

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-261
District Docket Nos. IIA-09-902E
and XIV-08-107E

IN THE MATTER OF
JAMES W. MISKOWSKI
AN ATTORNEY AT LAW

Decision

Argued: November 18, 2010

Decided: December 8, 2010

John McGill, III 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 recommendation for discipline (reprimand) filed by the District IIB Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.15(a) (failure to safeguard client funds), and

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

Respondent was admitted to the New Jersey bar in 1974 and to the New York bar in 1975. He has no prior final discipline. However, by order dated November 20, 2008, respondent was temporarily suspended for failure to comply with a fee arbitration determination. In re Miskowski, 197 N.J. 416 (2008). He remains suspended to date.

Since September 29, 2008, respondent has been ineligible to practice law in New Jersey for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In February 2008, Bank of America notified the Office of Attorney Ethics (OAE) of an overdraft in respondent's trust account.¹ The overdraft occurred on February 19, 2008, when respondent's trust account check in the amount of \$1,665.45 was presented against a balance of \$1,357.90, causing a -\$307.55 shortage. In March 2008, the OAE requested that respondent provide an explanation for the overdraft. When respondent

¹ Respondent entered into a stipulation of facts, dated March 10, 2010, which resolved any disputed material issues.

failed to adequately explain the reason for the overdraft, the OAE conducted a demand audit of his attorney books and records in August 2008.²

At the time of the overdraft, the only client funds in respondent's trust account related to the Curtiss estate matter. On January 1, 2008, the account balance was \$5,046.54, of which respondent owed \$4,996.35 to three estate beneficiaries.

On January 7, 2008, respondent issued two checks, each in the amount of \$1,665.45 to two of the three Curtiss beneficiaries. The checks cleared the account on January 16, 2008, leaving a balance of \$1,715.65 in the account as of January 31, 2008.

During this time, respondent was temporarily closing his practice due to health problems and was in the process of zeroing out his trust account. Due to a miscalculation, he assumed that his account held \$375 in excess of what he owed the third beneficiary. On February 15, 2008, he withdrew \$357.75 from his trust account, believing that he had sufficient funds in the account to cover his \$1,665.45 check to the third

² Due to respondent's health concerns, the OAE agreed to allow him to forward his records via "fax."

beneficiary. In fact, respondent's withdrawal left only \$1,357.90 in the account, causing the above-mentioned overdraft when the \$1,665.45 check was presented for payment, on February 19, 2008.

After respondent discovered his error, he deposited \$310 in the trust account on February 27, 2008, and an additional \$20 on April 25, 2008. On April 25, 2008, he issued a check to the third beneficiary in the amount of \$1,665.44, closing out the estate matter, and leaving a balance of \$3.46 in his trust account.

Prior to the 2008 incident, respondent had been the subject of a random audit, in 2006. A number of recordkeeping deficiencies were found in his attorney books and records at that time. Specifically,

- a. Receipts journal for the trust account is not fully descriptive. [R.1:21-6(c)(1)(A)];
- b. Disbursements journal for the trust account is not fully descriptive. [R.1:21-6(c)(1)(A)];
- c. Clients' trust ledger sheets are not fully descriptive. [R.1:21-6(c)(1)(B)];
- d. A separate ledger sheet is not maintained detailing attorney funds held for bank charges. [R.1:21-(6)(d)];

e. A schedule of clients' ledger accounts is not prepared and reconciled monthly to the trust account bank statement. [R.1:21-6(c)(1)(H)];

f. A running cash balance is not kept in the trust account checkbook. [R.1:21-6(c)(1)(G)];

g. Trust account checks must be made payable to a named payee and not to cash. [R.1:21-6(c)(1)(A)];

h. Attorney personal funds are commingled with trust funds. [RPC 1.15(a)];

i. Funds held as an executor, guardian, trustee or in any other fiduciary capacity must be maintained separately from the attorney trust account. [R.1:21-6(a)(1)];

j. The name and/or file number of the client whom the trust account disbursement is made on behalf of is not properly identified in the memo portion of the trust check. [R.1:21-6(b)(G)(7)];

k. Business account designation improper. [R.1:21-6(a)(2)];

l. A business receipts book is not maintained. [R.1:21-6(c)(1)(A)]; and

m. A business disbursements book is not maintained. [R.1:21-6(c)(1)(A)].

[S15.]³

³ "S" refers to the stipulation of facts between respondent and the OAE.

By letter dated June 7, 2006, respondent advised the OAE that he had corrected his recordkeeping deficiencies. Nevertheless, the OAE's 2008 demand audit investigation revealed that, since respondent's June 2006 letter to the OAE, his monthly trust account reconciliations had not fully conformed with the requirements of the recordkeeping rules. Specifically, although he reconciled the trust account disbursements and deposits to the trust account bank balance on a monthly basis, he did not reconcile the cash receipts and cash disbursements journals, trust account checkbook balance, client ledger sheet balances, and trust account bank statement balance, as required by R. 1:21-6(c)(1)(H).⁴

At the hearing below, respondent testified that, at the time that he was admitted to the bar, attorneys who had completed a judicial clerkship, like him, did not have to take the skills and methods courses and that he was never made aware of his recordkeeping responsibilities.

⁴ Although respondent testified that he did complete the three-way reconciliations required by the recordkeeping rules, he did not provide the documentation to the OAE during the audit.

The DEC found that respondent violated RPC 1.15(a), as well as RPC 1.15 (d) and R. 1:21-6(c)(H).

In mitigation, the DEC noted that, aside from respondent's current temporary suspension, which is not a final discipline, he has had an unblemished record since he was admitted to the bar in 1974. The DEC also considered that the overdraft resulted from an accounting error and not from respondent's desire to enrich himself. Finally, the DEC considered respondent's cooperation with the investigation in this matter.

In aggravation, the DEC considered that respondent had been advised of his recordkeeping deficiencies during his random audit in 2006.

As mentioned above, the DEC recommended that respondent receive a reprimand.

Following a de novo review of the record, we find that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. The facts amply support the findings that respondent violated RPC 1.15(a) and (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 Clemens, 202 N.J. 139 (2010) (as a result of

poor recordkeeping practices, attorney overdisbursed trust funds in three instances, causing a \$17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies; the attorney was not disciplined for those irregularities; the aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Mac Duffie, 202 N.J. 138 (2010) (negligent misappropriation of client's funds caused by poor recordkeeping practices; some of the recordkeeping problems were the same as those identified in two prior OAE audits; the attorney had received a reprimand for a conflict of interest); In re Fox, 202 N.J. 136 (2010) (motion for discipline by consent; attorney ran afoul of the recordkeeping rules, causing the negligent misappropriation of client funds on three occasions; the attorney also commingled personal and trust funds); In re Dias, 201 N.J. 2 (2010) (an overdisbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, we considered that the attorney, a single mother

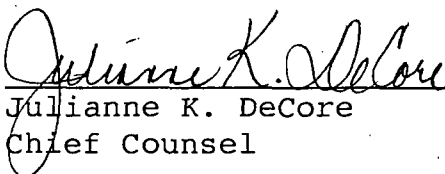
working on a per diem basis with little access to funds, was committed to and had been replenishing the trust account shortfall in installments); In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); and 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).

There are no factors in this case that remove it from the established discipline of a reprimand. We, therefore, determine to impose a reprimand. We further determine that, within ninety days of the Court's order, respondent is to show the OAE that he satisfactorily completed a course in attorney trust accounting.

Vice-chair Frost 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

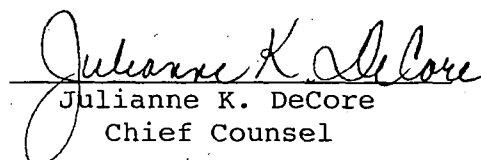
In the Matter of James W. Miskowski
Docket No. DRB 10-255

Argued: November 18, 2010

Decided: December 8, 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:			X			X


Julianne K. DeCore
Chief Counsel