

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 97-095

IN THE MATTER OF :
:
RONALD G. RUBIN, :
:
AN ATTORNEY AT LAW :
:

DECISION

Argued: October 16, 1997

Decided: December 16, 1997

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Raymond E. Milavsky appeared on behalf of respondent.

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

The Board determined to bring this matter on for a hearing following its review of the District IIIB Ethics Committee's ("DEC") recommendation for an admonition. The two-count complaint charged respondent with violations of R. 1:21-6(b)(8) and RPC 1.15(d) (recordkeeping violations – failure to submit a reconciliation of trust account) (count one) and RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation) (count two).

Respondent was admitted to the New Jersey bar in 1976. He maintains a law office in Cherry Hill, New Jersey.

In 1996 respondent admitted violating RPC 1.4 (failure to communicate) in two matters and RPC 1.5(b) (failure to provide client with a written retainer agreement or to communicate to the client the basis for the rate or calculation of the fee) in one matter. The case was diverted pursuant to R.1:20-3(i)(2)(B). Respondent agreed to enroll in a professional responsibility course and to forward a letter of apology to his client. In 1992 respondent received a private reprimand for breach of fiduciary duty by disbursing \$4,397 in escrow funds to his own clients without giving notice to the other party who had an interest in the funds. He also received a private reprimand in 1987 for a conflict of interest, when he accepted employment with former clients to negotiate a settlement with his own legal malpractice insurance carrier.

At the December 3, 1996 DEC hearing the parties agreed to enter into a stipulation of facts in lieu of testimony. The stipulated facts are as follows:

Respondent was selected for a random audit of his books and records scheduled for October 31, 1994. The OAE auditor conducted an audit at respondent's office on October 31, 1994 and December 20, 1994. The audit covered a two-year period from October 1, 1992 through September 30, 1994. It encompassed respondent's solo practice as well as a partnership with another attorney, Robert Agre, established in September 1993.

According to the stipulation, the OAE audit disclosed that respondent failed to prepare quarterly reconciliations for both his solo practice trust account and the partnership trust

account. The audit also revealed that respondent had unidentified trust funds in the amount of \$53,181.61 in his trust account for his solo practice and that he advanced funds to personal injury clients before settlement monies were received from their cases.

As to respondent's failure to reconcile his trust account, the stipulation stated that, prior to September 9, 1994, there were no quarterly reconciliations for either respondent's solo practice trust account or his new partnership trust account. Thereafter, respondent gave the OAE a reconciliation of the partnership trust account. By letter dated November 3, 1994, the OAE requested that respondent reconcile his solo practice trust account by December 20, 1994. Exhibit A-2. Thereafter, the OAE gave respondent until July 17, 1995 "to certify" the trust account. Exhibit A-4.¹ Respondent requested two more extensions to submit the information, both of which were granted.

After reviewing his records, respondent claimed that the unreconciled balance in his solo practice trust account had been reduced to \$34,846.05 because he was able to identify the source of \$18,335.56. On November 22, 1996 respondent and his secretary/bookkeeper met with OAE representatives. At that meeting it was determined that, as of October 30, 1996, respondent's trust account contained \$50,102.11. Of that amount \$18,335.56 represented fees and costs due to respondent, which respondent agreed to disburse to himself on or before January 2, 1997. An additional \$19,238 represented unclaimed funds from four client matters. After deducting \$5,198.33 for fees and costs on or about January 2, 1997,

¹Presumably, by "certify" the OAE meant respondent's assurance to the OAE that his trust account was in compliance with the recordkeeping rules.

respondent was to disburse the remainder to the Clerk of the Superior Court for deposit into the Superior Court Trust Fund. R.1:21-6(i). Additionally, an outstanding check in the amount of \$2,284.63 had been negotiated since the October 31, 1996 reconciliation. That amount represented the payment of funds to a client who could not previously be located. A second outstanding check in the amount of \$2,700 had also been identified.

From the remaining \$7,543.92 on respondent's books, \$160 was subtracted because of a bookkeeping error, leaving an amount of \$7,383.92 in unidentified funds. Respondent was to also disburse these funds to the Superior Court Clerk on or before January 2, 1997. The OAE maintained that respondent's failure to timely submit a reconciliation of his solo practice trust account was a violation of R. 1:21-6 and RPC 1.15(d).

According to the stipulation, respondent's loans to clients in connection with pending personal injury matters was a violation of RPC 1.8(e). Respondent made such advances while he was a sole practitioner and continued this practice during his partnership with Agre as well. The loans to the clients were made from the business account and were repaid to the firm upon disbursement of the settlement funds from the trust account. Most of the loans were documented on the individual client ledgers. Respondent's signature or a stamp of his signature was used as authorization on the checks that advanced the funds to the clients.

Respondent stopped making the loans after he was informed by the OAE that they were prohibited under RPC 1.8(e). He explained at the OAE audit that the advances were made because he believed that his clients were "very needy" at the time. The audit documented ten cases in which respondent advanced funds to his clients, totaling \$20,012.

As of the audit, three of the case settlements had not yet been obtained. On the second day of the audit, there was no evidence that respondent had continued to make loans to his clients.

At the DEC hearing respondent explained that, when he made loans to his clients, he was unaware that it was improper. He added that his clients had requested the funds because of their dire financial situation. According to respondent, he believed that his clients were sincere about their needs and deserved the loans. He denied making any loans for business purposes and asserted that he had stopped lending funds to his clients.

The DEC found technical violations relating to the reconciliation of respondent's solo practice trust account, in violation of R. 1:21-6(b) (8) and RPC 1.15(d). The DEC also found that respondent's loans to clients was improper and violative of RPC 1.8(e).

In recommending the imposition of an admonition, the DEC noted respondent's cooperation with the OAE and the fact that he had taken measures to bring his trust account in compliance with the Rules of Professional Conduct. The DEC also considered that respondent paid over to the Clerk of the Superior Court the amounts required under the stipulation.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the record. The stipulation conclusively establishes that respondent failed to maintain quarterly reconciliations of his trust account, in violation of RPC 1.15(d), and that he violated RPC 1.8(e) by providing financial assistance to clients in connection with pending litigation. The only issue left is the appropriate quantum of discipline.

Generally, most matters dealing with improper recordkeeping practices also involve negligent misappropriation of trust funds. Absent additional misconduct, the discipline in such cases has been either an admonition or reprimand. See In the Matter of Katiana Stylianou, Docket No. DRB 97-024 (April 30, 1997) (admonition where attorney negligently misappropriated client's trust funds because of her failure to reconcile accounts); In re Fucetola, 147 N.J. 255 (1997) (reprimand for negligent misappropriation of client trust funds because of failure to maintain proper trust and business accounting records); In re Powell, 142 N.J. 427 (1995) (reprimand for negligent misappropriation of client funds and recordkeeping deficiencies). Here, respondent did not misappropriate funds. Moreover, his loans to clients, although misguided, seem to have been made purely for altruistic reasons.

Respondent urged a dismissal of this matter, arguing that he accounted for most of the funds and that a portion of the funds was fees and costs that he had not paid to himself. The OAE urged the Board to impose a reprimand, citing respondent's excessive delay in bringing his solo practice trust account into compliance with the rules, his improper loans to clients and his ethics history. The OAE pointed out that the intent of RPC 1.8(e) is to avoid the

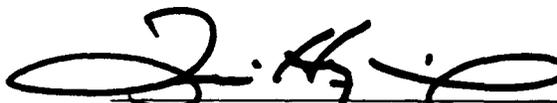
conflict of interest that unavoidably occurs when an attorney becomes a creditor of the client. The OAE added that, by loaning money to a client, the attorney obtains an interest in seeing the money returned and may compromise the client's interest in securing an optimum result.

There is no evidence in the record that respondent's loans to his clients compromised their interests. Respondent's claim that the advances were solely for charitable motives was unrefuted. Nevertheless, although respondent cooperated with the OAE and took measures to remedy the problems with his trust account, his conduct was unethical and deserving of discipline. Accordingly, the Board unanimously determined to reprimand him based on his misconduct in this matter, aggravated by respondent's prior ethics record.

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

Dated: _____

2/16/97



LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald G. Rubin
Docket No. 97-095

Argued: October 16, 1997

Decided: December 16, 1997

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:			9				

By Label Frank 1/8/97
Robyn M. Hill
Chief Counsel