

3

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-272  
District Docket No. XIV-06-166E

---

IN THE MATTER OF  
JAMES A. KEY, JR.  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:

Decision

Argued: November 16, 2006

Decided: December 21, 2006

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Clinton D. Hall appeared on behalf of respondent.

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"), concerning respondent's negligent misappropriation of trust funds and recordkeeping violations. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1974. He maintains an office for the practice of law in Fords, Middlesex County.

In February 1996, respondent received an admonition for lack of diligence, and failure to communicate with the client. Although respondent filed an appeal, he failed to correct certain deficiencies, as a result of which the appeal was dismissed. In addition, the client retained respondent to file a complaint against Channel Home Center, arising out of a 1991 incident. Although respondent filed the complaint, it was subsequently dismissed for lack of prosecution. In the Matter of James A. Key, Jr., DRB 95-418 (February 20, 1996).

Respondent received a second admonition in 1996 for lack of diligence and failure to communicate with a personal injury client. In imposing only an admonition, we considered respondent's candor and admission of wrongdoing. We also noted that the ethics infractions in this and in the earlier matter were "part and parcel of the same pattern of conduct." In the Matter of James A. Key, Jr., DRB 96-357 (November 25, 1996).

Respondent was the subject of an OAE random audit conducted in August 2004. Additional audit visits occurred in December 2004, April 2005, and June 2005. Respondent was the subject of a prior random audit, in November 1992.

Reconstruction of respondent's IOLTA trust account following the "initial" (presumably August 2004) audit confirmed that he had negligently misappropriated over \$18,000 of client trust funds. The misappropriation was the result of respondent's overdisbursement of client funds in sixteen matters, between March 2002 and September 2004, and failure to reconcile his attorney trust account, in violation of R. 1:21-6 and RPC 1.15(d).

In addition to respondent's negligent misappropriation of trust funds, the audit disclosed a number of recordkeeping violations, as follows:

1. A schedule of clients' ledger accounts was not prepared and reconciled monthly to the trust account bank statement.
2. A trust account receipt book was not maintained.
3. A running cash balance was not kept in the attorney-trust account checkbook.
4. Clients' ledger sheets were not fully descriptive.
5. Inactive balances remained in the attorney trust account for extended periods of time.
6. Trust account deposit slips were not maintained with accounting records for a period of seven years.
7. A business account receipts book was not maintained.

8. A business account disbursement book was not maintained.

9. Business account deposit slips were not maintained with the accounting records for a period of seven years.

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

Respondent had been cited for all but one of the above recordkeeping violations, following the 1992 random audit. Because respondent's 1992 audit disclosed nearly the same violations as the 2004 audit, the OAE recommended that he receive a reprimand.

Upon a de novo review of the record, we are satisfied that respondent is guilty of the stipulated misconduct. He violated RPC 1.15(d) and R. 1:21-6 by failing to comply with the recordkeeping rules and negligently misappropriating client funds.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Conroy, 185 N.J. 277 (2005) (reprimand for attorney who negligently misappropriated client trust funds, failed to turn over funds to a client, and who failed to comply with recordkeeping requirements; the attorney had been the

---

<sup>1</sup> S refers to the disciplinary stipulation, dated September 14, 2006.

subject of a previous random audit); In re Lehman, 182 N.J. 589 (2005) (reprimand for attorney who negligently misappropriated trust funds, and failed to comply with recordkeeping requirements); In re Winkler, 175 N.J. 438 (2003) (reprimand for attorney who commingled personal and trust funds, negligently invaded 'clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); In re Blazsek, 154 N.J. 137 (1998) (attorney reprimanded for the negligent misappropriation of \$31,000 in client funds and failure to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (reprimand for negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); and In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand for attorney who negligently misappropriated approximately \$5,000 in client funds after commingling personal and client funds; the attorney left \$20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices).

A reprimand may still result even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. In re Toronto, 185 N.J. 399 (2005) (attorney reprimanded for negligent misappropriation of \$59,000 in client funds and recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and a reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account); In re Regojo, 185 N.J. 395 (2005) (reprimand imposed on attorney who negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered); In re Rosenberg, 170 N.J. 402 (2002) (reprimand imposed on attorney who negligently misappropriated client trust funds in amounts ranging from \$400 to \$12,000 during an eighteen-month period; the misappropriations occurred because the attorney routinely

deposited large retainers in his trust account, and then withdrew his fees from the account as he needed funds, without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); In re Marcus, 140 N.J. 518 (1995) (attorney reprimanded for negligently misappropriating client funds as a result of numerous recordkeeping violations and commingling personal and clients' funds; the attorney had received a prior reprimand for engaging in a pattern of neglect in six matters and for failing to communicate with clients).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In re Michals, 185 N.J. 126 (2005) (admonition for attorney who negligently misappropriated \$2,000 for one day and \$187.43 for two days, respectively, commingled personal and trust funds, and violated the recordkeeping rules; in mitigation, we considered that the trust account shortage was limited to a few days, that the attorney fully cooperated with ethics authorities, that he had no prior encounters with the disciplinary system, that he assumed full responsibility for the problems with this practice, and that he subsequently made recordkeeping a priority); In the Matter of Cassandra Corbett, DRB 00-261 (January 12, 2001) (admonition where the attorney's deficient recordkeeping

resulted in a \$7,011.02 trust account shortage; in imposing only an admonition, we considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the Office of Attorney Ethics, and hired an accountant to reconstruct her records); In the Matter of Bette R. Grayson, DRB 97-338 (May 27, 1998) (admonition where the attorney's deficient recordkeeping resulted in the negligent misappropriation of \$6,500 in client trust funds; in mitigation, we considered that the attorney fully cooperated with the Office of Attorney Ethics, took subsequent steps to straighten out her records, and had no prior discipline); and In the Matter of Joseph S. Caruso, DRB 96-076 (May 21, 1996) (admonition imposed where the misrecording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account; in imposing only an admonition, we considered that the attorney was newly admitted to the bar at the time, corrected all deficiencies, implemented a computerized system to avoid reoccurrences, and fully cooperated with the Office of Attorney Ethics; moreover, the attorney's conduct caused no harm to any clients).

Respondent's misconduct falls squarely in the range of the reprimand cases, the level of discipline urged by the OAE. Respondent is guilty of negligent misappropriation of \$18,000

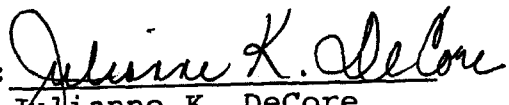


during a period of over two years. We considered, in mitigation, that respondent admitted his infractions, and that he cooperated with the OAE by entering into a stipulation.

We have not ignored respondent's two prior run-ins with the disciplinary system. On that score, however, are guided by In re Regojo, supra, 185 N.J. 395 (2005), where the attorney was reprimanded for negligent misappropriation resulting from recordkeeping improprieties, and for failure to timely disburse funds to third parties. As noted above, Regojo had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies. As in Regojo, we do not believe that discipline stronger than a reprimand is required in this case. We, therefore, determine to reprimand respondent.

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 O'Shaughnessy, Chair

By:   
Julianne K. DeCore  
Chief Counsel

---

---

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of James A. Key, Jr.  
Docket No. DRB 06-272

---

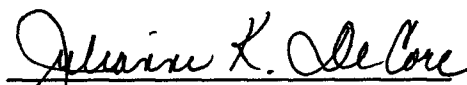
---

Argued: November 16, 2006

Decided: December 21, 2006

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh			X			
Boylan			X			
Frost			X			
Lolla			X			
Neuwirth			X			
Stanton			X			
Wissinger			X			
Total:			9			

  
Julianne K. DeCore  
Chief Counsel