

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-365
District Docket No. XIV-2009-0208E

IN THE MATTER OF
CHARLES W. CLEMENS
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: February 18, 2009

Decided: April 22, 2010

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation
filed by the Office of Attorney Ethics ("OAE"). Respondent
stipulated that he negligently misappropriated client funds and
engaged in numerous recordkeeping violations. We determine to
impose a reprimand for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1971. He has no prior discipline.

The stipulated violations were discovered during a June 3, 2008 OAE random audit of respondent's attorney trust and business accounts for the period May 1, 2006 through April 30, 2008.

The audit revealed a \$17,975.98 shortage in respondent's trust account as of August 2008. The shortage was caused by over-disbursements in three client matters: the estate of Gill (\$10,982.68), the Hennings matter (\$4,643.77), and the estate of Boyers-Bacchino (\$2,349.53). In the estate matters, respondent made overpayments to some of the beneficiaries. In the Hennings matter, he overpaid himself. The OAE specifically determined that the overpayments were the result of poor recordkeeping practices, as opposed to an intentional misuse of trust account funds.

On September 30, 2008, respondent reimbursed the trust account the entire \$17,975.98.

With respect to recordkeeping, respondent stipulated the following deficiencies:

- a) failure to prepare and reconcile client ledger accounts with trust account bank statements;
- b) no separate client ledger sheets for each client;
- c) no trust account receipts journal;
- d) no trust account disbursements journal;
- e) no business account receipts journal;
- f) no business account disbursements journal; and
- g) deposit slips were lacking in sufficient identifying detail.

[S3.]¹

Respondent stipulated that his conduct in this matter violated RPC 1.15(a) (negligent misappropriation), as well as RPC 1.15(d) and R. 1:21-6 (recordkeeping).

The stipulation noted that, in 1991, respondent was the subject of a random audit, which revealed virtually the same recordkeeping deficiencies as the within 2008 audit. He was not disciplined for those irregularities. The OAE recommended the imposition of a reprimand, citing In re Conroy, 185 N.J. 277 (2005), and In re Seradzky, 200 N.J. 230 (2009).

¹ "S" refers to the disciplinary stipulation.

Following a review of the record, we are satisfied that the stipulation fully supports findings of violations of RPC 1.15(a) as well as RPC 1.15(d) and R. 1:21-6.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Seradzky, supra, 200 N.J. 230 (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 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); 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); 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 Winkler, 175 N.J. 438 (2003) (attorney negligently invaded clients' funds, commingled personal and trust funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4,100 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 re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated \$31,000 in client funds and failed to comply with recordkeeping requirements); and In re Goldstein, 147 N.J. 286 (1997) (attorney negligently misappropriated client funds and failed to maintain proper trust and business account records).


We find the aggravating and mitigating factors to be in near equipoise. In aggravation, respondent was found to have had similar deficiencies during a 1991 audit, for which he was not disciplined. In mitigation, he has no prior discipline in almost forty years at the bar. Under the circumstances, we find that a reprimand sufficiently addresses respondent's misconduct.

Indeed, at times, even when the attorney has received prior discipline for negligent misappropriation and recordkeeping

deficiencies, a reprimand may still result. See, e.g., In re Regojo, 185 N.J. 395 (2005) (reprimand imposed on attorney who 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). We also require him to provide the OAE, quarterly and for two years, monthly reconciliations of his trust account. Member Stanton recused himself.

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

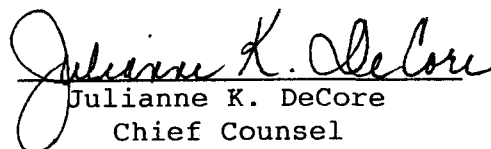
In the Matter of Charles W. Clemens
Docket No. DRB 09-365

Argued: February 18, 2010

Decided: April 22, 2010

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton					X	
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8		1	


Julianne K. DeCore
Chief Counsel