

*Bank*

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May 23, 2005

**Certified Mail - R.R.R. and Regular Mail**

David C. Pennella, Esq.  
Pennella & Claps  
Eight South Morris Street  
Suite 301  
Dover, New Jersey 07801

Re: In the Matter of David C. Pennella

Docket No. DRB 05-085

District Docket Nos. XIV-04-281E & VII-04-900E

**LETTER OF ADMONITION**

Dear Mr. Pennella:

The Disciplinary Review Board has reviewed your conduct in the above matter and has concluded that it was improper. Specifically, on April 11, 1996, the bank in which your two-lawyer firm kept its trust account mistakenly credited only \$300 out of a \$30,000 deposit to the account. The bank's error caused a \$29,700 trust account deficiency. As the partner in charge of reconciling your firm's trust account, when you became aware of the shortage you attempted to identify the source of the problem, to no avail. You and your partner, Roy Claps, took no steps to replenish the account and continued to use it, despite knowing that you were out of trust. In the interim, you continued in your efforts to detect the root of the shortage. Both you and Claps closely monitored all future disbursements to ensure that no client would be harmed.

In 1999, your office finally turned to its accounting firm for assistance but, because of a personal problem affecting the accountant entrusted with the reconciliation of your trust account records, little was done on the matter until 2002. You and Claps were unaware of this circumstance.

In December 2002, the Office of Attorney Ethics ("OAE") scheduled a random audit of your attorney records. In mid-January 2003, following the involvement of other accountants from the accounting firm, the bank's mistake was finally discovered. At that time, you and Claps deposited personal funds to cover the shortfall.

Your conduct in using the trust account, despite your knowledge of a shortage, constituted a continuation of the negligent misappropriation caused by the bank's error and a violation of RPC 1.15(a). In addition, the OAE audit revealed several recordkeeping deficiencies, a violation of R. 1:21-6 and, therefore, of RPC 1.15(d).

In imposing only an admonition, the Board considered numerous compelling mitigating factors: your firm's predicament was caused by a bank error, rather than by inattention to its recordkeeping responsibilities; you immediately acknowledged your wrongdoing and expressed regret therefor; from the outset of the audit, you and Claps apprised the OAE auditor of your trust account problem, rather than waiting for the auditor to discover it; the negligent misappropriation caused no monetary loss to any of your clients; you and Claps took steps to ensure that no clients were financially harmed by your continued disbursements from the account; you and Claps ultimately deposited personal funds to bring the account to an in-trust position; you and Claps sustained financial loss as a result of the bank's refusal to accept responsibility for its serious mistake; your office adopted a bookkeeping system that enables it to be in full compliance with the recordkeeping rules; you have an excellent personal and professional reputation, and participate in numerous civic activities; and you have had an unblemished disciplinary record for thirty years.

Your conduct adversely reflected not only upon you as an attorney, but also upon all members of the bar. Accordingly, the Board has directed the issuance of this admonition to you. R. 1:20-15(f)(4).

I/M/O David C. Pennella

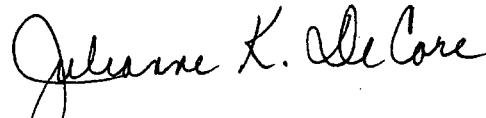
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A permanent record of this occurrence has been filed with the Clerk of the Supreme Court and the Board's office. Should you become the subject of any further discipline, it will be taken into consideration.

The Board has also directed that the costs of the disciplinary proceedings be assessed against you. An invoice of costs will be forwarded under separate cover.

Very truly yours,



Julianne K. DeCore  
Chief Counsel

/tk

c. Chief Justice Deborah T. Poritz

Associate Justices

Stephen W. Townsend, Clerk, Supreme Court of New Jersey

Gail G. Haney, Deputy Clerk, Supreme Court of New Jersey  
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David John Byrne, Chair, District VII Ethics Committee

Alan G. Frank, Jr., Secretary, District VII Ethics  
Committee