

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-034
District Docket No. XIV-2016-0725E

In the Matter of
Fincourt B. Shelton
An Attorney at Law

Decision

Argued: April 18, 2019

Decided: September 16, 2019

Eugene Racz appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's four-year suspension in Pennsylvania for his violation of the Pennsylvania equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.2(a) (failure to abide by a client's

decisions regarding the scope and objectives of representation and failure to consult with a client about the means to pursue them); RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(a) (unreasonable fee); RPC 1.7(a)(2) (conflict of interest); RPC 1.8(a) (improper business transaction); RPC 1.16(a)(3) (failure to withdraw after the lawyer is discharged); RPC 3.1 (frivolous claims); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 4.1(a)(1) (false statement of material fact or law to a third person); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determined to grant the motion for reciprocal discipline and recommend that respondent be disbarred.

Respondent was admitted to the Pennsylvania bar in 1980, to the New Jersey bar in 1987, to the New York bar in 2000, and to the Georgia bar in 2007.

Respondent has been ineligible to practice law in New Jersey since September 12, 2016, for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. On September 7, 2018, respondent

was temporarily suspended from the practice of law for failing to comply with a fee arbitration decision.

On May 29, 2015, the Pennsylvania Office of Disciplinary Counsel (ODC) filed a Petition for Discipline arising from respondent's mismanagement of two separate estate matters. Because respondent did not file an answer, the factual allegations were deemed admitted. At an October 16, 2015 disciplinary hearing, respondent appeared pro se. On June 8, 2016, the hearing committee recommended a three-year suspension. On August 23, 2016, the Disciplinary Board for the Supreme Court of Pennsylvania (PDB) issued its Report and Recommendations in which it made the following findings of fact and conclusions of law.

The Lorenzo Estate

On February 12, 2007, Geraldine Lorenzo died intestate in Philadelphia, Pennsylvania. On April 17, 2007, Phyllis M. Aristotele renounced her right to administer Lorenzo's estate with the Register of Wills of Philadelphia County in favor of respondent, who then was appointed as administrator, in addition to his role as the attorney for the estate. Thereafter, respondent filed a petition identifying Aristotele as Lorenzo's aunt and a surviving heir. She was neither.

On June 21, 2007, Lorenzo's real estate sold for \$200,000. Respondent was present at the closing and received a \$10,000 fee for professional services related to the sale of the property. On July 2, 2007, respondent filed an Inventory and Inheritance Tax Return with the Register of Wills in connection with Lorenzo's estate. Under penalty of perjury, respondent listed the value of her estate as \$35,700, despite his awareness that her real estate had sold for \$200,000 merely eleven days earlier, and despite his previous filing of a Petition for Probate on April 17, 2007, listing the value of the property at \$180,000.

Respondent argued before the PDB that the \$37,500 value he claimed was correct because it was the assessed value determined by the county tax assessment. The PDB rejected this assertion, noting that respondent failed to apply the "common level ratio to the assessment in violation of the procedure stated on the sole exhibit introduced by respondent."¹

Subsequently, respondent listed, as beneficiaries on the Inventory and Return, Lorenzo's son, Moustafa A. Baker-Moustafa, and a non-relative named Elizabeth Bonk. On the same return, he listed "Personal Representative

¹ The relevant instruction on date of death valuation indicates, "there are three methods to value the property at date of death: sale price, appraisal value or county tax assessment multiplied by the common level ratio factor." The "common level ratio" refers to a ratio that measures how a county's base year assessments compare with real estate valuations.

Commissions [respondent] \$3,500; Attorney Fees \$7,000." This, too, was a knowingly false statement because, as of July 2, 2007, respondent had issued to himself checks totaling \$32,200 and had received \$10,000 in commission and attorney fees for the sale of the real estate.

On December 19, 2007, respondent issued a \$10,000 loan to Enhanced Recovery Solutions, LLC (ERS) from Lorenzo's estate. His close relationship with this entity was evidenced by his reference to ERS as "we" in his testimony before the PDB. The loan term was for one year at an annual interest rate of fifteen percent. Respondent, who had invested his own money in ERS, admitted that he previously had loaned monies to ERS from three or four of his clients.

On January 14, 2008, respondent made another \$10,000 loan from Lorenzo's estate, to Dana and Ervin Asbury, for eighteen months at an annual interest rate of 15%. On March 13, 2007, respondent had filed a medical malpractice suit in the Delaware County Court of Common Pleas on behalf of Dana. The purpose of the loan from the Lorenzo estate was to pay two doctors for their testimony at the malpractice trial.

Respondent did not advise Dana, in writing, to seek the advice of independent legal counsel or provide her a reasonable opportunity to do so. Dana did not give informed consent to the essential terms of the loan or respondent's

role in the transaction, including whether respondent was representing Dana in the transaction. Dana repaid the loan in full, with interest, on February 10, 2009.

On September 16, 2010, almost three years after the first loan to ERS, respondent issued a second loan for \$50,000 to ERS from Lorenzo's estate, in return for a position on ERS' board and a percentage of the company's net profits. The loan term was for eighteen months at an annual interest rate of 12%. The PDB found this loan to be another breach of respondent's fiduciary duty to Lorenzo's estate. As of the date of the PDB hearing, no interest or principal payments had been made from ERS to Lorenzo's estate on either of its loans, and respondent had made no attempt to collect payments on behalf of the estate.

On May 31, 2011, Nina Stryker, Esq., on behalf of seven individuals, filed a petition for declaratory judgment, in the Philadelphia County, Orphans' Court Division, to determine the proper heirs of Lorenzo's estate. Respondent filed an answer on June 8, 2011. The court ordered respondent to file an accounting of his administration of the estate. On September 16, 2011, he filed an accounting for the period February 12, 2007 to September 8, 2011.

In his accounting, respondent listed an August 26, 2008 disbursement of \$35,000 to Elizabeth Bonk, relating to a home repair loan. Respondent made no such disbursement and knew it was false when he included it in the accounting.

Additionally, respondent represented in the accounting that \$15,000 had been paid to him for "commission and attorney fees." Respondent also knew this was false because, as of September 16, 2011, he had taken \$60,700 for counsel fees and commissions in connection with Lorenzo's estate. Upon cross examination, respondent claimed that it was "a mistake," "erroneous," and that "I was under pressure. I was just trying to get something to the court. I really was. . . I just didn't pay attention, and I printed it out, and I sent it."

Over one year later, on January 7, 2013, after several motions by the parties, a hearing was held at which the judge commented "to say the least, the accounting has so many material discrepancies in it that it would be impossible. . . to confirm the account" The court granted respondent leave to file an amended accounting to conform to the testimony presented. On February 22, 2013, respondent filed an amended accounting in which he misrepresented that he had been paid a total of \$54,200 in fees and commissions, knowing that he had received \$60,700 in fees and commissions. He also continued to omit the Lorenzo Estate loans to ERS and Asbury from any accounting. In the aggregate, respondent's fees and commissions, along with the unpaid loans to ERS, totaled \$120,700, or 51.08% of the value of the estate.

On July 12, 2013, respondent and the petitioners executed a settlement agreement and mutual release regarding Lorenzo's estate. Respondent agreed to pay the heirs of the estate \$131,000, which included the balance remaining in Lorenzo's bank account, \$10,000 for excessive fees and commissions, \$60,000 as repayment of the two promissory notes issued to ERS, and \$1,505.82 as interest due on the two ERS loans. Respondent promptly paid the remaining bank account balance, but nothing more and thus, \$71,505.82 remains outstanding under the settlement agreement.

Subsequently, Stryker discovered that, on August 16, 2012, respondent had filed for personal bankruptcy, ten months prior to the execution of the settlement agreement. Respondent had a duty in his bankruptcy proceeding to list Lorenzo's estate and the petitioners as parties entitled to notice of the filing, which he did not do. Respondent also failed to notify the court and the interested parties about his bankruptcy. Therefore, the PDB concluded that "respondent had no authority to undertake personal financial obligations during the bankruptcy proceedings."

The PDB also found respondent's collection of \$60,700 in counsel fees and commissions in connection with Lorenzo's estate "clearly excessive and/or illegal." Respondent kept no record of his time spent on estate matters, and

although he claimed that he usually charged a flat fee for estate matters, he had no fee agreement at all with the estate. At the declaratory judgment hearing, Stryker testified, based on her thirty years of Orphans' Court work, that respondent's fee should have been between \$10,000 and \$12,000, in light of the size and complexity of the estate. She added that, in most cases where an attorney has the dual role of attorney and administrator, compensation tends to be no more than seven percent of the value of the estate. Stryker also objected to respondent's loan of estate monies, as a breach of his fiduciary duty. The PDB found Stryker's testimony credible.

Respondent testified that, "I felt that I was entitled to whatever fee I got because that was my first time ever being around dead folks, and I didn't realize it smelled so bad."² He added that he acted as both attorney and administrator and tried not to exceed ten percent of the gross value of the estate when he calculated his fee. Respondent's fees and commissions before consideration of the ERS loans amounted to 30.26% of the gross estate.

On March 13, 2014, respondent resigned as Administrator of Lorenzo's estate.

² This comment appears to refer to an extensive house cleanup required in connection with the estate.

Robles Matter

On March 19, 2005, Gabriel Robles died intestate, survived by his mother, Lourdes Sierra, and his eight-year-old child, Aisya. Sierra was appointed Administrator of the Robles Estate by the Register of Wills of Philadelphia County. She retained the law firm of Pelagatti and Pelagatti (Pelagatti) to investigate medical malpractice and wrongful death claims against Temple University Hospital in connection with Robles' death. The applicable statute of limitations expired prior to Pelagatti's initiating suit. Therefore, in June 2008, Sierra hired the Colleran Law Firm to bring a legal malpractice action against Pelagatti. The matter settled for \$175,000 in July 2008. Two years later, in June 2010, Sierra retained respondent to finalize the legal malpractice settlement.

On November 4, 2010, after a decree was issued settling the legal malpractice action, respondent filed a petition with the Philadelphia County Orphans' Court Division under the caption "Estate of Aisya Robles, A Minor." In the petition, which expressly stated that it was the "petition of Lourdes Sierra, administratrix of the Estate of Gabriel Robles," respondent sought to be named guardian of Aisya. Respondent attached a verification to the petition, which

Sierra signed. Sierra, however, testified that she believed that she was the proposed guardian of Aisya.

On November 9, 2010, Judge John W. Herron entered an order appointing respondent as guardian of the "Estate of Aisya" and prohibiting him from entering into a settlement of any claim or cause of action without prior court approval. On November 19, 2010, Sierra filed objections to the decree, because she had not asked or agreed that respondent be appointed guardian; requested respondent's removal as guardian; and urged that respondent's request for a \$3,500 fee be denied.

In a January 25, 2011 order, Judge Herron appointed Sierra as successor guardian of Aisya. On the same day, knowing that he had been removed as guardian, and had the consent of neither the court nor Sierra, respondent forwarded a \$20,249.73 check to the Department of Public Welfare (DPW) to clear a lien on the Robles estate.³

On March 22, 2011, respondent filed a second petition with the Orphans' Court, under the caption "Estate of Aisya Robles, A Minor," claiming that he had been "appointed administratrix of the Estate of Gabriel Robles." Both

³ Nothing in the record explains why the DPW had a lien on the estate, but, presumably, it was to recover public assistance benefits. Although repayment of the lien would not have been required in a wrongful death matter, respondent failed to advance that position.

representations were false. Respondent did not have Sierra's permission to file this petition. In the second petition, respondent conceded that he had disbursed \$20,249.73 to the DPW, requested the court's approval of the disbursement and other settlement distributions, and proposed fee payments of more than thirty-four percent of the settlement proceeds to respondent and prior counsel, along with a 1.4% payment to the administrator for her commission.

Based on the record, it appears that Sierra retained respondent only to finalize the malpractice settlement. Once the malpractice matter concluded, respondent insinuated himself into the estate matters.

On April 8, 2011, Mary Jane Barrett, Esq., Sierra's new attorney, filed objections on behalf of Sierra, claiming that respondent filed the second petition without Sierra's knowledge; that he lacked standing to file the petition because he was not the administrator of the estate; that he filed the petition improperly under Aisya's name, instead of the name of the decedent's estate; that he improperly negotiated and received settlement proceeds without obtaining prior court approval, as Philadelphia Rule of Civil Procedure § 2206 requires; that he failed to protect the interests of the minor beneficiary because he had not advocated for the allocation of the funds to the wrongful death action, under which the DPW payments would not have been required; and that his fee request

of \$23,500 was excessive, in light of his mishandling of the litigation and the estate.

On April 26, 2011, Judge Herron sustained the objections and ordered respondent to file an appropriate petition for the approval of the settlement under the caption of "Estate of Gabriel Robles," which respondent did on May 13, 2011. Once again, the identities and positions of the respective parties were blurred. Although the petition stated that it was "filed on behalf of Lourdes Sierra, Administratrix of the Estate of Gabriel Robles, deceased," it noted that Sierra had not agreed to his proposed distribution. Respondent, therefore, requested that the court approve the allocation of gross proceeds, and order distribution of \$20,249.73 to the DPW and \$18,246.98 to respondent as his fee. Respondent failed to provide the required notice of the petition to the DPW, the Attorney General, or the Secretary of Public Welfare.

On July 27, 2011, Sierra filed an "Answer and New Matter to the Third Petition." On August 19, 2011, respondent replied to the "New Matter," attaching a certificate of service, which identified him as "Attorney for Petitioner, Lourdes Sierra." One month later, on September 19, 2011, Judge Herron issued an order, granting in part and denying in part the third petition. The order did not approve the proposed distribution to the DPW.

Three months later, on December 14, 2011, respondent filed a petition to compel the DPW to disgorge the \$20,249.73 that respondent had remitted to the DPW. In the petition, respondent once again identified himself as the petitioner on behalf of the Estate of Gabriel Robles. On March 27, 2012, Judge Herron denied the petition.

On May 15, 2012, respondent filed an appeal. On July 20, 2012, Judge Herron issued an opinion, finding that respondent:

- a) acted without the requisite authority or court approval, and failed to file a timely appeal of the September 19, 2011 court order that denied his requested distribution to the DPW;
- b) failed to follow the appropriate administrative procedure to obtain a refund from the DPW;
- c) tendered settlement proceeds to the DPW without the approval of the Administratrix of the estate that respondent represented, and without the Orphans' Court approval required by Judge Abramson's September 13, 2010 order;
- d) from the very beginning, used tactics to obtain Orphans' Court approval of the distribution of the settlement award that were duplicitous and confused;
- e) misrepresented in the First Petition that the petitioner was Lourdes Sierra, as Administratrix of her son's estate and as grandmother of Aisya;
- f) acted without the consent of the Administratrix of the Robles Estate and without court approval when he

distributed \$20,249.73 to the DPW on January 25, 2011;

- g) continuously sought in his filings to exceed his authority in representing the estate;
- h) used a persistent pattern of misrepresenting the identity of the petitioner and pushing the boundaries of his client's consent, leaving the court no equitable basis on which it could afford respondent's requested relief of ordering the DPW to disgorge the unauthorized payment to it;
- i) was not compelling in his lament that the practical effect of refusing to order the DPW to refund the \$20,249.73 is the forfeiture of his attorney fee, due to his repeated unauthorized actions in this matter; and
- j) as patently clear from the record, realized he was required to obtain court approval for the distributions from the Gabriel Robles Estate.

[OAEB;Ex.H,p.30-31]⁴

On June 11, 2013, the Commonwealth Court affirmed Judge Herron's March 27, 2012 order. The Commonwealth Court also found that respondent "bore personal responsibility" for erroneously settling the DPW's lien against the estate.

The PDB found that respondent violated Pa. RPC 1.1 (lack of competence); Pa. RPC 1.2(a) (failure to abide by a client's decision); Pa. RPC

⁴ "OAEB" refers to the OAE's brief in support of its motion for reciprocal discipline.

1.4(a)(2) (failure to reasonably consult with a client); Pa. RPC 1.4(b) (failure to sufficiently explain a matter to a client); Pa. RPC 1.5(a) (excessive fee); Pa. RPC 1.7(a)(2) (conflict of interest); Pa. RPC 1.8(a) (entering into a business transaction adverse to client); Pa. RPC 1.16(a)(3) (failure to withdraw from representation when discharged); Pa. RPC 3.1 (frivolous claims); Pa. RPC 3.3(a)(1) (false statement of material fact to a tribunal); Pa. RPC 4.1(a) (false statement of material fact to a third person); Pa. RPC 5.7(a) (lawyer is subject to RPCs when providing non-legal services to a recipient when those services are not distinct from legal services); Pa. RPC 5.7(b) (lawyer is subject to RPCs when he reasonably should know that the recipient of his non-legal services might believe that he is receiving the protection of a client-lawyer relationship); Pa. RPC 8.4(c) (dishonesty, fraud and deceit); and Pa. RPC 8.4(d) (conduct prejudicial to the administration of justice).

Specifically, the PDB noted that respondent made material misrepresentations to the court, mishandled entrusted funds, engaged in a significant conflict of interest and breach of fiduciary duty, and displayed extensive incompetence. In his filings with the Orphans' Court and the Register of Wills in the Lorenzo matter, respondent made knowing, or at a minimum, reckless misrepresentations. Respondent certified, under criminal penalty, that

the information in these legally significant documents was true and correct. Respondent misrepresented the value of real estate and the amount of commissions and fees he received, and made a false claim of disbursement relating to the Bonk home repair loan.

Additionally, respondent mishandled Lorenzo estate funds by collecting an excessive and unreasonable fee, totaling 30.26% of the gross estate. Based on Stryker's "credible and persuasive testimony," the PDB also found respondent's fee to be exorbitant, based on the size and complexity of the estate, the agreement filed in court that respondent refund \$10,000 "representing excessive fees and commissions paid to him," and his testimony that he believed he was entitled to "whatever fee he got because of some extensive house cleanup required in connection with the estate." Further, respondent's dishonesty was exacerbated by the fact that he failed to keep any time records to support his entitlement to the fees requested.

Respondent's loans to ERS "constituted an obvious conflict of interest and breach of fiduciary duty." Respondent indicated that he has a substantial interest in ERS which motivated him to make loans that were "completely contrary to the best interests of the estate." In its decision, the PDB noted that, more than

five years after respondent had made the loans, the estate still had not received any reimbursement from ERS.

Further, respondent incompetently represented the Robles estate "by filing inaccurate returns and accounts, failing to exhaust all statutorily prescribed administrative remedies, paying a DPW lien against the Robles Estate without court permission, and failing to timely appeal an order." The PDB noted that "[r]espondent at various times characterized his representation as 'sloppy work,' a 'mistake' and 'erroneous.'" He even referred to his representation as "malpractice."

In aggravation, the PDB cited respondent's ethics history, which included two informal admonitions for commingling funds, using his IOLTA account to pay personal expenses, and inadequate recordkeeping.⁵ Further, he "failed to appreciate the extent of his wrongdoing," "failed to demonstrate genuine remorse" for his misconduct in the handling of the estates, and offered no mitigation other than to argue that his practice has always served the underprivileged and economically distressed communities.

⁵ An informal admonition is a private form of discipline issued in lieu of formal proceedings.

On October 20, 2016 the Supreme Court of Pennsylvania issued an order suspending respondent for four years. He was reciprocally suspended for four years in New York and Georgia, on May 11, 2017 and August 28, 2017, respectively.

In its motion, the OAE argues that respondent's unethical conduct and ethics violations in Pennsylvania equate to the following violations of the corresponding New Jersey Rules of Professional Conduct: RPC 1.1(a); RPC 1.2(a); RPC 1.4(c); RPC 1.5(a); RPC 1.7(a)(2); RPC 1.8(a); RPC 1.16(a)(3); RPC 3.1; RPC 3.3(a)(1); RPC 4.1(a)(1); RPC 8.4(c); and RPC 8.4(d). The OAE noted that Pa. RPC 5.7(a) has no equivalent RPC.

Based on the foregoing, the OAE recommends respondent's disbarment for taking excessive legal fees and commissions from estate funds and for making improper loans from those entrusted funds. The OAE relies on In re Ort, 134 N.J. 146 (1993). The attorney in Ort took a \$32,000 fee in an uncomplicated estate matter valued at approximately \$300,000, representing 10.6% of estate receipts. He also established an unauthorized home equity loan of \$25,000, and used those funds to pay himself. The OAE argues that, here, respondent's misconduct is more egregious than that of the attorney in Ort because respondent's \$60,700 fee for an uncomplicated estate matter was nearly triple

the fee in Ort and amounted to 30.26% of the estate. Further, the OAE argues that respondent also engaged in self-dealing when he crafted the two loans from Lorenzo's estate.

According to the OAE, as in Ort, respondent failed to operate within the scope of the representation; overreached by charging excessive fees, which he failed to memorialize; and failed to establish that he had a good faith, reasonable belief that he was entitled to those excessive fees. Hence, in accordance with Ort, the OAE seeks disbarment.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa.

1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

At the outset, we determine to dismiss several of the alleged violations. In

Pennsylvania, respondent was found to have violated RPC 1.1(a) by neglecting Lorenzo's estate to the extent that he filed inaccurate returns and accounts. These documents, however, are the basis for the allegations of misrepresentation and false statement of material fact, which we address below. These misrepresentations were so blatant that they had to have been committed knowingly and purposefully to conceal respondent's fee overreaching and, thus, were not the result of neglect. Therefore, we determine to dismiss the RPC 1.1(a) allegation, as it pertains to the Lorenzo matter only.

Additionally, we determine to dismiss the alleged violations of RPC 1.16(a)(3) and RPC 3.1. Nothing in the record establishes that the claims respondent brought were frivolous. Similarly, there is nothing to support a finding that respondent failed to withdraw from representing either estate after having been discharged. In fact, specific to the Robles matter, it does not appear respondent was ever retained as counsel beyond finalizing the legal malpractice action.

As to the remaining allegations, because respondent significantly neglected the Robles matter, he violated RPC 1.1(a). He paid the DPW \$20,247.73, without court permission, under the erroneous belief that DPW was entitled to the funds. Respondent failed to appeal the order denying his requested

distribution to the DPW and failed to exhaust all administrative remedies.

Also in the Robles matter, respondent violated RPC 1.2(a) by filing multiple petitions with the Orphans' Court. Those petitions were not in accordance with Sierra's wishes, including respondent's naming himself Aisya's guardian. Sierra was forced to file objections to respondent's petition because she never authorized respondent to be Aisya's guardian. Respondent was removed, and Sierra was appointed as guardian. Yet, on the day he was removed, respondent forwarded the check to the DPW, knowing he was no longer guardian, that the disbursement required court approval, and that Sierra did not consent to the disbursement. Subsequently, respondent filed two more petitions in connection with the Robles estate. Neither petition was filed with Sierra's knowledge or consent.

Respondent's misconduct in this regard also violated RPC 1.4(c). Had respondent communicated with Sierra prior to filing petitions, she likely would have disapproved. At a minimum, she would have had a better chance at preventing respondent's insinuation into the estate matters and the damage he caused. Because respondent's lack of communication impacted Sierra's ability to make informed decisions about the representation, he violated RPC 1.4(c).

Further, in connection with Lorenzo's estate, respondent violated RPC 1.5(a) by collecting \$60,700 in counsel fees and commissions, which equated to 30.26% of the gross estate. Making matters worse, respondent failed to keep any time records and had the audacity to testify in Pennsylvania that he was "entitled to whatever fee [he] got." Stryker testified that, based on her thirty years' experience in Orphans' Court, respondent's fee was exorbitant. She opined that a reasonable fee for an estate of this size and complexity was \$10,000 to \$12,000. According to Stryker, in cases where an attorney serves as both the lawyer and the administrator of the estate, the fee typically falls in the range of no more than 7% of the gross estate. Therefore, respondent's fees were unreasonable, in violation of RPC 1.5(a).

Additionally, respondent's loans of estate monies to ERS constituted an obvious conflict of interest and breach of fiduciary duty. Respondent had a substantial interest and connection to ERS that motivated him to loan estate monies in transactions that were contrary to the estate's best interests. Respondent had invested a significant amount of his own money and considered himself a part of ERS, referring to ERS as "we." He admitted involvement in several other loans to ERS from up to four other clients.

The second loan to ERS was in exchange for respondent's possible board position and 2% of the company's net profit. Respondent's decision to make these loans to a startup company in which he had significant ties is extremely troubling, given that an administrator's duty is to protect and preserve assets, not to put them at risk. Respondent's breach of fiduciary duty was exacerbated by the fact that, as of the date of the PDB's final report, the estate had not received any payment from ERS. Respondent's loans to ERS from the estate are a clear violation of RPC 1.7(a)(2).

Moreover, the January 14, 2008 loan to Asbury constituted an improper business transaction. Respondent did not advise Asbury, in writing, or provide her a reasonable time to seek the advice of independent legal counsel. Asbury did not give informed consent to the essential terms of the loan or respondent's role in giving the loan, including whether he was representing Asbury in the transaction. Although Asbury repaid the loan in full, with interest, that loan constituted a violation of RPC 1.8(a).

Most troubling is respondent's brazen willingness to make material misrepresentations to the court, his clients, and third parties, and to generally conduct himself in a dishonest manner. Judge Herron at one point referred to respondent's behavior as "duplicitous."

Respondent made misrepresentations in his filings with the Orphans' Court and with the Register of Wills in connection with the Lorenzo Estate. He verified or certified, under criminal penalty, that the information in these documents was true and correct; yet, the PDB found these were knowing and purposeful misstatements.

Specifically, on April 17, 2007, respondent filed a Petition for Probate listing the value of Lorenzo's real estate at \$180,000. On June 26, and again on July 2, 2007, however, on Schedule A of the Inventory and Return in connection with Lorenzo's estate, respondent listed \$35,700 as the "fair market value" of Lorenzo's real estate at the date of her death. Respondent knew these to be false representations because he had been present on June 21, 2007, when Lorenzo's real estate had sold for \$200,000.

In Schedule H of the Inventory and Return, respondent falsely listed personal representative commissions of \$3,500 and attorney fees of \$7,000; yet, as of July 2, 2007, he had issued checks to himself totaling \$32,200 and had received an additional \$10,000 real estate commission. Moreover, on the accounting he filed, on September 16, 2011, respondent misrepresented that \$15,000 had been paid to him for commissions and attorney fees. At the time he filed the accounting, respondent had received \$60,700 in counsel fees and

commissions. He had received \$45,700 more than the amount he reported, which he knew or should have known was not accurate. Also, on the accounting he filed with the court, respondent listed an August 26, 2008 disbursement of \$35,000 to Elizabeth Bonk relating to a home repair loan. Respondent had made no such loan.

Additionally, respondent engaged in a bizarre pattern of misrepresenting the identity of the petitioner in pleadings he filed in connection with the Robles matter. The Pennsylvania disciplinary system referred to this conduct as "reckless ignorance of the truth or falsity thereof." As Judge Herron explained in his opinion, respondent's tactics to gain court approval of the DPW distribution of the settlement award were "duplicitous and confused." Even after being removed as Aisya's guardian, respondent persisted in filing petitions under the caption of Aisya Robles, but on "behalf of the Estate of Gabriel Robles, deceased" and characterizing the petitioner as the Administratrix of the decedent's estate.

When viewed collectively, we reach the conclusion that respondent's misrepresentations throughout both matters were made to conceal his exorbitant fees and inappropriate loans. Respondent's duplicitous conduct in this regard violated RPC 3.3(a)(1), RPC 4.1(a)(1), and RPC 8.4(c).

Respondent's misconduct caused a significant delay in resolving both estate matters and created a substantial amount of unnecessary work for the court. In the Robles matter alone, Sierra was forced to file multiple objections to petitions respondent filed, resulting in multiple orders issued by Judge Herron. Respondent's misconduct in both matters violated RPC 8.4(d).

In sum, respondent violated RPC 1.1(a); RPC 1.2(a); RPC 1.4(c); RPC 1.5(a); RPC 1.7(a)(2); RPC 1.8(a); RPC 3.3(a)(1); RPC 4.1(a)(1); RPC 8.4(c); and RPC 8.4(d).

Respondent's conduct was egregious. He made material misrepresentations to the court, engaged in a significant conflict of interest, and breached his fiduciary duty. Worse, he mishandled entrusted estate funds by collecting excessive and unreasonable fees and made self-dealing loans of estate monies to ERS. Thus, he should be disbarred.

The Court in In re Ort, 134 N.J. 146, 157, determined that a lawyer's charges of \$32,000 on an estate of no complexity valued at \$300,000 "were utterly unreasonable and inconsistent with the factors . . . of RPC 1.5(a)." The Court noted that the time sheets that Ort submitted "reflected work performed by respondent that [it] would characterize as wasteful, excessive, and unnecessary. That violation alone calls for substantial discipline." Id. at 159-60

(citing In re Hinnant, 121 N.J. 395 (1990) (public reprimand for attorney who had charged fees amounting to overreaching and had engaged in a conflict of interest)). Here, respondent did not keep time records. Rather, he audaciously testified that he was entitled to any amount of fees he could obtain. Lorenzo's gross estate value was \$236,299.06. Respondent took \$60,700 in aggregate fees, which is over 25% of the gross estate, more than double the percentage Ort took.

The Court disbarred Ort because, in addition to fee overreaching, he withdrew more than \$32,000 from the estate account as attorney's fees without informing his client and without her authorization, in violation of RPC 1.5(b) and RPC 8.4(c). Id. at 160. The parallels to the instant matter are inescapable. Nothing in the record indicates that respondent had permission to withdraw \$60,700 in fees from Lorenzo's estate, or to make the loans to ERS that directly benefited him.

Respondent claims that his practice always served the underprivileged in economically distressed communities. Based on the record, it appears that, rather than serving them, respondent has been preying on the people in these communities. As the Court noted in Ort, "[r]espondent's serious violations bear directly on his ability to justify and sustain the trust of prospective clients." The Court concluded that Ort "took unfair and improper advantage of his client for

his own benefit, and that the extent and severity of [Ort's] misconduct is such that the appropriate discipline is disbarment." Id. at 161. Here, respondent should meet the same fate.

In our view, the continued practice of law by respondent is detrimental to the public. His misconduct in the Lorenzo matter alone, based on its parallels to Ort, justify disbarment. That result is only further supported by his misconduct in the Robles matter.

Respondent was hired simply to finalize a legal malpractice matter on behalf of Sierra. He then insinuated himself into the estate matter and proceeded to take legal actions without the permission or authority of Sierra. Despite her objections to respondent's first petition, he filed two more petitions with the court and erroneously paid a lien on behalf of the estate, causing it financial harm. Additionally, that lien payment was in violation of a court order that explicitly prohibited respondent from taking any action on behalf of the estate.


Based on the record, respondent injected himself into the Robles estate matter for no other reason than to attempt to manipulate the matter in the same way he did in the Lorenzo matter. The public protection from further opportunities for respondent to impose his will in estate matters is, in our mind, paramount.

Accordingly, we determine to recommend that respondent be disbarred.

Chair Clark and members Boyer and Joseph voted to impose a three-year suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

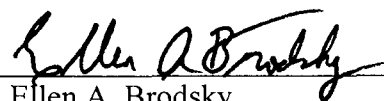
In the Matter of Fincourt B. Shelton
Docket No. DRB 19-034

Argued: April 18, 2019

Decided: September 16, 2019

Disposition: Disbar

<i>Members</i>	Disbar	Three-Year Suspension	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph		X		
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	3	0	0


Ellen A. Brodsky
Chief Counsel