SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-194
District Docket No. XIV-2010-0209E

IN THE MATTER OF	:
HUGO L. MORAS	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 20, 2012

Decided: November 27, 2012

Michael J. Sweeney 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 was before us on a recommendation for discipline (eighteen-month-suspension) filed by the District V-B Ethics Committee. The one-count complaint charged respondent with willful commingling of personal and attorney funds (RPC 1.15(a)), willful failure to maintain an attorney business account (R. 1:21-6(a) and RPC 1.15(d)), willfully depositing

attorney fees into a non-business account (R. 1:21-6(a)(2)), willful failure to maintain required books and records (R. 1:21-6(c)), and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). The hearing below proceeded on a stipulation of facts. At the hearing, respondent, the sole witness, offered evidence in mitigation of his conduct.

The Office of Attorney Ethics (OAE) recommended "at least a two- to three-year suspension." We determine that the more appropriate discipline is a three-month suspension, with conditions.

Respondent was admitted to the New Jersey bar in 1975. He is a sole practitioner, with offices in South Orange, New Jersey.

Effective April 5, 1993, respondent was suspended for a period of six months for using his trust account to issue a trust account check to a friend, who intended to set aside a judgment of foreclose on real property in which the friend had an interest. Although the friend gave respondent corresponding funds in the form of two checks, one of the checks bounced. As a result, client funds held in respondent's trust account were invaded. Relying on the friend's promise to make good on the check, respondent did not stop payment on the trust account

check, although he had the opportunity to do so. Ultimately, the friend gave respondent the funds, albeit in installments. The shortage was not made up until four years later, after respondent deposited some of his own funds. Respondent also commingled personal and client funds by leaving earned legal fees in his trust account and violated the recordkeeping rules by not maintaining receipts or disbursements journals for either his trust account and business account, not keeping a running checkbook balance, not maintaining client ledger sheets, and not preparing bank reconciliations and a schedule of client ledger balances. In re Moras, 131 N.J. 483 (1993). He was reinstated to the practice of law on November 3, 1993. In re Moras, 134 N.J. 223 (1993).

In 1997, respondent received a reprimand. There, respondent's business account check issued to pay a medical bill incurred by a client bounced because respondent's secretary stole $650 from his trust account and, thereafter, tried to disburse $650 from respondent's business account to cover the bill. Respondent was charged with violating RPC 1.15 (safekeeping property), RPC 5.3 (failure to supervise a non-lawyer employee), and R. 1:21-6 (recordkeeping). In re Moras,

151 N.J. 500 (1997). In 2005, he was again reprimanded, on a motion for discipline by consent, for failure to keep a client reasonably informed about the status of the matter and failure to communicate, in writing, the base or rate of his fee. In re Moras, 184 N.J. 232 (2005).[1]

In the current matter, respondent stipulated the following facts:

At all relevant times, respondent maintained a trust account with the Bank of America. He did not maintain a business account. On October 19, 2010, the OAE conducted a demand audit of his attorney trust account records for the period from July 2009 through September 2010. The audit revealed the following recordkeeping deficiencies: (1) the trust account was not reconciled on a monthly basis; (2) the trust account contained old outstanding client balances; (3) no attorney business account was maintained; (4) legal fees were not deposited to an attorney business account, but directly into either the personal

[1] On two occasions, in 1996 and 1997, respondent was temporarily suspended, although not for disciplinary reasons. The suspensions stemmed from respondent's failure to comply with his child support obligations. R. 1:20-11A. The suspensions lasted fifteen and twenty-seven days, respectively.

account of Frances DeBeau (respondent's secretary and girlfriend) or into a trust sub-account; (5) no trust receipts or disbursements journals were maintained; and (6) office staff signed respondent's name on trust account checks.

During the audit, respondent confirmed to the OAE that he did not maintain a business account. He closed the business account in 2009, after a levy was filed against it for a large unpaid medical bill. Specifically, after Saint Barnabas Medical Center obtained a $227,712.56 judgment against respondent, the hospital obtained a writ of execution, on April 24, 2009, authorizing a levy against respondent's personal and real property in Union County. Contemporaneously, respondent owed $71,389.21 to the IRS for tax years 2003 and 2004. As a result, the IRS, too, levied against respondent's personal accounts.[2] Respondent then stopped using his personal account and his attorney business account. Ultimately, he closed both because of the levies.

[2] Respondent told the hearing panel that the IRS levy totaled $127,000, rather than $71,000.

Thereafter, respondent created a trust sub-account in DeBeau's name, in which his legal fees were first deposited and then disbursed to DeBeau. DeBeau deposited the fees in her personal checking account, from which the firm's vendors were paid.[3] Respondent stipulated that he did so to avoid the hospital's and the IRS's levies.

At the DEC hearing, respondent testified about his poor physical health, his considerable medical bills, and his lack of health insurance. According to respondent, the judgment of divorce between him and his ex-wife provided for the wife to pay for their health insurance premiums, while he would be responsible for their son's college expenses, the son's car insurance, and a mortgage. Unbeknownst to him, however, his ex-wife stopped paying the premiums. In July 2007, following a heart attack and a quintuple bypass, he discovered that he had no insurance coverage. Nine months later, he had a severe infection in his left foot, resulting in the partial amputation of a toe.

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[3] Respondent treated DeBeau's checking account as a "business account."

Shortly thereafter, respondent was hospitalized for the removal of his gall bladder. At that time, he was told that his kidney function was declining and that dialysis would be only a matter of time. In August 2011, his kidney function dropped below ten percent, necessitating a one-week hospital stay. All of the above procedures/hospitalizations took place at Saint Barnabas Hospital.

Respondent also suffers from retinopathy, as a result of diabetes. About two years ago, after five or six laser treatments to his left eye (each treatment cost $1,500), he exhausted his savings and ran out of money. With his doctor's help, he applied for free treatments and was successful in obtaining assistance from the Commission for the Blind.

According to respondent, his medical and prescription bills were "running into hundreds of thousands." After lawyers for the hospital and for the anesthesiologist obtained judgments against him, he tried to reach a settlement with some of the doctors. Some were agreeable; others were not. He also attempted to settle with the hospital, but "the amount of money they required to settle was beyond [his] ability." According to respondent,

all of his creditors have been paid, with the exception of the hospital.

Respondent testified that, after being out of work for four months, he returned to a law practice that "had taken a pretty big hit." He continued:

> I moved my office from one location to another, to reduce the rent by 50 percent, I got rid of a couple of people, cut back on the overhead, I did what I could to reduce my expenses, but I still had expenses with the doctors, prescriptions, the drugs, and after my second levy . . . I realized that maintaining the business account was just going to be, even though it's mandated by — I don't dispute the rules, I don't dispute the violation, it became, you know, a merry-go-round, I put money in, and then they would levy on it, and then there were a couple executions out already against the account, I didn't do the bookkeeping I was supposed to do, and I admit that, but candidly, I lost a lot of time from work, I mean hours. In retrospect, hindsight is probably the best, I probably should have closed the office when I came back from the heart attack, because my ability to sustain a full-time practice just isn't there, anymore, I can't put in 40, 50 hours a week anymore, I can't.
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> . . . .
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> And one of the other things I've done trying to cut down on my bookkeeping and reducing my work load is, now, I do a closing, instead of doing the bookkeeping myself, I have a title company send an agent attorney from the title company, he takes the proceeds, he does

the bookkeeping, so I could relieve myself of that responsibility.

[T17-15 to T18-25.][4]

As to the IRS levy, respondent gave the following account of the circumstances that led to it:

> What happened was, when my ex-wife and I separated, it was not a very pleasant divorce, it was very contentious . . . . she was aware of certain financial transactions, certain things I've done to my son, and those transactions were brought to light by her, after we separated. The IRS brought me in, and the lady was Ms. Champion, a very nice lady, and she asked me a question, and I was very candid with her . . . and I said, yes, those transactions were with my son, and I said, I can't prove where the money came from, so she said, Well, you know, we're going to reassess and impose a tax on you, additional tax and penalties, so she asked for copies of all my medical records. . . . I gave her all the medical records, prescription records, copies of any paperwork she wanted, her [sic] and I dealt for a better part of a year, a year and-a-half, and she brought me in for one final meeting with her . . . and she sat me down, and she said to me, I'm convinced your health isn't good, I'm convinced you have all these prescriptions you have to take very day, and you have some serious problems, and she said, because of your age [respondent is sixty-four] and your health conditions . . . she said, We don't feel you're collectible, she said, and all your other bills, and your hospital bills and debts, she goes, "I've labeled you uncollectible", she goes, "so we

[4] "T" refers to the transcript of the DEC hearing on March 27, 2012.

won't be bothering you anymore", she said, and then she handed me a book, a white paperback book, I think it's called Accordant Compromise, it's a book that dealt with setting your account with the IRS, and she said to me, "This might be helpful to you, because of your financial situation, you could probably make us an offer for substantially less that what you owe us, and resolve your tax problems". Now, of course, she wouldn't, you know, commit to an amount, because that isn't her power of authority, but she did say — I said, "Well, supposing I could borrow money from my father to settle these tax liens, and she said, "Well, if you come up with maybe 25 percent of what you owe us, she says, we might be able to resolve this . . ." so one of the things I'm doing, I'm preparing, on actually March 29th [2012], I'll be eligible, I can file a Chapter 7 bankruptcy, to get rid of all these medical bills. Once I wipe out these bills, which I'll never be able to pay, because I have $1 million in judgments against me . . . I was going to sit down with my father, who has a — he has the financial wherewithal to lend me some money, and I'll ask him if I can borrow a sum of money to reconcile my problem with the IRS.

[T20-24 to T23-9.]

Respondent added that his mother and father are "immigrants, they made very good realty investments, over the years, my mother's born in Cuba, my father was born in Italy, so they're very hard working people, and my father had told me, he said, 'Get yourself clear of these hospital bills, file for bankruptcy and come down and talk to me', they're living in Florida now . . . ."

Respondent told the hearing panel that, since his last conversation with the IRS representative, there have been no further attempts to collect the sums owed to the IRS.

As of the date of the DEC hearing, respondent was practicing law and maintained a trust account, although not a business account. He testified: "[M]y plans were after I filed the bankruptcy, that will stop more executions or levies by the creditors . . . to open a business account." He was still paying his vendors through DeBeau's checking account.

In his brief to the DEC, the OAE presenter maintained that "[t]his case is about dishonesty;" that respondent's conduct was "goal-directed, focused, and clear: He misused his attorney accounts to hide personal assets from legitimate creditors;" that his conduct was "'willful' because he purposefully executed a course of dishonesty and intentionally engaged in a pattern of misconduct, both to achieve an illegitimate result;" and that the "focus of this case is respondent's efforts to evade the IRS and to escape another unsecured creditor, Saint Barnabas Medical Center." The presenter cited four cases, In re Vecchione, 159 N.J. 507 (1999) (six-month suspension for failure to file federal income tax returns for a period of twelve years); In re

Griffin, 121 N.J. 245 (1990) (one-year suspension for attorney who entered into a business transaction with a woman with whom he lived and who was also a client to pledge her house as collateral for a $20,000 loan for the attorney's benefit; the attorney did not advise the client to obtain independent counsel; when the attorney defaulted on the loan, the client was forced to sell the house to avoid a foreclosure); In re Garcia, 119 N.J. 86 (1990) (reprimand for attorney who filed to file federal income tax returns for three years); and In re Solomon, 110 N.J. 56 (1988) (attorney suspended for two years following guilty plea to one count of conspiracy to defraud the United States by trading upon confidential securities information obtained from his law firm).

In his answer, respondent explained that his "inability to maintain his business account resulted from the constant levy's [sic] and threats by creditors to place liens and levy's [sic] on [my] accounts;" that he "found it impossible to conduct his business practice in accordance with the Ethics Rules and Regulations, as it relates to Attorney Business Accounts, with the continual liens and levy's [sic];" that the "continual liens caused checks to bounce, some of which were made payable to

Courts and other individuals relating to [his] practice of law;" that his "disregard of the Rules and Regulations of maintaining a proper Business Account was in no way malicious in nature nor were they intended to be a direct disobedience, but in fact, a last act of desperation to continue to practice law;" that he had "every intention to clear up debts and judgments against him and then re-open an Attorney Business Account, however, each illness and medical issue thwarted [his] efforts to rectify same;" that the "IRS issues and problems arose as a direct result of [his] ex-wife's actions and attempt to exact revenge against [him] and contacted [sic] the Internal Revenue Service in regards to certain income issues of the parties; thereby resulting in an Audit and the imposition of taxes and penalties against [him];" that "the IRS audit could not be defended properly by [him] due in part to the fact that all prior tax years records were maintained at [his] former home, of which [his] ex-wife had custody of;" and that the "violation of any Rules and Regulations regarding the practice and Maintenance of accounts was solely done out of an act of desperation by a man desperately trying to get his life 'back on tract' after several debilitating health issues, financial woes and a nasty divorce . . . ."

The DEC found that respondent's deposit of his earned legal fees in his secretary/girlfriend's personal account was intended to "insulate the Respondent's personal assets and to attempt to place them beyond the reach of his creditors, who had previously levied on [his] attorney business account in enforcement of their lien against Respondent's assets." The DEC found that, despite respondent's claim that his efforts to "insulate these funds from his creditors were acts of desperation," they were made "knowingly and with the intent to prevent further execution on his personal assets by his creditors." The DEC concluded that respondent's "effort to defeat the legal rights of creditors amounted to dishonesty, a violation of RPC 8.4(c). The DEC remarked that, despite respondent's acknowledgement of the impropriety of his conduct, as of the hearing date he did not have a business account and continued to deposit his fees in DeBeau's personal account.

The DEC also found respondent guilty of willful commingling of attorney and personal funds, willfully depositing legal fees into a non-business account, and willfully failing to maintain required books and records, violations of RPC 1.15(a) and R. 1:21-6.

The DEC "did not feel that there were sufficient mitigating factors submitted by Respondent, stemming from his illnesses and resulting financial problems, which would justify, excuse or in any way mitigate his disregard of the Rules of Professional Conduct and the appropriate sanction for such violations." Furthermore, the DEC found that respondent's continuing course of conduct, in spite of having recognized its impropriety, "evidences a disdain for the Rules which Respondent has acknowledged he has violated" and "a lack of remorse on the part of the Respondent." The DEC concluded that respondent's "continuation of his offending practices provides a hollow ring to [his] expressions of contrition and remorse [to the OAE], and accordingly, the Panel gave no weight to this as a mitigating factor. Indeed the continuation of the improper conduct was felt by the Panel to be an aggravating factor."

As indicated previously, the DEC recommended an eighteen-month suspension.

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.

Admittedly, respondent violated the recordkeeping rule (R. 1:21-6)). He stipulated that he failed to maintain a business account into which all funds received for professional services must be deposited (R. 1:21-6(a)(2)); failed to perform monthly reconciliations of the trust account records (R. 1:21-6(c)(1)(H)); failed to promptly disburse client balances (R. 1:21-6(d)); failed to maintain appropriate receipts and disbursements journals (R. 1:21-6(c)(1)(A)), and authorized office staff to sign trust account checks (R. 1:21-6((c)(1)(A)). Violations of R. 1:20-1-6 are violations of RPC 1.15(d).

On the other hand, we are unable to agree with the DEC's finding that respondent violated RPC 1.15(a) by "willfully commingling attorney and personal funds," based on his withdrawals of legal fees from a special sub-trust account and deposit of them in his secretary's personal account. The commingling prohibited by RPC 1.15(a) is the commingling of trust funds and the lawyer's personal funds in a trust account ("A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property"). Respondent did not commingle trust and personal funds in his trust account. Rather,

he "commingled" his fees and DeBeau's personal funds in her checking account. That is not a violation of RPC 1.15(a). The impropriety here was that, after respondent drew his fees from his trust account (a proper depository of legal fees), instead of placing them in his business account, as required by R. 1:21-6(a)(2), he skipped that necessary step by depositing them directly from the trust account into DeBeau's checking account.

A lawyer may not directly deposit in a personal account legal fees drawn straight from his trust account. Legal fees must go from the trust account to a business account. Subsequently, the lawyer may place them in a personal account, if that is what the lawyer chooses to do with funds derived from professional services. By bypassing the business account, respondent violated R. 1:21-6(a)(2) and, therefore, RPC 1.15(d), an impropriety already encompassed in the above-cited recordkeeping violations that he stipulated. We, therefore, dismiss the charge that respondent violated RPC 1.15(a).

We now turn to the charge that respondent violated RPC 8.4(c) by insulating his earned legal fees from his creditors.

It is undisputed that respondent's decision to close his business account and to deposit his legal fees in DeBeau's

account was prompted by his desire to shield his professional earnings from his creditors, Saint Barnabas Hospital and the IRS, and that it constituted dishonesty, fraud, deceit or misrepresentation.

On the other hand, the record allows the conclusion that the method that he employed for handling his legal fees was a "stopgap" borne out of desperation, to use respondent's word, rather than a firm intent to permanently defeat the rights of his creditors, as found by the DEC. Respondent explained that he closed his business account because the colossal levies placed on it made it impossible for him to pay even for the expenses incidental to the representation of clients such as, for instance, court filing fees. In his answer, he asserted that he "found it impossible to conduct his business practice in accordance with Ethics Rules and Regulations, as it relates to Attorney Business Accounts, with the continual liens and levy's [sic]" and that the "continual liens caused checks to bounce, some of which were made payable to Courts and other individuals relating to Respondent's practicing of law." He disavowed any intent to permanently frustrate his creditor's collection efforts. He contended that his "disregard of the Rules and

Regulations of maintaining a proper Business Account was in no way malicious in nature nor were they intended to be a direct disobedience, but in fact, a last act of desperation to continue to practice law." He affirmed that he had "every intention to clear up debts and judgments against him and then re-open an Attorney Business Account, however, each illness and medical issue thwarted Respondent's efforts to rectify same." Indeed, respondent told the hearing panel that he tried to reach a settlement with some of the doctors and that "some of them were agreeable, some of them were not." Asked by the panel chair whether he had attempted to settle with the hospital, respondent replied that he had, but that "the amount of money they required to settle was beyond [his] ability." According to respondent, the judgment for his medical bills amounts to $1 million. He also told the panel that, with the exception of the hospital (and the IRS), all of his other creditors have been paid.

All in all, thus, the record does not afford a conviction that respondent was bent on defrauding or deceiving his creditors, as opposed to availing himself of an interim expedient that would allow him to continue with his law practice until his huge financial problems could be worked out.

Respondent told the hearing panel that was going to file for bankruptcy and then attempt to resolve the IRS lien, which, according to him, might be compromised to a much lower amount and then satisfied with his parents' financial assistance.[5]

We find, thus, that respondent violated RPC 8.4(c) for sheltering his income from the levies, but we conclude that he did so not to permanently defraud his creditors, but to be able to continue to represent clients, to pay office expenses such as court filing-fees and vendors, to earn a living, and hopefully to work out a solution to his financial woes. These circumstances serve to mitigate respondent's conduct. As respondent told us at oral argument, he was between a rock and a hard place. Every time he placed some funds in his business account, his "rent check would bounce, filing fees would bounce, bankruptcy fees were bouncing. It became a vicious cycle."

This case bears striking similarities to In re Olitsky, 149 N.J. 27 (1997), which resulted in a three-month suspension.

[5] At oral argument before us, respondent represented that he had filed for bankruptcy "this week" and also opened a business account "this week."

There, in addition to multiple recordkeeping deficiencies, an OAE audit disclosed that Olitsky was using his trust account to pay all of his business account expenses, as well as client costs, because he had closed his business account. In the Matter of Stephen M. Olitsky, DRB 96-089 (December 9, 1996) (slip op. at 3). Olitsky, too, owed some money to the IRS. In fact, the IRS had attempted to levy against his business account, but the bank vice-president had warned him of the impending levy and assisted him in withdrawing the funds prior to the levy. Id. at 3-4. Olitsky then closed his business account and opened a personal account "for the sole purpose of attempting to keep the IRS from levying on his fee income." Id. at 4.

Apparently, Olitsky filed the appropriate returns with the IRS, but was unable to make the necessary payments. He contended that he had contacted the IRS to work out a payment plan but that, once the IRS learned some information from him, it obtained a lien on his accounts. Id. at 7. He did not invade client funds. He admitted that his "main purpose in using his trust account was to 'thwart the IRS in its attempt to levy' on his business funds." Ibid. He claimed, however, that he was not "attempting to defraud anyone by commingling personal, client

and trust funds: 'I was not – well, okay, I don't know if it's defraud the IRS, it's avoid them taking money or what they believe was their money so that I could live.'" Id. at 9. He explained that he had gone through a divorce from his second wife, that he was saddled with $200,000 in debts owed to various creditors, including the IRS, that he had primary custody of his daughter, that the IRS had levied on both his personal and business account, that he and the daughter needed "some money to live on," and that the IRS was "actually taking it all." Id. at 4, 8-9.

We found Olitsky guilty of recordkeeping violations, commingling of personal and trust funds in the trust account, and conduct involving dishonesty, fraud, deceit or misrepresentation. The latter finding stemmed from his admission that he "attempted to avoid his tax responsibilities by commingling his personal and business funds with client funds because the trust account was safe from any IRS levy." Id. at 11.

We voted to suspend Olitsky for three months. Id. at 12.[6] The Court agreed with that measure of discipline. In re Olitsky, supra, 149 N.J. 27.

In a more recent case, In re Weber, 205 N.J. 467 (2011), the Court imposed a censure on an attorney who displayed analogous behavior. Weber, like respondent, entered into a stipulation with the OAE, was the subject of an OAE audit that uncovered numerous recordkeeping infractions, including the use of his trust account for both business and trust matters. Weber's purpose was to circumvent an IRS levy placed on his business account, which, the audit disclosed, had been "dormant for years." In the Matter of Howard W. Weber, DRB 10-341 (March 1, 2011) (slip op. at 2-3). Like respondent, Weber kept his legal fees in a separate trust account ledger, in which he also recorded his business and personal disbursements. Although the funds appeared to be Weber's client funds, they were "in fact . . . commingled funds which ultimately belong in the business account." Id. at 3-4.

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[6] Olitsky had received a prior private reprimand and an admonition.

Weber stipulated that his conduct violated RPC 1.15(a) for commingling personal and trust funds in the trust account, RPC 1.15 (d) for the numerous recordkeeping improprieties, and RPC 8.4(c) for avoiding the IRS lien. Id. at 5. In recommending either a reprimand or a censure, the OAE relied on Weber's unblemished ethics record and his full cooperation with the OAE. Id. at 2,5. As indicated previously, we voted for a censure, a quantum of discipline that the Court found appropriate.

In another recent case, In re Al-Misri, 197 N.J. 503 (2009), the attorney also received a censure for intentionally placing personal funds in his trust account to prevent a creditor from seizing them. In the Matter of Ousmane Dhu'L-Nun Al-Misri, DRB 08-194 (December 23, 2008) (slip op. at 3). Al-Misri also committed recordkeeping violations, grossly neglected a real estate matter, and practiced law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. Id. at 11-12. In voting for a censure in Al-Misri, we noted that the three-month suspension imposed in Olitsky had occurred before censure had become a recognized form of discipline. Moreover, we weighed the aggravating and mitigating factors, in reaching its decision.

Id. at 17. Specifically, Al-Misri had received two 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. On the other hand, we considered his acknowledgement of wrongdoing and the absence of any harm to his clients. His sobriety for twenty years and many years of help to other drug- and alcohol-dependent individuals, through several organizations, were also taken into account. Ibid. We remarked that, if not for his dedication to helping others recover from their addictions, we would have imposed a three-month suspension. Ibid.

How does respondent's conduct compare to those of the above attorneys? In every instance, the attorneys' personal assets were the subject of levies, either by the IRS or by other creditors. All of them used other accounts to prevent their personal funds from being seized. Respondent used another individual's personal account; Olitsky, Weber, and Al-Misri used their trust account. All exhibited inadequate recordkeeping practices.

The difference between this matter and the censure cases (and we are including Olitsky in that category) is that the

attorneys in those cases used their trust account, a more serious impropriety because not only did they commingle personal and client funds in their trust account but, in drawing from personal funds that they kept in the trust account, they exposed the clients' funds to the risk of invasion, or misappropriation. This aggravating factor found in Olitsky, Weber, and Al-Misri, however, is counterbalanced by an aggravating factor in this case that should place it at the level of a three-month suspension: respondent has an extensive ethics record (two reprimands and a six-month suspension), while Olitsky had a private reprimand and an admonition, Al-Misri had two admonitions, and Weber had no discipline. We, therefore, determine to impose a three-month suspension on respondent.[7]

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[7] The range of discipline recommended by the OAE, "at least a two- to three-year suspension" and the eighteen-month suspension recommended by the DEC are exceedingly harsh. Indeed, the cases cited in the OAE's brief are inapposite. Griffin (one-year suspension) involved an attorney's business transaction with a client who was not advised to seek separate legal advice. Solomon (two-year suspension) dealt with an attorney's guilty plea to conspiracy to defraud the United States by trading upon confidential securities information obtained from the attorney's law firm. Finally, Vecchione (six-month suspension) and Garcia (reprimand) addressed the attorneys' failure to file income tax returns, a violation with which respondent was not charged.

We also determine to impose certain conditions. Prior to reinstatement, respondent should produce proof of fitness to practice law, attested by a health practitioner approved by the OAE, and also show proof to the OAE that he has successfully completed a course in trust and business accounting for attorneys. After reinstatement, he should be required to submit to the OAE, for a period of three years, quarterly certifications confirming that his attorney records 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Hugo L. Moras
Docket No. DRB 12-194

Argued: September 20, 2012

Decided:

Disposition: Three-month suspension

Members	Disbar	3 month Suspension	Censure	Reprimand	Admonition	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel