

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
DOCKET NO. DRB 98-445

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IN THE MATTER OF :  
: :  
RUSSELL G. CHEEK :  
: :  
AN ATTORNEY AT LAW :  
: :  

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Decision

Argued: March 18, 1999

Decided: May 26, 1999

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE), arising out of respondent's handling of an estate matter.

Respondent was admitted to the New Jersey bar in 1980. He maintains an office in Toms River, Ocean County. Respondent was admonished by letter dated May 22, 1996 for failure to correct recordkeeping deficiencies discovered during a 1994 random audit. Respondent had certified to the OAE that he had remedied the deficiencies.

Here, two grievances were filed against respondent: one by a beneficiary of the estate and another by a co-executrix, alleging gross neglect and failure to communicate. The material stipulated facts are as follows:

Grace Armeit died on July 8, 1993. Respondent was retained shortly thereafter to represent the estate. Later in 1993, respondent filed an application to probate the will. Joan Horbert and Doris McAteer were appointed as executrixes of the uncomplicated estate. The primary beneficiary of the estate was the Armeit Family Trust, which was established to care for the decedent's son, Mark Armeit, who had been adjudged incompetent. Pursuant to the will, Frank Horbert, Joan Horbert and Planned Lifetime Assistance Network, Inc. were to be appointed as co-guardians for Mark Armeit. Respondent, however, failed to have them appointed. Respondent also failed to timely file the New Jersey inheritance tax returns. Furthermore, due to respondent's derelictions, the executrixes have been unable to make final distributions. As of the date of the disciplinary stipulation, November 1998, respondent had not settled the estate.

In addition to the above, respondent failed to keep the executrixes and beneficiaries informed about the status of the estate and to reply to their communications.

Respondent stipulated that his conduct violated RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate).

\* \* \*

Respondent was the subject of a 1994 random audit that disclosed several recordkeeping deficiencies. Respondent was notified of the deficiencies and certified to the OAE that he had corrected them. However, a demand audit of respondent's records in 1995 revealed that respondent had not remedied several of the deficiencies. As a result, in 1996 respondent received an admonition for the following recordkeeping improprieties:

- a) no quarterly reconciliations;
- b) lack of sufficient description in the trust receipts journal;
- c) checks issued against uncollected funds;
- d) outstanding checks not resolved;
- e) client ledger cards not sufficiently descriptive.

A demand audit conducted in December 1997 in connection with the investigation of the estate matter revealed several current recordkeeping deficiencies:

- a) business account checks improperly titled;
- b) no business account receipts or disbursement journals;
- c) no three-way reconciliations;
- d) unidentified funds in the trust account.

Respondent stipulated that his conduct violated RPC 1.15(d) and R.1:21-6 (recordkeeping).

\* \* \*

By way of mitigation, the stipulation states that respondent has taken "substantial steps" to settle the estate and has agreed to pay any penalties resulting from his failure to timely file the New Jersey inheritance tax return.

The OAE recommended that respondent receive a reprimand, based on his prior admonition and relevant caselaw, relying on In re Morris 152 N.J. 155 (1998) (reprimand for gross neglect, lack of diligence and failure to communicate in an estate matter. Morris failed to take any substantial action in the matter for eleven years but did, however, make restitution to the estate for its losses. Morris had received a prior admonition in connection with another estate matter).

\* \* \*

Upon a de novo review of the record, the Board is satisfied that respondent was guilty of the stipulated violations of the Rules of Professional Conduct. The question remains, however, as to the appropriate quantum of discipline for respondent's infractions. The OAE recommended a reprimand, relying on In re Morris, supra, 152 N.J. 155 (1998), where, like respondent, the attorney neglected an estate matter for a lengthy period and had a prior admonition. The Board agrees with the OAE's assessment of the appropriate measure of discipline. The Board unanimously determined to impose a reprimand. In addition, the Board accepted respondent's proposal that he reimburse the Armeit estate for penalties and interest incurred.

The Board was concerned, however, by respondent's failure to correct his recordkeeping deficiencies, despite an earlier admonition for violation of RPC 1.15(d) and R.1:21-6. As a condition imposed in connection with that previous discipline, respondent was to submit to the OAE, for a period of two years, annual certifications from a certified

public accountant attesting to his full compliance with R.1:21-6. Although the record is silent on this point, since violations were found in a 1997 audit, it may be concluded respondent has failed to comply with that directive. Accordingly, the Board determined to instruct the OAE to conduct a compliance audit of respondent's trust and business accounts within ninety days of the Court's order in this matter. The OAE is to re-examine respondent's trust account and recordkeeping practices six months later. Lastly, the Board cautions respondent that he has worn out his welcome and is well-advised to avoid further disciplinary or recordkeeping infractions.

Three members did not participate.

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

Dated: \_\_\_\_\_

5/26/99

By: 

LEE M. HYMERLING  
CHAIR  
DISCIPLINARY REVIEW BOARD

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Russell G. Cheek  
Docket No. DRB 98-445**

**Argued: March 18, 1999**

**Decided: May 26, 1999**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali							x
Brody			x				
Cole			x				
Lolla			x				
Maudsley							x
Peterson			x				
Schwartz			x				
Thompson							x
<b>Total:</b>			6				3

By Robyn M. Hill 6/30/99  
Robyn M. Hill  
Chief Counsel