

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-198  
District Docket No. XIV-2015-0471E

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IN THE MATTER OF :  
EDWARD HARRINGTON HEYBURN :  
AN ATTORNEY AT LAW :

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Decision

Argued: September 14, 2017

Decided: December 6, 2017

Reid Adler appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation  
between the Office of Attorney Ethics (OAE) and respondent.  
Respondent admitted violations of RPC 1.15(a) (negligent  
misappropriation) and RPC 1.15(d) and R. 1:21-6 (recordkeeping).

We determine to impose a censure.

Respondent was admitted to the New Jersey and Pennsylvania  
bars in 1997. On November 13, 2013, he received a censure for

his combined misconduct in two defaults. One of the matters involved violations of the attorney advertising rules; the other involved a lack of diligence, failure to communicate with the client, failure to safeguard property, failure to cooperate with ethics investigators, and misrepresentations by silence. In re Heyburn, 216 N.J. 161 (2013).

On June 18, 2015, respondent received a second censure for gross neglect, lack of diligence, failure to communicate, and misrepresentations to the client. In re Heyburn, 221 N.J. 631 (2015).

According to the May 26, 2017 disciplinary stipulation, on October 9, 2015, PNC Bank notified the OAE of an overdraft in respondent's trust account. By letter dated October 22, 2015, the OAE instructed respondent to provide a written explanation of the overdraft, by November 6, 2015. The OAE subsequently conducted a demand interview on November 17, 2015, at which respondent was required to produce the following records for the period from June 1, 2015 to November 2015: (1) client ledger cards; (2) three-way reconciliations; (3) trust receipts and disbursements ledgers; and (4) business receipts and disbursements ledgers.

Respondent produced only his client ledger cards for review. On November 18, 2015, the day after the interview, the

OAE requested that respondent produce the remaining, previously requested documents, a written explanation for the overdraft, and additional information relating to PayPal statements.

In respondent's November 23, 2015 written reply, he explained that he had opened a PayPal account to facilitate client payments for legal services. When respondent received payments, he would then transfer them into his attorney trust account.

Respondent established the PayPal account so that all debits (presumably of a personal nature) were to be paid from his personal account. However, because that account was not a "verified" account, PayPal withdrew funds from the trust account in the following instances. On August 12, 2015, with just \$5.19 in the trust account, PayPal withdrew \$9.99 for a payment to Skype Communications. On that same date, respondent placed in the trust account a \$2,180 deposit for taxes and expenses on behalf of client Sean McGeough. Thereafter, PayPal debited the following amounts from the trust account:

<b>Date</b>	<b>Party</b>	<b>Amount</b>
9/1/2015	iTunes	\$5.34
9/9/2015	Mobile Parking	\$1.12
9/10/2015	Just Host	\$167.76
9/14/2015	Skype	\$9.99
9/22/2015	Vista Print	\$50.79

In all of the above instances, the disbursements invaded the McGeough client funds. In addition, on September 1, 2015, PNC withdrew \$32 from the trust account for a service charge, which also invaded the McGeough funds, as respondent had insufficient personal funds in the trust account.

On September 24, 2015, PNC debited the trust account \$22.05 for check-printing fees. As of that date, respondent was required to hold \$1,010.53 for McGeough, but the trust account balance was only \$726.67, a shortage of \$283.86.

On September 25, 2015, respondent issued to himself a \$1,500 trust account check for his legal fee in the McGeough matter. He deposited that check into his personal bank account, because he had no attorney business account at the time, as required by R. 1:21-6(a)(2). Because the balance in the trust account was only \$726.67, the check caused a \$773.33 overdraft in the trust account.

Respondent was unaware of the shortages in the trust account because he had failed to: (1) maintain proper trust account receipts and disbursements journals; (2) maintain accurate client ledger cards; (3) review his trust account bank statements; (4) conduct three-way reconciliations of the trust account; and (5) maintain proper records of electronic transfers.

At the demand interview, respondent admitted that he negligently misappropriated trust account funds belonging to client McGeough, a violation of RPC 1.15(a), mistakenly cited as subsection (b). He also admitted failing to comply with the recordkeeping requirements of R. 1:21-6, including the improper deposit of the McGeough legal fee in an account other than his attorney business account, a violation of RPC 1.15(d).

According to the stipulation, respondent has corrected the above recordkeeping deficiencies and now operates with a proper attorney business account. He also conducts three-way reconciliations of his accounts, and maintains conforming client ledger cards and trust account receipts and disbursements journals.

In aggravation, the parties cited respondent's two prior censures. They cited no mitigating factors.

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Following a full review of the record, we are satisfied that the stipulation establishes, to a clear and convincing standard, that respondent's conduct was unethical.

Respondent negligently misappropriated client funds over a brief period of about six weeks in August and September 2015. The misappropriations were the product of respondent's error when unwittingly permitting PayPal to withdraw funds from the

trust account for his own personal expenses. In addition, PNC Bank debited the trust account for ordinary service charges. The most significant misappropriation (\$773.33) occurred when respondent withdrew his fee from money held in behalf of McGeough, the only client whose funds were invaded. Respondent's actions were in violation of RPC 1.15(a).

Respondent was unaware of the invasions as they occurred because he failed to comply with the attorney recordkeeping requirements, primary among them the performance of three-way reconciliations of his trust account. Respondent also failed to: (1) maintain proper trust account receipts and disbursements journals; (2) maintain accurate client ledger cards; (3) maintain an attorney business account; and (4) properly record all electronic transfers. Respondent's actions were in violation of RPC 1.15(d) and R. 1:21-6.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited into his trust account \$8,000 to satisfy a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed to him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77

belonging to other clients; when the transaction fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading the other clients' funds, in violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; in addition, a demand audit uncovered various recordkeeping deficiencies, a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records resulted in the negligent misappropriation of trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and ran afoul of the recordkeeping rules by writing trust account checks to himself and making cash withdrawals from his trust account, practices prohibited by R. 1:21-6; although the baseline discipline for negligent misappropriation is a reprimand and, in a default matter, the otherwise appropriate level of discipline is enhanced, a reprimand was viewed as adequate in this case because of the attorney's unblemished professional record of thirty-six years and his serious health issues); In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by

disbursing more than he had collected in five real estate transactions; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee); and In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of \$43.55 occurred in attorney trust account, as the result of a bank charge for trust account replacement checks; the attorney was also guilty of recordkeeping irregularities).

We also considered aggravating and mitigating factors. In aggravation, respondent twice before has been censured – once in 2013 and again in 2015, albeit for dissimilar misconduct. In mitigation, he cooperated with ethics authorities, and stipulated to his misconduct, thereby saving disciplinary resources.

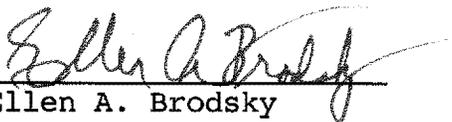
Although we were troubled that respondent has been the subject of two prior censures, we declined to impose a more severe sanction, because the misconduct here was relatively minor and took place over a very brief period of time. Thus, we determine that a censure adequately addresses the totality of respondent's misconduct.

Member Gallipoli voted for a three-month suspension.

Members Clark and Hoberman 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  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Edward Harrington Heyburn  
Docket No. DRB 17-198

Decided: December 6, 2017

Disposition: Censure

Members	Censure	Three-Month Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark			X
Gallipoli		X	
Hoberman			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	1	2

  
Ellen A. Brodsky  
Chief Counsel