SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-123
District Docket Nos. XIV-06-380E
and XIV-07-242E

IN THE MATTER OF	:
W. RAY WILLIAMS	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 19, 2008

Decided: August 14, 2008

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

This matter came before us pursuant to R. 1:20-6(c)(1), which provides that an ethics hearing is unnecessary if the pleadings do not raise genuine disputes of material fact and neither party requests a hearing in mitigation or aggravation. The two-count complaint charged respondent with violating RPC 1.15(a) (commingling personal and trust funds), RPC 1.15(c) (failure to keep separate property in which the attorney and the client or a third person have an interest), RPC 1.15(d) and R.

1:21-6 (recordkeeping violations), and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count one), as well as RPC 8.1(b) and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count two). We determine to reprimand respondent.

Respondent was admitted to the New Jersey and to the Pennsylvania bars in 1989. He has no history of discipline. However, he has been temporarily suspended, since March 13, 2007, for failure to cooperate with the Office of Attorney Ethics. In re Williams, 190 N.J. 57 (2007). In addition, he has been ineligible to practice law, since September 25, 2006, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Count One

In August 2006, Independence Community Bank notified the Office of Attorney Ethics (OAE) that respondent's trust account was overdrawn by $167.47. By letter dated September 11, 2006, respondent explained to the OAE that the overdraft had occurred during his representation of a client and friend, Ann Marie Gatling, in the sale of real estate. Respondent had provided Gatling with signed trust account checks to enable her to make disbursements from the sale proceeds, the details of which were

unknown at the time of the closing. Inadvertently, Gatling had written checks for an amount in excess of the funds on deposit in the trust account.

Respondent also explained to the OAE that, in May and June 2006, he had made two deposits for a client named Gordon Redd, totaling $7,500. Respondent did not explain how the Redd deposits were relevant to the overdraft issue. Respondent also stated that he was a full-time professor and that his law practice was limited.

In October 2006, Gerald J. Smith, OAE Chief of Investigations, requested that respondent provide the OAE with his July 2006 trust account bank statement, as well as his client ledger cards for Gatling and Redd. In November 2006, Smith directed respondent to appear at the OAE, on December 8, 2006, for a demand audit of his attorney books and records for the period January 2006 to November 2006.

By facsimile dated December 3, 2006, respondent advised Smith that he had no records to produce. He explained that he had been teaching full-time since 1994, reiterating that his law practice was extremely limited, consisting mainly of real estate closings for family and friends. Respondent added that he usually held funds for only one client at a time. According to

respondent, his practice had consistently grossed less than $1,000 for the prior twelve years.

The OAE then subpoenaed respondent's trust account bank statements for January 1, 2006 to December 31, 2006. The records revealed that, on May 1, 2006, respondent had deposited $2,200 in his trust account, the source of which was funds previously held in his personal checking account.

The records further revealed that, on May 7, 2006, respondent had written a trust account check payable to cash, contrary to the recordkeeping rules.

In March 2007, respondent appeared at the OAE for an interview and audit, at which time he admitted that he did not comply with the recordkeeping requirements of R. 1:21-6. He further admitted that, on occasion, he used the account as a personal checking account by depositing personal funds in the account and then paying personal expenses. The OAE then directed respondent to reconstruct the Gatling and Redd transactions, to prepare client ledgers for both, and to submit them to the OAE.

In March 2007, the OAE sent respondent a letter confirming that this direction should be completed by April 30, 2007. As of the date of the formal ethics complaint, February 1, 2008, respondent had not provided the OAE with the reconstructed transactions.

Respondent's 2006 trust account records revealed that he had deposited $3,200 in personal funds and $39,599.68 in client funds into the trust account. The $39,599.68 deposit constituted the net proceeds to Gatling from the sale of her property, which were wired into respondent's trust account by the settlement agent. The trust account disbursements in the Gatling matter totaled $39,850, or $250.32 in excess of the deposit.

Count Two

Pursuant to the Court's March 13, 2007 order of temporary suspension, respondent was directed to comply with the requirements of R. 1:20-20, which, among other things, states that the suspended attorney "shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent did not comply with the requirements of R. 1:20- 20.

By letter dated August 14, 2007, sent via certified and regular mail, the OAE reminded respondent of the requirement that he file the R. 1:20-20 affidavit. The certified mail

envelope was returned to the OAE, marked "unclaimed." The regular mail was not returned. As of the date of the complaint, respondent had not filed the affidavit. The complaint charged respondent with violating RPC 8.1(b) and RPC 8.4(d) (CCt2¶6).

In his answer, respondent admitted the allegations of count one. He did not refer to the allegations of count two. The OAE's cover letter forwarding this matter to Office of Board Counsel states that it considered respondent's silence on the second count to be an admission of the charges.

Respondent's answer set forth information that he called "background." He again explained that his private law practice has been "minimal," that he never had more than one client's trust funds in his account at any time, and that he did not make money from his practice, never billing more than $1,000 in a fiscal year. Respondent stated that his practice primarily consisted of "big firm exposure," and that he had been unaware of some of the recordkeeping requirements of R. 1:21-6. He admitted that his "inattention to detail" had caused the overdraft in his trust account. He admitted further that he deposited personal funds in his trust account and used it as a business account.

Respondent's answer also advanced what he termed "affirmative defenses." He stated that, in 1991, he had been

diagnosed with an unspecified illness "then considered terminal." He responded well to treatment, however, and maintained his health, in part due to what he labeled a "supportive community of care providers." He included in this group a young man who ran a health shop and two women who ran a pharmacy. Respondent stated that, in late 2006 through early 2007, both the young man and one of the women had died. Respondent stated further that, in "quick order," he had lost several friends and relatives due to accidents and illnesses. According to respondent, during that time he was unresponsive, was suffering from depression, and had an ongoing virus. Respondent did not provide any medical or psychological records supporting his assertions.

Finally, respondent's answer advanced a number of mitigating factors. Specifically, he has been suspended for nearly one year and considers that "a sufficient penalty for [his] carelessness"; he has been unemployed as a professor since September 2007, and has been unable to find work of any kind; he has no health insurance; his house is in foreclosure; he has no savings; and his unemployment benefits were due to terminate in March 2008.

Following a review of the record, we find that the complaint and the answer provide sufficient basis for a finding of unethical conduct on respondent's part.

Although it is plain that respondent's attorney trust account was overdrawn, how that overdraft occurred is not as clear. The bank's notice to the OAE states that the overdraft was caused by check number 1795, in the amount of $169, which caused an overdraft in the amount of $167.47. Respondent's reply to the grievance stated:

> Ms. Gatling inadvertently issued checks number 1808 and 1816 in the amount of $5000 and $200, respectively which was presented for payment on 06/09/06 and resulted in an [sic] $123.47 and [$]323.47 overdrafts, respectively.
> At the time the checks were presented, the account balance was $4876.53. Thus there were sufficient funds to cover #1816, but because #1808 was presented first check #1816 also created an overdrawn balance
>
> [Ex.3.]

In respondent's answer, he noted that the OAE audit had revealed a $250.32 disbursement in excess of Gatling's wire deposit for her property sale. He then discussed having given a cousin a check for $169.00 to pay his union dues, and later said, "[i]t seems that but for my overpayment of $250.32 to Gatling I would not have overdrawn my account." Respondent had $1.53 in his account when the check was presented ($169 - $1.53

= $167.47, the amount of the overdraft). It is not clear if respondent thought that he had personal funds in the account to cover the check to his cousin and that the overdraft occurred because of the Gatling overpayment. Whatever the cause, what is clear is that, on one occasion, respondent's trust account was overdrawn and he so admitted.

In fact, respondent admitted the allegations of the first count of the complaint, specifically, violations of RPC 1.1(a), (c), and (d), and R. 1:21-6 and RPC 8.1(b). We do not find, however, a violation of RPC 1.15(c). There is no indication in the record that respondent did not segregate funds to which he and a client or another person had an interest.

As to the remaining charges in count one, the record reveals that, in May and June 2006, respondent made two trust account deposits totaling $7,500 for client Redd. It is not clear whether those funds were invaded. Presumably, if the "cousin check" or the Gatling checks had invaded other client funds in the account, respondent would have been charged with negligent misappropriation. Therefore, it is not apparent how the Redd funds are tied to this matter, other than as further evidence of respondent's poor recordkeeping practices. Indeed, respondent's conduct in giving Gatling signed trust account checks was troubling, even if his actions did not put other

client funds at risk.

Attorneys guilty of commingling and recordkeeping violations have received a private reprimand (now an admonition). See, e.g., In the Matter of Jeffrey D. Servin, DRB 90-147 (June 20, 1990) (private reprimand imposed for commingling personal and client funds in the trust account and failing to comply with recordkeeping requirements). More recently, admonitions have been imposed for recordkeeping violations alone. See, e.g., In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (admonition for failure to maintain an attorney trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (admonition for numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (admonition for failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (admonition imposed on attorney who did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions); and In the Matter of Arthur N. Field, DRB 99-142 (July 19, 1999) (admonition for attorney who did not maintain an attorney trust account in a New Jersey banking institution). But see In re

Colby, N.J. (February 5, 2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been reprimanded for the same violations and for negligent misappropriation as well).

Respondent also failed to cooperate with the OAE in connection with its investigation of this matter. Although he communicated with the OAE, he failed to provide the requested reconstructions of his account records. Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to district ethics committee's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); and In the Matter of Mark D. Cubberley, DRB 96-090

(April 19, 1996) (attorney failed to reply to the ethics investigator's requests for information about the grievance).

As to count two, respondent failed to file the affidavit required under R. 1:20-20(b)(15). The failure to comply with that rule exposes an attorney to harsh consequences. Pursuant to R. 1:20-20(c), the failure to file the affidavit is a violation of not only RPC 8.1(b), but also of RPC 8.4(d). In addition, the OAE may also file an action for contempt, pursuant to R. 1:10-2.

The threshold measure of discipline for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances, including a disciplinary history, the attorney's failure to file an answer or failure to comply with the OAE's specific requests that the affidavit be filed. Ibid. See, e.g., In re Raines, 181 N.J. 537 (2004) (three-month suspension; the attorney's disciplinary history included a (private) reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Girdler, 179 N.J. 227 (2004) (three-month suspension in a default matter; the attorney failed to produce the affidavit

after prodding by the OAE and after agreeing to do so; the attorney's disciplinary history consisted of a (public) reprimand, a (private) reprimand, and a three-month suspension in a default matter); In re Horowitz, 188 N.J. 283 (2006) (six-month suspension in a default matter; the attorney's disciplinary history consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was disbarred on a motion for reciprocal discipline from New York); In re Wood 193 N.J. 487 (2008) (one-year suspension in a default matter; disciplinary history included an admonition, a reprimand, a censure, and a three-month suspension; two matters were defaults); In re McClure, 182 N.J. 312 (2005) (one-year suspension in a default matter; disciplinary history included an admonition and two concurrent six-month suspensions, one of which was a default; the attorney failed to cooperate with disciplinary authorities in the matter before us and also failed to abide by his promise to the OAE to complete the affidavit; we noted the need for progressive discipline in that instance); In re King, 181 N.J. 349 (2004) (one-year suspension in a default matter; extensive ethics history consisting of a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; in

two of the matters, the attorney failed to cooperate with disciplinary authorities; the attorney also ignored the OAE's attempts to have her file an affidavit of compliance); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension in a default matter; disciplinary history included three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; the attorney did not appear before the Supreme Court on its order show cause).

Here, respondent has not defaulted and he has no history of final discipline -- only a temporary suspension for failure to cooperate with the OAE's review of his attorney records. Furthermore, it is clear from the requirements of R. 1:20-20 that the focus is on the protection of clients. It is very possible, even likely, that respondent had no clients to protect at the time of his suspension. Although that does not exempt him from the R. 1:20-20 requirements, his failure to file the affidavit was less injurious than the conduct of attorneys who had clients at the time of their suspension.

All that being said, it appears that respondent's infractions, standing independently, would warrant an admonition for his commingling and recordkeeping improprieties, an admonition for his failure to cooperate with the OAE, and a

reprimand for his failure to file the R. 1:20-20 affidavit.

In light of the mitigating factors present in this case – respondent's illness, depression, loss of several friends and relatives in "short order," and lack of a disciplinary record, we believe that a reprimand adequately addresses the aggregate of his transgressions. Because of respondent's admitted mental problems, he should be required to provide to the OAE, within sixty days of the date of the Court order, proof that he is now fit to practice law.

We also 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 W. Ray Williams
Docket No. DRB 08-123

Argued: June 19, 2008

Decided: August 14, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Boylan			X			
Clark			X			
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			9			

Julianne K. DeCore
Chief Counsel