

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-240  
District Docket No. XIV-07-225E

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IN THE MATTER OF  
GREGORY P. ARMOTRADING  
AN ATTORNEY AT LAW

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Decision

Argued: October 18, 2007

Decided: December 5, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper service.

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), following the imposition of a ten-month suspension on respondent by the Supreme Court of Florida. The suspension was imposed as

a result of respondent's gross neglect, lack of diligence, negligent misappropriation, numerous recordkeeping violations, conduct involving dishonesty, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities.

The OAE seeks a ten-month suspension for respondent's misconduct. For the reasons expressed below, we determine to impose a six-month suspension.

Respondent was admitted to the practice of law in New Jersey in 1995 and, a year later, in Florida. At the relevant times, he maintained an office for the practice of law in Jacksonville and had no office in New Jersey.

Respondent has no disciplinary history in New Jersey. However, since September 25, 2006, he has been on the Supreme Court's ineligible list for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. For the same reason, respondent was ineligible to practice in New Jersey from September 15, 1997 through October 30, 1997, and September 20, 1999 through August 8, 2000.

Respondent's disciplinary history in Florida is limited to the proceeding giving rise to this matter, which included an April 4, 2005 temporary suspension for his failure to cooperate

with The Florida Bar's audit request. Although respondent did not file an answer to the complaint in the Florida disciplinary proceeding, he appeared with counsel at the final hearing. The referee determined that the appropriate measure of discipline for respondent's misconduct was a ten-month suspension. The Florida Supreme Court agreed with the referee's recommendation.

We take the facts from the referee's February 7, 2006 report and, when necessary, from the complaint.

On April 5, 2001, respondent received a \$3050 check from Allstate Insurance Company ("Allstate"), in settlement of the claim of one of respondent's clients, Martha Cummings. The transmittal letter from Allstate directed respondent to hold the funds until a release was signed by his client and returned to Allstate.

Respondent, however, disbursed the funds to Cummings without having obtained the release. When Allstate learned that the settlement check had been negotiated, it sent four letters to respondent, between June 2001 and January 2002, requesting the return of an executed release.

In February 2002, Allstate retained counsel for the purpose of obtaining the executed release from respondent. Over the next three weeks, counsel sent respondent three letters and made one phone call to him, to no avail. Finally, on June 30, 2003,

Allstate filed a complaint with The Florida Bar, alleging that respondent had disbursed settlement proceeds without having obtained the release from his client.

On June 25, 2003, The Florida Bar sent a copy of Allstate's complaint to respondent and asked him to reply by July 10, 2003. He failed to do so. The matter was then referred to the Fourth Judicial Circuit Grievance Committee "B." The Committee issued a subpoena to respondent, demanding that he produce to the Committee's auditor his trust account records for the period January 1, 2001 through September 30, 2003.<sup>1</sup>

After the auditor reviewed respondent's trust account records, he wrote to respondent on December 18, 2003, and requested specific documents and information regarding certain clients and certain transactions. When respondent failed to comply with the auditor's request, a non-compliance hearing was scheduled before the Committee for April 16, 2004.

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<sup>1</sup> On November 17, 2005, The Florida Bar was granted summary judgment, based on respondent's failure to answer the complaint and reply to the Bar's requests for admission. Accordingly, we rely on facts asserted in the complaint. The referee found these same facts, albeit without detailing them in his report.

Respondent appeared for the hearing and produced documentation that, he claimed, complied with the auditor's December 2003 request. After the auditor reviewed these documents, he wrote to respondent on May 21, 2004, and advised him that there remained some unanswered questions and the need for further documents. When respondent failed to reply, the Committee held a second non-compliance hearing on September 17, 2004.

Respondent did not appear at the hearing. Therefore, the Committee found that he was in non-compliance with the audit request. As a result, on March 2, 2005, the Supreme Court of Florida suspended respondent until he certified to his compliance with the Committee's audit request.

On January 6, 2005, the Committee's auditor submitted a final report of his review of respondent's trust account records. The report identified the following deficiencies:

Required Records and Procedures Not Maintained

- cash receipts and disbursement journal [Rule 5-1.2(b)(5)]
- client ledgers [Rule 5-1.2(b)(6)]
- bank reconciliations [Rule 5-1.2(c)(1)(A)]
- monthly comparisons [Rule 5-1.2(c)(1)(B)]
- annual listing of trust obligations [Rule 5-1.2(c)(2)]

Shortage on Trust Account

On September 30, 2003, a shortage of \$4,000.12 existed in Respondent's trust account. Specific instances contributing to

this shortage are listed in the final report.

Trust Funds Commingled

Transactions concerning clients Talbert and Sookdoe reveal Respondent commingled client funds with his personal or law firm funds.

Attorney's Signature on Settlement Statements

Respondent failed to execute or sign numerous settlement statements as required by Rule 4-1.5(f)(5) of the Rules of Professional Conduct of The Florida Bar.

[RR§II(B).<sup>2</sup>]

The auditor concluded that respondent's trust account records from January 1, 2001 through September 30, 2003 "were not in substantial compliance with The Florida Bar's Rules Regulating Trust Accounts."

On November 17, 2005, summary judgment was granted in favor of The Florida Bar, based on respondent's failure to answer the complaint, as well as his failure to comply with the Bar's requests for admission. On December 13, 2005, respondent appeared and testified at the final hearing, the purpose of

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<sup>2</sup> "RR" refers to the February 7, 2006 referee's report.

which was to determine the appropriate measure of discipline for his misconduct.

In his report, the referee summarized respondent's testimony regarding the auditor's report and the allegations of the complaint:

Respondent stated his failure to respond to the Bar's complaint and to the audit was based upon a belief that he was going to be disbarred for trust account violations.

Respondent presented client ledger sheets and trust account documents addressing the problems noted in the audit report. Respondent had deposited \$4000.12 into his trust account that cures [sic] the shortage. The client ledger sheets demonstrate that all outstanding liabilities represented by the shortage have been paid. Of the shortage, \$568.31 was due to Respondent for unpaid fees. Another reason for some of the shortage was that Respondent had mistakenly paid monies due to clients twice.

Respondent testified that until he began a solo practice in 2001, he had no experience at maintaining a trust account. As a result of his problems with the Bar, Respondent states he has hired a certified public accountant to manage his trust account.

Respondent states the initial problem with the execution of the release from Allstate occurred due to the fact his assistant presented the settlement check to Ms. Cummings not knowing to get an executed release. Respondent was not able to explain

why he did not respond to Allstate's numerous inquiries regarding the release.

Respondent personally expressed remorse over his rule violations and apologized to the court and the Bar for the troubles caused by his conduct. Respondent also expressed a desire to resume the practice of law again once he satisfies any requirements ordered by the court. It was brought out at the hearing that Respondent's counsel has referred numerous clients to Respondent without any complaints and with good results. Respondent has practiced law as a member of The Florida Bar for nine years.

[RR§II(B).]

The referee found that respondent committed the following violations:

- failed to provide competent representation to a client (4-1.1;RPC 1.1(a))<sup>3</sup>
- lacked reasonable diligence and promptness in representing a client (4-1.3;RPC 1.3)
- failed to safeguard funds (4-1.15;RPC 1.15)
- failed to prepare a closing statement upon recovery of funds (4-1.5(f)(5);R. 1:21-6(c)(1)(D))

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<sup>3</sup> The RPC noted parenthetically is the comparable New Jersey Rule of Professional Conduct. The R. noted parenthetically is the comparable New Jersey court rule.

- failed to retain fee agreement for six years after execution of closing statement (4-1.5(f)(5); R. 1:21-6(c)(1)(C))
- engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (4-8.4(c); RPC 8.4(c))
- engaged in conduct prejudicial to the administration of justice (4-8.4(d); RPC 8.4(d))
- failed to respond, in writing, to an official inquiry by bar counsel or disciplinary agency (4-8.4(g); RPC 8.1(b))
- fail[ed] to maintain an attorney trust account (5.1-1(a)(1); R. 1:21-6(a)(1))
- commingl[ed] funds (5-1.1(a)(1); R. 1:21-6(a))
- fail[ed] to apply trust funds or property to specific purpose (5.1-1(b); no comparable RPC)
- fail[ed] to provide notice of receipt of trust funds (5-1.1(e); RPC 1.15(b))
- fail[ed] to deliver trust funds (5-1.1(e); RPC 1.15(b))
- fail[ed] to provide accounting upon client's or third person's request (5-1.1(3))
- fail[ed] to maintain cash receipts and disbursements journal, including identification of client or matter for which funds were received, disbursed, or transferred; the date on which all trust funds were received, disbursed, or transferred; the check number for all

disbursements; and the reason for which all trust funds were received, disbursed or transferred (5-1.2(b)(5); R. 1:21-6(c)(1)(A); RPC 1.15(d))

- fail[ed] to maintain a separate ledger for each client showing all receipts, disbursements, or transfers and any unexpended balance and containing the identification of the client, the date on which the funds were received, disbursed or transferred, the check number for all disbursements, and the reason for which the funds were received, disbursed, or transferred (5-1.2(b)(6); R. 1:21-6(c)(1)(B); RPC 1.15(d))
- fail[ed] to make monthly reconciliation of trust (5-1.2(c)(1)(A); R. 1:21-6(c)(1)(H); RPC 1.15(d))
- fail[ed] to make monthly comparison between total of reconciled balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and the reasons therefore (5-1.2(c)(1)(B); R. 1:21-6(c)(1)(H); RPC 1.15(d)) and
- fail[ed] to prepare an annual list identifying the balance of unexpended trust money held for each client or matter (5-1.2(c)(2); RPC 1.15(d)).

[RR§III.]

Based on these violations and the referee's conclusion that "[t]here does not appear to have been an intentional misappropriation of client funds," respondent received a ten-

month suspension, retroactive to the effective date of his suspension for non-compliance, April 4, 2005. The referee identified respondent's temporary suspension as an aggravating factor. Mitigating factors were the "absence of a dishonest or selfish motive," respondent's "character or reputation," and his remorse.<sup>4</sup>

The Supreme Court of Florida agreed with the referee's report and suspended respondent for ten months, effective April 4, 2005. Respondent did not inform the OAE of this suspension.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. 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 referee, which were adopted by the Florida Supreme Court.

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<sup>4</sup> The referee's finding that respondent did not act dishonestly is at odds with his finding that respondent violated Florida ethics rule 4-8.4(c), which is comparable to New Jersey's RPC 8.4(c).

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(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 disciplinary 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.

Here, subsection (E) applies because respondent's misconduct does not warrant a ten-month suspension in New Jersey. Rather, a six-month suspension is the appropriate measure of discipline for his unethical conduct.

The violations found by the referee are comparable to the violations of the following New Jersey RPCs: 1.1(a) (gross neglect), 1.3 (lack of diligence), 1.15(a) (negligent misappropriation and commingling), 1.15 (improper release of

escrow funds), 1.15(d) (recordkeeping violations), 8.1(b) (failure to cooperate with disciplinary authorities), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice). However, the record developed in Florida does not support all of these violations.

RPC 1.1(a) and RPC 1.3 apply to an attorney's representation of a client. Respondent's release of the settlement funds to Cummings without first obtaining a release did not constitute gross neglect or lack of diligence, as he presumably turned over the funds to her promptly. Rather, respondent's disbursement of the settlement proceeds to his client was akin to an unauthorized release of escrow funds, which is considered an unethical act. See, e.g., In re Flayer, 130 N.J. 21 (1992) (attorney reprimanded for breaching escrow agreement by releasing escrow funds without the consent of a party to the agreement). In this case, respondent released the funds to Cummings, in violation of Allstate's express instruction that he hold the funds until his client executed a release and the release was returned to Allstate. In this respect, respondent violated RPC 1.15. His conduct was compounded by his failure to comply with Allstate's multiple requests for the release, over a period of approximately one year.

The referee also found that respondent negligently misappropriated client funds and commingled personal and client funds, a violation of RPC 1.15(a). The auditor identified a \$4000 shortage in respondent's trust account on September 30, 2003, and concluded that "trust funds belonging to the clients have been used for purposes other than those intended by the clients." Among other things, the referee noted that "some of the shortage was that Respondent had mistakenly paid monies due to clients twice." Respondent cured the shortage with a \$4,000.12 deposit. Ultimately, the referee concluded that there did "not appear to have been an intentional misappropriation of client funds."

Respondent also violated RPC 1.15(d) and R. 1:21-6, as a result of the numerous recordkeeping violations he committed. By way of example, he failed to prepare closing statements when he settled cases, failed to retain fee agreements, failed to maintain a cash receipts and disbursements journal, failed to maintain separate client ledger cards, and failed to make monthly reconciliations of his trust account.

Finally, respondent repeatedly failed to cooperate with the Florida disciplinary authorities, a violation of RPC 8.1(b). He failed to reply to the grievance, failed to produce records for

the Bar's auditor, failed to answer the complaint, and failed to appear at a non-compliance hearing, which resulted in his temporary suspension.

The referee made other findings that are not supported by the record. As noted above, he found that respondent violated RPC 8.4(c) and RPC 8.4(d). It is not clear why these violations were charged. Presumably, The Florida Bar believed that respondent had acted dishonestly when he transmitted the settlement proceeds to his client without first obtaining the signed release for Allstate. However, there is no evidence of such misconduct in the four corners of the complaint, which states only that Allstate directed respondent to disburse the funds after his client signed the release, and that respondent failed to do so.

In addition, it is presumed that the conduct prejudicial to the administration of justice is premised on respondent's failure to abide by Allstate's instructions, before he disbursed the settlement proceeds to his client. More properly, however, that is a breach of a fiduciary duty to Allstate, insofar as respondent improperly released funds entrusted to his care, a violation of RPC 1.15.

There remains the quantum of discipline to be imposed for respondent's negligent misappropriation, improper release of escrow funds, recordkeeping violations, and failure to cooperate with disciplinary authorities.

Negligent misappropriation and recordkeeping violations typically result in the imposition of a reprimand. See, e.g., In re Lehman, 182 N.J. 589 (2005) (attorney negligently misappropriated trust funds and failed to comply with recordkeeping requirements); 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 \$4,100 in legal fees from his trust account before the deposit of corresponding settlement funds; the attorney believed that he was withdrawing against a "cushion" of his own funds left in the 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 needed, without determining if 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); In re Goldstein, 147 N.J. 286 (1997) (attorney negligently misappropriated clients' funds and failed to maintain proper trust and business account records); 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).

Failure to cooperate with the investigation of a grievance ordinarily results in the imposition of an admonition. In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (admonition for failure to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (admonition for failure to reply to DEC's numerous communications regarding a grievance); In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (admonition for failure to comply with requests for information about a grievance and failure to file a timely answer to the

complaint); and In the Matter of Robert P. Gorman, DRB 94-437 (February 8, 1995) (admonition for violation of RPC 8.1(b) after the attorney failed to submit a written response to the investigator's requests for information about a grievance that had been filed).

However, a reprimand may result if the failure to cooperate is with the arm of the disciplinary system, such as the OAE, who uncovers recordkeeping improprieties in a trust account and requests additional documentation, which the attorney failed to provide. See, e.g., In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint). Thus, respondent's failure to cooperate with The Florida Bar's auditor alone would result in the imposition of a reprimand. In making this determination, we do not take into account respondent's other failures to cooperate with the Florida disciplinary authorities, which were so pervasive as to form a pattern of misconduct. As seen below, we considered that pattern as an aggravating factor.

Generally, the improper release of escrow funds also leads to the imposition of a reprimand. See, e.g., In re Milstead, 162 N.J. 96 (1999) (disbursement of escrow funds to client, in violation of consent order); In re Marqolis, 161 N.J. 139 (1999) (escrow agreement required attorney to hold settlement funds in escrow until settlement documents completed, but attorney used part of the funds for his fees, albeit with client's consent); and In re Flayer, supra, 130 N.J. 21 (attorney made premature and unauthorized disbursements against escrow funds).

Combined, respondent's negligent misappropriation, recordkeeping violations, improper release of escrow funds, and failure to cooperate with disciplinary authorities would warrant at least a censure. In addition, the presence of aggravating factors requires that the measure of discipline for respondent's infractions be enhanced.

Respondent's failure to cooperate with the Florida disciplinary authorities was so pervasive as to evidence a pattern of disregard for the ethics system. In addition to respondent's failure to respond to the auditor's two requests for documents, he failed to reply to the grievance; he failed to answer the complaint; he twice failed to comply with the auditor's request for documents; and he failed to appear at one

of two noncompliance hearings, which resulted in his temporary suspension. Respondent also failed to cooperate with the New Jersey disciplinary authorities by not reporting his Florida suspension to the OAE.

We are aware that respondent's conduct is not without mitigation. The referee found that there was an "absence of a dishonest or selfish motive" on respondent's part; he was of good "character or reputation;" and he was remorseful for his misconduct. When considered together, however, the aggravating factors substantially outweigh the mitigating factors. For the totality of respondent's conduct, the appropriate level of discipline is a (prospective) six-month 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 J. O'Shaughnessy  
Chair

By:   
for Julianne K. DeCore  
Chief Counsel

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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Gregory P. Armotrading  
Docket No. DRB 07-240

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Argued: October 18, 2007

Decided: December 5, 2007

Disposition:

Members	Disbar	Six-month 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				
<b>Total:</b>		8				1

  
 for Julianne K. DeCore  
 Chief Counsel