

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-272  
District Docket No. XIV-2010-0488E

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IN THE MATTER OF  
KEITH O.D. MOSES  
AN ATTORNEY AT LAW

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Decision

Argued: January 17, 2013

Decided: February 11, 2013

Melissa Czartoryski 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 (censure) filed by the District VII Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.15(a) (failure to safeguard client trust funds, commingling, and negligent misappropriation), RPC 1.15(d) and R. 1:21-6

(recordkeeping violations), and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities).

The Office of Attorney Ethics (OAE) recommended a censure. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1990. In 2002, he was admonished for failure to cooperate with the DEC's investigation of two grievances filed against him. In the Matter of Keith O.D. Moses, DRB 02-248 (October 23, 2002).

In 2011, respondent was reprimanded for failing to act with diligence, failing to keep his client informed about her personal injury claim, and for unilaterally deciding not to pursue the client's claim. In re Moses, 208 N.J. 361 (2011).

The conduct that gave rise to this disciplinary matter was as follows:

Respondent represented Roslyn Turner in a real estate transaction that closed on August 31, 2010 (the Turner transaction). In September 2010, Octavio Mendes, Broker of Record for Keller Williams Mid-Town Direct Realty, advised the OAE that two checks that respondent had tendered from his attorney trust account in connection with the Turner closing had been returned for non-sufficient funds (NSF). In response, the

OAE scheduled a demand audit of respondent's attorney books and records, to be conducted on November 8, 2010.

On that date, OAE auditors Raymond R. Kaminski and John Rogalski arrived at respondent's office to conduct the audit.<sup>1</sup> Respondent's office was locked and no one answered the door. By letter dated November 10, 2010, the OAE advised respondent that the audit had been rescheduled for November 17, 2010, at the OAE's office. Respondent appeared for the audit, albeit approximately four hours late. The audit revealed that respondent did not maintain his attorney trust and business account records in compliance with the requirements of R. 1:21-6. Specifically, the audit revealed the following deficiencies:

1. Trust Account designation improper: must indicate "Attorney Trust Account" or "IOLTA Attorney Trust Account" on bank statements, checks and deposit slips;
2. IOLTA Trust Account not maintained;
3. Trust Receipts Journals not maintained;
4. Trust Disbursements Journals not maintained;
5. No ledger card identifying Attorney funds for bank charges;

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<sup>1</sup> Kaminsky has since retired from the OAE.

6. No individual ledger cards for each client;

7. No monthly trust bank [sic] reconciliation with client ledgers, journals and checkbook; and

8. Checks were disbursed against uncollected funds.

[Ex.4.]<sup>2</sup>

By letter dated December 15, 2010, respondent was given forty-five days to submit to the OAE evidence that he had brought his records into compliance with R. 1:21-6. The letter advised respondent that his violations were serious and that, if he did not comply by February 3, 2011, the OAE would seek his temporary suspension.

Respondent failed to provide the documentation. Kaminsky then contacted respondent, who requested additional time to comply with the OAE's requests. By letter dated February 24,

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<sup>2</sup> Ex. 4 is the deficiency letter that the OAE sent to respondent, following the audit. The deficiencies listed in the complaint are different from those listed in that exhibit. The complaint alleged that respondent failed to maintain both business and trust account receipt and disbursement journals; failed to prepare monthly three-way trust account reconciliations; maintained old inactive client balances for extended periods of time; and failed to safeguard the Turner funds by transferring them to his business accounts and commingling those funds with his own. In respondent's answer, he denied only the failure to safeguard/commingling allegation.

2011, respondent's request was denied. The OAE "suggest[ed]" that he provide the documentation "immediately." The OAE further advised respondent that he was facing a possible charge of, among others, failing to cooperate with disciplinary authorities.

As of the day of the DEC hearing, May 29, 2012, respondent had not provided the requested reconciliations of his accounts. Ultimately, Kaminsky reconstructed respondent's records through subpoenaed documents.

During the relevant time period, respondent maintained the following accounts in connection with his law practice:

Attorney Trust Account	No. xxxxxx-7378	Provident Bank
Attorney Business Account	No. XXXXXX-6597	Provident Bank
Attorney Trust Account	No. XXXXXX-8382	Bank of America
Attorney Business Account	No. xxxxxx-8405	Bank of America
Attorney Business Account	No. xxxxxx-8421	Bank of America
Attorney Business Account	No. xxxxxx-8395	Bank of America

[C13;A13.]<sup>3</sup>

Respondent was under the erroneous belief that his trust account was a "holding account" from which he was not permitted to write checks and that trust funds had to be transferred to a business account from which he could write checks.

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<sup>3</sup> C refers to the complaint. A refers to the answer.

As to the Turner transaction, on August 31, 2010, \$210,968.42 was wired into respondent's Provident Bank trust account #7378. Respondent transferred \$210,979.86 from the Provident Bank trust account #7378 to Provident Bank business account #6597, which amount represented the Turner funds and \$11.44 of respondent's funds. On September 2, 2010, cash received from Turner at the closing, in the amount of \$11,738.26, was deposited in respondent's Bank of America business account #8395. Also on September 2, 2010, respondent transferred \$32,000 of Turner's funds from Provident Bank business account #6597 to Bank of America business account #8421. Kaminsky testified that respondent inadvertently transferred the funds to account #8421, intending to transfer them to account #8395, from which respondent was able to write checks. It appears from respondent's statements to the OAE during his interview that this error caused the two checks in the Turner transaction to be returned NSF. In his answer, respondent explained that he transferred funds from Provident Bank to Bank of America to avoid bank charges.

From September 9, 2010 to October 1, 2010, respondent withdrew funds from his business accounts for business and

personal expenses, thereby, negligently misappropriating amounts ranging from \$677.12 to \$1,551.01.

By way of mitigation, in respondent's answer he set out a number of events that hindered his ability to be more responsive to the OAE. Specifically, respondent explained that, in December 2010, he was forced to file for bankruptcy because of a landlord/tenant proceeding that forced him to relocate to a smaller office. Because of the move, some of his files became "fragmented and misplaced." In addition, in March 2011, respondent became the subject of an "adversary proceeding;" he suffers from hypertension and diabetes and was hospitalized in July 2011; he has been dealing with other disciplinary matters; and he separated from his spouse of thirty-five years. Respondent also stated:

During September and October 2011, I attempted to enter into a partnership with another firm and became involved in a serious incident when one of the principals acted unprofessionally. Currently this matter is still unresolved and they have seized and withheld my files and important documents. While this is unrelated to my legal obligation, it has been an incident of

such proportion that it has resulted in severe damage to my health.

[A19.]

The OAE urged the DEC to recommend a censure, noting respondent's prior admonition and reprimand. Respondent, in turn, argued that a reprimand is the appropriate discipline, pointing out that attorneys are not trained in accounting or banking issues and that he relied on the banks' monthly statements.<sup>4</sup> In his view, because his misappropriation was negligent, due to incorrect accounting practices, a reprimand is the more appropriate measure of discipline.

The DEC found that respondent committed recordkeeping violations that resulted in negligent misappropriation and failed to provide requested records to the OAE, thereby violating RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, and RPC 8.1(b) and R. 1:20-3(g)(3).

The DEC noted the OAE's recommendation for a censure and the OAE's reference to respondent's disciplinary history. The DEC also noted respondent's contention that he should receive no

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<sup>4</sup> Kaminsky explained that some banks provide client sub-account information for attorney trust accounts that show the balance on a given date.



more than a reprimand, because attorneys are not accountants or bookkeepers, and that he relied on the closing agents and/or banks to ensure that transactions were properly administered and that sufficient balances remained in his accounts. The DEC remarked that, "[however], the Respondent's lack of sophistication with respect to accounting/record keeping does not alleviate him of his duty to comply with the rules cited in the OAE's complaint."

The DEC recommended that respondent be censured. The DEC further recommended that respondent "be subjected to monitoring" by the OAE for at least two years and be required "to attend whatever training is deemed appropriate by the OAE since Respondent's testimony makes clear that he has not learned the skills necessary to comply with RPC 1.15(a), RPC 1.15(d) and R. 1:20-3(g)(3)."

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC's conclusion that respondent is guilty of recordkeeping violations, negligent misappropriation, and failure to cooperate with the OAE was sustained by the record. Respondent clearly had no grasp of his responsibilities with

regard to client funds and improperly relied on banks to maintain his records for him. Moreover, he failed to appear for one demand audit, appeared four hours late for another, and failed to provide documentation evidencing that he had corrected his recordkeeping, as directed by the OAE. He, therefore, violated RPC 1.15(a) and (d) and RPC 8.1(b).

Negligent misappropriation of client funds is generally met with a reprimand. 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 over-disbursed 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; that aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Fox, 202 N.J. 136 (2010) (motion for discipline by consent; 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); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); and In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated \$103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations).

A reprimand may still result, even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. See, e.g., 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 Dias, 201 N.J. 2 (2010) (an over-disbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, we considered that the attorney, a single mother working on a per diem basis with little access to funds, was committed to and had been replenishing the trust account shortfall in installments); In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); 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 out of 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).

As to the appropriate quantum of discipline for respondent, we take Regojo as a starting point. As noted, Regojo negligently misappropriated client funds as a result of his failure to properly reconcile his trust account records. He also committed several recordkeeping improprieties, commingled personal and trust funds, and failed to timely disburse funds. Regojo had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies.

Regojo's misconduct is very like respondents, with the exception of the failure to timely disburse funds, which respondent did not do. Respondent, however, is guilty of failure to cooperate with the OAE, a violation not seen in Regojo. Respondent's failure to cooperate and Regojo's failure to disburse balance each other out. As to prior discipline, both attorneys were disciplined twice. Regojo, however, had been reprimanded twice, a history slightly worse than respondent's admonition and reprimand.

In Regojo, we considered mitigating factors in imposing a reprimand. In this case, although respondent was apparently dealing with a number of personal issues, those events that he enumerated, as he explained them, generally took place after he had already been derelict in his duty to cooperate with the OAE

and correct his recordkeeping. On the other hand, it is unlikely that the problems that respondent listed suddenly occurred in 2011 and were not already "brewing" in 2010. We consider those factors in mitigation.

We are aware that respondent has been previously admonished for failure to cooperate with disciplinary authorities. The fact that he has again committed the same infraction gives us pause. However, this does not appear to be an instance where the attorney was "thumbing his nose" at the system. Rather, the mitigating factors enumerated here were preventing him from giving the OAE's directions the precedence that they required. Moreover, respondent ultimately cooperated with the OAE and conceded the underlying allegations in the complaint. A reprimand, thus, remains the appropriate form of discipline in this matter.

In addition, respondent is to provide monthly reconciliations of his trust account to the OAE on a quarterly basis for two years, in order to ensure that he is no longer relying on banks to perform his recordkeeping for him.<sup>5</sup> To that

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<sup>5</sup> At oral argument before us, respondent represented that he has "an accounting service" now.


end, respondent is also to take a CLE class in accounting for attorneys.

As to the DEC's recommendation that respondent be "monitored," there is no indication that respondent was derelict in his duties to his clients. Thus, a proctor is unnecessary.

Judge Gallipoli and Member Zmirich would impose a censure. Member Baugh did not participate.

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 Keith O. Moses  
Docket No. DRB 12-272

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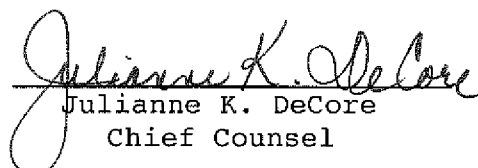
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Argued: January 17, 2013

Decided: February 11, 2013

Disposition: Reprimand

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Clark			X			
Doremus			X			
Gallipoli		X				
Wissinger			X			
Yamner			X			
Zmirich		X				
Total:		2	6			1

  
Julianne K. DeCore  
Chief Counsel