

negligent misappropriation of client funds (RPC 1.15(a)) and recordkeeping violations (RPC 1.15(d)), as well as his lack of diligence (RPC 1.3) in the representation of a client in a personal injury matter. For the reasons set forth below, we accept the OAE's recommendation and censure respondent for his misconduct. In addition, we require respondent to (1) submit monthly reconciliations to the OAE, on a quarterly basis, for a two-year period, and (2) attend a continuing legal education (CLE) course, approved by the OAE, on the topic of accounting for lawyers.

Respondent was admitted to the New Jersey bar in 1979. At the relevant times, he maintained an office for the practice of law in Camden.

In 1991, respondent received a private reprimand for his failure to maintain proper records for a period of seven years and to maintain records showing disbursements to a certain business agency on behalf of individual clients, as required by R. 1:21-6(b)(4), (6), and (9), which, in turn, constituted a violation of RPC 1.15(d). In the Matter of David Paul Daniels, DRB 91-018 (July 25, 1991).

In 1999, respondent was reprimanded for the negligent misappropriation of more than \$54,000 in client funds,

recordkeeping violations, conflict of interest by entering into an improper business relationship with a client (RPC 1.8(a)), and providing financial assistance to a client in connection with a pending or litigated matter (RPC 1.8(e)). In re Daniels, 157 N.J. 71 (1999). He was ordered to practice under the supervision of a proctor for a period of two years and until further order of the Court. The proctorship was terminated on April 26, 2001.

The facts are taken from the parties' stipulation, dated June 3, 2013.

On February 7, 2013, the OAE conducted a random compliance audit of respondent's books and records for the period encompassing February 1, 2011 through January 31, 2013. The audit uncovered the negligent misappropriation of \$12,753.43 in client trust funds in two client matters.

Specifically, on March 20, 2012, respondent disbursed \$10,000 from his attorney trust account to his client, Lucille Roach. The payment was made in settlement of Roach's malpractice claim against respondent, arising out of his failure to file a personal injury complaint on her behalf, prior to the expiration of the statute of limitations. The \$10,000 payment to Roach should have been made from respondent's attorney

business account, as there were no funds on deposit in his trust account belonging to her. Thus, according to the stipulation, this disbursement "negatively impacted" \$10,000 in trust account funds belonging to other clients.

According to respondent, he mistakenly issued the check from the trust account, instead of the business account. The audit disclosed that, at the time the trust account check was issued, respondent's business account held sufficient funds to cover the \$10,000 payment to Roach.

In another matter, respondent settled a personal injury case, on behalf of his client, Raymond Rooks, for a total of \$18,000, which was paid in the form of two checks. Of this amount, respondent was entitled to \$9,096.57 in fees and costs. Respondent mistakenly disbursed \$11,850 to himself, creating a trust account shortage of \$2,753.43, thereby "negatively impacting" the trust account funds of other clients. Moreover, he disbursed his fee five days prior to the deposit of the second settlement check.

The details underlying respondent's disbursement of an excess legal fee, prior to the deposit of the second settlement check, are set forth in a November 8, 2013 letter from the OAE to Office of Board Counsel. In that letter, Deputy Ethics

Counsel Melissa A. Czartoryski explained that, in the Rooks matter, respondent disbursed a portion of his legal fees, \$3500, from the first settlement check. When he received the second settlement check, he had forgotten that he had previously received part of his fee. He, thus, disbursed more funds from the second check than he should have. Because the OAE's review of respondent's business account revealed no immediate need for the funds, the OAE accepted respondent's explanation.

As to respondent's premature disbursement of his legal fees, he explained that, although the settlement check was received prior to respondent's December 14, 2011 disbursements, his secretary did not deposit it until December 20, 2011. Again, the OAE was satisfied with respondent's explanation.

Because of respondent's deficient recordkeeping practices, he was unaware of the negative balances in his trust account until he began to prepare for the OAE audit.

In addition to the negative balances in the trust account, the audit uncovered the following recordkeeping deficiencies: (1) a schedule of clients' ledger accounts was not prepared and reconciled monthly to the trust account bank statement (R. 1.21-6(c)(1)(H)) and (2) clients' ledger cards were found with debit balances (R. 1.21-6(d)).

Based on these facts, the parties stipulated to respondent's violation of RPC 1.3, RPC 1.15(a), and RPC 1.15(d).

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." Here, respondent's lack of diligence led to the expiration of the statute of limitations period, which time-barred his client's personal injury claim.

RPC 1.15(a) requires an attorney to safeguard client and escrow funds. Respondent invaded client funds, when he issued the settlement check to Roach from his trust account, instead of his business account, and when he disbursed more than he was entitled to receive as a legal fee in the Rooks matter and, in addition, did so before the second settlement check had been deposited into the trust account. These misappropriations were negligent, however, as the disbursements were made by mistake.

RPC 1.15(d) requires an attorney to comply with the provisions of R. 1:21-6, the recordkeeping rule. As shown above, respondent violated two provisions of the recordkeeping rule and, in turn, violated RPC 1.15(d).

Generally, a reprimand is imposed for negligent misappropriation of client funds, even when accompanied by other, non-serious infractions. See, e.g., 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, but the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled); 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); and In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account).

In this case, we conclude that a reprimand would not be sufficient because, not only does respondent have an ethics history, but, in two prior disciplinary matters, he was found guilty of recordkeeping violations and, in one of them, he also negligently misappropriated client funds. Given his disciplinary history, we determine to censure him in this matter.

Moreover, because respondent's continuing failure — perhaps even unwillingness — to comply with R. 1:21-6 is a serious issue, we require that, for a two-year period, he submit monthly reconciliations to the OAE, on a quarterly basis. We also

require that respondent attend a CLE course on the topic of accounting for attorneys, within sixty days of the date of the Court's order, said course to be approved by the OAE.

Member Gallipoli did not participate. Members Hoberman and Singer abstained.

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
Bonnie C. Frost, Chair

By: 
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David P. Daniels
Docket No. DRB 13-204

Argued: November 21, 2013

Decided: December 12, 2013

Disposition: Censure

Members	Disbar	Suspension	Censure	Abstained	Did not participate
Frost			X		
Baugh			X		
Clark			X		
Doremus			X		
Gallipoli					X
Hoberman				X	
Singer				X	
Yamner			X		
Zmirich			X		
Total:			6	2	1



Isabel Frank
Acting Chief Counsel