

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-362
District Docket No. XIV-08-0261E

IN THE MATTER OF :
 :
 :
 EDWARD A. MAC DUFFIE, JR. :
 :
 :
 AN ATTORNEY AT LAW :
 :
 :

Decision

Argued: February 18, 2010

Decided: April 5, 2010

HoeChin Kim 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 came before us on a disciplinary stipulation
between respondent and the Office of Attorney Ethics ("OAE").
Respondent admitted that he engaged in violations of RPC 1.15(a)
(negligent misappropriation of trust funds), as well as RPC
1.15(d) and R. 1:21-6 (recordkeeping violations).

The OAE recommended a reprimand. We agree with the OAE's
recommendation.

Respondent was admitted to the New Jersey bar in 1971. He maintains a law office in Lavallette, New Jersey.

In 2008, respondent was reprimanded for engaging in a conflict of interest and improperly disbursing a portion of settlement proceeds. In re MacDuffie, 196 N.J. 532 (2008).

Specifically, respondent represented a husband in a personal injury matter and the wife in a per quod claim arising from the same incident. Respondent continued to represent the couple after they separated and filed for divorce, even though their interests became adverse and the wife claimed that respondent favored the husband's interests over her own.

Respondent also improperly disbursed settlement funds to the husband, after the wife withheld her consent to the disbursement and the court had prohibited payments to anyone other than the parties' attorneys.

According to the stipulation, an OAE random audit of respondent's books and records revealed that respondent's records contained multiple recordkeeping deficiencies and that he had negligently misappropriated trust funds. The OAE examined respondent's three trust accounts (primary account no. 1743, secondary account no. 1751, and tertiary account no. 4443).

Primary Attorney Trust Account

Respondent's outside accounting firm conducted an initial reconstruction of his primary trust account. As a result of the reconstruction, on February 20, 2007, respondent deposited \$29,053.07 to cover a detected shortage in that amount. Corrections to the accountant's reconstructed records and a final reconciliation, presumably conducted by the OAE, revealed that the shortage was only \$21,363.48. Because of the large volume of activity in the account and a "computer conversion problem," respondent was unable to determine the actual cause of the shortage in his primary trust account.

The OAE auditor's review of respondent's records revealed that the shortage was the result of respondent's negligent bookkeeping practices, in particular, his failure to reconcile his trust account on a monthly basis.

Secondary Trust Account

Respondent's failure to reconcile the secondary trust account and to timely review bank statements for an extended period of time prevented him from discovering charges against this account. Specifically, between August 28, 2003 and October 28, 2004, eight payments totaling \$10,063 to Fleet Credit were

processed on respondent's behalf, through his secondary trust account.

During the audit, when the OAE informed respondent about the shortages, he deposited sufficient funds into the account to correct the errors. As of June 2008, all funds remaining in the secondary trust account had been properly disbursed.

The OAE auditor was satisfied that the shortage in respondent's secondary trust account resulted from respondent's negligent bookkeeping practices, particularly his failure to reconcile his trust account on a monthly basis.

The OAE audit also uncovered the following recordkeeping improprieties:

1. Client Trust Ledger sheets not fully descriptive. [R.1:21-6(c)(1)(B)].
2. Attorney Trust Account receipts not fully descriptive. [R. 1:21-6(c)(1)(A)].
3. Inactive Trust Ledger balances in the Attorney Trust Account. [R. 1:21-6(d)].
4. Client Ledger cards found with debit balances. [R. 1:21-6(d)].
5. Separate ledger sheet not maintained detailing attorney funds held for bank charges. [1:21-6(d)].
6. Old outstanding Attorney Trust Account checks not resolved. [R. 1:21-6(d)].
7. Schedule of client ledger account balances not prepared and reconciled monthly to Attorney Trust Account bank statement. [R. 1:21-6(c)(1)(H)].
8. Attorney Trust Account Bank Reconciliation for third Attorney Trust Account showed total trust funds on

deposit in excess of total trust obligations. [R. 1:21-6(d)].

9. Primary Attorney Trust Account Bank Reconciliation showed total trust funds on deposit deficient of total trust obligations. [R. 1:21-6(d)].

[S3-S4.]¹

Respondent had been previously audited, on April 15, 1986. Items 1 and 7, deficiencies also noted in the OAE's 1986 audit, were still present at the OAE's 2005 audit.

Following a full review of the record, we are satisfied that the stipulation presents clear and convincing evidence that respondent violated RPC 1.15(a) and RPC 1.15(d). The stipulated facts support respondent's admission that he negligently misappropriated client funds and had multiple recordkeeping deficiencies.

The only issue left for determination is the proper quantum of discipline. Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., 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

¹ S denotes the 2009 Disciplinary Stipulation.

reprimand); In re Weinberg, 198 N.J. 380 (2009) (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 the negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled); and In re Winkler, 175 N.J. 438 (2003) (reprimand for attorney who commingled personal and trust funds, negligently invaded clients' 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).

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 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 negligently misappropriating client funds as a result of numerous recordkeeping violations and commingling personal and clients' funds; the attorney had received a prior reprimand).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In re Gemma, 195 N.J. 5 (2008) (in seven real estate matters, the attorney's trust checking account was out of trust in amounts ranging from a few dollars to nearly \$100,000; the misappropriations were negligent, caused by the attorney's failure to maintain proper books and records; compelling mitigation considered, including that the attorney no longer practices law); In re Weston-Rivera, 194 N.J. 511 (2008) (attorney negligently misappropriated client's funds in two matters, violated the recordkeeping rules, and charged an excessive fee in eighteen personal injury matters by improperly deducting the fee from gross settlement proceeds and by deducting overhead charges from the clients' share of the proceeds; unblemished career of thirty years was viewed as a compelling mitigating factor); In the Matter of Michael Palmer, DRB 07-382 (March 3, 2008) (attorney negligently misappropriated more than \$30,000 in client and escrow funds in five real estate

transactions in which he represented the buyer; the attorney was unaware of these invasions because he did not reconcile his trust account; in mitigation, we considered that the attorney covered all trust account shortages once they were brought to his attention and that he had no prior disciplinary infractions); and In re Michals, 185 N.J. 126 (2005) (attorney negligently misappropriated \$2,000 for one day and \$187.43 for two days, respectively, commingled personal and trust funds, and violated the recordkeeping rules; in mitigation, we considered that the trust account shortage was limited to a few days, that he had no prior encounters with the disciplinary system, that he assumed full responsibility for the problems with this practice, and that he subsequently made recordkeeping a priority).

Here, mitigating circumstances were set forth in the stipulation and were presented at oral argument before us. Respondent stated that he currently has an accounting firm overseeing his books and records for his very active solo practice. He added that he is active in his local parish, served on the Seaside Board of Education for a number of years and the Seaside Volunteer Fire Department for twelve years, was a member of the New Jersey National Guard for approximately thirteen years, worked for the Judge Advocate General's

Corporation until his solo practice became too demanding, and was a volunteer civil mediator.

Respondent also disclosed that he is a recovering alcoholic and has been sober for eight years. He attends Alcoholics Anonymous programs three times a week and assists other alcoholics with their recovery. According to respondent, his ethics problems caused him to suffer from depression, for which he has undergone treatment and is taking medication. Respondent also expressed contrition for his ethics improprieties.

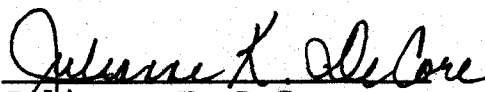
We have considered respondent's mitigation, as well as his ethics history, a reprimand. We have also considered that some of his recordkeeping improprieties here are the same improprieties that existed in two prior audits. Balancing the mitigating factors against the aggravating factors, we conclude that the mitigating factors do not warrant a reduction of the standard discipline for violations of RPC 1.15(a) and RPC 1.15(d), a reprimand. We, therefore, determine that a reprimand is the appropriate degree of discipline here.

We also determine to require respondent to submit monthly trust account reconciliations to the OAE on a quarterly basis and for a period of two years.

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

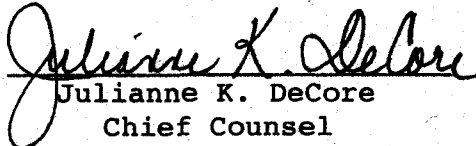
In the Matter of Edward A. MacDuffie, Jr.
Docket No. DRB 09-362

Argued: February 18, 2010

Decided: April 5, 2010

Disposition: Reprimand

Members	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:			9			


Julianne K. DeCore
Chief Counsel