

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-058

IN THE MATTER OF :
:
ROBERT E. CASSIDY, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 16, 1990

Decided: July 23, 1990

Arnold L. Stadtmauer appeared on behalf of the District XI Ethics Committee.

Respondent did not appear.¹

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

This matter is before the Board based upon a presentment filed by the District XI Ethics Committee.

Respondent was admitted as a member of the bar of New Jersey in 1978, and practiced law as a sole practitioner in Passaic, New Jersey.

¹ The Passaic County Prosecutor informed Board Counsel that respondent is currently living in Washington State. (The Prosecutor's office indicted respondent for Misapplication of Entrusted Property and Theft by Failure to Make Required Disposition of Property Received, but has chosen not to extradite him from Washington.) Notice by Publication was, therefore, made to respondent in Washington State.

Abandonment of Practice

On July 21, 1988, respondent's secretary received a letter from respondent stating he was abandoning his practice of law (P-2 in evidence). Respondent's practice consisted of municipal court matters and negligence cases, with approximately 150 open files. An order temporarily suspending respondent was entered by the Court on March 13, 1989. Subsequently, an attorney was appointed by the Court as a trustee to take physical possession of the files and to notify clients of respondent's abandonment of their cases.

The trustee testified that fifty to sixty clients arranged to take possession of their files. At least thirty-six of these clients had paid retainers for which there was no accounting of the funds. The funds were never deposited in either respondent's trust or business accounts (T17-T22; P-3 in evidence, P-4 in evidence).² The Clients' Security Fund has already paid seven claims for unearned retainers for a total of \$3,800. Two claims are still pending.

Dubroff Matter

Grievant, Alan L. Dubroff, testified that he had paid a \$400 retainer to respondent. Respondent was to negotiate the return of

² T denotes the transcript of the September 26, 1986 hearing before the District XI Ethics Committee.

Condy

some household furniture, \$3,000, and the partial payment of the mortgage as specified in a partnership agreement, which had been lost when the co-owner of grievant's home had moved from the premises. Grievant repeatedly phoned respondent for five months, without any return communication (T26-T36). The only item in the file was one handwritten letter to the housemate. Grievant never received any of his property back, or remuneration for his roommate's half of the mortgage payments.

Marthens Matter

Another grievant, Glenn R. Marthens, testified that he retained respondent to represent him in a workers' compensation dispute that he inherited when he purchased a business. Respondent told his client that approximately \$6,000 in medical expenses needed to be paid to the former employee, as ordered by the Division of Workers' Compensation. Grievant remitted \$6,000 to respondent, who made payments of \$1,308 to the appropriate medical personnel, but failed to account for the rest of the funds (T55-T56).

After many requests for an accounting, complainant learned respondent had abandoned his practice without returning to grievant the remaining \$4,692 (T37-T55).

Committee Conclusions

In the above matters, the committee found that respondent had violated R.P.C. 1.1(a) and (b) (gross neglect and patterns of neglect); R.P.C. 1.4 (failure to communicate); R.P.C. 1.16 (improper termination of representation); R.P.C. 1.15 (failure to safekeep property); R.P.C. 8.4 (dishonesty, fraud, deceit or misrepresentation), and R.P.C. 8.1(b) (failure to answer complaint).

Conclusion and Recommendation

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

In failing to carry out contracts of employment, respondent acted with gross negligence, contrary to R.P.C. 1.1(a), and exhibited a pattern of neglect, contrary to R.P.C. 1.1(b). In addition, by abandoning his clients, he improperly terminated their representation, contrary to R.P.C. 1.16. Moreover, his retention of totally unearned retainers and of one client's funds held to pay medical bills constituted both a failure to safekeep property and a fraud against the clients, contrary to R.P.C. 1.15 and R.P.C. 8.4(c). Finally, respondent's total lack of cooperation and failure to file an answer to the ethics charges violated R.P.C. 8.1(b).

The charges of neglect, lack of communication, improper termination, and failure to answer are clearly and convincingly demonstrated by respondent's abandonment of his practice and his total silence for the past two years.

The most important violation charged is the \$4,692 misappropriation in the Marthens matter. Respondent, who has not participated in any of the ethics proceedings, did not provide any explanation for the missing funds.

Seldom is there an outright admission by an attorney that he or she knew, at the time of the occurrence, that he or she was misusing client funds. In the absence of such an admission, circumstantial evidence may lead to the conclusion that a lawyer knew or "had to know" that client funds were being invaded. See Matter of Johnson, 105 N.J. 249, 258 (1987). Like the committee, the Board concludes that the evidence clearly and convincingly establishes that respondent knew he was taking his client's funds. Respondent vanished, taking \$4,691.20 of his client's funds that were specifically designated to pay medical bills. Given the "unauthorized use by the lawyer of client's funds entrusted to him", the only discipline appropriate for such knowing misappropriation is disbarment. In re Wilson, 81 N.J. 541 (1979).

This situation is almost identical to two cases where attorneys abandoned their practices while taking client funds. The events in both cases occurred prior to Wilson, but in both cases

the Court summarily ordered disbarment. See In re Planer, 94 N.J. 450 (1983); and In re Franco, 93 N.J. 491 (1983). Such misappropriation, combined with abandonment by an attorney, amply demonstrates that "professional good character and fitness have been permanently and irretrievably lost." Matter of Templeton, 99 N.J. 365, 376 (1985).

Certainly respondent's actions are more egregious than the actions in the recent case of Klein, where an attorney, in the process of closing his practice was disbarred when he failed to pay one client's property tax and insurance premiums out of the trust account before closing the account. He misappropriated these funds and neglected two other matters. In re Klein, 117 N.J. 686 (1990).

Similarly, respondent's retention of unearned retainers defrauded his clients. He accepted fees even though he knew the required legal services would not be performed. See In re Stern, 92 N.J. 611, 617 (1983) (Attorney received a one-year suspension for receiving fees when he knew he would not perform the services.) Recently, in In re Spagnoli, the Court disbarred an attorney for taking retainers when he had no intention of providing the legal services in return. In re Spagnoli, 115 N.J. 504 (1989).

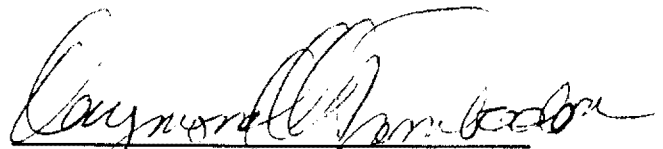
In this case, respondent took thirty-six retainers without depositing them in either his business or trust account. He then left the state without attempting to return any of these retainers.

The trustee expressed his personal opinion that most of the files showed little or no work performed. The Clients' Security Fund has already reimbursed clients \$3,800 for unearned retainers. Clearly, respondent fraudulently took retainers, as in the Stern and Spagnoli cases, and knowingly misappropriated \$4,692 from yet another client.

In view of respondent's abandonment of his practice, knowing misappropriation of trust funds, and fraudulent retention of retainers, the Board unanimously recommends that respondent be disbarred.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 7/23/1990



Raymond R. Trombadore
Chair
Disciplinary Review Board