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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
DRB 97-102

IN THE MATTER OF
ROBERT H. OBRINGER
AN ATTORNEY AT LAW

Decision

Argued: May 15, 1997

Decided: June 30, 1997

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Carl D. Poplar 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 Special Master David H. Dugan, III. The Office of Attorney Ethics ("OAE") filed a complaint charging respondent with knowingly misappropriating escrow funds, contrary to RPC 1.15 and In re Hollendonner, 102 N.J. 21 (1985); knowingly making a false statement to a tribunal, in violation of RPC 3.3; and engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, contrary to RPC 8.4(c).

Respondent was admitted to the New Jersey bar in 1982. He maintains a law office with Levenson, Vogdes, Cohen and Obringer ("the Levenson firm") in Marlton, New Jersey. Respondent has no prior ethics history.

* * *

At the hearing before the special master, the complaint, its exhibits, and the answer were introduced as joint exhibits. Respondent admitted the factual allegations of the complaint, but denied that he was guilty of unethical conduct.

Respondent specialized in bankruptcy law. His name was on a list used by the United States Trustee for the District of New Jersey to appoint trustees in bankruptcy proceedings. Respondent was appointed as trustee in a case in which the debtor was Gaskill Construction, Inc. ("Gaskill"). Serving in that capacity, on November 20, 1995, respondent filed a *Notice Depositing Funds to the Registry of the Court Pursuant to Local Rule 12(b)*. The notice recited that respondent, as trustee, had disbursed all of the funds in the trustee's account, with the exception of $20,733.93, representing (1) claim number 53 for $8,902.62 filed by LCW Leasing Co., c/o Ronnie Schwartz, Esq., 1500 The Fidelity Building, Philadelphia, Pennsylvania 19109 and (2) claim number 56 for $11,831.31 filed by Equileasing, 750 Third Avenue, New York, New York 10017. Respondent attached to the notice a check for

$20,733.93 payable to the Registry of the Court. Respondent deposited those funds in court because he asserted that he was unable to locate those two creditors.

On December 14, 1995, respondent filed a *Trustee's Certification of Completion of Estate Administration and Application for Discharge* asserting that he had completed all the requisite duties as trustee and requesting that he be discharged. Although the record does not contain any documentation on the issue, it is presumed that respondent was discharged as trustee in the Gaskill bankruptcy matter.

Two months later, on or about February 21, 1996, respondent opened Post Office Box 254, Audubon, New Jersey 08206. He then created a letterhead for a law firm, Ciob & Associates, showing an office address in Elkins Park, Pennsylvania and a New Jersey address of Post Office Box 254, Audubon, New Jersey. On February 27, 1997, respondent sent a letter to Sharon Newman, Financial Deputy of the United States Bankruptcy Court. Although respondent wrote the signature on the letter, it purported to be signed by a Ronnie Schwartz, Esq., of Ciob & Associates. The letter declared that Ronnie Schwartz represented two creditors in the Gaskill bankruptcy matter and requested payment of the funds due them. Attached to the February 27, 1997 letter were two documents: a letter dated January 18, 1996 purporting to be from respondent to Ronnie Schwartz and a release, purportedly signed by Equileasing personnel, authorizing Ronnie Schwartz to collect the funds due from Gaskill (Exhibit C to the complaint).

Based on the February 27, 1997 letter, the bankruptcy court entered two orders dated March 8, 1996, directing that checks in the amount of $11,831.31 and $8,902.62 be made payable to Equileasing and LCW Leasing Co., respectively. The checks, dated April 8, 1996, were issued to the name of Ronnie Schwartz and sent to Ciob & Associates at the Audubon post office box. Respondent had opened a checking account at Community National Bank bearing number 42-03576 in the name of Robert H. Obringer, EAF Gaskill. He "signed" Ronnie Schwartz's name as endorsements on the checks and deposited them into the new checking account. Respondent wrote three checks against these funds to pay for certain personal expenses. One check for $10,354 was issued to the Internal Revenue Service on April 15, 1996; another for $5,600 was payable to himself on April 19, 1996 and used to pay outstanding debts; and a third one for $4,126.48 was issued to American Express to pay a personal charge account.

In May 1996, respondent was diagnosed with cancer of the mouth. He underwent surgery and a lengthy period of hospitalization. In his absence from the office, the Levenson firm members monitored his mail. Apparently, respondent had the bank statements from the Community National Bank checking account sent to his office address. When the Levenson firm noticed a bank statement purporting to be from the Gaskill checking account, it investigated the matter and learned the truth. By letter dated July 9, 1996, the partners of the Levenson firm reported respondent's conduct to the District IIIB Ethics Committee secretary. Respondent signed the letter, indicating that

it was sent with his knowledge and consent (Exhibit K to complaint). The Levenson firm also made restitution of the funds to the court registry.[1]

At the hearing before the special master, it was agreed that certain evidence submitted on behalf of respondent would be considered in mitigation, but not as exculpation, for his misconduct. Four character witnesses testified in respondent's behalf: Donald Levenson, one of his law partners; Charles Nathanson, a former partner in the Levenson firm; Joseph McCormick, a Haddonfield attorney with a bankruptcy practice; and Morton Batt, a non-lawyer bankruptcy trustee. All four testified generally that respondent was trustworthy, with good morals and with an outstanding reputation for honesty.

Respondent also testified at the ethics hearing. He contended that, in the latter part of 1995 and early 1996, he began to experience serious personal problems, including marital difficulties and his eventual move out of the marital home. Respondent also alluded to problems dealing with the departure of Charles Nathanson from the Levenson firm; respondent felt that he had let another partner manipulate him into forcing Nathanson to leave the firm. At the same time, respondent's father, who resided in Pittsburgh, had suffered a stroke and lost both legs as well as the use of his right arm. Respondent's father passed away in August 1996.

According to respondent, in retrospect, taking the funds from the court registry did not make any sense because he had funds available from several sources: individual

[1] Respondent asserted that he has made restitution to the Levenson firm.

retirement accounts ("IRA"), a life insurance policy against which he could have borrowed, a loan from Donald Levenson, and large fees coming due from files he was about to close. When asked for an explanation for his misconduct, respondent speculated that he was sending himself a "horrible message that the circumstance I was in had to change" (T59).[2] He added that, although he was diagnosed with cancer shortly after the above events took place, his physician could not confirm that the disease had affected him in such a way as to account for his misconduct.

On cross-examination, respondent testified that, once he paid the funds into the court registry, he no longer had control over them and did not consider them to be escrow funds. Respondent remarked that the funds would belong to the federal government after three years, if no creditor claimed them. He conceded that, when he applied for payment from the court, he knew that the court registry was holding the money in escrow for the two creditors. Respondent also admitted that, when he opened the bank account and post office box to carry out his scheme of misappropriating the funds, he was aware of what he was doing, but felt "controlled" by the event.

With regard to the other sources of money available to him, respondent acknowledged that he would have incurred interest and penalties if he were to withdraw an IRA. He added that, if he had borrowed against his life insurance policy, his wife would have found out because either she or their children were the beneficiaries.

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[2] T refers to the transcript of the February 19, 1997 hearing before the special master.

In mitigation, respondent submitted the report of two mental health professionals, Gerald Cooke, Ph.D, a psychologist, and Robert L. Sadoff, M.D., a psychiatrist. Dr. Cooke conducted a psychological evaluation of respondent and submitted a report dated January 5, 1997. He discussed with respondent the circumstances surrounding the misappropriation of funds from the court registry. According to the report, respondent gave the following account of those events:

> He [Mr. Obringer] says that in February of 1996 he was listening to Rush Limbaugh about waste in the government and thought that there was $20,000 that was going to go to the Federal Government and he decided to retrieve that money for himself. When asked why, after a lifetime in which he had not engaged in any illegal activity, he did this, and did not reject the idea Mr. Obringer was at a loss to explain it except to say that in a number of areas in his life he has made decisions without really stopping to think them out. . . . [H]e did not seem to realize the coincidence in time: That is, that he basically enacted this scheme within one to two days prior to leaving his wife. Subsequent activities related to the charges extended to May 3 of 1996, predating his diagnosis of cancer and his operation, so it is clear that the cancer did not have anything to do with it. . . .
>
> Several other aspects of this situation were discussed with Mr. Obringer. This examiner asked him if he needed money at that time. His response to that was 'yes and no.' He indicates that he had run up the balances on his credit cards because of trips, dinners, and presents associated with Betsy[3]. By the same token he indicates that he could have easily cashed in an IRA or stopped doing charitable work and bill more time or finish up a Trustee case which would have paid him $75,000. When asked how he justified or rationalized his behavior he indicated that he did not. He simply did not stop and think. This examiner believes, however, that the nature of the process clearly required some thought and planning and Mr. Obringer is either not sharing his justification or really was unaware of why he acted the way he did, other than the above mentioned comments by Rush Limbaugh.
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> [Exhibit R-2 at 4-6]

[3] Betsy was respondent's paramour.

Dr. Cooke diagnosed respondent as suffering from a personality disorder, not otherwise specified, with self-defeating features and an adjustment disorder with depressed mood and features of anxiety and guilt. Dr. Cooke discussed the effect these disorders had on respondent's actions:

> Regarding the issue of whether Mr. Obringer's mental state at the time meets the criteria for 'diminished capacity' I would state the following: While Mr. Obringer has acted without sufficient thought at a number of times throughout his life and then had guilt for it, he has never acted in an antisocial or criminal manner and from that perspective this is an isolated and idiosyncratic behavior which is uncharacteristic of his general personality functioning. It is further my opinion, as contained in the text of this report, that during the period in which he engaged in this activity he was under an exacerbation of his generally higher than average tension level due to his internal conflict and guilt over leaving his marriage to be with another woman. While the obtaining of the post office box was on 2/21, this, in and of itself, did not yet constitute an illegal act. The fact that he actually put the illegal act into motion the day before he left his wife is, in this examiner's opinion, important in the light of the personality dynamics discussed above. This examiner usually does not believe that individuals who commit criminal acts want to get caught and I generally write that off as a trite and incorrect phase. However, in understanding Mr. Obringer's personality functioning going as far back as his mid-teenage years indicate that guilt is an important part of his personality structure and the fact that he put this scheme into action one to two days prior to leaving his wife is consistent with an individual who, out of guilt, had an unconscious need to punish himself and committed an act in such a way that would ensure that. Thus, in my opinion he was suffering from a significantly reduced mental capacity at that time which contributed directly to the commission of the offense.
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> [Exhibit R-2 at 10]

Similarly, in his January 16, 1997 report, Dr. Sadoff gave the following summary of respondent's recitation of the events surrounding the misappropriation of funds:

> It took several weeks or months for him to set up the problem which causes him his current legal difficulty. He said it was not 'a one shot deal.' He said there were a number of different steps that had to be taken along the way. He states as he thinks about what happened, he believes that once he started the journey, he was not able to stop. He indicates, for example, that he had to open a post office box, had to get checks made up and had to open a bank account. He said he made the mistake of having the checks mailed to him at the law firm office address rather than at another address.[4] He said there were several weeks in between steps. As he looks back on it, he states, he could have stopped at any point along the way if he chose to do so. He said he became so caught up in the matter that he just felt he was not able to stop.
> [Exhibit R-1 at 2]

Dr. Sadoff's report also noted that respondent had been a priest and had agreed to be ordained primarily because he did not want to disappoint his parents' expectations. When he left the priesthood, his pastor told him that, if he could not be faithful to the church, he could not be faithful to anyone and he could not have a successful marriage. According to Dr. Sadoff, respondent had a lot of guilt about his wife, Angela, and about his professional success. As to the reason for respondent's misconduct in this matter, Dr. Sadoff observed in his report:

> He said he just cannot explain why he would break the law as he did in order to get this money when he really did not need it. I did ask him what he did with the money, and he said he paid $10,000 for taxes. He said he had an IRA that he could have used if he needed that. He said he also wanted to fix up Betsy's home and that is why he wanted the extra money. He said that way Angela would [not] have been aware of the money that would have been used for Betsy. He states he also wanted to pay off his American Express bill, but that, he said, he could have done by taking money from another account.
> [Exhibit R-1 at 8]

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[4] The checks themselves were sent to respondent at the Audubon post office box; the checking account statements were sent to respondent's law office.

With regard to respondent's mental condition, Dr. Sadoff concluded:

> I would agree with Dr. Cooke and his diagnoses on Mr. Obringer. I feel very strongly that the major issue here is one of guilt for behavior that Mr. Obringer has expressed. He has guilt for decisions that he has made over many years of his life. He has remembered the statement of his pastor of over 10 years ago, that if he could not be faithful to God, he could not be faithful to himself or to Angela, and his marriage was doomed. Mr. Obringer has lived out that prediction and has destroyed his marriage with Angela. He has had other areas of decision making for which he has felt guilt and for which he sought, unconsciously, punishment.
>
> I would agree that the timing in this case is very important in terms of leaving his wife, taking up with Betsy and the illness of his father, the subsequent death of his father and the development of cancer in Mr. Obringer, reminiscent of the cancer in his mother which led to her death.
>
> Therefore, I would agree that Mr. Obringer committed this act while suffering from the diagnoses noted, i.e., personality disorder, NOS [not otherwise specified], and adjustment disorder, with depressed and anxious mood. These diagnoses, in my opinion, led to a reduced mental capacity that was not a result of voluntary use of drugs or other intoxicants. His behavior is clearly related to his feeling of guilt and his need for punishment. Also, it is my opinion, within a reasonable medical certainty, that Mr. Obringer's mental condition or diminished capacity was a contributing factor in the commission of these acts. Clearly, he was not antisocial, has not had a pattern of antisocial behavior in the past and led a very constructive and productive life. I would agree that this is an idiosyncratic event in a relatively long term constructive life of Mr. Obringer. . . .
>
> It is my opinion, also within reasonable medical certainty, that these acts of Mr. Obringer are unlikely to recur, that they were unusual and were an aberration for him, not consistent with his usual method of honest, constructive living.
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> [Exhibit R-1 at 10-11]

* * *

The special master found that respondent violated RPC 8.4(b), RPC 3.3(a)(1) and RPC 8.4(c). He concluded that the theft of the funds from the court registry was a criminal act that reflected adversely on his honesty, trustworthiness or fitness, contrary to RPC 8.4(b). According to the special master, by filing fictitious documents with the bankruptcy court in order to induce court staff to send the funds to him, respondent knowingly made a false statement of material fact to a tribunal, in violation of RPC 3.3(a)(1). In addition, the special master found that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c), by supplying false documents to the court, using misleading information to rent a post office box and open a bank account, and forging endorsements on the two checks from the bankruptcy court.

The special master found that respondent's misappropriation of funds from the court registry did not violate RPC 1.15, In re Hollendonner, 102 N.J. 21 (1985), or In re Wilson, 81 N.J. 451 (1979), because at the time of the theft the monies were neither trust funds nor escrow funds. He determined that respondent no longer had possession of the funds and that, after respondent paid the proceeds into the court registry, they lost their character as escrow funds. The special master concluded that "without 'possession' there can be no violation of RPC 1.15." He also found that respondent's misconduct did not occur in the context of a lawyer-client relationship, concluding that "[r]espondent simply stole money from the public registry doing so in his individual capacity." Thus, the special master found that

respondent's conduct violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty trustworthiness or fitness as a lawyer in other respects).

In response to the OAE's reliance on In re Spina, 121 N.J. 378 (1990), and In re Siegel, 133 N.J. 162 (1993), cited for the proposition that the Wilson rule is not limited to theft of client funds, the special master rejected the notion that those two cases mandate disbarment. Instead, he concluded that disbarment in those two cases had been ordered not mandatorily, but because of the magnitude of the offenses and lack of mitigating factors. The special master noted that the attorney in Spina stole more than $30,000 from his employer in seven transactions over a two and one-half year period and that the attorney in Siegel stole $25,000 from his law partners in thirty-four transactions over three years. In declining to find knowing misappropriation, under the circumstances of this matter, the special master also considered the following cases cited by respondent: In re Farr, 115 N.J. 231 (1989) (assistant prosecutor suspended for using and distributing marijuana and PCP stolen from prosecutor's evidence locker); In re Hoerst, 135 N.J. 98 (1994) (county prosecutor suspended for stealing approximately $15,000 via unauthorized expense account charges) and Application of Peterman, 134 N.J. 201 (1993) (applicant granted admission to bar despite theft of $1,625 in three transactions over one year.)

The special master found, however, that respondent's conduct was serious. The special master took into account that the offenses were multiple, that the amount of money taken was substantial and that "the various elements of [respondent's] misconduct raise[d]

grave questions as to his integrity and character." In mitigation, the special master noted that the offenses arose out of a single incident, suggested by the record to be aberrational and not likely to recur. The special master pointed out that respondent admitted his misconduct and cooperated with the OAE. Balancing out the gravity of the offenses and the mitigating circumstances, the special master believed that a two-year suspension was appropriate.

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Following a *de novo* review of the record, the Board is satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Respondent virtually conceded that he violated RPC 3.3(a)(1) (knowingly making a false statement to a tribunal) and RPC 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit and misrepresentation). Respondent filed fictitious documents with the court consisting of a letter dated February 27, 1996 to Sharon Newman from Ronnie Schwartz of Ciob & Associates, and two attachments: a letter dated January 18, 1996 from respondent to Ronnie Schwartz, and a letter dated February 27, 1996 purporting to be an authorization from Equileasing for Ronnie Schwartz to collect funds due from Gaskill. These documents were sent to induce court staff to send to respondent funds to which he was not entitled. The special master correctly found that these acts violated RPC 3.3(a)(1) and that the same misconduct, coupled with renting a post office box, opening a

checking account and forging signatures on the two checks sent by the court, violated RPC 8.4(c).

In the instant matter, respondent contended, and the special master found, that the misappropriated funds were not escrow funds because respondent had released the money to the court registry and had been discharged as trustee. The special master's finding in this context was appropriate. Although the funds were still held in escrow, the court was the escrowee, not respondent, who had already relinquished possession and control of the funds at the time of the theft. However, there is no doubt that respondent's misconduct arose out of an attorney-client relationship. Respondent knew that those funds were in the court registry only because of his position as bankruptcy trustee. As trustee, he served in the capacity of a fiduciary. This significant factor makes the conduct all the more egregious. Indeed, the common thread running through Wilson, Hollendonner, Spina and Siegel is the position of trust held by the attorney when he steals the funds. In Wilson, it was trust account funds; in Hollendonner, escrow funds; in Spina, the attorney stole from his employer, a non-profit entity; and in Siegel, the attorney stole from his law partners.

Of relevance here is In re Kelly, 120 N.J. 679 (1990), where the attorney was the executor of a decedent's estate. In administering the estate, he committed several serious transgressions, including the conversion of $12,500 into the attorney's own bank account. Although the attorney alleged that the funds were a gift from the decedent before her death,

the Court ruled that the funds were misappropriated. In imposing disbarment, the Court commented as follows:

> Even crediting respondent's good faith in that matter, no fiduciary can engage in such unauthorized transactions without severely affecting public confidence in the faithful administration of the attorney's duties to the estate. Taken in its entirety, the conduct requires disbarment.
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> [Id. at 690]

Similarly, in In re Servance, 102 N.J. 294 (1986), an attorney was retained in a non-attorney capacity by three individuals to provide investment, not legal, services. The attorney had represented that he could double the investors' funds. However, he placed the funds in investments of which he knew little. He also failed to return their original funds, let alone double their investment. In ordering disbarment, the Court noted that, although there was no attorney-client relationship, the investors trusted the attorney simply because he was an attorney and that this trust must be preserved.

Thus, an attorney-client relationship is not a prerequisite to the disbarment of an attorney whenever theft of funds is involved.

In its brief to the Board, the OAE argued that Hollendonner applies to this situation, characterizing the stolen funds as escrow funds. To be sure, when the theft occurred, the funds were being held in escrow by the court registry, waiting for any potential claims for the next three years. But they were no longer being held in escrow by respondent. In order for Hollendonner to apply, it must be found first that respondent stole the funds while he was

acting as an escrow agent. By the time respondent misappropriated the funds, they were no longer in his care. Clearly, respondent's actions constituted theft, but not of escrow funds being held by him.

The OAE also analogized this matter to Siegel. Contrary to the case at hand, however, Siegel dealt with theft of law partners' funds. Here, respondent stole monies that belonged either to Gaskill's creditors or to the federal government, depending on what claims would be made over the next three years.

In this case, respondent administered the bankruptcy estate of Gaskill. As such, he was responsible for paying the debts of the bankrupt party. In that capacity, he apparently became aware that, because two creditors (Equileasing and LCW Leasing Co.) could not be located, their claims could not be paid. After respondent paid the money otherwise due those two creditors into the court registry, he used the information that he had obtained as a fiduciary to steal those funds.

Although disbarment may not be automatically mandated under existing caselaw, such as Wilson or Hollendonner, because the funds respondent stole were not within his possession or control, his wrongdoing was substantially more egregious than simple theft. Respondent stole public funds[5] and carefully planned and executed his scheme to wrongfully take the money. He filed papers to set the plan in motion well before he actually received the

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[5] The record suggests that, if the creditors did not claim the funds within three years, the funds would escheat to the federal government.

funds. He took numerous other steps in furtherance of his plan: he rented a post office box, opened a bank account, created fictitious letterhead, filed documents with the court containing false information, forged the signature of Ronnie Schwartz on the two checks from the bankruptcy court, deposited those checks into the bank account he opened specifically for that purpose and, using those funds, he wrote three checks to pay personal debts. This was clearly not an impulsive act accomplished with the mere stroke of a pen. Nor was it a momentary lapse in judgment. Respondent admitted to Dr. Sadoff that he had had several opportunities during the various stages to terminate the plan. Yet, he chose to proceed with the plan until completion. In short, respondent's was not a single, aberrational act borne out of stupidity or poor judgment. His conduct was a series of premeditated, carefully contrived maneuvers undertaken with one single purpose in mind: the theft of the funds.[6]

In his brief to the special master, respondent relied on In re Hoerst, 135 N.J. 98 (1994), In re Gassaro, 124 N.J. 395 (1991), In re Bateman, 132 N.J. 297 (1993), In re Gillespie, 124 N.J. 81 (1991), and In re Chung, N.J. (1997). However, with the exception of Hoerst, those cases do not involve theft. Rather, they stand for the proposition that attorneys who are guilty of criminal wrongdoing, such as income tax fraud or mail fraud, will ordinarily receive lengthy suspensions. Hoerst is distinguishable because in that case a county prosecutor misappropriated funds acquired from the then recently enacted forfeiture statute. The Court remarked that, if not for the fact that the Office of the Attorney General had not promulgated guidelines implementing the forfeiture statute, an extended period of

[6] Respondent claimed that his position as trustee was not essential to the theft. He argued that, because the records of the court registry are public, any individual could have simply requested to review the records and then submitted a request for the funds. However, respondent not only gained knowledge of the funds by virtue of his position as trustee, he placed those funds in the court registry himself, as trustee. Thus, respondent created the climate that allowed him to commit the theft.

suspension would have been imposed. In contrast, this respondent committed theft, and indeed conceded that he stole $20,000 from the court registry. Respondent's reliance on the above cases is misplaced.

In mitigation, respondent offered that he was having marital difficulties, that he was diagnosed with cancer, and that his father, who resided in Pittsburgh, was very ill and eventually passed away in August 1996. However, the marital difficulties that respondent mentioned consisted of an extra-marital affair that eventually led him to leave his wife for his paramour, Betsy. Respondent told Dr. Cooke that at least part of the misappropriated funds were used to pay credit card bills incurred by purchasing gifts for Betsy and traveling and dining with her (Exhibit R-2 at 6). The record reflects that respondent was contemplating using the funds to "fix up" his paramour's home and permits the conclusion that the reason he did not borrow funds against his life insurance policy was that his wife would have been made aware of the loan. Thus, the claimed mitigating factor of marital difficulties hardly presents a sympathetic picture.

Similarly, while there is no reason to doubt that respondent's father suffered from poor health and that such a debilitating illness can take its toll, the record shows that respondent's father passed away in August 1996, six months after respondent wrote the letter to the court requesting payment of the funds. Thus, although a potentially mitigating factor, respondent's father's condition cannot be used as a defense to respondent's misconduct.

Finally, although in May 1996 respondent was diagnosed with cancer of the jaw and underwent several surgeries related to this illness, the disease was, in fact, diagnosed several months after his theft of the funds. As respondent candidly admitted, his physician could not say with any degree of certainty that the cancer contributed in any way to respondent's misconduct. Indeed, Dr. Cooke conceded that respondent's disease was diagnosed after the theft and that "the cancer did not have anything to do with" respondent's misconduct (Exhibit R-2 at 5).

Two expert reports alluded to diminished capacity on respondent's part at the time of the theft. Dr. Cooke observed that respondent had engaged in the scheme out of a sense of guilt and that he intended to be caught. Dr. Cooke noted that "the fact that he put this scheme into action one to two days prior to leaving his wife is consistent with an individual who, out of guilt, had an unconscious need to punish himself and committed an act in such a way that would ensure that." However, the record suggests a different scenario. The sole flaw in respondent's otherwise clever plan was to have the checking account statements sent to his law office. If not for respondent's unanticipated illness and resulting unforeseen absence from the office, chances are his law partners would never have discovered the misconduct and respondent's scheme would not have been discovered. Thus, contrary to Dr. Cooke's report, respondent's actions do not appear consistent with those of a person feeling overwhelmed by guilt and desirous of being caught, but instead of a person overcome with greed who wanted to maintain a lifestyle beyond his means.

Moreover, neither expert report met the criteria set forth in In re Jacob, 95 N.J. 132 (1984). In that case, the Court ruled that attorneys are not responsible for their actions if they demonstrate "by competent medical proofs that [they] suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful." Id. at 137. Respondent offered those reports only in mitigation, not to excuse his misconduct. Nonetheless, as discussed above, the mitigating factors in this case are not particularly strong.

Respondent committed outright theft. While not every theft will result in disbarment, under these circumstances the Board determined that this respondent should be disbarred. Respondent committed the type of misconduct that undermines the confidence of the public. Moreover, contrition ensued only after he suffered the bad luck of being caught. Respondent conceded that he knew his misconduct was wrong. However, he proceeded with the scheme he concocted to prevent his wife from becoming aware of his lifestyle.

In Spina, the Court also considered the conclusions of a psychiatrist that the attorney suffered from a "Narcissistic personality disorder." In rejecting such an excuse for the attorney's misconduct, the Court remarked:

> So flagrant were the ethical violations that we would not hesitate to disbar had the misconduct arisen out of a lawyer-client relationship. Nor do we believe we should hesitate here, where the relationship was fiduciary in nature.
> [Id. at 390]

The same rationale applies to the case at hand.

Respondent has shown that he does not possess the moral character required of attorneys. See In re Templeton, 99 N.J. 365 (1985), in which the Court remarked as follows:

> We seek through appropriate discipline to protect the public from the attorney who does not and cannot meet the standards of responsibility of every member of the profession. . . . We must . . . consider whether in the totality of the circumstances respondent has demonstrated that his ethical deficiencies are intractable and irremediable.
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> [Id. at 374, 376]

In the Board's view, the theft of public funds engineered by respondent demonstrates "intractable and irremediable" ethics deficiencies. In light of the foregoing, the Board unanimously determined that respondent should be disbarred. One member recused himself.

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

Dated: 6/30/97

Lee M. Hymerling
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

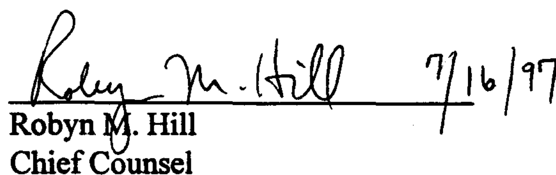
In the Matter of Robert H. Obringer
Docket No. 97-102

Hearing Held: May 15, 1997

Decided: June 30, 1997

Disposition: Disbar

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						
Total:	8					1	



Robyn M. Hill
Chief Counsel