

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-274  
District Docket Nos. XIV-00-355E  
and XII-03-900E

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IN THE MATTER OF  
MARVIN LEHMAN  
AN ATTORNEY AT LAW

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Decision

Argued: November 18, 2004

Decided: December 14, 2004

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa 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 recommendation for a reprimand filed by the District XII Ethics Committee ("DEC"). The complaint charged respondent with negligent misappropriation of

client funds, violations of RPC 1.1(a) and RPC 1.15(a), and with recordkeeping improprieties and commingling of personal and client funds, violations of RPC 1.15(d) and Rule 1:21-6.

Respondent was admitted to the New Jersey bar in 1974. He has no disciplinary history.

The facts in this matter are not in dispute. Indeed, in his answer to the formal ethics complaint, respondent admitted the allegations and, at the ethics hearing, the parties submitted a stipulation of facts, essentially tracking the complaint.

This matter came to the attention of the Office of Attorney Ethics ("OAE") when Independence Community Bank sent notices of two trust account overdrafts that occurred on April 21 and October 18, 2000. The first overdraft resulted after respondent issued a \$396.28 payroll check from his trust account to an employee when the account balance was only \$125.68. At that time, respondent's trust account should have held at least \$6,798.97 on behalf of five clients. The October overdraft occurred when respondent issued a \$2,250 check to a client when the trust account balance was only \$1,834.12. At that time, respondent's trust account should have held at least \$7,429.97 on behalf of six clients. Respondent immediately rectified the two overdrafts.

The overdraft notifications prompted the OAE to perform a demand audit of respondent's books and records on January 24, 2001, and to conduct a tape-recorded interview on January 22, 2002.

The demand audit revealed the following recordkeeping deficiencies:

- (a) respondent failed to perform accurate quarterly reconciliations;
- (b) amounts were deducted on client ledgers when no check was written and the amount was never disbursed;
- (c) incorrect amounts were deducted on client ledgers that were not consistent with bank records;
- (d) deposits were recorded on client ledgers in incorrect amounts;
- (e) client ledgers were not updated;
- (f) the overdrawn status of the account was not properly reflected on the client ledger; and
- (g) incorrect balances were reflected on client ledgers.

At the demand audit, respondent admitted that he frequently commingled personal and client funds in his trust account; that he routinely deposited personal funds into, and paid business and personal expenses from, his trust account; and that he mistakenly believed that, by depositing personal funds and by

leaving legal fees in his trust account, he maintained sufficient funds to cover his personal draws. Respondent acknowledged that his failure to maintain a ledger card for his personal deposits into his trust account led to the overdrafts. Respondent knowingly kept in his trust account earned legal fees, totaling \$12,090.10, from six client matters.

Respondent failed to maintain a ledger card or an accounting of either his deposits or withdrawals of personal funds in connection with his trust account and failed to maintain a balance in that account equal to the amount of funds he should have been holding for his clients.

In 1995, respondent was the subject of a random audit that revealed the following recordkeeping deficiencies:

- (a) bank statements failed to indicate the proper designation as "trust account";
- (b) no ledger card was in use to indicate attorney funds for bank charges; and
- (c) inactive balances were left in the trust account.

Respondent admitted that his conduct constituted negligent misappropriation of client funds, recordkeeping violations, and improper commingling. Between January 2000 and September 2003, respondent deposited more than \$20,000,000 into his trust account. The OAE acknowledged that respondent's misconduct

resulted from inattention and negligence, and that no dishonesty or intent to misappropriate client funds existed. Respondent fully cooperated throughout the OAE investigation and has no disciplinary history. After the demand audit, respondent hired a bookkeeper who worked for him until the fall 2003, and retained an accountant to review and reconcile his trust account.

Although respondent admitted that he maintained personal funds in his trust account to insulate them from the Internal Revenue Service ("IRS"), the OAE found no unethical conduct in that regard because the IRS never attempted to levy on those funds. The OAE determined that respondent was not attempting to hide funds, but was safeguarding them while he negotiated with the IRS about whether a bank's forgiveness of his debts was considered income.

The OAE urged the DEC to recommend a reprimand, while respondent suggested that an admonition was appropriate.

The DEC found that respondent violated RPC 1.1(a), RPC 1.15(a), RPC 1.15(d), and Rule 1:21-6. The DEC recommended a reprimand, conditioned on the requirement that, for one year, a designated co-signatory sign all of respondent's trust account checks, as provided in Rule 1:20-15A(b)(1).

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. Respondent admitted that he intentionally maintained personal funds in his trust account, that he failed to prepare an accounting of those funds, that he mistakenly believed that he had more personal funds in his trust account than he actually had, that he negligently misappropriated client funds as a result, and that he failed to maintain proper records. As to the personal funds kept in his trust account to protect from possible attachment by the IRS, although respondent's conduct raises the specter of an ethics violation, the OAE was satisfied that his conduct was not unethical and the record does not contain clear and convincing evidence to the contrary. The IRS never levied on any of respondent's bank accounts.

Although we find that respondent violated RPC 1.15(a) and (d) and Rule 1:21-6, we see no basis for a finding of gross neglect. We, thus, dismiss the charged violation of RPC 1.1(a).

The remaining issue is the quantum of discipline. Attorneys who have engaged in similar misconduct have received either admonitions or reprimands. See, e.g., In the Matter of Cassandra Corbett, Docket No. DRB 00-261 (2001) (admonition for negligent

misappropriation and failure to maintain required records); In the Matter of Bette Grayson, Docket No. DRB 97-338 (1998) (admonition for negligent misappropriation of client trust funds in eleven instances, failure to prepare quarterly trust account reconciliations, and failure to maintain required records); In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (1996) (admonition where the attorney used his trust account for personal and business expenses, negligently misappropriated client funds, and was guilty of recordkeeping deficiencies); In re Silber, 167 N.J. 3 (2001) (reprimand imposed on an attorney who deposited client funds in his business account, failed to maintain those funds intact, negligently misappropriated client funds in four instances, and failed to maintain required records); In re Feintuch, 167 N.J. 590 (2001) (reprimand for negligent misappropriation of client trust funds, improper commingling of funds, and recordkeeping violations); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where attorney commingled personal and client funds and negligently misappropriated client funds).

Mitigating factors include respondent's unblemished record of thirty years, his immediate replenishment of the trust account shortage, and his employment of a bookkeeper (albeit not

permanently) and retention of an accountant. In aggravation, we consider that respondent was on notice, after the 1995 random audit, of the importance of proper recordkeeping, particularly in connection with commingling personal and client funds.

Because respondent was the subject of a prior random audit, and knew or should have known that he was prohibited from maintaining personal funds in his trust account, in our view, a reprimand is warranted in this matter. We find no reason to require a co-signatory for respondent's trust account checks, however. Indeed, in its brief filed with us, the OAE contends that this requirement is unnecessary and burdensome to respondent, and suggests that, if any financial controls are warranted, respondent should be required to submit certified monthly reconciliations of his trust account to the OAE for one year.

Based on the foregoing, we determine that a reprimand is the appropriate discipline for respondent's conduct. In addition, respondent must submit certified monthly reconciliations of his trust account to the OAE for one year. Chair Mary J. Maudsley did not participate.



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

Disciplinary Review Board  
William J. O'Shaughnessy, Vice-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 Marvin Lehman  
Docket No. DRB 04-274

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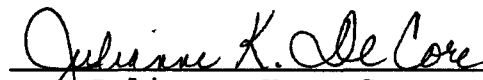
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Argued: November 18, 2004

Decided: December 14, 2004

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy		X			
Boylan		X			
Holmes		X			
Lolla		X			
Pashman		X			
Schwartz		X			
Stanton		X			
Wissinger		X			
<b>Total:</b>		8			1

  
Julianne K. DeCore  
Chief Counsel