

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY



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January 22, 2016

Via Certified Mail RRR 7013 0600 0001 4588 0366 & Regular Mail

Frank C. Babcock, Jr., Esq.
910 Bergen Avenue, Suite 207
Jersey City, NJ 07306

**Re: Office of Attorney Ethics vs. Frank C. Babcock, Jr., Esq.
Docket No. XIV-2014-0542E**

Dear Mr. Babcock:

In accordance with *Rules* 1:20-4(d) and 1:20-7(h), I serve upon you a complaint in the above-referenced matter. You are required to file your written, verified answer within twenty-one (21) days of receipt of this correspondence. *R.* 1:20-4(e). The original and one (1) copy of your answer are to be filed **directly with me**.

In filing your answer, you must follow *In re Gavel*, 22 *N.J.* 248, 263 (1956) and *Rule* 1:20-4(e), which requires the answer to contain:

- (1) a full, candid and complete disclosure of all facts reasonably within the scope of the formal complaint;
- (2) all affirmative defenses, including all claims of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;
- (3) any mitigating circumstances;
- (4) a request for a hearing either on the charges or in mitigation; and
- (5) any constitutional challenges to the proceedings.

R. 1:20-4(e).

You are advised that, while the burden of proof by clear and convincing evidence is on disciplinary authorities to establish unethical conduct, the burden of going forward on all properly raised affirmative defenses and mitigating factors, including claims of mental and physical disability, if any,

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and whether such defenses or claims are causally related to the offense charged, is on you. The burden of proof for all medical/psychiatric defenses is clear and convincing evidence. *R. 1:20-6(c)(2)(B)*.

Please note that you must personally verify your answer by attaching and signing the following form to that document:

<u>VERIFICATION OF ANSWER</u>	
I, _____, am the respondent in the within disciplinary action and hereby certify as follows:	
1. I have read every paragraph of the foregoing Answer to the Complaint and verify that the statements therein are true and based on my personal knowledge.	
2. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.	
DATE: _____	_____ (Sign Name Here)

TAKE NOTICE THAT YOUR FAILURE TO FILE A TIMELY, VERIFIED ANSWER WILL CONSTITUTE AN ADMISSION OF THE CHARGES. SUCH FAILURE MAY ALSO RESULT IN YOUR IMMEDIATE TEMPORARY SUSPENSION FROM PRACTICE. IN EITHER EVENT, NO FURTHER HEARING NEED BE HELD AND THE ENTIRE RECORD, OR A RECORD SUPPLEMENTED BY THE PRESENTER, IN THIS MATTER CAN BE CERTIFIED DIRECTLY TO THE DISCIPLINARY REVIEW BOARD FOR IMPOSITION OF SANCTION, ALL PURSUANT TO *RULE 1:20-6(C)(1)*, *RULE 1:20-4(E)* and *(F)*, AND *RULE 1:20-11*.

This matter will be presented by me before a three-person panel composed of members from the District VI Ethics Committee. Pursuant to *Rule 1:20-4(g)*, you are entitled to have an attorney present on your behalf at the forthcoming hearing. If you are unable to retain an attorney by reason of indigency, you may make application to the Assignment Judge of your vicinage for the appointment of counsel based upon a certification pursuant to *Rule 1:20-4(g)*. Such application must be made within fourteen (14) days after service of the complaint on written notice to me.

In addition, you are entitled, pursuant to *Rule 1:20-7(i)*, to the issuance of subpoenas necessary and relevant to your defense. This application should be directed to the chair of the hearing panel at

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least two weeks prior to the hearing date. Your failure to timely request the issuance of subpoenas or assignment of counsel will constitute a waiver. Furthermore, failure to timely secure counsel forthwith, either directly or by application to the Assignment Judge, will **not** be accepted by the Hearing Panel Chair as a reason for adjournment.

Pursuant to *Rule* 1:20-5(a), discovery of all information specified therein is requested. In the event that any class of information specified in that rule is not available, a written representation to that effect is required.

If you have any questions regarding this matter, you should promptly communicate with me.

Very truly yours,



HoeChin Kim
Deputy Ethics Counsel

Encl.

cc: Harry Rodriguez, Disciplinary Auditor (w/o enclosure)
Candace Moody, Counsel, Advisory Committee on Judicial Conduct (w/enclosure)
Jack Jay Wind, Esq., Secretary, District VI Ethics Committee (w/o enclosure)

Office of Attorney Ethics
P.O. Box 963
Trenton, NJ 08625
(609) 530-4008
Presenter: HoeChin Kim, Deputy Ethics Counsel

OFFICE OF ATTORNEY ETHICS,

Complainant,

v.

FRANCIS C. BABCOCK, JR.,

Respondent.

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket No. XIV-2014-0542E

Disciplinary Action
COMPLAINT
Rule 1:20-4(b)

Complainant, Office of Attorney Ethics ("OAE"), P.O. Box 963, Trenton, New Jersey, by way of complaint against Francis C. Babcock, Jr. (respondent) says:

GENERAL ALLEGATIONS

1. Respondent was admitted to the Bar of the State of New Jersey in 1990.
2. Respondent currently maintains a law office located at 910 Bergen Avenue, Suite 207, Jersey City, Hudson County, New Jersey. His former law office was located at 40 Journal Square, Suite 316, Jersey City, Hudson County, New Jersey.
3. Respondent has been a part-time municipal court judge for Jersey City, having served from in or about October 2007 to in or about October 27, 2010, from in or about November 2010 to in or about November 2013, and from in or about December 2013, to in or about August 2015, at which time he stepped down.
4. At all times relevant to the Complaint, respondent maintained the following attorney accounts:
 - a. Attorney Trust Account ending in #0609 held at Capital One;
 - b. Attorney Business Account ending in #1611 held at Capital One; and
 - c. Attorney Business Account ending in #9178 held at Wells Fargo (Wachovia) Bank.

SPECIFIC ALLEGATIONS

(Gross Neglect, Lack of Diligence, Failure to Promptly Disburse Funds,
Terminating Representation, Failure to Obey Order of Tribunal,
Failure to Cooperate, and Conduct Prejudicial to the Administration of Justice)

5. By letter dated September 18, 2014, the Hon. Katherine R. Dupuis, P.J. Ch. reported the conduct of respondent. (Attached hereto as Exhibit 1 is a true and correct copy of the referral letter).
6. Specifically, the judge detailed that by Consent Order of December 17, 2008, the parties in a contested estate matter agreed to the appointment of respondent as administrator of the Estate of Andrew Thompson, docket number Q-4544. (Id.).
7. In or about November 2013, the plaintiff filed a complaint requiring respondent to account. (Id.).
8. By Consent Order of March 27, 2014, respondent agreed to account by April 27, 2014. (Id.).
9. Respondent failed to comply. (Id.).
10. Instead, by letter of May 18, 2014, one of the attorneys involved in the estate litigation inquired of respondent as to the status of the accounting. (Id.).
11. In response, respondent stated he would remedy the delinquency and send a check by May 29, 2014. (Id.).
12. Respondent failed to do so. (Id.).
13. By Order entered July 17, 2014, Judge Dupuis required respondent to comply. (Id.).
14. As of August 14, 2014, respondent still had failed to provide the required accounting. (Id.).
15. By letter dated October 28, 2014, the OAE provided a copy of the ethics report to respondent, requesting a written response and records relating to the Estate of Andrew Thompson by November 10, 2014. (Attached hereto as Exhibit 2 is a true and correct copy of the cover letter - redacted).
16. That letter was addressed to respondent's home address in Branchville and what appeared to be respondent's office address in Jersey City. (Id.).
17. On or about October 30, 2014, Judge Dupuis signed a bench warrant for respondent's arrest for his failures to comply with the Court's prior Orders.

18. Prior to the issuance of the bench warrant, Judge Dupuis had removed respondent as the administrator of the Estate of Andrew Thompson.
19. Nicholas A. Giuditta III, Esq. was appointed as the Substitutionary Administrator.
20. Respondent received the OAE mailings, as he telephoned Disciplinary Auditor Harry Rodriguez on or about November 12, 2014, and requested additional time to provide a response. That request was approved to November 21, 2014. (Attached hereto as Exhibit 3 is a true and correct copy of the November 12, 2014, letter - redacted).
21. Respondent failed to respond, either orally or in writing, by November 21, 2014.
22. Accordingly, by letter dated December 2, 2014, the OAE provided the ethics report and prior OAE correspondence to respondent again for his written response, this time due by December 12, 2014. (Attached hereto as Exhibit 4 is a true and correct copy of the cover letter - redacted).
23. As that packet was sent to respondent's former martial residence in Branchville and former apartment in Jersey City, by letter dated December 3, 2014, the OAE provided another copy of the December 2, 2014, packet to respondent's new business address by UPS delivery. The due date remained December 12, 2014. (Attached hereto as Exhibit 5 is a true and correct copy of the December 3, 2014, cover letter).
24. On December 12, 2014, respondent sent a two-page facsimile to Auditor Rodriguez listing deposits and disbursements from a Capital One account, with no account number or supporting documentation. (Attached hereto as Exhibit 6 is a true and correct copy of the December 12, 2014, facsimile).
25. Respondent stated that he had "not been able to pull out the back up for this yet but expect to have most of it by Monday. I will fax it to you." (Id.).
26. Respondent failed to provide a written explanation as to why he had not complied with Judge Dupuis's prior Orders. (Id.).
27. Respondent failed to provide any additional information by Monday, December 15, 2014.
28. The OAE subpoenaed records relating to the Estate of Andrew Thompson from both Capital One and Wells Fargo, along with respondent's attorney accounts to confirm the deposits and disbursements listed by respondent.
29. Those records showed that respondent opened an administrator's account for the Estate of Andrew Thompson, ending in 0379 at Capital One, on or about January 14, 2009, with a \$50 deposit. (Attached hereto as Exhibit 7 is a true and correct copy of the monthly bank statements - redacted).
30. As of November 30, 2014, a balance of \$52,478.58 remained in the estate account. (Id.).

31. That balance had not changed since November 30, 2011. (Id.).
32. By letter dated April 10, 2015, the OAE scheduled a demand audit of respondent's books and records at the OAE for April 29, 2015. (Attached hereto as Exhibit 8 is a true and correct copy of the letter dated April 10, 2015).
33. By facsimile letter of April 23, 2015, the OAE rescheduled the demand audit to May 6, 2015. (Attached hereto as Exhibit 9 is a true and correct copy of the April 23, 2015, cover letter).
34. By letter dated April 30, 2015, Judge Dupuis advised that to date, respondent continues to fail to act. Accordingly, the judge entered an Order holding him in violation of litigant's rights for failure to turn over the file to the substitute administrator and entering judgment against him for costs. (Attached hereto as Exhibit 10 is a true and correct copy of the letter and filed Order).
35. On May 5, 2015, respondent telephoned ethics counsel to request a few-days adjournment of the demand audit scheduled for the following day. Respondent was advised that the only way for the audit to be adjourned would be for him to provide the previously requested documents to the OAE; otherwise, the audit would proceed as scheduled.
36. Respondent stated he had some documents in his possession, but still was in the process of obtaining all such documents.
37. Respondent further declined to send via facsimile those documents in his possession to the OAE. Rather, respondent stated that he intended to see Judge Dupuis that day to straighten out the matter.
38. Nonetheless, respondent stated he would send via facsimile the requested documents by 7:00 a.m. the morning of May 6, 2015.
39. Respondent failed to send any facsimile to the OAE on May 6, 2015.
40. Respondent also failed to appear at the demand audit still scheduled for 11:00 a.m. on May 6, 2015.
41. On May 12, 2015, upon inquiry from the OAE, Judge Dupuis advised that respondent did show up on May 5, 2015, but she refused to see him as he had not filed any papers with the court and still had not turned over his file to the substitute administrator per her prior Orders.
42. By letter dated and sent via facsimile on May 18, 2015, the OAE advised respondent that it would be concluding its investigation of the ethics report despite respondent's continuing failures to cooperate, which could include the filing of a complaint for his failure to cooperate along with violations stemming from the underlying report. Additionally, as he currently was a municipal court judge, respondent was advised that any formal complaint would be provided to

the Advisory Committee on Judicial Conduct. (Attached hereto as Exhibit 11 is a true and correct copy of the May 18, 2015, letter).

43. On the same date, respondent sent a letter via facsimile that enclosed copies of some checks, bank statements, and what appeared to be a handwritten ledger for the estate account. (Attached hereto as Exhibit 12 is a true and correct copy of respondent's facsimile of May 18, 2015 - redacted).

44. In that letter, respondent asserted that he had been "diligently working toward transferring the file to the attorney named to handle the matter." He had spoken "to the newly appointed administrator last week and told him [respondent] would be obtaining the necessary documents." (Id.).

45. On August 24, 2015, upon inquiry from the OAE, Mr. Giuditta, the substitute administrator, stated that he had received a facsimile from respondent on May 18, 2015, but the information provided was not sufficient for him to conduct an accounting.

46. Thus, Mr. Giuditta requested additional information from respondent by letter dated May 20, 2015.

47. As of August 24, 2015, Mr. Giuditta had neither heard nor received any additional information from respondent.

48. To ensure funds remained intact in the estate account, the OAE subpoenaed bank statements of the estate account from December 2014 to August 2015.

49. A review of those statements confirmed the balance of \$52,478.58 remained intact in the account. (Attached hereto as Exhibit 13 is a true and correct copy of the statements - redacted).

50. As of the date of this Complaint, respondent has never submitted a written explanation as to why he stopped working on the Estate of Andrew Thompson as of December 2011.

51. As of the date of this Complaint, respondent has never submitted a written explanation as to why he failed to comply with Judge Dupuis's Orders.

52. In so doing, respondent has committed a violation of the following Rules of Professional Conduct and Court Rules:

- a. RPC 1.1(a) - a lawyer shall not handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence;
- b. RPC 1.3 - a lawyer shall act with reasonable diligence and promptness in representing a client;

- c. RPC 1.15(b) - a lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive;
- d. RPC 1.16(d) - upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred;
- e. RPC 3.4(c) - a lawyer shall not knowingly disobey an obligation under the rules of a tribunal;
- f. RPC 8.1(b) & Rule 1:20-3(g)(3) - a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information and fail to cooperate in an ethics investigation; and
- g. RPC 8.4(d) - it is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

WHEREFORE, respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

DATED:

January 22, 2016

By:

Charles Centinaro
CHARLES CENTINARO