

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-096
District Docket No. XIV-2009-0394E

IN THE MATTER OF
LOUIS MACCHIAVERNA
AN ATTORNEY AT LAW

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Decision

Argued: May 20, 2010

Decided: August 16, 2010

Melissa Ann Czartoryski 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 respondent and the Office of Attorney Ethics ("OAE"). Respondent stipulated that he negligently misappropriated client funds as a result of poor recordkeeping practices, a violation

of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1998. He has no prior final discipline.

In April 2008, the OAE received two overdraft notices regarding respondent's trust account at Sovereign Bank. On July 29, 2008, the OAE conducted a demand audit of the account, which revealed certain improprieties.

A little over a year later, on July 17, 2009, the parties entered into an agreement in lieu of discipline covering the found improprieties. The parties attached the agreement to the within stipulation. The unethical conduct found was that

the trust account checkbook was not reconciled with the balance on the monthly trust account statement and the client ledger cards in violation of R. 1:21-6(c)(1)(H) and RPC 1.15(d)(recordkeeping). In addition, respondent deposited personal proceeds into his trust account and wrote checks payable to himself or to "cash" from the trust account in violation of R. 1:21-6(a)(1) and RPC 1.15(d) (recordkeeping and RPC 1.15(a)(safekeeping).

[S.Ex.1.]¹

¹ "S" denotes the disciplinary stipulation.

Presumably, the RPC 1.15(a) violation stemmed from respondent's commingling of trust and personal funds in his trust account.²

Less than a month after the diversion, on August 10, 2009, the OAE received another overdraft notice for respondent's trust account. Respondent had issued a \$500 trust account check to pay insurance premiums for client Andrew Taurosa. On August 5, 2009, the check was presented against insufficient funds. At the time, respondent advised the OAE that he was puzzled as to why there were insufficient funds in his trust account to cover the check.

On December 7, 2009, the OAE conducted another demand audit of respondent's books and records. The audit covered the period April 1, 2009 through November 30, 2009.

The audit revealed that, on July 1, 2009, just prior to the diversion, the balance in respondent's trust was \$521.85. Of that amount, \$500 was held on account of Taurosa's insurance premiums. The remaining funds apparently belonged to respondent, as the account contained no other client funds on that date.

² The diversion was completed on May 10, 2010.

Also in July 2009, respondent's wife and bookkeeper ordered checks for the trust account at a cost of \$65.40, believing that the firm would be billed for the cost of the checks. Unbeknownst to her and respondent, the bank immediately debited the trust account for the \$65.40, on July 14, 2009. Because only \$21.85 of the \$521.85 present in the account that day belonged to respondent, the replacement check charge caused a negligent misappropriation of Taurosa's funds, in the amount of \$43.55.

On August 14, 2009, respondent deposited \$130 of his own funds in the trust account to cover the shortage.

The OAE audit also revealed several recordkeeping violations:

- a. Failure to perform monthly three-way reconciliations. R. 1:21-6(c)(1)(H).
- b. There was no running checkbook balance. R. 1:21-6(c)(1)(G).
- c. Trust receipts journal did not fully describe each item deposited. R. 1:21-6(c)(1)(A).
- d. Trust disbursements journals did not fully describe the purpose of each disbursement. R. 1:21-6(c)(1)(A).
- e. Deposit slips did not identify client matter(s) by file number or client name. R. 1:21-6(c)(1)(A).

- f. A disbursement for a personal expense was made from the trust account.

[S19.]

The OAE recommended the imposition of a censure. The OAE considered, in aggravation of the misconduct, that respondent did not correct the July 2008 deficiencies, which resulted in the August 2009 overdraft and negligent misappropriation of client funds.

Following a review of the record, we are satisfied that the stipulation fully supports findings of violations of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6.

Respondent admitted that a minor negligent misappropriation of \$43.55 occurred in his attorney trust account, as the result of a bank charge for trust account replacement checks, a violation of RPC 1.15(a). While the rules do not allow an attorney to keep personal funds in the trust account indefinitely, they allow the attorney to maintain a sufficient sum for bank fees.

In addition, the subsequent OAE audit uncovered several fresh recordkeeping deficiencies, violations of RPC 1.15(d) and R. 1:21-6.

In aggravation, this matter surfaced less than one month after respondent entered into a diversion for 2008 recordkeeping deficiencies. In mitigation, the misappropriation was extremely minor in amount and was caused by a bank charge. Also, respondent has no prior final discipline, since his 1998 bar admission.

Attorneys found guilty of negligent misappropriation, commonly alongside recordkeeping deficiencies, will ordinarily receive a reprimand. See, e.g., In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account records, his mistake going undetected until an overdraft occurred; the attorney had no prior final discipline); In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated \$103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney

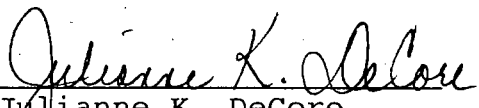
inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which clients were entitled); and In re Winkler, 175 N.J. 438 (2003) (attorney commingled 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).

The aggravating factor (proximity to similar misconduct in the diversion) is counterbalanced by the mitigation present (extremely minor misappropriation and no prior final discipline since 1998). Thus, we determine that a reprimand sufficiently addresses respondent's misconduct. We also require respondent to provide the OAE with monthly reconciliations of his trust account on a quarterly basis, for a period of two years.

Member Stanton 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
Louis Pashman, Chair

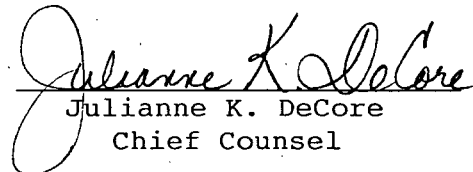
By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Louis Macchiaverna
Docket No. DRB 10-096

Argued: May 20, 2010
Decided: August 16, 2010
Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton						X
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1


Julianne K. DeCore
Chief Counsel