

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-341
District Docket No. XIV-2009-639E

IN THE MATTER OF :
:
HOWARD W. WEBER :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: January 20, 2011

Decided:

Michael J. Sweeney 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 came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The

OAE recommends the imposition of either a reprimand or a censure for respondent's stipulated violations of RPC 1.15(a) (commingling), RPC 1.15(d) (recordkeeping violations), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to impose a censure on respondent for these violations.

Respondent was admitted to the New Jersey bar in 1971. At the relevant time, he maintained an office for the practice of law in East Brunswick. Respondent has no disciplinary history.

According to the stipulation, respondent was the subject of a random compliance audit, which took place on July 7, 2009. Initially, the audit covered the time period from June 1, 2007 through May 31, 2009, but was later expanded through September 30, 2009. The details of the recordkeeping improprieties uncovered at the audit are set forth in the December 2, 2009 investigative report prepared by Mary E. Waldman, OAE Assistant Chief of the Random Audit Program, which was incorporated by reference into the stipulation.

Respondent was the sole signatory on his attorney business account and attorney trust account. During the audit, Waldman learned that the business account had been dormant "for years."

Respondent told Waldman that the IRS had placed a levy on the business account "several years ago" and that to circumvent the levy he had been using the trust account for both business and trust matters. This impropriety formed the basis for the charged violation of RPC 8.4(c).

As to the recordkeeping deficiencies, according to Waldman, respondent maintains the accounting records for the trust account. These records include a checkbook, client ledgers, and a receipts journal. As of Waldman's initial visit, respondent had not been reconciling the trust account or client ledgers. Thereafter, he retained a CPA to reconcile the trust account for the period encompassed by the OAE's audit.

According to Waldman's investigative report, during the audit period, the funds on deposit in the trust account ranged from \$10,000 to \$62,000. Respondent tracked the funds maintained in the trust account in a separate ledger, in which the running balance was comprised of earned fees deposited directly into the trust account and earned fees transferred from client ledgers to respondent's ledger. Respondent's business and personal disbursements also were recorded on this separate ledger and deducted from the running balance. Although the funds appeared on ledgers as client funds, they were,

"in fact . . . commingled funds which ultimately belong in the business account." At no time were client funds affected, however.

As of November 13, 2009, the trust account held \$38,474.12 in attorney funds and \$20,000 in "miscellaneous fees and costs due respondent."

Based on these facts, respondent was cited for the following recordkeeping deficiencies: (1) failing to prepare a schedule of client ledger accounts and reconcile them monthly to the trust account bank statement, (2) commingling personal and trust account funds, (3) holding funds in the trust account that were in excess of the total trust obligations, (4) permitting inactive balances to remain in the trust account for an extended period of time, (5) failing to maintain a running checkbook balance for the trust account, (6) failing to maintain "fully descriptive" client ledger cards, (7) failing to maintain trust account disbursements journal, and (8) failing to deposit all earned legal fees into the attorney business account.

According to the investigative report, in July 1998, respondent had been the subject of a random audit, which uncovered several recordkeeping deficiencies, namely, those

identified in the previous paragraph of this decision as items one through six.

In support of its recommended measure of discipline, the OAE relies on respondent's unblemished disciplinary history and his full cooperation with the OAE's investigation in this matter.

Following a de novo review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical.

The stipulation and the investigative report contain sufficient evidence to support a finding that respondent commingled personal and clients funds (RPC 1.15(a)), committed recordkeeping violations (RPC 1.15(d)), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). Specifically, respondent permitted his business account to lie dormant, while he deposited and maintained personal and business funds in the trust account, a clear violation of RPC 1.15(a). Moreover, he committed a multitude of recordkeeping violations, as identified in the investigative report, all of which violated RPC 1.15(d). Finally, he intentionally commingled the funds in order to circumvent the IRS levy, a violation of RPC 8.4(c).

In In re Olitsky, 149 N.J. 27 (1997), the attorney intentionally commingled client funds, business funds, and personal funds for the purpose of circumventing an IRS levy. He also committed recordkeeping violations and failed to safeguard client funds. The attorney, who had received a prior private reprimand and admonition, was given a three-month suspension.

In In re Al-Misri, 197 N.J. 503 (2009), the attorney intentionally placed personal funds into his trust account to prevent a creditor from seizing the monies. In the Matter of Ousmane Dhu'L-Nun Al-Misri, DRB 08-194 (December 23, 2008) (slip op. at 3). He also admitted to having committed recordkeeping violations. Id. at 11. In addition, the attorney grossly neglected a client's real estate matter (RPC 1.1(a)) and, in two separate real estate matters, practiced while ineligible as a result of his failure to pay the 2003 annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (RPC 5.5(a)). Id. at 12.

In imposing a censure on Al-Misri, we first noted that the three-month suspension imposed on the attorney in Olitsky occurred before "censure" became a recognized form of discipline. Id. at 17. Moreover, we weighed aggravating and mitigating factors in reaching that decision.

In aggravation, Al-Misri had two prior admonitions and had ignored "several warnings from the OAE over the years about using his trust account, but used it anyway for his personal obligations." Ibid. In mitigation, Al-Misri had admitted to his misconduct and his clients were unharmed by his misdeeds. Ibid. Further, he had been clean and sober for twenty years and had devoted many years to helping other drug-and-alcohol-dependent individuals through Alcoholics Anonymous, Narcotics Anonymous, and a lawyers assistance program. Ibid.

In Al-Misri, we pointed out that, in imposing a censure, we gave "great weight" to the mitigating factors. Ibid. We cautioned, however, that were it not for the attorney's dedication to helping others recover from their addictions, we would have imposed a three-month suspension. Ibid.

Like the attorney in Al-Misri, respondent commingled client and personal funds in his trust account for the purpose of circumventing a creditor's attempt to seize monies from the business account - in this case, the IRS. He also committed recordkeeping violations. Further, just as the attorney in Al-Misri had been warned by the OAE about maintaining personal funds in his trust account, respondent had been cited for recordkeeping violations in the past, to no avail. Finally, in

both matters, the attorneys admitted to their wrongdoing, and no harm befell their clients.

Despite the similarities, there are significant differences in this matter and Al-Misri. Unlike respondent, who enjoyed an unblemished career of nearly forty years before this incident, the attorney in Al-Misri had a disciplinary history. He also committed other ethics infractions, that is, he practiced while ineligible and grossly neglected a client's real estate matter. As indicated above, the only thing that saved the attorney in Al-Misri from a suspension was his service to others who suffer from addiction.

Thus, in the absence of a disciplinary history and other violations, such as those in Al-Misri, a censure is the appropriate sanction for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.4(c). In addition, respondent is required to complete ten hours of ethics courses and ten hours of accounting courses, and to provide quarterly certifications to the OAE, for a two-year period, confirming that his accounts are being kept in accordance with the recordkeeping rules.

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
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

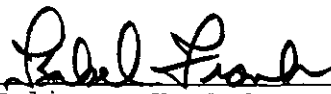
In the Matter of Howard W. Weber
Docket No. DRB 10-341

Argued: January 20, 2011

Decided: March 1, 2011

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


by Julianne K. DeCore
Chief Counsel