



if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation." In this case, the parties agreed that, in two client matters, respondent delayed in the satisfaction of tax liens, even though he had escrowed funds for that purpose. The parties also agreed that respondent had committed certain recordkeeping violations.

Although this matter is before us pursuant to R. 1:20-6(c)(1), the District V-C Ethics Committee ("DEC") issued a hearing panel report in which it characterized as "stipulated facts" the allegations of the complaint, which were admitted by respondent in his answer. The rule, however, merely required the DEC to file directly with us the pleadings and a statement of procedural history for our consideration in determining the appropriate sanction to be imposed. In this regard, the hearing panel report states that, although respondent's answer had requested a hearing on mitigation, respondent and the presenter agreed to waive a hearing so that the matter could proceed under R. 1:20-6(c)(1).

The DEC recommended that respondent receive a reprimand and that he be required to submit monthly reconciliations to the

Office of Attorney Ethics ("OAE") for one year. The OAE concurs with that recommendation.

Respondent requests the imposition of an admonition. At oral argument before us, his counsel stated that he has no objection to the submission of monthly reconciliations. For the reasons expressed below, we determine to impose an admonition on respondent and to require him to submit monthly reconciliations to the OAE for one year.

Respondent was admitted to the New Jersey bar in 1996. At the relevant times, he maintained an office for the practice of law in Bloomfield. He has no disciplinary history.

**The Audrey Moyd Matter**

On February 11, 2004, respondent represented Audrey Moyd in the purchase of real property located in Jersey City. From the proceeds of the sale, he placed \$14,000 in escrow for the satisfaction of three tax liens on the property. On February 16, 2004, respondent wrote to the Jersey City tax collector and requested pay-off figures for the tax sale certificates.

On approximately May 25, 2004, Moyd received a tax sale warning notice from the tax collector's office. Upon receipt of this notice, Moyd faxed a copy to respondent.

On June 3, 2004, Moyd paid \$632.51 to Jersey City to avoid a tax sale of her property. Moreover, in July 2004, Moyd's mortgage company, CitiMortgage, paid to Jersey City \$11,981.40 in tax lien assessments and \$3,646.65 in local taxes.

From May 24 through September 8, 2004, Moyd regularly and repeatedly attempted to contact respondent to obtain his assistance in getting the tax liens paid off. But for one occasion, respondent did not communicate with her. On the one occasion when Moyd and respondent spoke, he "assured her that he would take care of the problem but failed to do so."

Moyd then retained attorney Randy Redden to assist her in resolving the tax lien issue. On September 8, 2004, Redden wrote to respondent and demanded that he return the escrowed funds and reimburse Moyd for the \$2,138.13 in penalties that had been assessed by CitiMortgage.

On September 9, 2004, respondent turned over to CitiMortgage the \$14,000, which had remained in his trust account since the closing. In his answer to the formal ethics complaint, respondent stated that he "is prepared to reimburse Ms. Moyd for any losses that she sustained."

Respondent admitted that his conduct violated the RPCs with which he was charged: RPC 1.3 (lack of diligence), RPC 1.4(b)

(failure to communicate with the client), and RPC 1.15(b) (failure to promptly deliver to a third party the funds to which that third party was entitled to receive).

**The Althea Ferguson Matter**

On April 29, 2004, respondent represented Althea Ferguson in the purchase of a Jersey City property. From the proceeds of the sale, respondent escrowed \$7,525.39, which was to be used to redeem a tax lien and to pay back taxes, as well as to pay \$849.82 for the 2004 second quarter taxes, \$1,270.40 for the realty transfer tax, and \$575 for a survey. Respondent did not make these disbursements.

On April 11, 2005, Ferguson received a notice from Countrywide Home Loans, informing her that it had paid \$8,238.98 to satisfy the delinquent property taxes. Eventually, respondent satisfied all of the outstanding obligations from the Ferguson closing.

Respondent admitted that his conduct violated the RPCs with which he was charged: RPC 1.3 and RPC 1.15(b).

### Recordkeeping Violations

At some point, the OAE audited respondent's books and records for the period encompassing September 22, 2003 through February 14, 2004. The audit uncovered the following recordkeeping violations: (1) the trust receipts and disbursements journals were not maintained (contrary to R. 1:21-6(c)(1)(A)); (2) a schedule of client ledgers was not prepared and reconciled monthly to the trust account bank statements (contrary to R. 1:26(c)(1)(H)); and (3) the trust accounts had inactive balances for "extended periods of time and old outstanding checks were not resolved" (contrary to R. 1:21-6(d)). As to this last recordkeeping violation, respondent maintained a \$37,212.71 inactive trust account balance, representing funds from thirty real estate closings, which he had failed to disburse for at least a two-year period.

Respondent admitted that his conduct violated the RPCs with which he was charged: RPC 1.3, RPC 1.15(b), and RPC 1.15(d).

In mitigation, respondent pointed out, in his answer, that (1) he has no ethics history; (2) he cooperated with the disciplinary authorities in this matter; (3) he acknowledged responsibility and is remorseful; (4) he has a good reputation

in the legal community; and (5) he served as the assistant public defender for the Township of Belleville, where he is currently the assistant prosecutor. Respondent also cited his move to a solo practice in August 2003, where he became "overwhelmed by his case load and the new responsibilities;" a "contentious divorce," which was finalized in February 2004 and caused him to move his personal residence and office in April and May 2004; and his "difficulty in securing competent help during the relevant time period."

The undisputed facts establish that respondent engaged in unethical conduct. Respondent's delay in disbursing the escrowed funds to the designated recipients in the Moyd and Ferguson matters constituted a violation of RPC 1.3 and RPC 1.15(b). Also, in the Moyd matter, respondent violated RPC 1.4(b) (requiring an attorney to promptly comply with the client's reasonable requests for information) when, for more than three months, he ignored all but one of his client's attempts to communicate with him about the unpaid liens.

Finally, respondent's recordkeeping deficiencies violated RPC 1.15(d).<sup>1</sup>

There remains the quantum of discipline to be imposed for respondent's violations of the rules cited above. For each of respondent's individual violations, an admonition is typically imposed, even if accompanied by other, albeit non-serious, violations. See, e.g., In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (attorney did not promptly disburse to a client the balance of a loan that was refinanced; in addition, the attorney did not adequately communicate with the client and did not promptly return the client's file; violations of RPC 1.15(b), RPC 1.4(b), and RPC 1.16(d)); In the Matter of Walter A. Laufenberg, DRB 07-042 (March 26, 2007) (following a real estate closing, attorney did not promptly make the required payments to the mortgage broker and the title insurance company; only after the mortgage broker sued the attorney and his client did the attorney compensate everyone involved; violations of RPC

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<sup>1</sup> RPC 1.15(d), rather than RPC 1.3, is the rule applicable to bookkeeping improprieties.



1.1(a) and RPC 1.15(b)); In the Matter of Gordon Allen Washington, DRB 05-307 (January 26, 2006) (for a seven-month period, attorney did not disburse the balance of escrow funds to which a party to a real estate transaction was entitled; the attorney also lacked diligence in addressing the problem once it was brought to his attention); In the Matter of Alan Zark, DRB 04-443 (February 18, 2005) (attorney violated RPC 1.4 (a) and (b)); the attorney did not reply to the clients' requests for information about their matter; in addition, the attorney caused his clients unnecessary concern over the disposition of some checks to be transmitted to a court-appointed fiscal agent when the attorney turned over the checks to the agent six months later, without first notifying the clients); In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain uncashed, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); and In the Matter of

Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions). But see In re Colby, 193 N.J. 484 (2008) (reprimand for attorney who violated the recordkeeping rules; although the attorney's recordkeeping irregularities did not cause a negligent misappropriation of clients' funds, he had been reprimanded previously for the same violations and for negligent misappropriation as well).

In this case, for respondent's violation of RPC 1.3 and RPC 1.15(b) in two matters, RPC 1.4(b) in one matter, and RPC 1.15(d), we determine to impose an admonition. In doing so, we consider respondent's unblemished disciplinary record, as well as his personal and professional difficulties during the time of the infractions. In addition, respondent must provide monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a period of one year.

Member Wissinger 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  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of John E. Cerza  
Docket No. DRB 10-027

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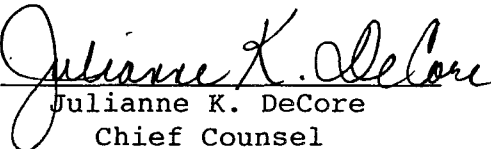
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Argued: April 15, 2010

Decided: May 26, 2010

Disposition: Admonition

Members	Disbar	Admonition	Suspension	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