SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-220
District Docket No. XIV-2011-0518E

IN THE MATTER OF	:
RICHARD L. TICE	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 15, 2015

Decided: April 15, 2016

Thomas A. Pavics appeared on behalf of respondent.

Maureen G. Bauman appeared on behalf of the Office of Attorney Ethics.

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

This matter was originally before us on a recommendation for an admonition filed by the District XIII Ethics Committee (DEC), which we determined to bring on for oral argument. A two-count complaint charged respondent with violations of RPC 1.7(a)(2) (concurrent conflict of interest), RPC 1.15(d) and R. 1:21-6 (recordkeeping), RPC 3.3(a)(1) and (a)(2) (lack of candor toward a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct

prejudicial to the administration of justice). We determine to dismiss the matter.

Respondent was admitted to the New Jersey bar in 1976. He has no prior discipline.

Respondent represented Steven Thomas, also known as Steven Searfoss, a nonlawyer and principal of "Superior Court Services, LLC" (SCS) and "Hunterdon Legal Services." Thomas was a "finder," someone in the business of scouring court records, including those of the Supreme Court Trust Fund Unit (SCTFU), for unidentified funds. Thomas would then locate the owners of funds and contract with them, for a fee, to obtain an order for withdrawal of the funds.

Typically, Thomas would then retain respondent to file the motions for withdrawal of funds. As seen below, at the center of these two client matters was respondent's practice of fashioning his pleadings as the attorney for the owner of the funds, without any reference to Thomas or his companies, who were the real clients.

The Dorleen Widmayer Matter

On March 8, 2011, respondent sent the SCTFU a notice of motion and supporting documentation seeking the release of funds

in the Widmayer v. Caram matter. The cover letter was addressed to Jane Rickenbach, Esq., an attorney in the SCTFU.

Five weeks later, on April 18, 2011, the Honorable Mary K. Costello, J.S.C., ordered that $30,000, plus all accrued interest on deposit with the SCTFU, be released to respondent's law firm, Watts, Tice & Skownek, as attorneys for Widmayer.

According to respondent, in late April and early May 2011, Thomas forwarded correspondence to Rickenbach, requesting that the SCTFU process the withdrawal order and issue a check to Watts, Tice & Skownek, as attorneys for Widmayer.

On July 19, 2011, Thomas sent Rickenbach an e-mail providing respondent's work e-mail address, to be used in case she had any questions about the matter. Although respondent did not specifically recall reading that e-mail, he conceded that Thomas had sent a copy of it to him.

On July 25, 2011, the SCTFU issued a $34,794.33 check to Watts, Tice & Skownek, as Widmayer's attorneys. Respondent received that check and deposited it in his trust account.

On August 2, 2011, respondent disbursed $23,312.27 to Widmayer (trust account check no. 1318) and $11,482.16 to "Steven Searfoss" (trust account check no. 1390). He sent both checks to Thomas, who then forwarded Widmayer's check to her.

Respondent had known Thomas for about twenty-five years before representing him in SCTFU matters. Thomas had previously filed withdrawal motions on his own. Respondent became involved in 2010, only after Rickenbach told Thomas that he could no longer file motions in the SCTFU without an attorney. Thomas retained respondent to prepare and file the withdrawal motions, which Rickenbach reviewed and submitted to the court for approval.

Respondent understood Thomas' business operation. He was aware that Thomas entered into agreements with the owners of SCTFU funds and that Thomas charged a fee. Respondent learned, during the ethics proceedings, that Thomas charged a one-third fee.

Because respondent neither met with nor spoke to Widmayer during the representation, he did not discuss a fee agreement or potential conflicts of interest with her.

In defense of his actions in the matter, respondent claimed that, because Thomas' fee from Widmayer was contingent on the outcome, he was not required to identify Thomas in the pleadings that he submitted to the court:

> I had this discussion consistently, and I tried to -- when I talked to your investigators. I looked it as the contingent fee arrangement where I have an interest. I don't put my name on it. If I'm hired, for instance, from an attorney out of state to domesticate a judgment on behalf of another corporation, I don't put that

> attorney's name in there although he may get a percentage. The money would belong to that company he's hiring me for and I collect it.
>
> [2T31-12 to 22.][1]

Respondent did not identify Thomas or his companies in any of his motion papers. He testified that he was not trying to hide anything, but realized later in the ethics proceedings that he should have identified Thomas and his companies in the pleadings because they were also real parties in interest. Respondent further conceded that the funds on deposit with the SCTFU belonged to Widmayer.

With respect to the recordkeeping charge, respondent conceded that his client ledger card for the matter was deficient because it named only Widmayer. As a result, respondent's attorney records failed to properly document disbursements made to Thomas and his companies. Respondent now recognizes that he should have had a client ledger card for Thomas. Although he admitted that his actions fell short of the recordkeeping requirements, he did not concede a violation, leaving that determination to the hearing panel: "[t]he Court Rule is there. They'll make the decision as to whether I did something wrong or not."

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[1] "2T" refers to the transcript of the July 17, 2014 DEC hearing.

The Jacqueline Gufrovich Matter

On June 27, 2011, Jacqueline Gufrovich retained Thomas and SCS to recover personal injury protection (PIP) funds that remained in the SCTFU. Her mother, Eileen Gufrovich, testified that, in 2002, Jacqueline had been rendered quadriplegic from injuries she sustained in an automobile accident, for which the Stark & Stark law firm represented her.

Some of the settlement proceeds were earmarked for Jaqueline's future needs. Years later, Thomas contacted Eileen about funds that had remained in the SCTFU, stating that he worked in the accounting department at "Superior Court Services," that he had found a substantial sum of money that belonged to her, and that SCS wanted to help her recover the funds. Eileen signed an agreement giving SCS a one-third fee for the matter. According to Eileen, Thomas never spoke to her about respondent, who never contacted her about the case.

Respondent admitted that, in this matter, too, he did not see a copy of Thomas' agreement with Jacqueline until the ethics hearing:

> We needed documents to put together the motion. And Thomas went to Stark and Stark, who I guess pulled them out of like archives and sent them to him. And I think he sent them a check for like a hundred and some dollars, so I was aware prior to filing the motion that he had

contacted Stark and Stark, who was the attorney for Gufrovich in the personal injury action.

[2T124-15 to 21.]

On August 9, 2011, respondent sent Rickenbach a motion and supporting documents for withdrawal of funds in Gufrovich v. Farm Family Casualty.

Rickenbach testified at the DEC hearing that respondent had submitted his notice of motion as the attorney for Gufrovich. Yet, when she reviewed the court docket in Gufrovich v. Farm Family Casualty, she noticed an entry for an order, apparently naming Stark & Stark as counsel for Jacqueline and calling for funds held in the SCTFU to be paid over to Gufrovich. Therefore, Rickenbach contacted Stark & Stark for clarification.

On August 30, 2011, Stark & Stark attorney Paul N. Daly sent Rickenbach a copy of an August 20, 2004 consent order directing that any remaining PIP funds be disbursed to Gufrovich.[2] Daly's letter also requested that the SCTFU release all of the funds to Gufrovich, care of Stark & Stark. According to Rickenbach, also on August 30, 2011, respondent sent her a letter requesting an update on her review of his motion papers in the Gufrovich matter.

[2] Respondent's motion papers to Rickenbach also contained a copy of this court order (Ex.3).

On December 5, 2011, the SCTFU released the entire amount on hand ($47,660.54) to Stark & Stark, as attorneys for Gufrovich.

Eileen had no criticism of respondent, whom she never dealt with in the matter. Her ire was directed at Thomas, whom she believed had held himself out to her as an employee of the SCTFU. In a September 2, 2011 e-mail to Rickenbach, Thomas characterized Eileen's confusion about his employment as "unfortunate," and asserted that her confusion was probably due to his company's name, "Superior Court Services."

Rickenbach testified that Thomas was a "finder," that she had previously received respondent's motions in these matters, and that Thomas had provided her with respondent's office e-mail address during the Widmayer matter. Despite that information, Rickenbach had not realized that respondent's involvement was as the attorney for Thomas and his companies. She candidly admitted that she probably "should have" made that connection, but noted that the SCTFU had about five-thousand open cases at the time, and that hers was a high volume workload, another reason why it should be made "very obvious" whom the attorney represents in a case.

Rickenbach referred these matters to ethics authorities for two reasons. First, she was concerned that Thomas may have

been involved in consumer fraud, which could have implicated respondent. Second, she considered respondent's motions misleading to any court that might hear them because respondent's motion papers stated that he represented the individuals entitled to receive the funds, when he actually represented the interests of Thomas and his companies, entities that were never mentioned in them.

Rickenbach also explained that, in cases involving a finder, the caption on pleadings should include the attorney's name either as counsel for both the finder and the owner of the funds or as the agent for the owner. Whenever she encountered a matter for a finder, she would forward a copy of the motion papers to the New Jersey Division of Consumer Affairs for its review. The caption should clearly identify the parties because "people regularly make motions on behalf of recovery services as agents for or on behalf of the individual. And so it is clear on the face of the motion that that motion is being made – the attorney is representing the finder."

Respondent denied that failing to name Thomas and his companies as interested parties in SCTFU motion papers constituted a violation of RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d). He reasoned that it was enough that Rickenbach was aware of Thomas' involvement in these matters, as Thomas had sent her a letter in 2010 notifying her of his

intention to retain respondent for withdrawal motions. Thereafter, Rickenbach had reviewed the motions for the courts. Therefore, the court could not have been misled by any omissions.

Respondent also denied that, by representing both Thomas and Gufrovich, he engaged in a conflict of interest:

> I see it as a service. This money sits there many, many years, and he finds it for them and they get it. And again, I think probably a lot of people were happy. And the -- obviously, the feedback I get is from Mr. Thomas and I don't think he's going to tell me people complain especially. But I think most people if you call them up and say, I found 30,000 for you, I'll get it for you but I want a third, if they don't know where it is, they're going to hire him.
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> [2T130-15 to 24.]

After respondent learned that Stark & Stark had requested the SCTFU to send the funds directly to Gufrovich, he sensed a potential conflict of interest situation and ceased working on the case.

Respondent estimated that, prior to the Widmayer and Gufrovich matters, he had filed about twelve SCTFU withdrawal motions for Thomas. Respondent did not prepare a written fee agreement for any of the representations, including Widmayer and Gufrovich. Instead, he charged Thomas $275 per hour for legal services, no matter the result obtained. Respondent billed Thomas on a monthly basis for work performed.

Respondent admitted that he avoided having any communications with Gufrovich and Widmayer out of a fear that

someone might say that he had "negotiated the original relationship" between them and Thomas.

In mitigation of his actions, respondent offered character witness testimony. Scott Scammell, III, testified that his father, an attorney who passed away in 1984, had hired respondent as an associate in his law office. Respondent has been Scammell's attorney and personal friend ever since, and is both honest and truthful. In addition, Scammell and respondent have served together in a service organization in Flemington similar to the Rotary Club.

Another character witness, Susan Hoffman, testified that she serves in the elected position of Hunterdon County Surrogate. Respondent has acted as her campaign treasurer. She has come to know respondent and trusts him "absolutely." Hoffman considers respondent to be a truthful, ethical, law-abiding individual and has recommended him in the past to serve as a court-appointed guardian ad litem.

The DEC concluded that respondent impermissibly represented both Thomas and the owners of the SCTFU funds, and that, as the owners' attorney, respondent had a duty to inform Widmayer and Gufrovich that they did not need Thomas' aid when claiming funds from the SCTFU. The DEC found that respondent had protected only Thomas' interests in obtaining his one-third

fee, to the detriment of Widmayer and Gufrovich, violations of RPC 1.7(a)(2).

The DEC also concluded that, by maintaining ledger cards in the owners' names only, without reference to Thomas or his company, respondent failed to include the names of all persons to whom the funds were to be disbursed, a violation of RPC 1.15(d) and R. 1:21-6.

The DEC dismissed the RPC 3.3(a)(2) charges because respondent did not "knowingly" make a false statement to a tribunal. The DEC found that Rickenbach was aware of respondent's involvement in these matters; that respondent was not given clear direction on how to properly file pleadings in a "finder" case; and that Rickenbach could have returned deficient pleadings to respondent or Thomas, but did not do so.

The DEC dismissed the RPC 8.4(c) and (d) charges for similar reasons, concluding that, although respondent may have been careless in his handling of these cases, he did not intentionally hide facts or indicate how SCTFU funds were to be used. Rather, he "simply asked for" their release. The DEC also considered respondent's reliance on Rickenbach to provide direction or instructions "on how to properly couch the caption and motion."

The hearing panel recommended an admonition, citing the following mitigating factors: respondent's good character and reputation; his lack of prior discipline; his admission of wrongdoing regarding the recordkeeping deficiency; his cooperation with ethics authorities; the absence of a motive for personal gain; and the lack of harm.

Following a de novo review of the record, we are not satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The DEC viewed this strictly as a conflict-of-interest case and found that, by representing both sides of the transactions in Widmayer and Gufrovich, respondent had breached his duty to the owners, in favor of Thomas, the finder.

It is not clear that respondent actually represented the owners, however. He had no contact with Widmayer or Gufrovich. He never met them, avoided speaking with them, had no fee agreement with them, and never charged them legal fees or costs associated with his legal services. The only indicia in the record of their representations was the obvious presence of his name as their attorney, prominently placed on SCTFU pleadings and trust account ledger cards containing their names.

By all accounts, respondent represented Thomas and his companies in these matters. Thomas was the only client with

whom respondent communicated; the only client with whom he exchanged information; the only client whom he charged a legal fee; and the only client who paid for expenses associated with Widmayer and Gufrovich's matters.

Indeed, Rickenbach, respondent, and the DEC concluded that respondent actually represented Thomas and his companies' interests in these matters. Because it appears that respondent actually had just one client – Thomas – we determined to dismiss the RPC 1.7(a)(2) charge in both matters.

The next question is whether respondent lacked candor and misrepresented to the court that Widmayer and Gufrovich were his clients.

In the Widmayer matter, Judge Costello granted the relief requested in respondent's motion without any indication in the record before her that Thomas or his companies were the actual client, or that they had a financial interest in the case. Instead, respondent's motion gave the appearance that he represented Widmayer, as was the case with his filings in Gufrovich.

While it was not Rickenbach's responsibility to help respondent properly caption his pleadings, and while respondent instinctively should have known to name Thomas and SCS in his pleadings, we were persuaded by respondent's credible testimony

that he was not trying to hide that fact from the court.[3] Moreover, we are also persuaded in this respect by Rickenbach's prior direction to Thomas to retain the services of an attorney to file the motions and by Thomas' subsequent notice to her that he, indeed, had retained respondent for that purpose. Thus, while we believe that "things could have been done better," we do not view the record to clearly and convincingly establish violations of RPC 3.3(a)(1) and RPC 8.4(c). We, therefore, determined to dismiss those charges.

Respondent admittedly failed to maintain a fully descriptive ledger card for the Widmayer matter, which implicates RPC 1.15(d) and R. 1:21-6. He did not concede that his actions amounted to an ethics violation, leaving it to us to determine whether he "did something wrong or not."

Respondent prepared a ledger card for the Widmayer matter – albeit one that was not fully descriptive. We find that sole shortcoming, in an otherwise unblemished thirty-nine year career at the bar, to be de minimis and not deserving of discipline. Thus, we voted to dismiss this last remaining charge as well.

Member Zmirich voted to impose an admonition.

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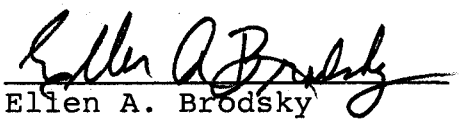
[3] Respondent additionally presented character witnesses who convincingly portrayed him as an honest and truthful attorney, who also contributes time to the betterment of his community.

Vice-Chair Baugh and Members Hoberman and Singer did not participate.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard L. Tice
Docket No. DRB 15-220

Argued: October 15, 2015

Decided: April 15, 2016

Disposition: Dismiss

Members	Disbar	Suspension	Admonition	Dismiss	Disqualified	Did not participate
Frost				X		
Baugh						X
Clark				X		
Gallipoli				X		
Hoberman						X
Rivera				x		
Singer						X
Zmirich			X			
Total:			1	4		3

Ellen A. Brodsky
Chief Counsel