

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-055

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IN THE MATTER OF :  
JOSEPH P. BREIG :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_

Decision

Argued: April 16, 1998  
Decided: September 28, 1998

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.  
Martin T. McDonough appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District I Ethics Committee ("DEC"). A two-count complaint charged respondent with violations of RPC 1.15(b) (failure to promptly deliver funds to a client) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations). The charges stemmed from respondent's failure to properly represent a client in connection with a debt collection business.

Respondent was admitted to the New Jersey bar in 1977. He maintains a law practice in Millville, New Jersey. Respondent has no history of discipline.

At the DEC hearing, the parties stipulated that the allegations in the complaint were true. The complaint charged as follows:

Respondent was the attorney for B & G Collection, Inc. ("B & G"), a debt collection business. B & G was owned and operated by Robert Garton, Jr., the grievant in this case, and Barbara Ann Davis. In December 1995, Garton contacted the Office of Attorney Ethics ("OAE") to inform it that respondent, who was a personal friend, might have misappropriated funds that he had collected on behalf of B & G. Garton claimed that respondent had not submitted any collected funds to B & G since approximately June 1995. Based on the foregoing, the OAE started an investigation.

A demand audit of respondent's attorney records was scheduled for May 10, 1996 to cover the period from July 1, 1994 through May 1996. At respondent's request, the audit was rescheduled to May 31, 1996. Respondent failed to appear or to provide the OAE with an explanation for his failure to appear. Thereafter, on June 6, 1996, Martin McDonough, Esq. contacted the OAE to advise that he represented respondent. He further informed the OAE that he and respondent wished to cooperate with the OAE investigation.

At the new audit date, respondent stated that he began collection work for B & G in June 1994, even though he had no prior experience in the area. Respondent admitted that he had failed to file collection reports or to remit funds to Garton since approximately June or July 1995.

Respondent indicated that, although there was no written retainer agreement with B & G, they had an oral arrangement whereby respondent would retain sixty percent of

B & G's fee from debts collected. B & G's fee varied from twenty to fifty percent of the amounts recovered. Most of respondent's collection work involved Millville Hospital debtors. B & G charged a twenty percent fee to its client, the outpatient clinic of the Millville Hospital. According to respondent, his costs were to be provided "up front" by B & G; after those amounts were expended, respondent was to reimburse himself from collected funds. A March 24, 1994 letter from respondent to Garton memorialized their understanding of respondent's responsibilities:

1. Proceed with any legal action required to collect the funds due on various accounts.
2. We will submit monthly statements to your office listing monies received from our collection efforts along with costs and fees.
3. We will forward to you on a monthly basis the proper remittance less our share of 60% and your share being 40% of the fee earned from monies collected.

The letter did not clarify which expenses were to be reimbursed to respondent.

Garton consented to the terms by signing the letter and returning it to respondent.

A review of respondent's collection bank account records revealed that, during the period from July 1, 1995 through May 15, 1996, there were seventeen deposits made to the account, totaling \$3,803.19. Respondent's collection account records from March 1995 through May 15, 1996 disclosed reimbursable expenses to respondent in the amount of \$1,011; an additional reimbursement for an overpayment in the amount of \$25; total disbursements to B & G in the amount of \$4,141.76; and total disbursements to respondent in the amount of \$3,383.19. Total disbursements from the collection account amounted to \$8,560.95.

The OAE auditor testified at the DEC hearing. According to the auditor, respondent stopped filing reports with Garton in June 1995. The auditor determined that respondent collected \$4,056.56 in behalf of B & G and that B & G should receive fees in the amount of \$332.52. The auditor concluded that, after deducting allowable expenses and respondent's fee, the hospital should receive \$1,973.18.

In October 1996, a few months after the last audit visit, respondent submitted two checks to B & G: one for \$2,500, representing the funds owed to Millville Hospital and the other for approximately \$330, representing B & G's portion of the fee for the collected funds.

During the course of the investigation of respondent's attorney books and records, the OAE found the following recordkeeping deficiencies:

1. A trust receipts journal was not maintained.
2. A trust disbursement journal was not maintained.
3. A schedule of clients' ledger accounts was not prepared and reconciled monthly or quarterly to the bank statement.
4. A separate ledger sheet was not maintained for each trust client.
5. Funds received for professional services were not deposited into respondent's business account.
6. Personal and trust funds were commingled.

As to mitigation, the complaint alleged that respondent had been diagnosed as suffering from clinical depression stemming from an October 1991 accident in which respondent sustained head injuries. Respondent also suffered from Crohn's disease, a

condition that causes blood loss over a long period of time.

In his answer to the complaint, respondent gave more details about his personal problems. He explained that he had been involved in a serious motor vehicle accident in October 1991 that caused him extensive head and shoulder injuries and a serious post-concussion syndrome. According to respondent, as a result of these problems he had become confused, had experienced memory concentration difficulties and had been unable to work.

In December 1991, two months after the accident, respondent and his wife of fifteen years separated, in large part because of the accident-related head injuries. Against respondent's wishes, he and his wife were divorced.

In July 1992 respondent underwent extensive shoulder surgery that required a long rehabilitation period. He was unable to return to work until January 1993, at which time he began a part-time solo practice in Millville. This was respondent's first experience with private practice since graduating from law school in 1976.

Respondent asserted that, in addition to the foregoing, he suffers from irritable bowel syndrome/Chron's disease. On and off for years, he experienced bleeding and associated fatigue and lethargy. As a result of this condition, on September 30, 1996 he was admitted to the hospital in serious condition.

Respondent maintained that his health, mental and physical, has improved since this last hospitalization. He remains under treatment to prevent a relapse.

When respondent became aware of his ethics problems, he began treatment with a psychiatrist. He continues under the doctor's care and is taking medication. Several medical

reports, attached to respondent's answer, substantiate respondent's narrative in the answer.

At the DEC hearing, respondent expressed regret for his conduct, apologized to the presenter, the OAE auditor and the Disciplinary Review Board for involving them in this matter, and accepted full responsibility for his misconduct. The OAE auditor testified that respondent appeared genuinely contrite and that he had been very cooperative during the investigation.

Respondent testified that he has remitted all funds owed to B & G and vowed never to do collection work again.

The DEC concluded that respondent's conduct violated RPC 1.15(b) and RPC 1.15(d). The DEC recommended that respondent be reprimanded and that he be required to take ICLE courses in trust account management.

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Upon a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent's conduct was unethical.

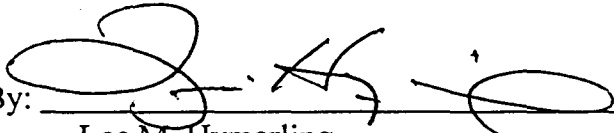
Respondent admitted the allegations of the complaint. He admitted that he was in over his head with the collection work and pledged never to accept that type of matter again. He repaid all monies that were owed to his client and appeared to be truly remorseful for his misconduct. It is likely that respondent's physical and mental condition played a role in his ethics transgressions.

Nevertheless, respondent violated RPC 1.15(b) by failing to promptly remit funds belonging to B & G and Millville Hospital (\$332.52 and \$1,973.18, respectively), as well as RPC 1.15(d) by failing to comply with the applicable recordkeeping rules. Cases involving recordkeeping deficiencies ordinarily result in either a reprimand or an admonition. See, e.g., In re Fucetola, 101 N.J. 5 (1985) (reprimand for failure to maintain trust and business account records); In re Hennessy, 93 N.J. 358 (1983) (reprimand for flagrant recordkeeping errors in trust account); In the Matter of Russell G. Cheek, Docket No. DRB 96-100 (May 22, 1996) (admonition for failure to correct recordkeeping irregularities uncovered by audit); In the Matter of Raymond A. Brown, Jr., Docket No. DRB 95-212 (April 3, 1996) (admonition for failure to perform quarterly reconciliations of attorney records and for use of a rubber stamp to sign trust account checks). Here, respondent also failed to promptly remit funds to his client, in violation of RPC 1.15(b). The Board has considered the extensive mitigating circumstances presented and unanimously determined to impose a reprimand. One member did not participate.

The Board further determined to require respondent to take a course on trust and business accounting for attorneys, offered by the Institute for Continuing Legal Education.

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

Dated: 9/28/98

By:   
Lee M. Hymerling  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**


**In the Matter of Joseph P. Breig  
Docket No. DRB 98-055**

**Argued: April 16, 1998**

**Decided: September 28, 1998**

**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>			<b>8</b>				<b>1</b>

  
Isabel Frank 11/21/98  
Deputy Chief Counsel