SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-276
District Docket No. XIV-07-218E

IN THE MATTER OF

JEFFREY M. ADAMS

AN ATTORNEY AT LAW

Decision

Argued: November 15, 2007

Decided: December 20, 2007

Richard J. Engelhardt 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), based on respondent's one-year suspension in New York for commingling client and personal funds, sharing fees with a suspended attorney, and failing to safeguard client funds. The OAE recommends a one-year suspension, retroactive to respondent's New York suspension on May 10, 2007. We agree with the OAE's recommendation.

Respondent was admitted to the New Jersey bar in 1986, the same year that he was admitted to the New York bar. He has no prior discipline.

An eight-charge (count) petition (complaint) alleged that respondent mishandled his New York trust account and improperly shared fees with his father, Eugene Adams, a suspended attorney.

After respondent passed the bar in 1986, he took his first attorney position as an associate in his father's New York law firm. Respondent remained there until 1991, when he opened his own law practice. In 1994, father and son opened a law office as partners, naming it "Adams & Adams, PC."

In September 1996, Eugene was suspended from the practice of law in New York. As a result, respondent was designated the sole signatory on the firm's trust account.

Charges one through seven of the New York petition alleged that respondent commingled personal and client funds in the trust account, made disbursements from the trust account when it lacked corresponding funds for disbursement, made premature disbursements from funds that had not yet been deposited, failed to promptly make disbursements on behalf of clients, and failed to maintain proper attorney books and records. The petition charged respondent with violating 22 NYCRR §1200.46(a) and 22 NYCRR §1200.3(a)(7) (failing to safeguard client funds and/or to maintain adequate client funds in the attorney trust account, comparable to New

Jersey's RPC 1.15(a)), 22 NYCRR §1200.46(d) subsections (1), (2) and (9) (failure to maintain adequate trust account books and records, comparable to New Jersey RPC 1.15(d)).

Charge eight alleged that respondent improperly shared fees with Eugene after Eugene's suspension, in violation of 22 NYCRR §691.10(b) (paying or sharing fees with a suspended or disbarred attorney, comparable to New Jersey R. 1:20-20(b)(13) and RPC 5.4(a)).

On forty-four occasions over a period of three and a half years, respondent paid Eugene a portion of the firm's earned fees. Those fees totaled $211,113.63. According to the petition, respondent shared the fees without first making an application to the court, as required by 22 NYCRR §691.10(b). That rule provides that the amounts and manner of payment to a suspended attorney be determined by a court, prior to the effective date of the attorney's suspension.

On August 5, 2005, respondent filed a verified answer to the petition, admitting the underlying facts. On October 18, 2005, respondent and the New York ethics authorities entered into a stipulation. Respondent admitted charges one through seven, that is, failure to safeguard trust funds, commingling, and recordkeeping improprieties.

In his April 10, 2006 report, the special referee concluded that respondent was guilty of charges one through seven:

a) Between April 30, 1999 and September 30, 2003, Respondent deposited and/or retained earned legal fees and reimbursed expenses totaling in excess of $230,000.00 in his IOLA account;

b) From August 10, 1999 through January 13, 2003, Respondent "adjusted" his IOLA account by writing checks disbursing the earned fees and reimbursed expenses that had accumulated in his IOLA account. These checks, which totaled $215,892.31, were made payable to the Adams Law Firm, Eugene Adams (Respondent's father) and Chas. A. Schwab & Co. Respondent was unable to explain how he determined the specific amount of each disbursement and he was unable to specify the clients to whom they related. On the dates that three of the disbursements were made, Respondent's IOLA account did not contain sufficient funds from earned fees and reimbursed expenses to cover the "adjustments" made by Respondent. As a result, these three disbursements were drawn, in whole and/or in part, against funds being held for the benefit of clients. The disbursement made on January 17, 2003, in the sum of $91,134.88 made payable to The Adams Law Firm, resulted in a negative balance of earned fees and reimbursed expenses on deposit in the IOLA account. This negative balance remained through September 30, 2003, which was the end of the period audited by the Grievance Committee. As of that date, the balance of earned fees and reimbursed expenses in the IOLA account was minus $34,313.82;

c) On June 29, 1999, Respondent mistakenly deposited escrow funds, in the sum of $24,500.00, held for his clients Weber and Gura, into his operating account. Respondent failed to review the operating account records and/or take corrective action. Respondent did not learn of this error until it was brought to his

attention by the Grievance Committee four years later;

d) From 1999 through 2003, Respondent made various disbursements from his IOLA account. At the time of these disbursements, there were no funds and/or insufficient funds on deposit in the IOLA account to cover the disbursements.

e) On April 30, 1999, the first day of the period audited by the Grievance Committee, the balance on deposit in Respondent's IOLA account was $150,758.30. Of that amount, Respondent could only identify clients for whom he was holding funds totaling $88,450.86. The remainder of the funds on deposit, in the sum of $62,307.44, according to Respondent, represented earned fees and/or reimbursed expenses attributable to each client;

f) With respect to two clients . . . Respondent drew checks on his IOLA account prior to making the corresponding client deposits; and

g) With respect to eight clients, Respondent failed to properly disburse to them the balance of funds he was holding in his IOLA account for their benefit. These funds were disbursed only after the Grievance Committee staff called his attention to his failure to do so.

[OAEbEx.F4 to 5.][1]

The New York ethics authorities did not charge respondent with knowing misappropriation of client funds.

[1] "OAEb" refers to the OAE's brief in support of its motion for reciprocal discipline.

With regard to charge eight (improper fee-sharing), respondent denied that he had violated the New York ethics rules. The special referee found that

> the remaining charge, Charge Eight of the petition, has been sustained by a fair preponderance of the evidence. As with the other charges, Respondent admitted all of the factual specifications of Charge Eight, including his failure to apply to the Court, on notice to the clients, for an order fixing the amount and manner of payment to be made to his father, a suspended attorney, for legal services and recoverable disbursements (22 NYCRR §691.10[b]).
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> It is Respondent's contention, as argued in his Memorandum of Law addressing Charge Eight of the petition, that application to the Court is not the exclusive means to determine the division of fees earned prior to the suspension between a suspended attorney and his/her partner. I find this contention to be without merit.
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> 22 NYCRR §691.10(b) provides:
>
> A disbarred, suspended or resigned attorney may not share in any legal fee for legal services performed by another attorney during the period of his removal from the bar. A disbarred suspended or resigned attorney may be compensated on a *quantum meruit* basis for legal services rendered and disbursements incurred by him prior to the effective date of the disbarment or suspension order or of his resignation. The amount and manner of payment of such compensation and recoverable disbursements shall be fixed by the court on the application of either the disbarred, suspended or resigned attorney or the new attorney, on notice to the other as well as on notice to the client.
>
> The use of the word "shall" in this Rule makes the procedure set forth mandatory rather than permissive. For another, and just as

> significant reason, the suspended attorney and the new attorney are prohibited from entering into an agreement on the division of fees without application to the Court. This Rule mandates that the application be made on notice to the client. Where an attorney has been disbarred or suspended or has resigned, the client has a right to be heard in connection with the application. The agreement between the new and the suspended attorney deprives the client of input into the determination and such an agreement, if enforceable, would arrogate to the parties to the agreement the exclusive authority of the Court.
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> [OAEbEx.F7 to 8.]

For purposes of mitigation, respondent's social worker, Simona Chazan, who first treated respondent in 1995, described him as a man troubled by Eugene's downfall.[2] Respondent had idolized his father and wanted to be like him. He had great difficulty dealing with the discovery "that his father was [of] less than perfect moral character." Respondent also presented several witnesses who testified about his good character.

On April 17, 2007, the New York Supreme Court, Appellate Division suspended respondent for one year, effective May 10, 2007.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

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[2] Prior to being suspended in New York, Eugene had been disbarred and then reinstated.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the New York Supreme Court, Appellate Divison.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a) (4), which provides that

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Respondent's misconduct was two-fold: he was reckless with his trust account responsibilities and improperly shared fees with his father, a suspended attorney.

With regard to the trust account improprieties, respondent commingled his own funds and funds belonging to his clients, failed to safekeep their funds by negligently misappropriating them, and failed to maintain proper books and records of his trust account disbursements, violations of RPC 1.15(a) and RPC 1.15(d).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Conner, N.J. (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 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); 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); 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 Liotta-Neff, 147 N.J. 283 (1997) (attorney negligently misappropriated approximately $5,000 in client funds after commingling personal and client funds; the attorney left $20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices).

Respondent also violated New York's NYCRR §691.10, requiring that suspended attorneys and those attorneys who share quantum meruit fees with them have the fees approved by court order. Although the New York disciplinary authorities found that Eugene had earned the fees that respondent shared with him, neither attorney made application to have the fees set by the court. In forty-four separate cases, over the span of three and a half years, respondent shared legal fees with his father, without regard to the rules dealing with a suspended attorney. Eugene's share of those fees was a staggering $211,000.

New Jersey R. 1:20-20 deals with the responsibilities of suspended attorneys and includes provisions for quantum meruit

fee-sharing with suspended attorneys. Although, unlike New York, New Jersey does not require a court order prior to sharing a quantum meruit fee with a suspended attorney, respondent, as a New Jersey attorney, should be disciplined in New Jersey for violating the rules of the New York jurisdiction.

For violations of R. 1:20-20, a reprimand is the threshold discipline. That sanction is enhanced when an attorney has defaulted in the ethics matter or has an extensive ethics history. Recent cases, most of which are defaults, have generally resulted in suspensions. See, e.g., In re Raines, 181 N.J. 537 (2004) (three-month suspension in a non-default matter, where the attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court Order); In re Girdler, 179 N.J. 227 (2004) (three-month suspension in a default matter; ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re McClure, 182 N.J. 312 (2005) (one-year suspension where the attorney's ethics history included an admonition and two concurrent six-month suspensions; the matter proceeded as a default); In re King, 181 N.J. 349 (2004) (one-year suspension where the attorney had an extensive ethics history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension;

the attorney remained suspended since 1998, the date of the temporary suspension; default matter); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension in a default case where the attorney's ethics history included three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; in three of the matters, the attorney failed to cooperate with disciplinary authorities). But see In re Moore, 181 N.J. 335 (2004) (reprimand in a default matter, where the attorney's disciplinary history included a one-year suspension).

Although this is not a default matter, and respondent has no prior discipline, we find that, because he formed the intent to violate the fee-sharing rule forty-four times over three and a half years, the discipline imposed by the New York disciplinary authorities is appropriate, with one slight variation.

We were moved by respondent's contrition for his acts, and his reflection upon the misguided view he had held of his father as idol and role-model, when, as it turned out, Eugene had a terribly flawed character. Taking into account this compelling mitigating circumstance, we determine to make the suspension retroactive to his May 10, 2007 New York suspension.

Member Lolla 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
William O'Shaughnessy
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey M. Adams
Docket No. DRB 07-276

Argued: November 15, 2007

Decided: December 20, 2007

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan		X				
Frost		X				
Lolla						X
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1

Julianne K. DeCore
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Chief Counsel