

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-383  
District Docket No. XIV-2010-0486E

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IN THE MATTER OF :  
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RICHARD C. HEUBEL :  
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AN ATTORNEY AT LAW :  
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Decision

Decided: April 24, 2012

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter), RPC 1.15(a) (failure to properly maintain client funds - negligent misappropriation of trust funds), RPC 1.15(d) (recordkeeping violations), and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities).

For the reasons expressed below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1977. He maintains a law office in North Bergen, New Jersey.

In 1990, he received a private reprimand. While representing a landlord, he violated RPC 4.1(a)(1) (false statement of material fact to a third person), when he misrepresented to the tenants that the property in question had been condemned. In the Matter of Richard C. Heubel, DRB 09-292 (November 8, 1990).

In 2009, respondent was admonished for notarizing a signature on a deed outside the presence of the signatory, a violation of RPC 8.4(c). In the Matter of Richard C. Heubel, DRB 09-187 (September 24, 2009).

Service of process was proper in this matter. On September 1, 2011, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 412 77<sup>th</sup> Street, North Bergen, New Jersey, 07047.<sup>1</sup> As of the date of the certification of the record, October 24, 2011, the United States Postal Service's "track & confirm" website showed that the certified mail was returned to the OAE as unclaimed. However,

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<sup>1</sup> That address is also listed in the attorney registration records as respondent's home and office address.

the OAE had not yet received it. The regular mail was not returned to the OAE.

As of the date of the certification of the record, October 24, 2011, respondent had not filed an answer to the ethics complaint.<sup>2</sup>

Respondent and his counsel were both in contact with Office of Board Counsel (the OBC) staff about this matter, on January 18 and January 3, 2001, respectively. On both dates, the OBC granted extensions to respondent, up to the date of our session, to file a motion to vacate the default. Respondent did not avail himself of that opportunity.

According to the complaint, Elizabeth Padron retained respondent to represent her in the refinancing of a mortgage on her property in North Bergen, New Jersey. The refinancing took place on July 31, 2009.

The HUD-1 reflected that respondent escrowed \$9,283.61 for property taxes and \$636.68 for a title insurance premium.

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<sup>2</sup> The certification does not mention whether the OAE sent a letter to respondent, notifying him, among other things, that if he did not file an answer within five days the matter would be certified to us for the imposition of discipline. Although the Court Rules do not require this warning, the OAE and the district ethics committees typically send such a letter.

Respondent did not disburse any funds for the title insurance premium and paid only \$8,404.24 for property taxes.

According to the complaint, respondent failed to answer repeated inquiries from the mortgagee's representatives about the taxes and premium. In his reply to the grievance, respondent informed the OAE that he "issued a check to Padron in the amount of \$9,283.61 but, on August 2, 2009, when Padron took the check to the office of the tax collector, she was informed that the property taxes were only \$8,404.24."

Respondent claimed that, on August 3, 2009, Padron informed him of the discrepancy. He then voided the original check and re-issued an \$8,404.24 trust account check to the Township of North Bergen, to cover the property taxes. Respondent further informed the OAE that, on that date, he gave Padron a trust account check for \$859.57, the balance of the tax escrow, thereby resolving the property tax issue.

The HUD-1 showed that the total amount escrowed was \$9,283.81. However, the total of the re-issued check for the taxes (\$8,404.24) and the refund to Padron (\$859.57) amounted to \$9,263.81. The refund to Padron was, therefore, short by \$20.

As to the title insurance premium, the HUD-1 showed that \$636.68 was escrowed. Respondent told the OAE that he issued a check to First American Title in that amount, on July 31, 2009.

However, the check was never negotiated. Respondent believed that it was lost in the mail. Therefore, on November 29, 2010, more than one month after the September 16, 2010 grievance was filed, respondent issued another check in that amount to First American Title.

The OAE examined respondent's trust account bank statements from July 1, 2009, the month of the refinancing, to November 29, 2010, the date that respondent issued the replacement check to First American Title. The examination revealed that respondent's trust account balance fell below the required amount of \$636.68 on numerous occasions, "primarily due to respondent's failure to reconcile his attorney trust account monthly, as required by R. 1:21-6." Respondent's balance was below the required balance of \$636.68 from October 14, 2009 through March 9, 2010.

Because respondent was out of trust, on April 26, 2011, the OAE held a "demand interview" of respondent, at which time he promised to have his accountant reconcile his trust and business accounts and to provide the OAE with the reconciliations within thirty days. He failed to provide the promised reconciliations within that time, however. The OAE, therefore, contacted respondent's accountant, June Toth, a Certified Public Accountant with ZBT Accounting and Consulting LLC (ZBT). Toth

informed the OAE that respondent had not provided her with his records or paid ZBT's retainer.

The complaint further alleged that "[s]everal unsuccessful attempts to contact respondent led to the scheduling of a second 'demand interview' for June 24, 2011."

On June 23, 2011, Toth notified the OAE that respondent had finally given her his records. She requested an extension to July 7, 2011 to complete the reconciliation, conditioned on respondent's payment of the retainer. The OAE granted the extension and postponed the second "demand interview." On June 27 and 28, 2011, Toth notified the OAE that respondent had not yet paid ZBT's retainer.

While waiting for the reconciliations, the OAE used subpoenaed bank records to reconstruct respondent's records. Based on the OAE's reconstruction, it scheduled a "demand interview" on July 6, 2011. However, in a June 30, 2011 email, respondent requested that the OAE postpone the interview, claiming that he had paid ZBT's retainer. The OAE rescheduled the "demand interview" to July 20, 2011.

Respondent failed to provide his reconciled financial records at the July 20, 2011 interview, but asserted that he would pay the balance of his accountant's retainer and would

drop off the additional records to Toth within the next "couple of days."

On July 21, 2011, Toth informed the OAE that respondent had neither paid the balance of his retainer nor given her the additional records that she needed to complete the reconciliation.

As of the date of the ethics complaint, August 31, 2011, respondent had not provided the OAE with his reconciled financial records.

The OAE's analysis of Padron's reconstructed ledger card showed that, on August 5, 2009, when respondent re-issued the check for the property taxes, there was a \$656.68 balance left in escrow for Padron, or \$636.68 for the title insurance premium and \$20 that respondent owed Padron from the property taxes.

On August 28 and September 10, 2009, respondent issued two checks, each for \$500, from the remaining funds that had been escrowed for Padron, leaving a \$342.32 negative escrow balance for Padron.

According to the complaint, the HUD-1 for the Padron refinancing showed \$600 for respondent's legal fees, \$200 for settlement charges, and \$100 for the title examination, totaling \$900. However, "through poor recordkeeping practices," respondent had issued \$1,325 to himself.

The complaint further alleged that respondent never explained to Padron the differences between the figures on the HUD-1, the amount actually escrowed, and the amount he paid; failed to answer Padron's March 2010 email inquiry; and evaded her questions about the status of her refinancing.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

Respondent lacked diligence in properly paying off the property taxes and delaying payment of the title insurance premium until after the grievance was filed. Moreover, he failed to properly communicate with Padron. He did not reply to her email or keep her apprised of the status of her matter, violations of RPC 1.3 and RPC 1.4(b), respectively.

Respondent also failed to reconcile his attorney trust account on a monthly basis, causing the trust account balance for the Padron escrow to fall below the required amount, on numerous occasions, violations of RPC 1.15(d) (recordkeeping improprieties) and RPC 1.15(a) (negligent misappropriation of escrow funds). He also failed to cooperate with the OAE's



investigation and failed to file an answer to the ethics complaint, thereby violating RPC 8.1(b).

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.3, RPC 1.4(b), RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee); In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of \$43.55 occurred in attorney trust account, as the result of a bank charge for trust account replacement checks; the attorney was also guilty of recordkeeping irregularities); 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 above aggravating factor was offset by the attorney's clean disciplinary record of forty years); and In re Fox, 202 N.J. 136 (2010) (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).

A reprimand may result even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. See, e.g., In re Blakely, 208 N.J. 589 (2012) (based on poor recordkeeping practices, the attorney over-disbursed \$12,111, grossly neglected a real estate matter, failed to provide a client a writing setting forth the basis or rate of his fee and practiced law while ineligible; attorney had a prior admonition); 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 Toronto, 185 N.J. 399 (2005) (attorney negligently misappropriated \$59,000 in client funds and recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault arising from a domestic violence

incident and a reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account); In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered); In re Rosenberg, 170 N.J. 402 (2002) (attorney negligently misappropriated client trust funds in amounts ranging from \$400 to \$12,000 during an eighteen-month period; the misappropriations occurred because the attorney routinely deposited large retainers in his trust account, and then withdrew his fees from the account as he needed funds, without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); and In re Marcus, 140 N.J. 518 (1995) (attorney guilty of negligently misappropriating client funds as a result of numerous recordkeeping violations and commingling

personal and clients' funds; the attorney had received a prior reprimand).

This is not a case involving compelling mitigating factors that warrant the reduction of a reprimand to an admonition, as in In re Gemma, 195 N.J. 5 (2008) (in seven real estate matters, the attorney's trust checking account was out of trust in amounts ranging from a few dollars to nearly \$100,000; the misappropriations were negligent, caused by the attorney's failure to maintain proper books and records; compelling mitigation considered, including that the attorney no longer practiced law). In addition, the default nature of these proceedings warrants enhancement of the appropriate form of discipline (reprimand) for respondent's violations. "[A] respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

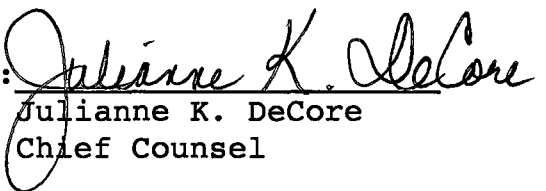
Based on the totality of respondent's ethics violations, his ethics history (a 1990 private reprimand and a 2009 admonition), and the default nature of these proceedings, we determine that a censure is the appropriate level of discipline in this case.

We also determine that, within ninety days of this decision, respondent is to turn over to the OAE his business and trust account reconciliations, prepared by an OAE-approved CPA. If respondent fails to provide the records requested by the OAE within the ninety-day period, the OAE may apply to the Supreme Court for an order for his temporary suspension.

We further determine that respondent is required to provide to the OAE, on a quarterly basis and for a two-year period, monthly reconciliations of his attorney records, prepared by an OAE-approved CPA.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Richard C. Heubel  
Docket No. DRB 11-383

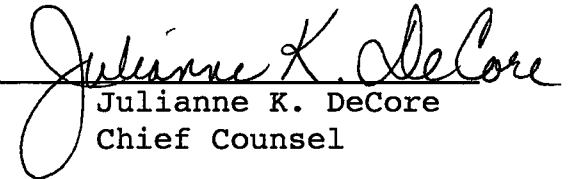
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Decided: April 24, 2012

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			

  
Julianne K. DeCore  
Chief Counsel