

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-193
District Docket No. XIV-05-621E

IN THE MATTER OF
BRIAN P. CAMPBELL
AN ATTORNEY AT LAW

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Decision

Argued: October 18, 2007

Decided: November 29, 2007

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Barry D. Epstein appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (admonition), filed by the District VI Ethics Committee (DEC). The complaint alleged that respondent negligently misappropriated client funds and failed to comply with the recordkeeping requirements of R. 1:21-6, thereby violating RPC 1.15(a) and RPC 1.15(d).

After bringing the matter on for oral argument, we determine that a reprimand is the appropriate level of discipline for respondent's infractions.

On a procedural note, this was not the first time that this disciplinary matter was before us. In 2005, we reviewed a motion for discipline by consent (reprimand), supported by a disciplinary stipulation in which respondent admitted that he had negligently misappropriated client trust funds and violated the recordkeeping rules. On September 28, 2005, we granted the motion. In the Matter of Brian P. Campbell, DRB 05-236 (September 28, 2005).

On December 6, 2005, the Supreme Court rejected the consent motion, finding that "acceptance of the discipline consented to was not warranted." The Court remanded the matter to the DEC for a hearing. As noted above, the DEC recommended an admonition. For the reasons expressed below, we find that a reprimand more appropriately addresses respondent's ethics violations.

The facts of this matter are as follows.

On June 20, 2003, the Office of Attorney Ethics (OAE) was notified by Hudson United Bank that, as of March 31, 2003, respondent's trust account was overdrawn by \$3,348.32.¹

¹ At the time, respondent practiced law under the firm name Campbell and Smith, but maintained a trust account in his name alone.

Respondent told the OAE investigators that, in March 2003, a trust account check in the amount of \$4,425, payable to George Ellemak, had caused the overdraft. Although the bank honored the Ellemak check, thereafter the trust account went into overdraft status.²

Respondent's own client ledger cards, including one for a transaction titled M&A Taxi Corp/Pedro Guzman, contained references to special deposits to overcome deficiencies in his trust account. In one instance, respondent deposited \$6,000 into the trust account. In another instance, respondent transferred \$5,000 from his business account into the trust account to cover a shortage.

The trust account overdraft was the result of a mistake by respondent's bookkeeper, Maureen Podaski. Accidentally, the bookkeeper had issued two trust account checks in payment of the single fee in a matter designated as Abreu. The checks, each for \$5,830, cleared the trust account on July 9 and August 9, 2002.

An OAE audit of respondent's trust account revealed that the balance in his trust account fell to -\$175.04 on April 3, 2003, -\$4,786.04 on April 7, 2003, and -\$4,979.37 on April 18, 2003.

² Separate and apart from the numbered exhibits to the complaint is a set of exhibits tabbed 1 through 6. Each tab contains more numbered exhibits within it. The hearing panel report refers to tabs 1 through 6 as exhibits A through F.

The audit further revealed that, as of November 1, 2001, respondent's business account had a negative balance of \$21,368.38. The next day, respondent's bookkeeper mistakenly deposited \$38,750 in client trust funds in the business account, rather than in the trust account. Respondent's ledger cards indicated that the deposited funds belonged to three clients: Diana Wilson (\$16,250), Francisco Cabral (\$12,500), and Fernando Cano \$10,000.

The OAE's disbursement schedule for the Wilson, Cabral, and Cano matters shows that, as of December 3, 2001, \$38,750 had been disbursed from respondent's trust account. According to the OAE investigator, respondent then unwittingly engaged in a practice known as "lapping," whereby clients' funds are used to pay for disbursements related to other clients, in this case, Wilson, Cabral, and Cano.

Respondent explained to ethics authorities that he had allowed Podaski to maintain his books and records, which she had done in a "sloppy" fashion. Respondent, however, recognized that he was ultimately responsible for the state of his accounts' records.

Unfortunately, Podaski, who was ill when respondent first contacted her about the OAE investigation into this matter, passed

away before ethics authorities had an opportunity to interview her.

In early April 2003, respondent realized the full extent of the problems with his trust and business accounts, including the use, for eighteen months, of client funds to pay for business expenses. Respondent later learned that his business account balance had fallen into the red 169 times between November 2001 and April 2003. During that period, respondent incurred over \$44,000 in bank penalties (\$32 per occurrence), as a result of bounced checks.

In order to bring his trust and business accounts into compliance with the rules, respondent had to make reimbursements amounting to \$50,824.67, between April 2003 and July 2004. Altogether, respondent negligently misappropriated \$44,580 -- \$38,750 belonging to clients Wilson, Cabral, and Cano, and \$5,830 in connection with the Abreu matter.

Count two of the complaint alleged that "respondent's books and records demonstrated record keeping [sic] deficiencies, including a failure to reconcile the trust account, failure to maintain a trust account disbursements journal, failure to maintain a business account receipts journal and business disbursements journal, violations of R. 1:21-6 and RPC 1.15(d)."

Following a de novo review of the record, we find that the evidence clearly and convincingly supports the DEC's conclusion that respondent's conduct was unethical.

Respondent negligently misappropriated client funds, a violation of RPC 1.15(a). His business and trust accounts were chronically mismanaged from November 2001 to April 2003. During that time, respondent "bounced" an untold number of business account checks, accumulating over \$44,000 in overdraft charges on that account. Furthermore, his trust account was out-of-trust on four separate occasions, by as much as \$21,368. As a result of the overdrafts, respondent negligently invaded other clients' funds.

In addition, respondent failed to reconcile the trust account, and failed to maintain a trust account disbursements journal, as well as business account receipts and disbursements journals, violations of R. 1:21-6 and RPC 1.15(d).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., 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 needed, without determining whether he had sufficient fees from a particular client to cover the withdrawals); In re Silber, 167 N.J. 3 (2001) (attorney negligently invaded client's funds in four instances and failed to maintain proper trust and business accounting records); In re Blazsek, 154 N.J. 137 (1998) (negligent misappropriation of \$31,000 in client funds and failure to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); 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); and In re Imperiale, 140 N.J. 75 (1995) (deficient recordkeeping and negligent misappropriation of \$9,600 in client funds).

Mitigating circumstances may lower the discipline to an admonition. See, e.g., 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, it was considered that the trust account shortage was limited to a few days and that the attorney fully cooperated with ethics authorities, had no prior encounters with the disciplinary system, assumed full responsibility for the problems with this practice, and subsequently made recordkeeping a priority); In the Matter of Michael A. Mark, DRB 01-425 (February 13, 2002) (attorney negligently misappropriated client funds for a period of two years, as a result of failure to follow proper recordkeeping procedures; the misappropriation occurred when the attorney erroneously withdrew a legal fee of \$4,000, failed to reimburse the trust account for bank service charges in the amount of \$100, mistakenly advanced client costs in the amount of \$350 from the trust account, instead of the business account, and failed to reconcile the account on a quarterly basis; an OAE audit also disclosed several recordkeeping violations; mitigating factors were the attorney's prompt replacement of the trust funds and his hiring of a CPA to reconstruct the trust records, to correct all recordkeeping deficiencies, and to insure that all client funds

were on deposit; prior three-month suspension); In the Matter of Cassandra Corbett, DRB 00-261 (January 12, 2001) (attorney's deficient recordkeeping resulted in a \$7,011.02 trust account shortage; in mitigation, it was considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records); In the Matter of Bette R. Grayson, DRB 97-338 (May 27, 1998) (negligent misappropriation and recordkeeping deficiencies; mitigation included attorney's full cooperation with ethics authorities, steps taken to correct deficiencies, and lack of prior discipline); and In the Matter of Philip J. Matsikoudis, DRB 00-189 (September 25, 2000) (attorney miscalculated fees in his favor and failed to pay a physician's lien, as a result of poor recordkeeping; mitigation included steps taken to overcome deficiencies, and respondent's use of his own personal funds to pay the physician's lien).

In mitigation, we considered that respondent took immediate action to replenish his trust account, took steps to improve his recordkeeping by opening a new trust account and retaining a new bookkeeper, caused no financial harm to any client, and has no prior discipline.

In aggravation, we took into account that respondent abdicated his accounting responsibilities, entrusting them to his

bookkeeper. "Lawyers have a duty to assure their accounting practices are sufficient to prevent misappropriation of trust funds." In re Fleisher, 102 N.J. 440, 447 (1986). It took respondent eighteen months to take notice of the state of disarray of his accounts. Moreover, the amounts misappropriated were substantial, \$44,000. Altogether, more than 1,300 checks were dishonored.

Balancing the mitigating factors against the aggravating factors, we conclude that an admonition is insufficient discipline in this instance. We, therefore, determine to reprimand respondent.

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, Esq.

By: Paul Frank
for Julianne K. DeCore
Chief Counsel

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

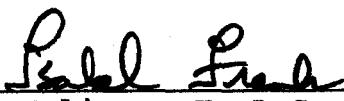
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Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla					X
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		8			1

By 
Julianne K. DeCore
Chief Counsel