

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-088
District Docket No. XIV-2008-0326E

IN THE MATTER OF
PETER E. MANOLAKIS
AN ATTORNEY AT LAW

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Decision

Argued: September 20, 2012

Decided: October 12, 2012

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.¹

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 (suspension for an unspecified period) filed by the District VIII Ethics Committee (DEC). The complaint charged

¹ Respondent advised the Office of Board Counsel that he was unable to travel to New Jersey for the hearing due to a serious illness.

respondent with violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.15(a) (failure to safeguard client property), RPC 1.15(b) (failure to promptly turn over property to a client or third party), RPC 1.15(d) (recordkeeping violations), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).² We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1987. In 2009, he was censured for practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection and for failure to cooperate with the Office of Attorney Ethics (OAE), during its investigation of the matter. In re Manolakis, 197 N.J. 467 (2009).

Respondent was temporarily suspended, in January 2009, for failure to cooperate with the OAE's investigation of the

² At the conclusion of the hearing, the presenter withdrew the allegation that respondent violated RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing). In addition, the presenter clarified that an allegation in the complaint that respondent had violated R. 1:21-6(C)(2) was a typographical error. The presenter did not state if another rule was meant to be charged. We have treated both of these allegations as having been withdrawn.

incident that forms the basis for the current charges. In re Manolakis, 197 N.J. 261 (2009).

Respondent did not attend the DEC hearing and did not notify the DEC that he would not be appearing. The only witness was Christopher Spedding, an investigator with the OAE.

In April 1991, respondent sent a letter to the grievant, Stavros Timbanaris, confirming an agreement between them.³ Specifically, the letter recounted that respondent and Timbanaris had opened a (joint) savings account and that Timbanaris, who was traveling to Greece, had executed a power of attorney, enabling respondent to make deposits and withdrawals from this account on his behalf. The agreement called for Timbanaris' workers' compensation and disability checks proceeds to be deposited into the account and for respondent to disburse and forward a specific amount to Timbanaris each month.

The agreement further specified that respondent was to be compensated pursuant to the terms of a prior agreement between them, dated December 11, 1990. Respondent was to withdraw his

³ By the date of the hearing, Timbanaris was deceased. Timbanaris had indicated to the OAE that he wanted the ethics proceeding to be discontinued.

invoice amount from the account and forward the invoice to Timbanaris.

Although the record is unclear, it appears that Timbanaris received payments from three sources: Permacel Disability Fund, workers' compensation, and the Second Injury Fund, in the amounts of \$41,637.68, \$44,849.28, and \$99,537.96 respectively. The funds were all deposited in the savings account either by respondent or by direct deposit.

In June 2002, George Manjounes, a friend of Timbanaris, wrote to respondent demanding that, within fifteen days, he forward to Timbanaris the balance of his funds, as well as an accounting of his "income benefits" for the prior three years. In addition, Manjounes advised respondent that he no longer had a power of attorney from Timbanaris or authorization to endorse any of his checks.⁴ Respondent did not comply with Manjounes' direction.

In respondent's answer to the complaint, he stated that, after he received Manjounes' letter, he wrote to Timbanaris explaining that preparing the accounting was time-consuming, but

⁴ The OAE found no documentation indicating that the power of attorney was actually revoked at that time.

adding that he would provide the information, if Timbanaris requested it. According to respondent, Timbanaris did not request the information.⁵ Respondent's letter to Timbanaris went on to state that he had been forwarding all of the funds that Timbanaris had requested. The letter also stated that respondent would have communicated with Manjounes, but that he had no telephone number or address for him.

Spedding explained that, because Timbanaris' funds were in a savings account, rather than a checking account, there is no "trail" to follow to determine where the funds went, once withdrawn. Respondent had no client ledger or records for Timbanaris. Respondent provided to the OAE a number of cover letters to Timbanaris, indicating that he was remitting funds to him. However, because the letter was photocopied with the check and certified mail return receipt adhered to and obscuring the check, it is not possible to tell to whom the check was written or for what sum.

⁵ In his answer, respondent asserted that he had at least two conversations with Timbanaris, who stated that he did not want the accounting and that he was pressured by Manjounes to ask for it.

The following exchange took place between the panel members, the presenter, and Spedding:

Mr. Brigiani: Is it your position that although he may have mailed things with the checks covered up, that he in reality was really not sending money to the Grievant?

Q. Is that your position?

A. Yes.

Ms. Foster: So, even with the -- covered up, no where [sic] in the ledger -- we saw withdrawals that you just showed us.

Mr. Spedding: That is from the bank statements.

Ms. Foster: But there is no indication in the same bank statements of a check being written? It will say -- it should say check number and whatever. It should be somewhere in the ledger that a check was written.

Mr. Spedding: No, there wasn't.

[Presenter]: Maybe I can clarify something.

Q. Did you ever see Mr. Manolakis's client ledger for this account?

A. No, there was no client ledger.

Q. And was there any checking account associated with this client?

A. No.

Q. So, what you were looking at were savings account statements?

A. Correct.

Q. So, there is no way to determine whether the money that came out of the checking -- of the savings account went to Mr. Timbanaris?

A. That is correct.

Q. Could it have?

A. Could it have?

Q. Yeah. I mean, is it possible that Mr. Manolakis actually was --

A. If he had records, we would know that, but he had no accounting records. So, there is no way to tell.

Q. So, you don't know one way or another?

A. No, I don't.

Mr. Brigiani: Based on your investigation and expertise, is it your testimony that the checks allegedly written to the Grievant were in reality nonexistent or they were checks representing money that Mr. Manolakis took for himself?

Mr. Spedding: No. I don't think Mr. Manolakis took it for himself.

Mr. Brigiani: So, they were just checks to make it look good, but in reality no money was withdrawn for the Grievant?

Mr. Spedding: Correct.

[T21-1 to T23-1.]⁶

Between June 11, 2002 and April 30, 2004, respondent made no withdrawals from the savings account. In respondent's answer, he explained that, because Manjounes had revoked the power of attorney, he could no longer disburse funds from the account. The OAE noted that the funds remained in the account.

By letter dated April 21, 2004, Manjounes demanded that respondent forward to him "all Records, Documents, Accounting, Check Books any all [sic] Business Matters" pertaining to Timbanaris. Manjounes again stated that the power of attorney was revoked.⁷ Both Manjounes and Timbanaris signed the letter. Spedding testified that respondent did not provide the accounting.

In respondent's answer, he stated that he again asked Timbanaris to confirm his request. Timbanaris confirmed that he wanted the bank statements from September 2002 to June 2004,

⁶ T refers to the transcript of the DEC hearing.

⁷ Spedding testified that there was an indication that the power of attorney was revoked at that time. The record is silent on whether the evidence went beyond Manjounes' letter stating that it was revoked.

which respondent forwarded to him, by letter dated April 27, 2004. Respondent forwarded "all bank statements which [he] could find beginning with 9/30/02 through and including 3/31/04." By way of this letter, respondent asked Timbanaris to contact him, if he wanted anything further. Timbanaris did not contact respondent.

The savings account was closed on May 19, 2004. Timbanaris received the funds that had remained in the account.

On that score, the following exchange took place between the presenter, the panel, and Spedding:

[Presenter] . . . The money that was in that fund, the \$8,000, I am not sure -- I seem to recall that it eventually got to Mr. Timbanaris, but I am not sure.

Q. Do you know that, Chris [Spedding]? Did the money that stayed in his account for two years, did that ever get to Mr. Timbanaris?

A. Yes, I think it did.

Mr. Brigiani: How about the 99,537?

Mr. Spedding: Yeah. We touched on that, did we not?

[Presenter]: What we know is that the money that was supposed to go into the account went into the account.

[T45-7 to T45-20.]⁸

A separate count of the complaint charged respondent with making counter withdrawals from his attorney trust account in the amounts of \$500 and \$2,000 on March 2, 2006 and April 11, 2006, respectively. He failed to provide an explanation to the OAE for these cash withdrawals or any records in connection with them. In respondent's answer, he stated that the withdrawals were probably funds that were to be deposited into his business account as fees and costs and which were withdrawn as cash, in error. He contended that no client funds were affected by the withdrawals.

By letter dated March 10, 2008, the OAE notified respondent that he would be the subject of a demand audit, to be conducted on March 27, 2008, at his office.⁹ Respondent failed to appear. By letter and fax dated April 2, 2008, the OAE re-scheduled the audit for April 8, 2008, at the OAE's office. The letter to

⁸ The record does not reveal how Timbanaris received his money.

⁹ According to the letter, the OAE had made three previous requests for respondent's trust and business account records.

respondent was sent by certified and regular mail. The certified mail was returned unclaimed. The record is silent with regard to the regular mail, but states that the fax was received.

On April 3, 2008, the OAE received a letter from respondent, along with copies of the bank statements from September 2005 to March 2007, except for one missing statement. Respondent's letter stated that he would be out of his office until April 16, 2008, but would call on his return.

On April 25, 2008, the OAE wrote to respondent requesting an explanation, by May 9, 2008, for the two counter withdrawals from the trust account, in the amounts of \$500 and \$2,000. The letter was sent by regular mail and fax. Respondent failed to reply to the OAE's letter.

On July 25, 2008, the OAE advised respondent that a demand audit was scheduled for August 8, 2008, at his office. By letter dated August 4, 2008, respondent advised the OAE that he was recovering from an operation. He requested a three-week extension for the audit. The OAE informed respondent that his request had been granted and that the audit had been re-scheduled for September 5, 2008. The OAE also requested documentation of respondent's medical condition.

On September 4, 2008, respondent requested another adjournment, due to his medical condition. He did not provide documentation of his illness. By letter dated September 12, 2008, the OAE granted the adjournment until September 26, 2008. The OAE's letter advised respondent that, if he failed to provide documentation of his illness or if he failed to appear at the audit, the OAE would petition the Court for his temporary suspension. By letter dated September 13, 2008, respondent provided documentation verifying that he had been hospitalized.

On September 25, 2008, respondent sent a fax to the OAE, stating that a power failure had occurred in his area and that his computer had been disabled. He requested another adjournment, which was denied. On September 26, 2008, the OAE conducted an interview with respondent, at which he failed to produce any records. By letter dated October 16, 2008, the OAE advised him that the demand audit would be conducted on November 7, 2008, at the OAE. On November 5, 2008, respondent sent a fax to the OAE, stating that he would not be attending the audit because he could not organize all of the requested documentation in time and that he would contact the OAE to reschedule the audit, after he organized the documents and spoke with counsel. The documentation requested was the same as that requested for

the prior audit date. Respondent did not contact the OAE to reschedule the audit and did not produce any documentation regarding the disposition of the funds from the joint savings account.

As previously noted, on November 17, 2008, the OAE filed a petition for respondent's immediate temporary suspension, which was granted on January 13, 2009.

In November 2009, the OAE called respondent to request copies of his "personal bank statements" for the period of November 2003 to November 2009. In respondent's answer, he stated that he never received that call. Thereafter, by letter dated December 7, 2009, sent by certified and regular mail and by fax, the OAE scheduled a demand audit, to be conducted on December 17, 2009. The certified letter was forwarded and delivered to an address in Cape Canaveral, Florida, on December 18, 2009. By letter dated December 21, 2009, respondent advised the OAE that he had received the demand audit letter after the audit date. Respondent told the OAE that he was out of state and residing at a temporary address and that he would contact the OAE as soon as he finalized his "residence situation." The OAE received no further communication from respondent.

In respondent's answer, he set forth mitigating factors about his conduct. He explained that, beginning in 1999, following the death of his brother, he was responsible for his then 84-year old mother's care, until her death, in 2006. Due to those demands on him, he may not have replied to Timbanaris' request "quickly enough."

With regard to his derelictions in replying to the OAE, respondent explained that he became ill in 2007 or early 2008. He tried to focus on serving his clients and neglected his own matters, until he required surgery, in June and July 2008, for a mass in his torso. Because his recovery took a long time, he did not reply as he should have to the OAE, for which he apologized.

Also in mitigation, respondent discussed his prior discipline:

As a result of all the above, I was temporarily suspended from the practice of law in January, 2009 and remain so. I was also Censured for the reasons stated in the Complaint including any failure to cooperate with the OAE. I was also fined a considerable amount. I have not practiced law since then and have wound down my practice. I have now moved to Florida with my family, first to one address and now another where I am attempting to settle. I have been severely impacted and drained economically and severely affected

professionally. I believe that the Censure and temporary suspension are enough for any errors which I may have committed.

[AM.]¹⁰

Essentially, the DEC found that Timbanaris retained respondent to create the power of attorney savings account, into which his settlement funds were deposited. From June 2002 to April 2004, respondent deposited over \$8,000 in the account, but made no disbursements to Timbanaris. Despite requests from Manjounes, respondent did not disburse funds to Timbanaris or provide an accounting. The DEC also found that respondent made two cash withdrawals from his trust account and did not provide the OAE with documentation about those withdrawals. Finally, the DEC recounted the OAE's numerous requests that respondent produce his attorney account records.

The DEC found that respondent violated RPC 1.3, RPC 1.4(b), RPC 1.15(a), RPC 1.15(b), RPC 1.15(d), and RPC 8.1(b).

As to the appropriate measure of discipline, the DEC noted that, although it would have recommended a reprimand for respondent's misconduct, in light of the prior proceedings that

¹⁰ AM refers to the mitigation section of respondent's answer.

resulted in a censure and a suspension, the reprimand should be upgraded to a suspension.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. We disagree in part, however, with the DEC's findings.

As to the allegation that respondent violated RPC 1.3, the OAE seems to be arguing that, because it cannot be proven that respondent did send monthly payments to Timbanaris, it can be assumed that he did not send the payments. That however, is not how the burden-of-proof requirement is met. The OAE has a number of documents from respondent purporting to be his cover letters forwarding checks to Timbanaris. The missing link is Timbanaris, who could state with certainty whether he received the checks, but he is deceased. The gap left in the record cannot be filled by suppositions.

Therefore, without clear and convincing evidence to the contrary, we must conclude that, at least until June 2002, respondent complied with his agreement with Timbanaris and forwarded his monthly payments. After June 2002, respondent's power of attorney was revoked, according to the letter he

received from Manjounes. Thus, he would have been unable to forward checks to Timbanaris.

That being the case, we dismiss the allegation that respondent violated RPC 1.3. There is no indication that respondent lacked diligence in the tasks he was to undertake for Timbanaris. The record demonstrates that he collected Timbanaris' funds. As to whether he timely disbursed the funds, respondent stated that he did so, until such time as the power of attorney was revoked. Because the OAE could not establish that respondent did not forward funds to Timbanaris with his cover letters, that charge fails for lack of clear and convincing evidence.

The same reasoning applies to the alleged violations of RPC 1.15(a) (failure to safeguard client funds), and RPC 1.15(b) (failure to promptly disburse client funds). We dismiss the charged violation of RPC 1.15(a) as inapplicable to this matter. We also dismiss the charged violation of RPC 1.15(b) for lack of clear and convincing evidence that the funds were not promptly disbursed while it was in respondent's power to disburse them. The record is silent as to what was occurring during the two years that respondent made no disbursements, in terms of communication between respondent and Timbanaris. Without

testimony or documents to support the allegation that respondent could have forwarded checks to Timbanaris but failed to do so, this charge, too, fails for lack of sufficient evidence.

As to the alleged violation of RPC 1.4(b) (failure to communicate), the OAE charged that respondent did not adequately communicate with Timbanaris.¹¹ Respondent contended in his answer, that he spoke with Timbanaris, very often and kept him apprised of the status of his funds. Respondent's concession, in his answer, that he may not have replied "quickly enough" to Timbanaris is not sufficient evidence that his communication with his client was truly deficient. The alleged violation of RPC 1.4(b) is, thus, dismissed.

On the other hand, there is clear and convincing evidence that respondent violated the remaining charged RPCs, specifically, RPC 1.15(d) (recordkeeping) and RPC 8.1(b) (failure to cooperate with the OAE).

As to RPC 1.15(d), although the arrangement with Timbanaris was somewhat unusual, he was respondent's client. Respondent

¹¹ The complaint asserted that "Respondent failed to keep Grievant apprized [sic] of the receipt and deposit of his funds." It is unclear why, if respondent received payments on a regular schedule, he had to inform Timbanaris each time he received a check or mailed a check to him.

should, thus, have maintained the required records for the funds held for Timbanaris, including a client ledger card. Respondent failed to produce such records for the OAE.

Moreover, on two occasions respondent made cash withdrawals from his trust account. Although he stated, in his answer, that the withdrawals were made in error and although there are no allegations that client funds were invaded, respondent violated RPC 1.15(d).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain outstanding, and failed to perform one of the steps of the reconciliation process); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); and In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and

disbursements journals, as well as a separate ledger book for all trust account transactions). But see In re Colby, 193 N.J. 484 (2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been reprimanded for the same violations and for negligent misappropriation as well).

There is no indication that respondent's recordkeeping violations harmed any client or that his records were deficient with regard to any client, other than Timbanaris. Were this respondent's sole violation, an admonition for the recordkeeping derelictions would have been sufficient.

However, respondent was also guilty of a troubling failure to cooperate with the OAE. The record reflects the numerous attempts that the OAE made to perform the audit of respondent's attorney records and the numerous accommodations made for respondent, in scheduling the audit. Respondent's failure to cooperate became so severe that the OAE was forced to petition the Court for his temporary suspension, which was granted. Although respondent was suffering from an unspecified illness, he should have appeared for the scheduled audit, should have

provided his records, and should have communicated with the OAE more readily. He, therefore, violated RPC 8.1(b).

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to district ethics committee's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (attorney failed to reply to the ethics grievance and failed to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996)

(attorney failed to reply to the ethics investigator's requests for information about the grievance).

If the attorney has been disciplined before, but the attorney's ethics record is not serious, then reprimands have been imposed for failure to cooperate with ethics authorities. See, e.g., In re LeBlanc, Jr., 192 N.J. 107 (2007) (default case; reprimand for failure to cooperate with the investigation of an ethics grievance; prior censure for several improprieties, including failure to cooperate with disciplinary authorities); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Much more serious discipline has been imposed where warranted. In In re Arnotrading, 193 N.J. 479 (2008), a six-month suspension was imposed in a reciprocal discipline proceeding where the attorney displayed a pervasive failure to

cooperate with disciplinary authorities. Although the attorney also negligently misappropriated client funds and disbursed settlement proceeds without first obtaining a release from the client, as directed by the carrier, the suspension was largely predicated on the attorney's pattern of willful disregard for the ethics process.

Like Armotrading, respondent has displayed a pattern of failure to cooperate with disciplinary authorities. His first run-in with the disciplinary system, which resulted in a censure, also involved failure to cooperate with the OAE during its investigation. His failure to cooperate in the investigation of the current matter gave rise to his temporary suspension. His disrespect continued even after his suspension was in place. Respondent failed to appear for the DEC hearing, without so advising the committee. A respondent's appearance at an ethics hearing is mandatory. R.1:20-6(c)(2)(D). His disdain for the disciplinary process and for those who dedicate their time to it was appalling. A suspension is clearly warranted.

Armotrading received a six-month suspension for his failure to cooperate with the ethics investigation, negligent misappropriation, and improper release of funds, conduct more serious than respondent's. Armotrading had no prior discipline.

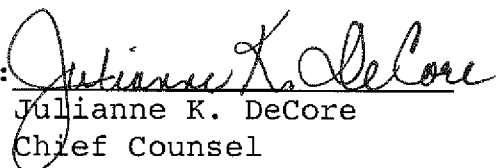
Respondent has a prior censure. His disciplinary history balances with Arnotrading's more serious misconduct, persuading us that, ordinarily, a six-month suspension would be appropriate for respondent as well.

We are, however, inclined to consider respondent's mitigating factors, specifically, his obligation to care for his mother and his own illness. In that light, we determine to lower the appropriate quantum of discipline one level and impose a three-month suspension.

Members Gallipoli and Zmirich voted for a six-month suspension.

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

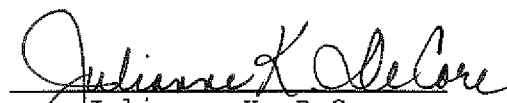
In the Matter of Peter Manolakis
Docket No. DRB 12-088

Argued: September 20, 2012

Decided: October 12, 2012

Disposition: Three-month suspension

Members	Disbar	Six-month suspension	Three-month suspension	Dismiss	Did not participate
Pashman			X		
Frost			X		
Baugh			X		
Clark			X		
Doremus			X		
Gallipoli		X			
Wissinger			X		
Yamner			X		
Zmirich		X			
Total:		2	7		


Julianne K. DeCore
Chief Counsel