

Office of Attorney Ethics
Supreme Court of New Jersey
CN 963
Trenton, NJ 08625
(609) 530-4008
Nitza I. Blasini, Deputy Ethics Counsel

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket No. XIV-96-20E and
I-97-900E

OFFICE OF ATTORNEY ETHICS		
Complainant	:	Disciplinary Action
	:	COMPLAINT
v.	:	(Complex Misconduct)
	:	R. 1:20-4(b)
JOSEPH P. BREIG, ESQ.	:	
Respondent	:	
	:	

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey, CN 963, Trenton, New Jersey 08625, by way of formal complaint against respondent, Joseph P. Breig, Esq., says that:

GENERAL ALLEGATIONS

1. Joseph P. Breig, hereinafter "respondent", was admitted to the practice of law in the State of New Jersey in 1977.

2. At the time of the events set forth herein, respondent maintained an office for the practice of law at 224 North High Street, Second Floor Suite, Millville, New Jersey.

3. In connection with his law practice respondent maintained the following bank accounts:

- a. Farmers & Merchants National Bank
Millville, New Jersey
Primary Trust Account
No. 2044115000
- b. Farmers and Merchants National Bank
Millville, New Jersey
Primary Business Account
No. 2039304006
- c. Farmers and Merchants National Bank
Bridgeton, New Jersey
Collection Account
No. 2039304007

4. This matter was first brought to the attention of the Office of Attorney Ethics (OAE) on or about December 1995 by Robert Garton, Jr., hereinafter "grievant", who, together with Barbara Ann Davis (Davis), owns and operates B & G Collection, Inc. (B & G), a debt collection business.

5. Grievant alleged that respondent, who is the attorney for B & G, as well as

grievant's personal friend, may have misappropriated funds respondent collected on behalf of B & G. Specifically, grievant alleged that respondent had not submitted any collected funds to B & G since approximately June 1995.

6. Based upon this information, as well as grievant's follow-up letter dated December 19, 1995, (Exhibit 1), the OAE commenced an investigation.

COUNT ONE

(Failure to Promptly Deliver Funds Belonging to Another, in Violation of R. P.C. 1.15(b))

1. On April 23, 1996, the OAE served a notice for a demand audit on respondent by regular and certified mail. Exhibit 2.

2. The audit was scheduled for May 10, 1996 at 10:00 a.m. at respondent's law office located at 224 North High Street, Millville, New Jersey. The audit was to cover the period from July 1, 1994 through May 1996. Id.

3. In the letter, respondent was advised that the focus of the audit was his handling of both his collection account and attorney trust account. Id.

4. On May 9, 1996, respondent, through his secretary, canceled the demand audit. The audit was rescheduled to May 31, 1996 at the OAE Mountain View Office, West Trenton. (Exhibit 3)

5. Respondent did not appear on May 31, 1996, nor did he provide the OAE with an explanation for his failure to appear at said audit.

6. Thereafter, on June 6, 1996, Martin McDonough, Esq. (McDonough) contacted the OAE and advised that he represented respondent. McDonough further advised that both he and his client wished to cooperate fully with the OAE's investigation.

7. Accordingly, the audit was rescheduled to June 13, 1996 at respondent's law office. Exhibit 4. Present at the audit were respondent, McDonough, Investigative Auditor D. Kenneth Tulloch (Tulloch), and Deputy Ethics Counsel Nitza I. Blasini (Blasini).

8. During the audit respondent stated that he began doing collection work for B & G in June 1994 although he had no prior experience doing this type of work. Respondent admitted that he had failed to file collection reports or to remit funds to grievant since approximately June or July 1995.

9. Respondent further stated that he had no written contract with B & G; that the fee arrangement was as described by grievant¹; that funds for respondent's costs were to be provided "up front" by grievant; and that after those funds were expended respondent was to reimburse himself from collected funds.

10. Respondent further disclosed that he was recently diagnosed by Dr. Crouse, a psychiatrist and neurologist, as suffering from clinical depression related to an October

¹During an interview conducted by Tulloch on April 17, 1996, grievant stated that he and respondent had an oral agreement wherein respondent would keep 60% of whatever grievant's fee would be from funds collected by respondent. Grievant's fee varied from 20% to 50%. Grievant charged a 20% fee to his client, the Outpatient Clinic of Millville Hospital. Almost all of respondent's collection work pertained to the Millville Hospital debtors.

1991 automobile accident in which respondent sustained head injuries.²

11. During the continuation of the audit on August 15, 1996, Tulloch located a letter to grievant from respondent dated March 24, 1996 which summarizes the agreement between them. The letter, however, does not set forth which expenses are to be reimbursed to respondent. Exhibit 5.

12. Tulloch's review of respondent's collection bank account records (account no. 2039304007) for the period July 1, 1995 through May 15, 1996 disclosed the following deposits:

Deposit Date	Total Deposit	Exhibit Reference
7/07/95	\$222.21	6
7/19/95	963.69	7
7/31/95	50.00	7
8/07/95	220.00	7
8/22/95	203.88	8
9/08/95	542.58	8
9/22/95	35.06	9
10/18/95	375.53	10
11/10/95	325.00	10
12/13/95	150.00	11
1/10/96	155.00	12
1/22/96	25.06	13
2/06/96	130.00	13
2/13/96	120.06	13
3/08/96	150.00	14
4/05/96	75.00	15
4/17/96	60.12	16
TOTAL DEPOSITS	\$3,803.19	

² Subsequent to the audit, McDonough provided the OAE with medical reports which show respondent is suffering from Crohn's disease, a condition which causes blood loss over a prolonged period of time.

13. Tulloch's review of respondent's collection account records for March 1995 through May 15, 1996 disclosed the following:

Expenses reimbursable to respondent (court costs, postage)	\$1,011.00
Reimbursed overpayment.	25.00
Total Disbursements to B &G	4,141.76
Total Disbursements to Respondent.	3,383.19

Total Collection Account Disbursements \$8,560.95 Exhibit 17

14. Tulloch's review and analysis of known receipts issued for cash payments for the period from March 3, 1995 through May 2, 1996 disclosed the following:

Total receipts issued from 3/3/95 to 5/2/96	\$4,388.53	Exhibit I8 & 19
Receipts related to Millville Hospital	1,270.53	Exhibit 18 & 19
Receipts issued after respondent's last collection report of 7/I/95 for payments to Millville Hospital	612.12	Exhibit 18 & 19
Less currency deposited to Collection Account after 7/1/95 report	233.75	Exhibit 19
Undeposited currency receipts from Millville Hospital debtors	378.37	Exhibit 19

15. Upon review and analysis of respondent's collection account records, Tulloch determined the following:

Collection account deposits 7/01/95-5/15/96.....	\$3,803.19
Add: Undeposited currency receipts.....	378.19
.....	\$4,181.56
Less: Overpayment reimbursed to debtor	- 25.00
Net Collections.....	\$4,156.56

Collection fees due to grievant and respondent (20% x \$4,156.56):	\$831.31
Fees due to B&G Collections (40% x \$831.31)	\$332.52
Fees earned by respondent (60% x \$831.31)	\$498.79

Estimated funds due to Millville Hospital:	
Net Collections	\$ 4,156.56
Less: Possible over reporting on 7/01/95 report	341.07
Expenses reimbursable to respondent	1,011.00
Collection fees for grievant & respondent	831.18
Balance due Millville Hospital	\$1,973.18

16. Respondent's failure to promptly remit funds belonging to B & G and Millville Hospital (\$332.52 and \$1,973.18, respectively) constitute a violation of R.P.C. 1.15(b) which provides in pertinent part that a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

COUNT TWO

(Recordkeeping Violations - R.P.C 1.15(d) and R.1:21-6)

1. The allegations in Count One are incorporated herein by reference as though the same were fully set forth at length herein.

2 .Tulloch's review of respondent's books and records disclosed the following deficiencies:

- a) A trust receipts journal was not maintained. [R.1:21-6(b)(1)]
- b) A trust disbursements journal was not maintained. [R.1:21-6(b)(1)]
- c) A schedule of client's ledger accounts was not prepared and reconciled monthly or quarterly to the bank statement [R.1:21-6(b)(8)]
- d) A separate ledger sheet was not maintained for each trust client [R.1:21-6(b)(2)]
- e) Funds received for professional services are not deposited into business account. [R.1:21-6(a)(2)]
- f) Attorney's personal funds are commingled with trust funds. [R.P.C. 1.15(a)]

WHEREFORE, respondent should be publicly disciplined.

OFFICE OF ATTORNEY ETHICS

/s/ DAVID E. JOHNSON, JR.
DIRECTOR

DATED: June 9, 1997