

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-212

IN THE MATTER OF :
:
DANIEL B. ZONIES :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: September 12, 2002

Decided: December 6, 2002

Robert Prihoda 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 was before us based on a stipulation signed by the Office of Attorney Ethics (“OAE”) and respondent. Respondent stipulated that he violated *RPC 1.15(d)* and *R.1:21-6* (recordkeeping violations), *RPC 1.15(a)* (failure to safeguard client funds and commingling) and *RPC 1.15(b)* (failure to deliver funds promptly to clients and third parties).

Respondent was admitted to the New Jersey bar in 1970. He maintains a law office in Cherry Hill, Camden County. In 1991 he received a private reprimand for lack of diligence, failure to expedite litigation, failure to keep a client informed about the status of a matter and failure to turn over the client’s file to new counsel, in violation of *RPC 1.3*, *RPC 3.2*, *RPC 1.4(a)* and *RPC 1.16(d)*.

* * *

On May 24, 2000 the OAE conducted a random audit of respondent’s books and records. The audit disclosed the following recordkeeping violations:

- fully descriptive business account receipts and disbursements journals were not maintained;
- financial records were not kept at respondent’s law office;
- fully descriptive trust account receipts and disbursements journals were not maintained;

- fully descriptive trust account client ledger cards were not maintained;
- a running trust account checkbook balance was not kept;
- the attorney trust account was not reconciled quarterly;
- a facsimile signature rubber stamp was used to sign trust account checks; and
- personal and trust account funds were commingled.

Respondent maintained his trust account at First Union National Bank. Because he had failed to reconcile his account and to maintain contemporaneous journals and ledger card entries, respondent opened a new trust account at Fleet Bank to give himself a “fresh start.”

After several additional audit visits, during which respondent failed to provide requested records, the OAE scheduled a September 13, 2000 demand audit. Respondent still did not provide missing bank records, updated journals, client ledger cards and trust reconciliations. He was unable to account for \$181,041.92 in trust funds held in his First Union trust account as of May 31, 2001. Some of these funds had remained in respondent’s trust account from 1996, five years earlier. Respondent could not determine how much of those funds belonged to his clients, to third parties or to himself as fees.

The OAE directed respondent to retain a certified public accountant to reconstruct his First Union trust account and to provide the OAE with trust account reconciliations. Respondent’s accountant compiled a list of fifty-seven clients that accounted for all but

\$139.65 of the \$181,041.91 trust account funds. The accountant's list included eight negative balances totaling (\$44,441.21) that were offset by earned fees that respondent had maintained in the trust account.

The OAE told respondent that, as trust funds were identified, he was required to immediately disburse the monies to the appropriate individuals. The OAE informed him that, if he was unable to locate or identify the payees, he should transfer the balances to the Superior Court Trust Fund, as required by R.1:21-6(i). Despite these instructions, respondent transferred some of the First Union funds to his Fleet Bank trust account.

As of the date of the stipulation, thirty-two of the fifty-seven balances, totaling \$45,902.77, remained in the Fleet Bank trust account. Many of the unidentified balances related to client files that had been placed in storage. Contrary to the OAE's direction, respondent did not transfer unidentified funds to the Superior Court Trust Fund.

Respondent stipulated the following violations: (1) failure to maintain required records; (2) failure to safeguard client funds and to maintain client funds separately from his own funds; and (3) failure to promptly deliver funds to which clients or third persons were entitled.

Relying on *In re Rubin*, 153 N.J. 354 (1998), the OAE urged us to impose a reprimand, with the condition that respondent provide proof that he paid all of the client balances to the proper parties or transferred the funds to the Superior Court Trust Fund.

The OAE further recommended that respondent be required to submit periodic trust account reconciliations to that office, certified by an accountant approved by it.

* * *

Respondent acknowledged that he violated *RPC* 1.15(a), (b) and (c). The stipulation provides ample basis to support those violations.

Respondent was guilty of eight different recordkeeping violations, including commingling personal and trust funds, failing to keep a running balance in his trust account checkbook and using a signature rubber stamp to sign trust account checks. In addition, he maintained in his trust account a substantial sum, more than \$180,000, oblivious to the identity of the owners of the funds and to how much of that sum represented earned fees that he had failed to remove from the account. Even after the OAE instructed him to disburse the balances to the owners as they were being identified by his accountant or, in the alternative, to transfer the unidentified funds to the Superior Court Trust Fund, respondent continued to hold the funds in his trust accounts. Although there was no indication that respondent negligently or knowingly misappropriated client funds, his failure to comply with the recordkeeping rules created the potential for harm to his clients.

Generally, in cases involving failure to safeguard funds, failure to promptly deliver funds and recordkeeping violations, admonitions or reprimands are imposed. *See, e.g., In the Matter of Nedum C. Ejiogu*, 162 N.J. 99 (1999) (admonition for numerous recordkeeping deficiencies and failure to comply with contingent fee agreements); *In the Matter of A. Thomas Palamara*, Docket No. DRB 95-112 (1995) (admonition for failure to maintain business and trust account records and to distribute estate funds held in attorney's trust account); *In re Breig*, 157 N.J. 630 (1999) (reprimand for failure to promptly deliver funds to client and recordkeeping violations); *In re Rubin, supra*, 153 N.J. 354 (1998) (reprimand for failure to comply with recordkeeping requirements and providing financial assistance to a client), and *In re Goldston*, 140 N.J. 272 (1995) (reprimand for lack of diligence, failure to safeguard client funds and recordkeeping violations).

Based on the foregoing, an eight-member majority voted to reprimand respondent, with the added requirement that, for a period of two years, respondent submit to the OAE quarterly reconciliations of his trust account, certified by an accountant approved by that office. In addition, a trustee shall be appointed, at respondent's expense, to disburse all remaining client funds to those clients who can be located and whose funds can be identified or, in the alternative, to the Superior Court Trust Fund, in the event that the funds cannot be identified or the clients cannot be located. If respondent fails to comply with this direction, the OAE, at its discretion, may immediately file a motion for

respondent's temporary suspension. One member dissented, voting for a three-month suspension, along with the foregoing conditions.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Daniel B. Zonies
Docket No. DRB 02-212

Argued: September 12, 2002

Decided: December 6, 2002

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>		X					
<i>Wissinger</i>			X				
Total:		1	8				

 12/16/02
 Robyn M. Hill
 Chief Counsel