

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-115
District Docket No. XIV-2010-0141E

IN THE MATTER OF
MARK W. FORD
AN ATTORNEY AT LAW

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Decision

Argued: July 21, 2011

Decided: September 27, 2011

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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). Respondent stipulated to violating RPC 1.15(a) (failure to safeguard funds) and RPC 1.15(d) and R. 1:21-6 (recordkeeping improprieties).¹ The OAE argued that a censure is appropriate

¹ By letter dated May 16, 2011, the OAE withdrew the Kenneth and Donna Damm matter, on the basis that the facts alleged in the complaint did not constitute unethical conduct.

discipline for respondent's ethics infractions. We agree with the OAE.

Respondent was admitted to the New Jersey bar in 1983. He maintains a law practice in Gloucester City, New Jersey.

In 1998, respondent was reprimanded, after he falsely certified to the Division of Unemployment and Disability Insurance, at least ten times, that he was entitled to unemployment benefits, when, during the relevant time he was self-employed. In re Ford, 152 N.J. 465 (1998). In 2002, he was admonished for lack of diligence for failure to file claim petitions in his client's workers' compensation claims against her former employers and for failure to reasonably communicate with her about the status of her matters. In the Matter of Mark F. Ford, DRB 02-280 (October 22, 2002).

Respondent received another reprimand, in 2009, for conflict of interest and failure to withdraw from the representation, namely, filing an answer to a civil complaint at a time when his interests were directly adverse to his client's. Afterwards, he tried to negotiate separate settlements, to his client's detriment. He also failed to advise his client, in writing, to seek advice from independent counsel and failed to advise the client about a potential malpractice claim against him. In re Ford, 200 N.J. 262 (2009).

This matter arose from a March 12, 2010 letter from the Office of the Chapter 13 Standing Trustee, notifying the OAE that respondent had stopped payment on an attorney trust account check payable to the Chapter 13 Trustee. As a result, the OAE conducted an audit of respondent's books and records. The OAE audit revealed that respondent engaged in the practice of issuing trust account checks against uncollected funds.

I. The John Reynolds Matter

Following a settlement on behalf of John Reynolds, respondent was to receive a \$100,000 settlement check, in or around November 2007. When the check was "delayed in the mail," it was presumed lost. The issuer, therefore, placed a stop-payment order on it. Later, respondent received the check and requested the revocation of the stop-payment order to permit him to deposit the check into his trust account for appropriate disbursements.

On November 21, 2007, respondent deposited the check into his trust account. On November 29, 2007, he began making disbursements against the \$100,000 deposit. The bank, however, had not honored the revocation request for the stop-payment order. According to the stipulation, on November 26, 2007, "the check was returned." Because of respondent's disbursements

against it, he created a \$7,750.68 shortage in his trust account that lasted for ten days.

II. The Dwayne Tatum Matter

Respondent received a \$15,000 settlement check on behalf of his client Dwayne Tatum. On July 17, 2009, he mistakenly deposited it into his business account, rather than his trust account. Unaware of this error, on July 20, 2009, respondent issued trust account checks totaling \$15,000. The resulting trust account shortage in that amount lasted for approximately four weeks.

In mid-August 2009, respondent discovered the mistake. He then transferred funds from his business account into the trust account to cover the shortage.

III. Additional Matters

Respondent also stipulated that, in four additional client matters, he engaged in misconduct similar to that described in the Reynolds and Tatum matters. He accepted checks from the clients and made disbursements against them without verifying that the checks had cleared, a violation of Advisory Committee on Professional Ethics Opinion No. 454, 105 N.J.L.J. 441 (May 15, 1980) (permitting the immediate draw against bank, cashier's or certified checks, for real estate closings, but prohibiting

the immediate draw against personal checks, regardless of the amount or purpose). Thereafter, the checks were returned for insufficient funds, a violation of RPC 1.15(a) (negligent misappropriation of funds).

Respondent further stipulated that his attorney books and records were not in compliance with R. 1:21-6 and RPC 1.15(d). Specifically, the OAE audit uncovered the following deficiencies:

- a) Client Ledger Cards not fully descriptive;
- b) Inactive balances left in trust account;
- c) Trust funds on deposit exceeded obligations;
- d) Improperly processed trust checks;
- e) Trust account certification required; and
- f) Improper image of processed business checks

[S1B5.]²

The stipulation cited respondent's full cooperation with the OAE, as a mitigating factor, and his ethics history (two reprimands and an admonition), as an aggravating factor.

² S refers to the disciplinary stipulation.

Noting that, ordinarily, respondent's conduct would warrant a reprimand, the OAE argued that, because of his disciplinary history, a censure is the appropriate discipline.

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical. He violated RPC 1.15(a) for drawing against uncollected funds and negligently misappropriating client trust funds, and RPC 1.15(d) and R. 1:21-6 for his recordkeeping improprieties. The only issue for consideration is the proper quantum of discipline.

Generally, a reprimand is imposed when an attorney, in making disbursements against uncollected funds, also negligently misappropriates funds. A reprimand may still be imposed even if the attorney is guilty of additional ethics violations or has a non-serious ethics history. See, e.g., In re Gertner, 205 N.J. 468 (2011) (attorney guilty of drawing checks against uncollected funds for a business enterprise with a client and, on four occasions, invading other clients' trust funds; the attorney also entered into the business transaction with that client without complying with the conflict of interest rules; mitigation included that the client was a sophisticated businessman who was aware of his right to independent counsel, that no clients were harmed from the brief invasion of client funds, and that the attorney voluntarily apprised the OAE about


the four instances in which he invaded other client funds; no ethics history); In re Ambrosio, 200 N.J. 434 (2009) (attorney guilty of disbursing against uncollected funds, negligently misappropriating client trust funds, and recordkeeping violations); In re Broder, 184 N.J. 294 (2005) (as the closing agent in a real estate matter, the attorney immediately wrote trust account checks against funds that had not been collected; he was also guilty of negligently misappropriating client trust funds and recordkeeping violations); and In re Colby, 172 N.J. 37 (2002) (attorney accepted a company check from a client and disbursed funds against it, resulting in negligent misappropriation of other clients' trust funds when the check was returned for insufficient funds; the shortage in the attorney's trust account remained for seventeen months; the attorney was also guilty of recordkeeping violations; mitigation included the client's repeated assurances that he would make good on the check, the attorney's prior dealings with the client, and the attorney's deposit of his own funds to cover the shortfall in the trust account; prior reprimand for negligent misappropriation due to improper trust and business accounting practices).

Based on the above-precedent, respondent's conduct would warrant a reprimand in the absence of a non-serious ethics history. He was, however, disciplined three times. He was

reprimanded in 1998 for making false certifications; admonished in 2002 for lack of diligence and failure to communicate; and reprimanded again in 2009 for conflict of interest and failure to withdraw from the representation. While this is not a case where the attorney has failed to learn from prior, similar mistakes, respondent's ethics history establishes his propensity to violate the Rules of Professional Conduct. We, therefore, conclude that more than the threshold discipline (reprimand) is warranted. In determining that a censure is warranted here, we have considered that respondent's infractions were inadvertent at best, careless at worst, and the result of mistakes (Reynolds and Tatum) or recordkeeping inadequacies.

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

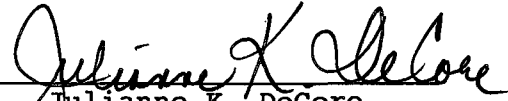
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Disposition: Censure

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			


Julianne K. DeCore
Chief Counsel