SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-226
District Docket No. XIV-2005-0061E

IN THE MATTER OF	:
TERRY L. SHAPIRO	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 20, 2011

Decided: December 16, 2011

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Robert E. Ramsey appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated to violating RPC 1.15(a) (failure to safeguard client trust funds and negligent misappropriation of client trust funds); RPC 1.15(b) (failure to promptly deliver to a client or third person funds or other property that they are entitled to receive); RPC 1.15(d) and R. 1:21-6 (recordkeeping improprieties); RPC 1.5(a) (charging an unreasonable fee); RPC

1.5(c) (charging an excessive contingency fee in a personal injury matter); and RPC 1.5(e) (dividing a fee between lawyers not in the same firm when the division exceeded the fees allowable under R. 1:21-7 (contingent fees)).

For the reasons expressed below, we agree with the OAE's recommendation for a three-year suspension and also recommend the imposition of conditions on respondent's practice.

Respondent was admitted to the New Jersey bar in 1974. He maintains a law office in Newark, New Jersey.

In 1988, respondent was privately reprimanded for breaching client confidentiality, in violation of RPC 1.6(a). In re Matter of Terry L. Shapiro, DRB 88-311 (December 21, 1988).

In 1994, respondent was suspended for six months for negligent misappropriation of more than $60,000 of client trust funds, conduct involving deceit and misrepresentation for lying to an associate about the receipt of a fee to which the associate was entitled, and conduct prejudicial to the administration of justice by failing to comply with a court order. In re Shapiro, 138 N.J. 87 (1994). He was reinstated on June 1, 1995. In re Shapiro, 140 N.J. 243 (1995).

Respondent was again suspended in 2001, this time for three months. In connection with civil litigation, he knowingly and intentionally submitted a false certification of services to his

adversary, with the knowledge that the certification would be considered in determining his fee. Motivated by monetary reasons and the desire to be paid promptly, he adopted another's certification as his own. In re Shapiro, 169 N.J. 219 (2001). He was reinstated on November 1, 2001. In re Shapiro, 170 N.J. 8 (2001).

On a procedural note, on October 20, 2011, during oral argument before us, respondent's counsel referred to a brief and appended psychiatrist's report that, he stated, he had filed with us in this matter. Neither Office of Board Counsel (OBC) nor the OAE had received these items. We note that OBC's July 13, 2011 letter scheduling this matter for oral argument notified the parties that the brief due date was August 2, 2010. Although respondent's counsel did not request an extension to file a brief, the letter-brief, dated October 6, 2011, was not received in this office until October 24, 2011, four days after oral argument before us. Attached to the letter-brief was a psychiatric report, dated September 29, 2011, from Robert Latimer, M.D., P.A.

Even though counsel's submission was filed out of time, we, nevertheless, considered it in rendering our decision.

We now turn to the facts of this matter, as stipulated by respondent and the OAE.

COUNT ONE

Respondent is a partner in the law firm of Shapiro and Berezin, P.C. At the relevant times, he maintained two trust accounts and one business account.

In June 2008, the OAE completed a review and analysis of respondent's reconciliation of his trust accounts for the year ending December 31, 2004. The trust account reconciliation summary included a schedule of open client ledger balances that, after adjustment by the OAE, totaled $204,104.51. The trust account reconciliation prepared by the OAE showed an unidentified surplus of $1,997.83. The OAE's review of respondent's trust account records did not uncover when or how the trust account surplus arose.

The schedule of open client matters included twenty-four matters where the client balance was a negative number, indicating that client funds "may have been invaded." Twelve of the negative client balances were for more than $1,000. The negative client balances resulted from erroneous and/or improper disbursements of trust account funds to clients, respondent, and others. Some of the disbursements occurred in the following matters:

1. **The Berry Matter**

Respondent represented Violet Berry in a personal injury case that settled for $17,500, in January 2003. On January 28, 2003, the check was deposited into respondent's trust account.

Respondent's client trust ledger showed that, on January 30, 2003, two checks were paid: one to the Law Office of Terry L. Shapiro for $9,910.66 and one to Berry for $7,589.34. On February 18, 2003, a $2,000 check was paid to Martin Turk, an expert witness. The checks, totaling $19,500, created a $2,000 negative balance for this client matter, thereby causing the invasion and misappropriation of other client trust funds.

The $2,000 check to Turk was mistakenly issued from the trust account, rather than the business account. Respondent's settlement statement confirmed that litigation expenses, including the $2,000 expert fee, were deducted from the settlement and deposited into respondent's business account. On June 23, 2005, respondent reimbursed the trust account with his business account check no. 3111, in the amount of $2,000.

2. **The Hazekamp Matter**

Respondent represented Herman Hazekamp in a personal injury case that settled for $53,500, in August 2003. The funds were deposited into respondent's trust account.

In connection with the case, on August 1, 7, and 20, 2003, payments were made to the Law Office of Terry L. Shapiro, in the amounts of $5,000, $13,856.67 and $6,000, respectively. On October 7, 2003, two checks were made out to Hazekamp for $6,000 and $19,187.63. Payments were also made, on October 14 and 25, 2004, to Mountainside Hospital for $6,587.65 and to Dr. E. Megariotis for $399.50. The payments, totaling $57,031.45, created a $3,531.45 negative balance for this client matter and caused the invasion and misappropriation of other client trust funds.

During the OAE audit, respondent improperly attributed the negative balance to an overpayment to the client. However, respondent's settlement statement confirmed that Hazekamp was entitled to, and received, net settlement proceeds totaling $25,187.63.

Although respondent indicated that he had deposited $3,531.45 into his trust account to cover the shortfall, the OAE was unable to verify that deposit.

3. **The Alonzo Matter**

Respondent represented Oscar Alonzo in a personal injury case that settled for $145,000, in September 2003. Two

settlement checks were deposited into respondent's trust account, in September and October 2003.

Respondent's client trust ledger for this matter showed that respondent disbursed $153,827.35 against the $145,000 settlement, creating a negative balance of $8,827.35, as follows: on September 30, 2003, a $53,505.11 check to the Law Offices of Terry L. Shapiro; on October 22, 2003, a $49,161.56 check to Alonzo; on October 30, 2003, a $42,333.33 check to NJM Insurance Company; on November 24, 2003, a $1,600 check to Alonzo; and, on March 22, 2004, a $7,227.35 check to Faro & Portanova.

The negative balance was caused by the issuance of two trust account checks, after the settlement proceeds had been fully disbursed: one check to Alonzo for $1,600 and one check to Faro & Portanova for $7,227.35. The $8,827.53 negative balance caused the invasion and misappropriation of other client trust funds.

On June 30, 2005, approximately sixteen months after the negative balance was created, respondent deposited a $10,987.28 business account check into the trust account, thereby creating a $2,159.93 surplus balance for this client matter.

4. **The Baskerville Matter**

Respondent represented Paul Baskerville in a personal injury case. Even though there was no money on deposit in the trust account for this client, respondent's trust ledger shows that, on October 3, 2003, respondent disbursed $4,176.67 to Baskerville. The disbursement created a negative balance for this client matter and the invasion and misappropriation of other clients' trust funds. Respondent's records did not show that he had corrected the negative balance caused by the disbursement.

5. **The Salese Matter**

Respondent represented Vincent Salese in a personal injury case, which settled for $60,000, in May 2004. In May and June 2004, two checks totaling that amount were deposited into respondent's trust account.

Respondent's client trust ledger showed that he disbursed $64,000 against the deposits: on June 14, 2004, $24,192.67 to Shapiro and Berezin and, on June 15, 2004, $39,807.33 to Salese. The disbursements created a negative client balance of $4,000 and invaded and misappropriated other clients' trust funds.

Respondent's settlement statement showed that the net proceeds due to Salese was only $35,807.33. Although respondent

stated that, on June 23, 2005, he had reimbursed the account to correct the $4,000 negative balance, the OAE was unable to verify that reimbursement.

6. The Ryals Matter

In September 2004, respondent settled Ozzie Ryals' personal injury case for $215,000. On September 10, 2004, the funds were deposited into respondent's trust account.

From September 14 to September 28, 2004, respondent made six payments against the funds, totaling $217,959.78, thereby creating a $2,959.78 negative balance for this client matter. The payments were: $33,435.04 to Shapiro and Berezin; $19,061.52 to Mandel and Sawyer; $20,000 to Lawrence M. Berezin; $96,776.88 to Ryals; $2,969.78 to New Jersey Support Payment Center; and $45,716.56 to Specialty Risk Services. The disbursements caused the invasion and misappropriation of other client trust funds.

Respondent's explanation for the negative balance was that "the child support lien had not been deducted from the client's net proceeds." According to the stipulation, that explanation was not accurate.

Respondent's settlement statement for the matter showed that respondent disbursed $45,716.56 to SKS Hartford Insurance for a workers' compensation lien, rather than $42,746.78, a

$2,969.78 overpayment. Although respondent's client trust ledger for Ryals showed a June 29, 2005, $2,969.78 payment to the trust account to correct the negative balance, the OAE was unable to verify that.

7. **The Turk Matter**

Respondent represented Dr. Martin Turk in a criminal matter. In October 2004, Turk gave respondent a $3,000 check for a retainer. On October 25, 2004, respondent deposited the check into his trust account.

On November 1, 2004, Turk's check was returned for insufficient funds, thereby causing a $3,000 negative balance for this client matter and an invasion of other clients' funds in the trust account. On May 19, 2005, more than five months after the check was returned, respondent deposited a $3,000 business account check to correct the shortfall.

As to count one of the complaint, respondent stipulated to having violated RPC 1.15(a) by failing to safeguard trust account funds and by negligently misappropriating client funds, RPC 1.15(b) by failing to "promptly deliver to a client or third person any funds or other property" that they were entitled to receive; and RPC 1.15(d) by failing to comply with R. 1:21-6, the recordkeeping rule.

COUNT TWO

In June 2008, the OAE completed a review and analysis of respondent's reconciliation of his trust accounts for the year ending June 30, 2005. The trust account reconciliation summary included a schedule of open client ledger balances, totaling $102,923.60. There were thirteen negative open client balances, totaling $18,969.99, which offset the open positive balances.

Of these thirteen, seven involved amounts in excess of $500 and resulted from erroneous disbursements of trust account funds to clients, to respondent, and to others. The remaining six matters, involving amounts less than $500, resulted from addition or subtraction errors.

On August 30, 2005, respondent corrected the thirteen negative balances by depositing $18,969.99 from the Shapiro and Berezin business account into the trust account.

The following matters had negative balances greater than $500.

1. **The Desa Matter**

Respondent represented Natal Desa in a personal injury case that settled for $20,000, in October 2003. In October and November 2003, respondent deposited the gross settlement proceeds into his trust account.

Between October 3, 2003 and July 1, 2004, respondent made three payments against those funds, totaling $21,200: $8,177.22 to the Law Office of Terry L. Shapiro; $11,822.78 to Desa; and $1,200 to Primax Recoveries. The payments created a $1,200 negative balance in this client matter and invaded and misappropriated other client trust funds.

Respondent's explanation was that he had inadvertently paid $1,200 to Primax Recoveries, when that money should have been kept in his trust account for medical bills. According to the stipulation, this explanation was not supported by the documentation that respondent turned over to the OAE. Respondent's settlement statement showed that he was entitled to only $6,977.22 (a fee of $6,511.39 and costs of $465.83), but paid the Law Office of Terry L. Shapiro $8,177.22, comprised of a $6,511.39 attorney fee, $465.83 in costs, and $1,200, to which respondent was not entitled.

2. The Zeller Matter

In December 2003, respondent settled Allen Zeller's personal injury case for $40,000. On December 20, 2003, he deposited the gross settlement proceeds into his trust account.

Between December 20, 2003 and May 1, 2005, respondent issued eight checks against the funds, totaling $40,929.32:

$13,060.68 to the Law Office of Terry L. Shapiro; three checks to Zeller totaling $26,010; two checks to Dr. Megariotis, each for $800; and two checks to Dr. Sabato, each for $129.32.

The $929.32 negative balance in this client matter invaded and misappropriated other clients' trust funds and resulted from respondent's duplicate payments to Drs. Megariotis and Sabato.

3. The Barr Matter

In January 2004, respondent settled Trinese Barr's personal injury case for $17,500. On January 8, 2004, respondent deposited the settlement proceeds into his trust account.

Respondent's client ledger card showed five payments against those funds, between January 9 and May 21, 2005: a $6,043.33 check to the Law Offices of Terry L. Shapiro; a $10,256.67 check to Barr; a $1,200 check to "S & B (Shapiro & Berezin);" a $250 check to St. Barnabas Medical Center, and a $300 check to Dr. Edward Decter, for a total of $18,050. The disbursements created a $550 negative balance and invaded and misappropriated other client trust funds.

Respondent's settlement statement showed that $1,200 was retained as an escrow for the payment of "Unpaid Medical Expenses." However, on March 1, 2005, respondent issued "check

#1692, payable to Shapiro and Berezin" for $3,950 that included the $1,200 escrow for medical expenses.

Respondent claimed that the $250 check to St. Barnabas had never been paid and that he had refunded $900 to Barr, "representing the unpaid balance of her $1,200 escrow." However, Barr never received a $900 refund check from respondent.

According to the stipulation, respondent's "failure to properly disburse the $900 escrow balance to the client in this matter invaded and misappropriated the client's escrow funds on deposit in the trust account."

4. The Payne Matter

Respondent represented Sharon Payne in a personal injury case that settled for $70,200. In April and June 2004, two checks representing the gross settlement were deposited into respondent's trust account.

Respondent's settlement sheet showed that Payne was entitled to $42,437.57[1]. The client trust ledger showed that, between April 30 and November 11, 2004, respondent made six disbursements to Payne, totaling $47,937.57.

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[1] Exhibit 29 shows that Payne was entitled to a net amount of $42,937.57.

According to the stipulation, respondent's November 11, 2004, $5,000 disbursement to Payne constituted an overpayment that created a $5,000 negative client balance and that invaded and misappropriated other clients' trust funds.[2]

5. The Cotler Matter

Respondent represented minor Ezequiel Cotler in a personal injury case that settled for $40,000, in August 2004. In August and September 2004, the gross settlement proceeds were deposited into respondent's trust account.

Respondent's client ledger card showed four disbursements, between August 18 and October 20, 2004, totaling $41,895.10: $9,041.67 to Shapiro and Berezin; $27,862.50 to Cotler; $2,842.70 to Dr. Donald Cotler; and $2,148.23 to Walder Hayden & Brogan. The disbursements created a $1,895.10 negative balance in this client matter and invaded and misappropriated other client trust funds. The negative client balance occurred when

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[2] The $42,437.57 amount may have been a typographical error in the stipulation; Exhibit 29 shows the "net to client" as $42,937.57, while the stipulation states that Payne was entitled to net proceeds of $42,437.57. If Payne was actually entitled to receive $42,937.57 and received $47,437.57, the negative client balance was actually $5,000. If, on the other hand, Payne was only entitled to $42,437.57, then the negative client balance was $5,500, with a negative balance of $500 as of September 21, 2004, when the first $5,000 disbursement was made to Payne.

respondent paid a $2,148.23 referral fee to Walder Hayden & Brogan, a fee that did not appear on the client's settlement statement.

According to the stipulation, "[t]he payment of attorney fees totaling $11,189.90 ($9,941.67 to Shapiro & Berezin and $2,148.23 to Walder Hayden) constitutes an over-payment of the attorney fee due in this matter."

6. The Matesic Matter

Respondent represented Maria Matesic in a personal injury case that settled for $40,000. On October 14, 2004, the gross settlement proceeds were deposited into respondent's trust account.

Between October 14 and December 17, 2004, respondent's client trust ledger showed two disbursements to Shapiro and Berezin for $6,106.12 and $8,868.28; one disbursement to Matesic for $23,825.60; and one to "Neil Fink, Esq. (referral fee and costs)" for $8,868.28, for a total of $47,668.28. The disbursements created a $7,668.28 negative balance in this matter, thereby invading and misappropriating other client trust funds.

Respondent told the OAE that he had mistakenly issued duplicate checks for legal fees and litigation expenses

($8,868.28) to both Shapiro and Berezin and to Neil Fink, Esq. According to the stipulation, "respondent's explanation did not address how a negative balance of $7,668.28 shortage [had been] created."

The stipulation stated further that, when respondent settled this matter, he retained $1,200 from Matesic's proceeds as an escrow for the payment of subsequent medical bills. However, no portion of that escrow was used for medical bills. The amount should have remained on deposit in the trust account until it was disbursed to Matesic. Instead, it was invaded and misappropriated.

On April 18, 2006, respondent paid Matesic $1,200 from his business account.

7. **The Barrocas Matter**

In November 2004, respondent achieved a partial settlement of Jamie Barrocas' personal injury case for $25,000. On November 1, 2004, the funds were deposited into respondent's trust account.

Respondent's client ledger card for this matter shows that, on November 2 and 3, 2004, checks were paid to Shapiro and Berezin for $8,745.33 and to Barrocas for $15,054.82, respectively. On December 17, 2004, $3,187.11 was paid to Neil

Fink, Esq. Those payments totaled $26,987.31 and created a $1,987.31 shortage for this client. As a result, other client trust funds were invaded and misappropriated.

Respondent's client trust ledger shows that, subsequently, on June 29, 2005, a $1,254.68 deposit decreased the negative balance to $732.63.

The settlement statement prepared by respondent showed that $1,200 was to be set aside from Barrocas' proceeds to pay medical expenses. However, on December 17, 2004, respondent issued a check to Neil Fink, Esq. for $3,187.11 against a client balance of only $1,199.80, thereby creating a $1,987.31 negative balance.

To correct the negative balance in this matter, on June 29 and August 30, 2005, respondent deposited $1,254.68 and $732.63, respectively, into the trust account.

According to the stipulation, there was "no indication that Respondent either disbursed the $1,200 escrow [for] medical expenses or returned the $1,200 to the client."

As to count two, respondent admitted to having violated RPC 1.15(a) for failing to properly safeguard client funds and negligently misappropriating client trust funds, RPC 1.15(b) for failing to "promptly deliver to a client or third person any funds or other property that the client or third person [was]

entitled to receive," RPC 1.15(c) for charging an excessive contingency fee in a personal injury matter, RPC 1.15(d) for failing to comply with the provisions of R. 1:21-6, and RPC 1.5(e) for the improper "division of fees between lawyers not in the same firm in such a manner that the total fees paid exceeded the fees allowable under R. 1:21-7 [contingent fees]."

COUNT THREE

According to the stipulation, respondent's December 31, 2004 reconciliation included a schedule of open client balances that listed twenty-four matters showing a negative client balance totaling $48,440.81. The twenty-four negative client balances indicated that other clients' trust funds "may have been compromised." As a result, the OAE examined respondent's open positive client balances as of December 31, 2004. The OAE's examination revealed that, as of that date, respondent's trust account should have had $234,859.40 in client funds but, instead, had a $28,715.34 shortage (schedule of client balances, compared to the bank balance less obligations for outstanding checks).

Respondent stipulated that he did not properly safeguard client funds, thereby violating RPC 1.15(a).

COUNT FOUR

During the OAE's audit of respondent's financial records, "it appeared from Respondent's trust ledgers that he had taken excessive contingency fees in a number of personal injury matters." Respondent took excessive fees in four matters where the fee calculation was "erroneous," as follows:

Client	Fee Taken	Allowable Fee 33 1/3%	Excessive Fee	Refund
Fitzgerald	8,725.00	6,797.67	1,927.33	1,927.33
Paredes	65,876.56	65,289.69	586.87	
Alonso	49,753.81	47,082.90	2,670.91	1,070.91
Parisi	164,793.02	163,593.02	1,200.00	1,200.00
Total	289,148.39	282,763.28	6,385.11	4,198.24

Respondent stipulated that he violated RPC 1.5(a) and (c) by paying himself excessive contingency fees in personal injury matters and RPC 1.15(b) by not promptly delivering funds or other property to a client or third party that they were entitled to receive.

COUNT FIVE

In about 1993, the OAE audited respondent's attorney books and records. At that time, the OAE reminded respondent of the

recordkeeping rules. According to the OAE, since then respondent should have had a heightened awareness of his responsibility to properly account for client trust funds.[3]

In this matter, the OAE identified a number of continuing recordkeeping deficiencies in respondent's books and records. Serious consequences resulted from the deficiencies, namely, respondent's additional misappropriations of client funds, the shortages in his trust account, and his inability to properly account for all client funds on deposit in his trust account, at any given time during the audit period.

The OAE found the following deficiencies:

1. No monthly trust bank reconciliations with client ledgers, journals and checkbook. [R. 1:21-6(c)(1)(H)]
2. No running checkbook balance for the trust account. [R. 1:21-6(c)(1)(g)]
3. Client ledger cards not fully descriptive in that no detail was provided for deposits. [R. 1:21-6(c)(1)(B)]
4. A separate ledger card is not maintained for each trust client. [Four trust account checks] could not be traced back to a ledger card. [R. 1:21-6(c)(1)(b)]

[3] In that case, presumably the one resulting in his six-month suspension, respondent had "misappropriated client trust account funds."

5. Business account designation improper: must indicate "Attorney Business Account", "Attorney Professional Account", or "Attorney Office Account" on bank statements, checks and deposit slips. [R. 1:21-6(a)(2)]

[SV¶4.][4]

According to the stipulation, respondent had been previously advised of his obligation to maintain client funds in accordance with R. 1:21-6 and had been previously sanctioned for negligently misappropriating more than $60,000 of client trust funds, engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, and engaging in conduct prejudicial to the administration of justice. Here, respondent stipulated that his continued failure to properly maintain and account for client trust funds was "reckless and willful."

As to count five, respondent stipulated to having violated RPC 1.15(a) by not properly safeguarding or holding property of clients or third persons, in connection with a representation, in a separate account maintained in a financial institution in New Jersey and by recklessly failing to maintain the integrity of client trust account funds and RPC 1.15(d) by recklessly failing to comply with R. 1:21-6.

[4] SV refers to count five of the disciplinary stipulation.

The OAE filed a letter-brief, dated August 2, 2011, urging us to impose a lengthy period of suspension ("in the range of three years"), based on respondent's violations that affected dozens of client matters, his reckless handling of client funds, and his history of prior serious discipline.

The OAE considered respondent's conduct, during these proceedings, a significant aggravating factor. To its letter-brief the OAE appended more than 700 pages of correspondence among respondent, the OAE, and each of the four special masters that, at various times, the Court had appointed to hear this matter. Respondent demanded that each of the special masters be recused for alleged bias. According to the OAE, in so doing, respondent "engaged in a combative verbal assault consisting of wholly unfounded and imaginary 'conflicts' and appalling ad hominem attacks."

The OAE offered a glimpse of respondent's attacks on the special masters at pages five through seven of its letter-brief and urged us to read respondent's letters.

As to each of the appointments, respondent objected that he had not been consulted about them. He claimed that, if he had been, the problems arising from what he perceived to be conflicts could have been avoided.

The following illustrates the nature of the contents of the voluminous pages generated in connection with the Court's appointments of the Special masters.

After the Court's May 14, 2009 appointment of John M. Boyle, J.S.C., Ret., a number of letters were exchanged among the judge, the OAE, and respondent. By letter dated June 16, 2009, respondent objected, among other things, to Judge Boyle's appointment, based on his and the judge's firm's adversarial positions, over the years, in prior litigation. At the OAE's request, on June 30, 2009, respondent filed a formal motion and certification. Among other things, respondent requested that his disciplinary matter be heard by a person whose law firm had no prior adversarial proceedings with either him, his law firm, or his clients. His certification implied that the judge could not be impartial in adjudicating his matter and requested that the judge be replaced. The OAE opposed the motion. Respondent replied, on August 19, 2009, with a fifteen page letter and attachments.

By letter dated September 9, 2009, Judge Boyle noted that respondent had specifically identified only one case, as the basis for his application. That case had occurred several years earlier and had not involved the judge. Nor had the judge been aware of it, until respondent had brought it to his attention.

Because respondent believed that the judge's affiliation with the law firm would somehow influence his decision, the judge agreed to recuse himself as the special ethics master, so as to relieve respondent "of any anxiety that [his] decision would in any way be influenced by that case." The judge added that respondent's "vigorous objection to my selection would only cause a distraction in this case and I believe that under the circumstances my voluntary removal would avoid even the appearance of a conflict of interest."

On October 21, 2009, the Court appointed William Seth Greenberg, Esq., as special ethics master. By letter dated November 24, 2009 to Greenberg, respondent objected to his appointment as well, citing Greenberg's firm's participation in a matter involving one of respondent's clients. Respondent accused Greenberg's firm of proceeding to no fault PIP arbitration, without advising respondent, so that he could join in the arbitration. The arbitration resulted in a final award that, respondent claimed, was adverse to his client's interests. He accused Greenberg's firm of not keeping him informed about the proceedings, a failure that had "profound, significant consequences" on his client's interests.

Respondent maintained that his ethics matter should not be heard by anyone in Greenberg's firm:

> My desire that the issues in this matter be decided with impartiality cannot be accomplished when I continue to represent the client, never being advised by your law firm of the adverse award by Mercury Insurance Company, despite copies of my several letters sent to your law firm that went unanswered.
>
> I respectfully object to the selection of a Special Master, whose law firm handled a matter adversely affecting my client's rights, making my continued representation of the client more difficult.
>
> [Nov. 24, 2009 letter at 4.]

By letter dated December 3, 2009, the OAE opposed respondent's request, arguing that the disqualification did not fall within R. 1:20-6(d). The OAE noted (1) that respondent had been a personal injury lawyer for thirty-five years and that, undoubtedly, his practice had placed him in an adversarial relationship with many of the State's law firms, from time to time; (2) that respondent at one time represented a client whose interests were affected by a position taken by an adversary or co-counsel did not preclude a fair and unbiased hearing; and (3) that the case respondent referenced was apparently closed and that, therefore, any divergent interests that respondent alleged existed had ended.

On December 11, 2009, respondent filed a motion for the special master's disqualification. In a December 13, 2009 letter-brief to Greenberg, respondent renewed his request that

Greenberg disqualify himself. Among other things, respondent accused Greenberg of having an ex parte conversation with the OAE to "agree upon a strategy." Moreover, on that very day, respondent had served Greenberg's firm, via fax, with a notice of claim for professional negligence/legal malpractice, based on the firm's handling of the no fault PIP arbitration.

Greenberg's December 17, 2009 letter-opinion refuted respondent's charges. Greenberg had not been aware of the case until respondent had raised it. The only connection respondent's client had to the case was that she had been a recipient of medical services and had executed an assignment of her right to prosecute a claim for medical bills in 2007, one year prior to the institution of proceedings. Therefore, she could not have intervened in the matter and could not have participated in the arbitration. Greenberg found that no actual conflict of interest existed and that his client's interests were aligned with those of respondent's client.

Greenberg also denied the existence of an ex parte communication with the OAE, stating that any communications with it were to set up a conference call. Greenberg labeled respondent's allegation as based on conjecture and speculation.

Nevertheless, in granting respondent's motion for substitution of a special ethics master, Greenberg stated:

> The direct claim against the Special Master's law partner and law firm on its face creates an actual conflict of interest between the Special Master and the Respondent. The frivolous nature of the claim, the complete lack of standing by the Respondent or his client, the complete lack of any factual or legal basis notwithstanding, I find that Respondent has successfully manipulated the ethics process prescribed by the Supreme Court of the State of New Jersey. He has manufactured an actual conflict of interest. Moreover, Respondent has succeeded in creating a bias against himself where none existed before.
>
> [LO4.][5]

On March 16, 2010, the Court appointed Timothy L. Barnes, Esq. to act as the special master.

By letter to the OAE presenter, dated April 13, 2010, respondent objected not only to Barnes' acting as the special ethics master, but also to the presenter's continuing role as the presenter, based on the presenter's conduct with Greenberg. Respondent again accused the presenter of having an ex parte communication with Greenberg to agree upon a strategy.

In an April 14, 2010 sixteen-page letter to Barnes, with attachments, respondent objected to his appointment, among other reasons, for his bias because of his employment with Porzio, Bromberg and Newman, P.C. and because of respondent's adverse

[5] LO refers to Greenberg's December 17, 2009 letter-opinion.

positions taken against his law firm, in prior litigated matters, over the years. Respondent also referred to a number of cases "about to be placed in suit," where there was a likelihood that Barnes' firm would handle the defense.

Respondent stated further:

> There is no certainty that "tomorrow" a Complaint drafted by me on behalf of my client will not be referred to [the Porzio firm] for defense, and the filing and service of an Answer denying the allegations of my clients prior to the conclusion of this proceeding.
>
> Based upon the above, I have demonstrated actual prejudice if you serve as Special Master while employed by a law firm that derives income maintaining adverse positions to the interests of my clients, my law firm and me in the past and probably in the future as well as for other reasons expressed in this letter.
>
> . . . Substitution of another person is the only workable remedy.
>
> Of equal importance to me, is that I have stated my objections to your service as Special Master in writing, thus placing me on the defensive, throughout this proceeding should my application be denied.
>
> In my preliminary statement I referred to the "elephant always being in the room," if my application is denied.
>
> To me the elephant is not imaginary.
>
> [April 14, 2010 letter at 15.]

By letter dated April 22, 2010, the OAE presenter objected to respondent's request. The presenter stated, among other things, that respondent had not provided a reason "that would preclude a fair and unbiased hearing" and that Barnes or his firm may have, at one time or at various times represented adversaries, did not preclude a fair hearing in the matter.

In another letter, addressed to respondent on that same date, the presenter stated that respondent's accusations about an improper ex parte communications with Greenberg were false and that, after discussions with the presenter's supervisor, they both agreed that the Court Rules did not require the appointment of another presenter.

Respondent wrote two additional letters to Barnes, requesting that he recuse himself. In a June 1, 2010 confidential letter to the OAE director, Barnes recused himself from the case.

On September 13, 2010, the Court appointed Herbert S. Friend, J.S.C., Ret., to preside over the matter. The OAE's letter-brief to us highlighted some of respondent's contumacious barrage of invectives leveled against the judge. The OAE's index of the exchanges for this appointment alone numbers thirty-eight.

By a fifteen page letter-brief, dated October 27, 2010, respondent objected to Judge Friend's appointment, alleging, among others reasons, that a conflict of interest existed because the judge had been appointed by the New Jersey Governor to the Governor's Local Ethics Task Force and the Court had appointed him as the special master. The conflict, respondent claimed, existed because of the judge's plenary authority to call upon the OAE for any information or assistance, regardless of whether the judge had already called upon it, or planned to do so. Respondent alleged that there had been a violation of his property rights (which he also raised as an objection with the other special masters) and other constitutional rights guaranteed by the equal protection clause, because there was not an appointment of an impartial person to decide his ethics matter. He added that the controversy could have been avoided, if the OAE had not ignored his reasonable request to be consulted about the selection of a special ethics master.

By letter dated November 5, 2010, the OAE opposed respondent's application for the judge's recusal, stating, among other things, that respondent's hypothetical "as to the effect of a non-existent request for information from the Governor's Task Force to the [Judge] is rank speculation" and "fiction."

On November 10, 2010, the judge found no merit to respondent's argument that a conflict existed. He stated that the Governor has no jurisdiction over the OAE and could not order it to do anything; that the OAE has nothing to do with the area of responsibility of the task force; that task force's final report disclosed that it did not deal with, touch on, or consider any issues either factual, legal or procedural that relate to any issues contained in respondent's case; that the judge had resigned from the task force, effective September 30, 2010; and that respondent was mistaken in his belief that the selection of a special ethics master, solely the prerogative of the Supreme Court, required respondent's participation in the process.

In another of respondent's letters to the judge, dated November 18, 2010, he accused the judge of intentionally or unreasonably and thoughtlessly violating R. 1:20-5(b)(1) (pre-hearing conference), so as to "manifest [his] bias and prejudice" against respondent by unilaterally scheduling that discovery be completed during the busiest time of the year and that his unilaterally scheduling the completion of discovery without a pretrial conference conclusively proved that his application for the judge's removal should be granted.

Several days later, under cover letter dated November 29, 2010, respondent filed a motion for the substitution of the special master. By letter dated December 1, 2010, he reiterated his objections to Judge Friend's hearing his matter. The judge's December 7, 2010 letter addressed some of respondent's erroneous statements and accusations and, once again, denied the request for his recusal.

By letter dated December 14, 2010 to the parties, in response to respondent's December 7, 2010 letter, the judge addressed some of respondent's misstatements made therein: "The repetition of erroneous statements by [respondent] does not change their character; no matter how many times [respondent] repeats them."

By letter dated December 15, 2010, respondent charged that the judge's December 7, 2010 letter "conclusively demonstrated" his bias against him by "mischaracterizing and misquoting" his October 27, 2010 letter

> and intentionally failing to bring to my attention the absence of my Certification you carelessly and recklessly believed was supposed to be attached to my October 27th letter. You incredibly conclude you had no obligation to bring to my attention the absence of my Certification you mistakenly believed I stated was attached because you had absolutely no interest in what I had to say even if the Certification included objections to your appointment that were new, not previously presented or presented

in a different manner. Your reckless indifference to my constitutional right to "due process of law," and, "right to be heard" under both the federal and New Jersey State Constitution is inexcusable.

2. failing on your own, to schedule a Prehearing Conference . . . manifesting your profound lack of interest, cavalier attitude and reckless indifference to my procedural rights in a case of monumental importance to me . . . .

3. failing to read carefully or not read <u>at all</u> documents sent to your . . . .

4. twisting and interpreting <u>Rule</u> 1:20-5(b)(1) to suit your own private agenda.

. . . .

You discussed my case with the [OAE] while still serving on the Governor's Task Force, yet you continue to untruthfully state in writing that there was, "no contact."

Therefore it was necessary for you to modify your previous, untruthful December 1st representation that, "there was no contact <u>whatsoever</u> between the [OAE and the Ethics Task Force] by "qualifying" your previously unqualified December 7th misrepresentation . . . .

Your December 7th "qualification" of your previously unqualified December 1st representation casts doubt on your veracity and also highlights your "private agenda" to defend your obvious bias and prejudice against me with untruthful statements that you later modify when exposed as untruthful.

> For all of the foregoing reasons I am respectfully renewing my request you recuse yourself . . . because you are biased and prejudiced against me . . . .
>
> [December 15, 2010 Letter.]

On December 16, 2010, respondent sent the judge an equally inflammatory letter, accusing him of being biased, prejudiced and cavalier; of drawing erroneous conclusions; of being hostile and angry; and of making erroneous statements. Respondent requested the judge's recusal.

Not affording the judge time to reply, on the next day, respondent filed a motion with the OAE director, seeking the judge's recusal. Respondent made many of the arguments he had made earlier and attached many of the same exhibits previously filed with the judge.

By letter dated December 19, 2010, the judge addressed respondent's false assertions, pointed out that, despite respondent's misstatements and misrepresentations in respondent's letters, he had been "respectful and considerate in both content and tone" in his replies, and denied respondent's request that he recuse himself.

In response, on January 11, 2011, respondent filed a motion with the OAE director, who, on February 8, 2011, declined to "supersede" the judge's decision. Undeterred, respondent made additional attempts to have the judge removed from the case.

Judge Friend denied all of respondent's requests for his recusal and scheduled the matter for a hearing. At one point, respondent objected to the hearing going forward and also threatened that he would not attend. Later, he requested that the hearing dates be adjourned because of personal commitments. The judge adjourned the matter, which was then scheduled to proceed on April 4 and 5, 2011. The hearing was never held as scheduled. Rather, the parties entered into a disciplinary stipulation.

According to the OAE, the above noted attacks on Judge Friend and his predecessors were wholly baseless and "not simply lacking in civility, [but] unprecedented in their mean-spiritedness." The OAE added that, "given the repetitive nature of respondent's attacks against all four Special Ethics Masters, we are compelled to conclude that respondent knew his accusations were baseless, but engaged in these outrageous personal attacks, one after another, solely to forestall the ethics proceedings in this matter." The OAE argued that respondent's "outrageously rude behavior, in and of itself, cannot be tolerated. That it had been done by design, for the purpose of disrupting and delaying the processing of this ethics matter, is an additional affront to the disciplinary system that demands a harsh response."

In sum, the OAE alleged that respondent's unethical conduct was serious and intentional; that he knowingly failed to maintain records, which resulted in numerous invasions of client funds; that his trust accounting deficiencies were not aberrational, but persistent and repeated, in case after case, for years; and that his "persistent refusal to follow proper accounting procedures constituted a wholesale abdication of his responsibility to safeguard [client trust funds]." The OAE's position was that respondent's ethics violations, contumacious behavior towards four distinguished special ethics masters, serious ethics history, and callous disregard of the Rules of Professional Conduct, required discipline "in the range of three years."

In his letter-brief, respondent's counsel stated that, because respondent stipulated to violating various RPCs, the purpose of the brief was solely to address the issue of mitigation. Counsel acknowledged that, in light of respondent's serious violations and ethics history, respondent "anticipates a recommendation for a significant quantum of discipline."

According to Latimer's report, appended to the letter-brief, respondent was treated for panic and depression by Dr. Harvey Block. No report from Dr. Block was submitted on respondent's behalf. Dr. Latimer met with respondent only three

times: on April 20, May 24, and June 2, 2011. Their first meeting occurred after the Honorable Herbert S. Friend, J.S.C., Ret., denied respondent's numerous motions to have him recused from presiding over this disciplinary matter as a special master and after the judge re-scheduled the adjourned hearing dates to April 4 and 5, 2011.

Through Latimer's report, respondent claimed that, as a result of his prior suspension for trust account improprieties, he developed a "phobic avoidance of the trust account" and delegated the responsibility to "other law firm employees;" that he "not willfully fail to maintain the trust account;" that he "avoided confirming that the trust account was being properly maintained during the period 2003 to 2005;" that he had "temporarily developed a fear, ever since [his] two previous suspensions" and avoided checking to make sure that the job was done properly; and that, from 2003 to 2005, he had "suicidal ideas," but never made actual plans for it.

According to Latimer's report, respondent has no history of antisocial behavior, does not use alcohol to excess and never engaged in the use of illegal drugs. He traveled "in a select circle of the most well-known, powerful and respected trial lawyers [until] [h]e fell out of their favor," after the first

ethics investigation began, in 1990. The report detailed all of respondent's numerous accomplishments over the years.

Latimer stated that the most important symptom respondent experienced was a "phobia which was temporarily interfering with his ability to properly maintain the trust account." That phobia forced him to delegate that responsibility and to put his trust in others.

Latimer diagnosed respondent with post-traumatic stress disorder, chronic, exacerbated by present stress and exposure to a similar incident in his past, and with "Severe Anxiety and Marked Phobic Element in specific area," accompanied by major depression, which is part of an adjustment disorder with mixed anxiety and depression.

Latimer opined that respondent suffered from a bona fide psychiatric disorder with a specific phobia, from 2003 to 2005 for which he had sought treatment with Dr. Block. Latimer opined that respondent's handling of his trust account was not carried out with willful neglect, desire, or consciousness of committing a wrongful act.

Latimer concluded that respondent's prognosis for his condition "depends on the out-come of the present investigation." In Latimer's opinion, "the absence of criminal history is an important element in adjudicating this case." He

added that the "use of psychotherapy with medications, if needed, is highly recommended." He referred respondent to Dr. Kathy Liebhauser for further treatment for his current depression.

Respondent's counsel proffered the concept of "correction through treatment," not to excuse or justify respondent's conduct but: 1) to encourage attorneys to engage in therapy aimed at eventual rehabilitation; 2) to prevent disbarment of attorneys who have demonstrated rehabilitation; and 3) to protect the public.

Following a review of the stipulation, we find that the facts contained therein fully support a finding that respondent's conduct was unethical.

Respondent's numerous improper disbursements of trust account funds to himself, his clients, and others resulted in the negligent misappropriation of trust account funds. The stipulation demonstrates that this occurred in at least thirteen matters, in amounts ranging from $550 to $8,827.35.

In the fourteenth matter, Turk, the client gave respondent a $3,000 check as a retainer. Although the stipulation stated that the check was returned for insufficient funds and that the negative balance resulting therefrom invaded and misappropriated other client trust funds, it did not mention any disbursements

that respondent made against the retainer. Because, however, respondent stipulated that he invaded other client funds and, as a result, had to deposit a corresponding amount into his trust account to correct the shortfall, we infer that respondent made disbursements against these funds as well. Respondent's December 2004 reconciliation revealed a $28,715.34 shortage in his trust account.

One of the more troubling matters listed in the stipulation is the Baskerville matter. Even though respondent had no funds on deposit for this client, he disbursed $4,176.67 to Baskerville. The stipulation does not explain how or why the disbursement was made.

Also, in the Barr matter, not only did respondent issue a check to the "Law Offices of Terry L. Shapiro" for $10,256.67, but he issued a check to "S & B (Shapiro & Berezin)" for $1,200. The stipulation does not explain why these two checks were issued to different names.

In the matters referred to in counts one through three, respondent is guilty of failing to safeguard client trust funds and negligently misappropriating client trust funds.

Respondent is also guilty of failing to promptly deliver funds or property to a client or third person. In the Barr matter, respondent had escrowed $1,200 for unpaid medical

expenses. Rather than refund the unpaid balance of the escrow ($900) to Barr, he issued a check to his firm that included the escrow for the medical expenses.

Similarly, in the Matesic matter, respondent had escrowed $1,200 for subsequent medical bills. No portion of the escrow was used for medical bills. Although those funds should have remained on deposit in the trust account until disbursed to Matesic, they were used for legal fees. Respondent used a business account check to pay Matesic, on April 18, 2006.

In the Barrocas matter, although $1,200 was set aside for medical expenses, respondent used the funds to pay another attorney. There was no indication that the $1,200 was used for medical expenses or paid over to the client.

Also in the Matesic matter, respondent issued duplicate checks for legal fees to both his firm and to another attorney, thereby violating RPC 1.5(e) for the improper division of fees, with a lawyer not in the same firm, that exceeded the contingent fees permissible under R. 1:21-7.

As to count four, respondent stipulated that he paid himself excessive contingency fees in four client matters and, in so doing, failed to promptly deliver the funds to the clients, violations of RPC 1.15(a), (b), and (c).

Respondent also stipulated that he engaged in recordkeeping improprieties, of which he had previously been apprised, and that his failure to properly maintain his trust account was reckless and willful.

It is troubling that respondent's ethics violations demonstrate that he has not learned from his prior mistakes. He continues to ignore the recordkeeping rules and recklessly uses his trust account, without consideration to whether he is invading client funds. Moreover, we agree that he has manipulated the ethics process by obtaining the recusal of three special ethics masters appointed to hear his case. It may be inferred that his contumacious and insolent efforts to avoid an ethics hearing in this matter were designed to avoid the detection of even more serious problems with his trust account.

Turning now to the issue of discipline, it is well-settled that, absent serious aggravating factors, generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Macchiaverna, 203 N.J. 584 (2010); In re Clemens, 202 N.J. 139 (2010); and In re Dias, 201 N.J. 2 (2010). Clearly, the discipline meted out in those cases is inappropriate here because of respondent's numerous ethics infractions (establishing a pattern), the aggravating factors present in this case, and, particularly,

respondent's recklessness and willfulness in failing to safeguard client trust funds.

Three-month suspensions were imposed in In re Gallo, 117 N.J. 365 (1989), and In re James, 112 N.J. 580 (1988), where the attorneys had no ethics histories and had adopted their predecessors recordkeeping practices.

Gallo's suspension was based on his poor recordkeeping practices and negligent misappropriation of funds. He left earned legal fees in his trust account, paid all of his operating expenses from his trust account, never kept a running balance of the account, and never used client ledger cards. As a result, he never knew how much money was in his trust account or to whom the funds belonged. In mitigation, it was considered that he had taken over another attorney's practice, inheriting over 200 files in a completely disorganized state. In addition, he had adopted the same improper practice utilized by the attorney for whom he had previously worked. Gallo's inadequate bookkeeping practices led to the invasion of clients' funds on numerous occasions.

In In re James, 112 N.J., supra, at 580, the attorney's poor accounting procedures caused the invasion of clients' funds. James had a practice of leaving substantial fees in his trust account. He used his trust account as a second business

account to pay employee payroll taxes, to advance costs to other clients and to pay litigation expenses, at times making disbursements in excess of funds deposited in the trust account for that purpose.

That James followed the same business practices and accounting procedures learned from his legal mentors was a mitigating factor. Nevertheless, he was found to have been seriously and inexcusably inattentive to the accounting and bookkeeping details of his practice. His negligent misappropriation of trust funds was found to be a result of gross negligence, not the product of knowing misappropriation.

In In re Bevacqua, 180 N.J. 21 (2004), the Court imposed a six-month suspension on an attorney who misappropriated a client's funds. Specifically, Bevacqua wire-transferred an earned legal fee of $5,000 from his trust account to his business account. When Bevacqua's attempts to withdraw monies from his business account were unsuccessful, he assumed that the transfer had not gone through, but it had. Bevacqua then used $5,000 from his trust account for personal and business expenses, thereby invading a client's funds. Bevacqua had a practice of leaving earned fees in his trust account to satisfy his personal and office bills. We found that he was reckless vis-à-vis his recordkeeping responsibilities. He conceded that

he did not even know where to look for the recordkeeping rules and that he had only a "ballpark idea" of his trust account balance. Bevacqua was guilty also of a conflict of interest and had been previously reprimanded.

The attorney in In re Ichel, 126 N.J. 217 (1991), received a suspended six-month suspension for his reckless handling of his trust account funds. Specifically, on ninety occasions, he withdrew legal fees from his trust account, before either a recovery in personal injury cases or settlements in real estate or estate matters. The above practice caused an overdraft in the account.

Ichel contended that he had erroneously believed that he had a "cushion" of his own funds in his trust account at the relevant times and that he had inadvertently over-disbursed $10,000 to the seller in a real estate transaction, an error that was not discovered until the following year.

The passage of nine years since the conduct occurred and the absence of prior discipline were factors considered in imposing only a six-month suspended suspension on Ichel.

In In re Lesser, 144 N.J. 160 (1996), the attorney received a one-year suspension for recklessly failing to maintain proper trust and business account records and for using his trust account as a personal account, from which he disbursed in excess

of $250,000 to a contractor for work performed on his house. An OAE audit revealed that payments to the contractor appeared on more than a dozen different client cards, as disbursements from funds of different clients. Negative balances occurred, when the attorney disbursed more funds on behalf of clients than funds on deposit for those clients. The OAE speculated that the attorney had invaded client trust funds on at least twenty-five occasions. The attorney claimed that his client ledger cards were inaccurate and that the disbursements did not evidence misappropriation of client funds.

The OAE auditor found the attorney's records to be "horrendous." The attorney admitted that he was unable to tell, at any time, how much money he had in his trust account or to whom the funds belonged. The attorney could not reconstruct his records, when asked to do so. Because the attorney's records were so "shoddy," the OAE auditor conceded that knowing misappropriation could not be proven to a clear and convincing standard.

The attorney's ethics history included a private reprimand for improperly removing legal fees from closing proceeds without the client's authorization; a three-month suspension for commingling trust and personal funds, failing to notify his client of his receipt of funds, failing to disburse funds

promptly, and engaging in recordkeeping improprieties; and a one-year suspension for grossly neglecting an appeal, making a misrepresentation and failing to cooperate with disciplinary authorities.

In cases where the misappropriation of trust funds resulted from more than negligence, that is, recklessness, three-year suspensions were imposed. See, e.g., In re Levy, 194 N.J. 560 (2008), and In re Simmons, 186 N.J. 466 (2006).

In Levy, the attorney's recordkeeping was found to be beyond shoddy and his misappropriations beyond negligent. His recklessness resulted in the invasion of a client's funds and of unidentified client funds, when he made disbursements on behalf of three clients without having sufficient funds to their credit in his IOLTA account. Levy had been previously suspended for three months.

Simmons was also found to be reckless in his failure to safeguard funds. After settling a personal injury claim on behalf of a minor, he failed to remit the minor's share of the funds, to the surrogate, as required.

After Simmons switched law firms, he deposited the minor's funds into a new trust account. He notified the minor's guardian of the transfer, but later lost contact with the guardian. Four years after settling the case, Simmons invaded the minor's funds

by issuing a fee refund to an individual whom he believed to be a former client who had asked for its return.

One year later, without notifying the guardian, Simmons left the practice of law and moved to another state to seek treatment for drug addiction.

Simmons attributed his conduct at the time of the refund to depression and drug addiction. He claimed a belief that the fee refund had come out of his business account. We discounted his claim. Instead, we found Simmons guilty of recklessness for losing track of the client's funds and issuing the fee refund without first determining the ownership of the monies in his trust account. Simmons saw funds lying dormant in his trust account and used them at his own convenience without investigating to whom they belonged. He was also guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to promptly turn over the minor's funds. We found no mitigating circumstances in the matter, only aggravating circumstances, which included Simmons' prior admonition in 2005 and his cavalier attitude toward the disciplinary system.

Respondent's conduct was certainly more egregious than Gallo' and James' (three-month suspensions), each of whom were involved in busy law practices and had learned their accounting

practices from their legal mentors. Neither one had an ethics history, while respondent had been previously disciplined for negligent misappropriation of funds. Respondent even stipulated that, as a result of the 1993 OAE-audit, the OAE had informed him about the recordkeeping rules and that, therefore, he should have had a heightened awareness of his responsibilities toward client trust funds.

Comparing respondent's conduct to that of attorney Lesser's, respondent's is clearly more egregious. Although Lesser received a one-year suspension for recklessly failing to maintain proper trust and business account records, using his trust account as a personal account, invading client trust funds on at least twenty-five occasions, and having a comparable ethics history to that of respondent, he was not guilty of abusing the ethics process, as did respondent. Respondent cunningly and successfully thwarted the ethics process for a full two-year period, thereby avoiding discipline which he himself "anticipated" would be "significant." In so doing, the public was not protected from his admitted "reckless and willful" failure to properly maintain client trust account funds.

Clearly, the lengths to which respondent went to prevent a disciplinary hearing from going forward is a serious aggravating

factor. Not only were his efforts incessant, combative, and rude, but they produced the desired effect. No ethics hearing ever took place. We were extremely troubled by respondent's conduct. Even if it were true, for the sake of argument, that conflicts of interest warranted the special masters' recusal, the manner in which respondent approached the issue should not be tolerated. In at least one instance, his combativeness alone created a situation where the special master could not fairly adjudicate the matter.

Respondent's lack of civility and his disrespectful conduct towards the OAE and the special ethics masters require enhanced discipline. See, e.g., In re Rochman, 202 N.J. 133 (2010) (the attorney's combative behavior and "scorched earth" tactics at the ethics hearing was considered an aggravating factor, justifying increased discipline) and In re King, 198 N.J. 448 (2009) (censure imposed based, in part, on the attorney's disrespectful conduct at the disciplinary hearings).

We find that the totality of the circumstances -- respondent's multiple ethics violations (misappropriating trust funds, failing to safeguard trust funds, taking excessive fees in contingency fee cases, dividing fees between lawyers not in the same firm in a manner that exceeded the allowable fees, failing to promptly deliver funds to clients or third persons,

recordkeeping improprieties, and recklessness in maintaining trust funds), coupled with his substantial ethics history (private reprimand, three- and six-month suspensions), his failure to learn from prior mistakes, and his lack of civility towards those involved in the ethics process -- requires a three-year suspension. Comparing respondent's conduct to that of Levy's and Simmon's, who received three-year suspensions for the reckless maintenance of their trust accounts, we are aware that respondent's conduct is more serious in terms of the number of clients affected by his recklessness and his ethics history. Nevertheless, we find that, on this record, discipline more severe than a three-year suspension would be excessive and unwarranted.

As indicated previously, we have considered respondent's counsel's brief to which Latimer's report was appended. We find that the report regurgitated only what respondent relayed to Latimer. Nothing contained therein warrants reducing the three-year suspension that we find is warranted.

Latimer's report, however, underscored respondent's need for continued therapy. Even respondent's counsel advocated "correction through treatment." We, therefore, determine to require respondent, prior to reinstatement, to provide to the the OAE proof of fitness to practice, as attested by an OAE-

approved mental health professional. We also determine to refer respondent to the appropriate County Bar Association Committee on Professionalism for an assessment and, if appropriate, the appointment of a mentor to assist him in developing and maintaining courtesy and civility in his dealings with others.

In addition, we determine to require respondent, upon reinstatement, to submit to the OAE, for a period of two years, monthly reconciliations of his attorney accounts on a quarterly basis, prepared by on OAE-approved certified public accountant.

Members Stanton and Yamner did not participate.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Terry L. Shapiro
Docket No. DRB 11-226

Argued: October 20, 2011

Decided: December 16, 2011

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Disqualified	Did not participate
Pashman		X			
Frost		X			
Baugh		X			
Clark		X			
Doremus		X			
Stanton					X
Wissinger		X			
Yamner					X
Zmirich		X			
Total:		7			2

Julianne K. DeCore
Chief Counsel