his trust account until March 29, 1995. In his brief, respondent explained that he had left with an office assistant both a trust account deposit slip

---

<sup>2</sup>Brooks alleged that respondent misappropriated \$4,000 of the \$5,000 check he cashed on January 5, 1996. The OAE's investigation revealed no evidence of such conduct.

<sup>3</sup>Respondent's brief states that his client's "claim against the respondent of rendering an endorsement without authorization was without merit." This statement contradicts the stipulation, which states that "[r]espondent also endorsed Brooks' name on the back of the check, without Brooks' knowledge or consent," although respondent may well have acted as a convenience to his client.

for the \$2,300 and a trust account check to be given to the client. He claimed that, inadvertently, the assistant gave the check to the client before the corresponding funds were deposited in his trust account.

Finally, on May 4, 1995, respondent issued a Midlantic trust account check payable to Martin F. Barbato, Esq., in the amount of \$400, which referenced client James Howell. Although the check cleared respondent's trust account on May 5, 1995, he did not deposit the \$400 into his trust account until May 10, 1995. In his brief, respondent explained that the client had given him a \$400 money order that he forgot to deposit, having found it on his desk after he issued the trust account check.

As summarized in the stipulation,

[r]espondent's failure to properly reconcile his attorney trust account, his commingling of client funds and personal funds in the account, and his disbursement of checks against uncollected funds all contributed to the creation of a shortage in respondent's attorney trust account and an invasion of client funds, a violation of *RPC 1.15(a)*, a failure to safeguard funds held in the attorney trust account. Respondent's commingling of client funds with his personal funds in the attorney trust account constitute a violation of *RPC 1.15(a)* and *R. 1:21-6(a)(1)*, and his failure to properly prepare attorney trust account reconciliations constitute violations of *RPC 1.15(d)* and *R. 1:21-6(b)(8)*.

The stipulation also states that respondent's endorsement of his client's name without authorization and his failure to obtain the proper endorsement before negotiating the check constituted a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

\* \* \*

The audit of respondent's attorney trust account records disclosed several recordkeeping deficiencies:

- (a) client trust ledger sheets were not fully descriptive [R. 1:21-6(b)(2)]
- (b) inactive trust ledger balances remained in the trust account for an extended period of time [R. 1:21-6(c)]
- (c) separate ledger sheets were not maintained for each client. [(R. 1:21-6 b)(2)]
- (d) deposit slips lacked sufficient detail to identify each item of deposit [R. 1:21-6(b)(1)]
- (e) funds received for professional services were not deposited into the business account [R. 1:21-6(a)(2)]
- (f) attorney funds held in the trust account were in excess of the amount necessary for bank charges [RPC 1.15(a)]
- (g) interest was not properly apportioned to clients
- (h) attorney personal funds were commingled with trust funds [RPC 1.15(a)]
- (i) trust account was used to account for funds unrelated to the legal practice [R. 1:21-6(a)(1), RPC 1.15(a)]
- (j) receipts and disbursements journals for the trust account were not fully descriptive [R. 1:21-6(b)(1)]
- (k) receipts and disbursements journals for the business account were not fully descriptive [R. 1:21-6(b)(1)].

Respondent stipulated that the above conduct constituted a violation of RPC 1.15(a) and (d) and R. 1:21-6.

According to the stipulation, respondent admitted his wrongdoing, cooperated fully with the OAE's investigation, brought his records into compliance with the recordkeeping rules and, at the time the stipulation was signed, was in the process of closing his trust and business accounts at Provident Bank.

\* \* \*

At oral argument before us, respondent's counsel made a motion to expand the record to include certain letters about respondent's good character. We granted the motion as to all letters, except for the portion of Professor Alfred Slocum's letter that refers to pressures on solo practitioners.

Upon a de novo review of the record, we are satisfied that there is clear and convincing evidence that respondent violated RPC 8.4(c), RPC 1.15(a) and (d) and R.1:21-6.

Generally, an admonition or a reprimand is the appropriate discipline for recordkeeping deficiencies and negligent misappropriation, even where the attorney also commingled personal and client funds. See In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (admonition imposed where the misrecording of a deposit led to a trust account shortage; the attorney committed a number of violations in the maintenance of his trust account); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed where the attorney had deficient recordkeeping practices and failed to prepare quarterly reconciliations of client ledger accounts, resulting in negligent misappropriation of client trust funds in eleven instances); In re Marcus, 140 N.J. 518 (1995) (reprimand imposed where the attorney negligently misappropriated client funds as a result of numerous recordkeeping violations and commingled his funds and client funds; prior reprimand; attorney's lack of awareness of the account's being out of trust, subsequent adoption of proper recordkeeping procedures, the absence of loss to any client and successful

completion of a two-year proctorship following his previous reprimand were considered); In re Goldstein 147 N.J. 286 (1997) (reprimand where the attorney negligently misappropriated client funds as a result of recordkeeping deficiencies); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where the attorney negligently misappropriated client funds after commingling personal and client funds) and In re Gilbert, 144 N.J. 581 (1996) (reprimand where the attorney negligently misappropriated in excess of \$10,000 in client funds and committed violations of the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts).

In this case, however, respondent also drew against uncollected funds and, more seriously, endorsed a client's name on a check. These added violations would require enhanced discipline, unless there are compelling mitigating factors. In addition, in 1999 he was reprimanded for failure to cooperate with the ethics authorities — an aggravating factor.

Here, respondent readily admitted his wrongdoing; cooperated with the OAE by stipulating his misconduct; explained that the endorsement on the check was motivated by his desire to accommodate a client and done at the instruction of the bank manager; explained that the withdrawals against uncollected funds were the result of inadvertence, rather than intentional conduct; corrected his deficient accounting practices by adopting a computerized system and hiring an accountant; attended professional responsibility seminars; allegedly will be enrolling in an accounting and recordkeeping course; has performed community service;

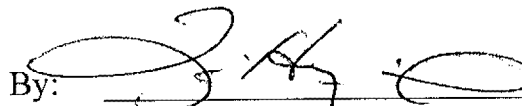


represented hundreds of clients for little or no fee; and allegedly is closing down his practice in New Jersey.

We unanimously determined that the foregoing mitigating circumstances keep the proper measure of discipline for this respondent at a reprimand. Two members did not participate.

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

Dated: 1/21/01

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Frederic H. Brooks  
Docket No. DRB 00-183**

**Argued: September 21, 2000**

**Decided: January 31, 2001**

**Disposition: Reprimand**

Members	Disbar	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>			7				2

*Robyn M. Hill* 5/16/01  
Robyn M. Hill  
Chief Counsel