

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-086

IN THE MATTER OF :
 :
WILLIAM T. McCUE :
 :
AN ATTORNEY AT LAW :
_____ :

Decision
Default [R. 1:20-4(f)(1)]

Decided: February 17, 1998

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

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline, following respondents' failure to file an answer to the formal ethics complaint. On January 21, 1997 the OAE sent a copy of the complaint by regular and certified mail to respondent's last known home address. The certified mail receipt card was returned on January 28, 1997 signed by "M. McCue." The regular mail was not returned. The OAE did not serve respondent at an office address, because none was known.

Thereafter, respondent was served with notice of the ethics proceeding by publication in The New Jersey Lawyer, on January 27 and February 3, 1997, and in The Record of Bergen County, on January 24, 29 and 30, 1997.

Respondent was admitted to the New Jersey bar in 1980. On February 6, 1996 he was temporarily suspended from the practice of law based on the allegations in this matter, then pending, that he had misappropriated \$547,000 from a trust and had failed to cooperate with the ethics investigator. In re McCue, 143 N.J. 331 (1996).

The formal complaint charged respondent with violations of RPC 1.15 (knowing misappropriation of entrusted funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

According to the complaint, respondent was appointed trustee of a trust created by Miriam B. Gordon. The trust was established on October 17, 1980 for the benefit of John B. Gordon and his wife, Beatrix W. Gordon. Apparently, the beneficiaries resided in Virginia. At the creation of the trust, Miriam Gordon placed assets worth approximately \$333,378 in its corpus. She died on August 4, 1987. In her will she bequeathed the remainder of her estate and assets to the trust. As a result, respondent received an additional \$1,001,980 to be placed in the trust corpus.

Throughout his term as trustee, respondent failed to give the beneficiaries an accounting of the trust assets. Consequently, the beneficiaries petitioned the Virginia Surrogate Court to have respondent removed as trustee.

At some unspecified point, respondent entered into an agreement to resign as trustee. He, therefore, transferred to the successor trustee trust assets valued at \$1,210,355. Thereafter, John B. Gordon submitted evidence to the OAE showing that respondent had misappropriated funds from the trust. An ensuing investigation revealed that respondent had diverted approximately \$547,000 from the trust between February 1990 and April 1992 for the benefit of the Mary Vincent Hanke trust, by issuing approximately forty-three checks to the Hanke trust, in amounts ranging from \$115,000 to \$1,000. John Gordon claimed that he was unfamiliar with the Hanke trust and that it had no connection at all with the Gordon trust.

Based on the foregoing information, in November 1995 the OAE filed a motion for respondent's immediate temporary suspension. The Supreme Court issued an Order to Show Cause on November 16, 1995, directing respondent to appear on January 2, 1996. When respondent did not appear, a temporary suspension was imposed on February 6, 1996. That suspension remains in effect.

From March 1996 until June 17, 1996 the OAE made numerous demands that respondent provide certain records to the OAE. Requests were made by mail and by leaving telephone messages left at respondent's home with his mother. Respondent failed to reply to any of the OAE's requests.

In the investigative report and other documents appended to the complaint, the following information was established: John Gordon instituted a civil action against

respondent in Virginia. On January 17, 1996 the Virginia Circuit Court entered a judgment against respondent in the amount of \$964,190.40. The court found that respondent did not file the fiduciary income tax returns for the trust from the decedent's date of death through the date of respondent's resignation as trustee. The court also found respondent guilty of breach of fiduciary duties. The court further found that respondent had distributed to himself compensation from the trust, which the court ordered returned to the trust. The court determined that the trust had suffered compensable losses of at least \$655,000 as a result of respondent's fraud and misappropriation. Moreover, the court concluded that, because respondent failed to provide a complete accounting of the trust funds, the beneficiaries were unable to determine whether the assets of the Gordon trust had been handled properly or whether they had received all of the trust assets.

Although respondent was repeatedly asked by the Virginia Court, the OAE and the New York Departmental Disciplinary Committee for an explanation for his actions, respondent gave none.

Because of respondent's failure to cooperate and the unavailability of records prior to 1990, the true extent of respondent's misappropriation from the trust fund is unknown. At a minimum, respondent misused more than \$500,000.

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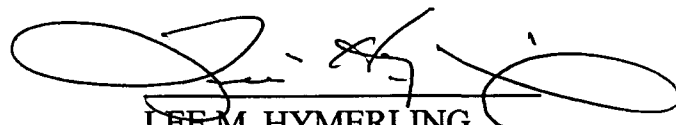
Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's knowing misappropriation of trust assets.

This leaves only the issue of appropriate discipline. According to In re Wilson, 81 N.J. 951 (1979), knowing misappropriation of trust funds warrants disbarment. It is of no consequence that there was no attorney-client relationship between respondent and the beneficiaries. In re Servance, 102 N.J. 286 (1986). Disbarment has been deemed the appropriate discipline where an attorney has misappropriated estate assets while acting as the executor. In re Kelly, 120 N.J. 679 (1990).

In light of the foregoing, the Board unanimously determined to recommend that respondent be disbarred.

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

Dated: 2/17/98


LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of William T. McCue
Docket No. DRB 97-086**

Decided: February 17, 1998

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:	9						

By Robyn M. Hill
Robyn M. Hill
Chief Counsel