

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-063  
District Docket No. XIV-06-407E

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IN THE MATTER OF :  
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MAXWELL COLBY :  
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AN ATTORNEY AT LAW :  
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Decision

Argued: May 10, 2007

Decided: July 11, 2007

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent admitted that he committed recordkeeping violations (RPC 1.15(d) and R. 1:21-6). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1975. He maintains a law practice in Oakhurst, New Jersey.

In 2002, respondent was reprimanded for negligent misappropriation of client trust funds, due to improper trust and business accounting practices. In re Colby, 172 N.J. 37 (2002).

On May 12, 2006, the OAE conducted a random compliance audit of respondent's books and records. The audit resulted in the following stipulation:

1. Respondent's disbursements journal for the trust account was not fully descriptive because respondent was deleting void checks and not recording these deletions on the check register. This conduct violated R. 1:21-6(c)(1)(A). Respondent represents that this practice has been modified and that voided checks are now shown on the register.
2. The listing of client balances prepared by the auditor identified balances remaining in the attorney trust account for 2001, 2003 and 2004. This conduct violated R. 1:21-6(d).
3. A schedule of clients' ledger accounts was not prepared and reconciled monthly to the trust account bank statement. [R. 1:21-6(c)(1)(H)].
4. Three old outstanding checks were required to be resolved. [R.1:21-6(d)].
5. The trust account bank reconciliation prepared by the auditor showed a surplus of \$139.79. [R. 1:21-6(d)].

6. All funds entrusted to the attorneys [sic] care shall be deposited to and disbursed from the attorney trust account and not the attorney business account. [R. 1:21-6(a)(1)].

[S2[B1]-S3[B6.]]<sup>1</sup>

According to the stipulation, respondent had acknowledged the deficiencies cited at 2, 3 and 5 above, discovered during a prior April 26, 1999 OAE select audit. Respondent's failure to properly reconcile his attorney account on a monthly basis prevented him from detecting that he had not deposited a \$1,744.13 trust account check. That check, payable to respondent, was located in a client's file.

Although some of respondent's current deficiencies were similar to those detected in the OAE's 1999 audit, respondent did not negligently misappropriate trust funds, as in the 2002 matter.

The OAE urged us to impose another reprimand for respondent's misconduct, citing In re Regojo, 185 N.J. 395 (2005) (reprimand for attorney guilty of negligent misappropriation of client funds and other recordkeeping violations; ethics history included two prior reprimands, one for identical violations) and In re Winkler, 186 N.J. 263 (2006) (attorney reprimanded for negligently misappropriating client

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<sup>1</sup> S refers to the stipulation.

trust funds and recordkeeping violations; ethics history included a prior reprimand for similar misconduct).

Following a review of the stipulation, we find that the facts contained therein fully support a finding that respondent's conduct was unethical. Respondent committed recordkeeping infractions, some of which continued from an earlier OAE audit, thereby violating RPC 1.15(d) and R. 1:21-6.

Generally, the discipline imposed in matters involving recordkeeping violations, without more, has been an admonition. See, e.g., In re DeZao, 189 N.J. 125 (2007) (admonition for attorney who did not correct three deficiencies from a prior audit; one step of the reconciliation process was still not being performed and prevented the attorney from detecting old outstanding balances in the trust account; no negligent invasion of client funds resulted; prior discipline (reprimand) for unrelated ethics violations); 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 for 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).

Respondent's current infractions were limited to recordkeeping deficiencies, conduct ordinarily met by an admonition. Nevertheless, we have to consider that, in 2002, he was reprimanded for the same violations (as well as negligent misappropriation). Therefore, an admonition would be insufficient discipline in this instance. More properly, a reprimand is in order, the discipline also received by Regojo and Winkler, who had been previously reprimanded for the same conduct. We so vote.

We also require respondent to submit to the OAE, for a period of one year, quarterly reconciliations of his attorney records, certified by an accountant approved by the OAE.

Members Lolla, Wissinger, and Neuwirth would impose a censure. Member Baugh 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  
William J. O'Shaughnessy, Chair

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Maxwell X. Colby  
Docket No. DRB 07-063

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Argued: May 10, 2007

Decided: July 11, 2007

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh						X
Boylan			X			
Frost			X			
Lolla				X		
Neuwirth				X		
Stanton			X			
Wissinger				X		
Total:			5	3		1

  
Julianne K. DeCore  
Chief Counsel