

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 14-186 and
DRB 14-187
District Docket Nos. XIV-2013-
0142E and XIV-2012-0271E

IN THE MATTERS OF
JOHN J. PALITTO, JR.
AN ATTORNEY AT LAW

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Decision

Argued: September 18, 2014

Decided: December 16, 2014

Melissa Czartoryski 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.

These matters were before us by way of a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent (DRB 14-186) and a recommendation for discipline (admonition) filed by the District IV Ethics Committee (DEC)

(DRB 14-187). The two matters have been consolidated for the purposes of discipline. The OAE recommended a censure for the combination of respondent's conduct in the two matters. We determine that a reprimand is the more appropriate discipline.

Respondent was admitted to the New Jersey bar in 1992. He was temporarily suspended, on June 5, 2013, for failure to cooperate with the OAE in the investigation of DRB 14-187. He was reinstated on June 11, 2013, with the condition that his practice be subject to monitoring by a proctor. In re Palitto, 214 N.J. 50 (2013).

DRB 14-186 (STIPULATION)

Respondent stipulated violating RPC 1.15(b) (failing to promptly deliver to the client or third person any funds or property that the client or third person is entitled to receive) and RPC 1.15(d) (failing to maintain trust account bank statements, R. 1:21-6(c)(1)(G), and improperly holding special fiduciary funds in an attorney trust account, rather than a fiduciary account, R. 1:21-6(a)(1)).

1. The Iannotti Matter

On March 27, 2001, respondent was appointed temporary guardian for Angelina Iannotti. He remained so until May 24,

2001, when Iannotti was adjudicated incapacitated. On July 9, 2001, respondent was appointed Iannotti's permanent guardian. On June 22, 2007, Iannotti died.

On July 7, 2007, the co-executrix of the Iannotti estate, Marlene Iannotti-Sparks, wrote to respondent, requesting an accounting and the release of all guardianship funds, within thirty days. Respondent did not comply with that request. On July 23, 2007, the attorney for the Iannotti estate, Robert J. Borbe, also wrote to respondent, requesting an accounting. On August 13, 2007, respondent replied with a handwritten note on the letter from Borbe, indicating that the only assets were bank accounts and that he would have an accounting to Borbe by the end of August, when he returned from vacation. He did not, however.

On August 29, 2007, Sparks terminated Borbe's representation. A few days later, on September 3, 2009, Robert E. Pomkin, of the Division of Medical Assistance and Health Services, sent a letter to The Heritage, the care facility where Iannotti had resided, stating that his agency was asserting a Medicaid lien against the Iannotti estate. Pomkin requested the completion and return of a questionnaire. On November 30, 2009, respondent received a copy of the letter and questionnaire from Pomkin. On December 28, 2009, respondent returned the completed

questionnaire to Medicaid, along with a letter explaining that he was holding \$2,166.61, the approximate value of the Iannotti estate, in a guardianship account. He inadvertently failed, however, to list \$3,414.38 that he was holding for Iannotti in his trust account.

In a February 5, 2010 letter, Medicaid notified respondent that it would not assert a claim against the Iannotti estate. On March 1, 2010, respondent sent a copy of the Medicaid letter to the Camden County Surrogate's Office, stating that he wanted to disburse the \$2,166.61 (the record does not reveal to whom), less the outstanding commissions, and asking whether he could proceed in an informal capacity. On March 8, 2010, the Surrogate's Office replied that

[m]any guardianship estates are resolved by the consent of the parties to an informal account from the guardian, without a formal account being submitted to the Superior Court for adjudication. However each case is different and there are many potential reasons why a party, including you, might want the court to adjudicate your account.

[S¶13;Ex.12]¹

The Surrogate's Office added that it could not advise respondent about distribution and that, if he was uncertain about distribution or the exercise of any statutory power, he

¹ "S" refers to the disciplinary stipulation entered into between respondent and the OAE on April 29, 2014.

could seek advice and directions from the Superior Court, pursuant to R. 4:95-2. Respondent did not take any further action to conclude the guardianship estate.

As of the date of the complaint, \$2,151.61 remained in an Iannotti guardianship account and \$3,414.38 remained in respondent's attorney trust account. The OAE's investigation did not reveal any evidence that respondent misappropriated Iannotti's funds.

2. The Ciekurs Matter

On September 5, 2002, respondent was appointed guardian of Evalds Ciekurs. On December 30, 2002, respondent transferred \$36,278.91 from Ciekurs' personal checking account to a guardianship account under his control. The OAE's investigation revealed that respondent's subsequent disbursements from this account were used for Ciekurs' benefit.

In February 2005, respondent began depositing Ciekurs' Canadian pension checks into his trust account. On November 7, 2005, he closed the Ciekurs guardianship account. On December 13, 2005, he deposited its balance (\$1,416.29) into his trust account.

On February 22, 2006, Malda Znutina replaced respondent as guardian for Ciekurs. Ciekurs died on March 28, 2006. As of

May 15, 2006, respondent was holding \$3,524.16 in his trust account for Ciekurs. He never took any action to disburse these funds either to Znutina or to the Ciekurs estate.

As of the date of the complaint, \$3,524.16 remained in respondent's trust account for Ciekurs. The OAE's investigation did not reveal any evidence that respondent misappropriated Ciekurs' funds.

3. The Cecchi Matter

On April 10, 2001, respondent was substituted in as guardian for Eda Cecchi. The previous guardian, Angelina Cava, was directed to remit \$35,707 to respondent, representing the proceeds from the sale of Cecchi's home, from which certain disbursements were to be made.

On April 23, 2001, Steven T. Passarella, attorney for Cava, sent respondent \$35,707, which respondent deposited into his trust account. Respondent then disbursed a total of \$34,058.50, including the payments contained in the substitution order.

Cecchi died on May 18, 2002. The balance of Cecchi's funds was disbursed to respondent for his commissions, in the amount of \$1,628.50.

Soon thereafter, on June 23, 2003, John H. Reiser III, the court-appointed attorney for Cecchi, sent respondent

correspondence received from Prudential Financial, advising of the availability of death benefits for Cecchi, as beneficiary of her husband. On June 27, 2003, respondent wrote to Prudential about pursuing those benefits.

On October 2, 2003, respondent filed a motion to allow him to receive the Prudential funds. The motion was granted on October 20, 2003. On November 4, 2003, respondent sent the court order and the requisite forms to Prudential.

On or about November 11 and November 24, 2003, respondent received \$1,052.28 and \$1,212.17 from Prudential, respectively. He deposited the funds into his trust account, but failed to disburse them.

As of the date of the complaint, \$2,264.45 remained in respondent's trust account for Cecchi's estate. The OAE's investigation did not reveal any evidence that respondent misappropriated Cecchi's funds.

4. The Tydeman Matter

On April 29, 1996, respondent was appointed personal guardian for Clifford Tydeman. On May 28, 1996, respondent opened a guardianship account for Tydeman with \$900 from Tydeman's personal account. On July 16, 1996, Tydeman died.

On August 12, 1996, respondent obtained an order approving

the sale of Tydeman's home. On August 19, 1996, respondent was named temporary administrator C.T.A. Three days later, on August 22, 1996, respondent wrote to Phyllis Duncan, Tydeman's stepdaughter and the estate's only living beneficiary, advising her, among other things, that she was entitled to the balance of the estate and that she would receive an accounting at the appropriate time.

The sale of Tydeman's home occurred on September 10, 1996. Respondent received the sale proceeds of \$24,950.97, which he then deposited into the Tydeman estate account. On September 16, 1996, respondent sent Duncan a copy of the RESPA and explained the bills that were paid at closing. He also informed her that the proceeds from the sale were deposited into the Tydeman estate account, that the guardianship had concluded, and that he would provide her with a guardianship accounting for her review and approval. He informed Duncan that he planned to complete the estate accounting within sixty to 120 days.

On October 5, 1996, respondent provided Duncan with a copy of the "First and Final Accounting of Court Appointed Guardian" for her ratification and made a partial estate distribution of \$5,000 to her, indicating that the balance would be sent to her along with an estate accounting, as soon as the estate was settled. On October 18, 1996, respondent sent the guardianship

accounting and the signed ratification to the Camden County Surrogate's Office, for filing.

On February 1, 1997, respondent sent Duncan a second partial estate distribution of \$2,500 and informed her that he would forward the balance to her, along with an accounting, as soon as the estate was settled.

On March 25, 1997, respondent sent a letter to the Division of Medical Assistance and Health Services, requesting Medicaid lien information. Respondent sent a copy of his letter to Duncan and told her that a Medicaid lien had been asserted and that no further estate distributions could be made until the lien amount was determined.

Later that year, on October 21, 1997, respondent was notified that the Medicaid lien filed against the estate amounted to \$74,588.57. On October 30, 1997, respondent sent a letter to Duncan, informing her of the lien amount and explaining that she could challenge the lien, based on hardship. He asked Duncan to contact him to confirm her intentions. Duncan did not reply to respondent's letter. Respondent failed to take any further action in the matter.

As of November 30, 2013, the estate account balance was \$13,827.16. As of December 3, 2013, the guardianship account balance was \$1,509.07. As of April 29, 2014, the date of the

disciplinary stipulation, the \$74,588.57 Medicaid lien remained outstanding. The OAE's investigation did not reveal any evidence that respondent misappropriated Tydeman's funds.

Finally, the stipulation states that respondent failed to maintain complete and current bank statements for all of the above matters and to keep special fiduciary funds in separate fiduciary accounts, as opposed to the trust account.

DRB 14-187 (ADMONITION)

The complaint in this matter charged respondent with commingling trust and personal funds (RPC 1.15(a)); failing to promptly disburse client funds (RPC 1.15(b)); failing to comply with the recordkeeping requirements of R. 1:21-6 (RPC 1.15(d)); and failing to cooperate with disciplinary authorities (RPC 8.1(b)). On December 10, 2013, the DEC held a hearing on this matter. At the outset of the hearing, respondent stipulated to the charged violations. His testimony, thus, was limited to the issue of mitigation.

Joseph Cohen, DDS, the grievant in this matter, retained respondent to pursue collection matters on behalf of Cohen's dental practice. According to Cohen, respondent failed to remit to him any monies that respondent had collected for the dental practice. An investigation into this grievance prompted the OAE

to audit respondent's books and accounts, which revealed recordkeeping violations. Respondent did not cooperate with the OAE's investigation.

Specifically, on June 19, 2012, former Deputy Ethics Counsel Janice L. Richter asked respondent to submit a written reply to the grievance by July 23, 2012. Respondent did not do so. On August 1, 2012, Richter sent a second letter to respondent, giving him until August 15, 2012 to send a reply. Once again, respondent did not reply.

By letter dated September 5, 2012, Richter directed respondent to appear at the OAE's offices on October 3, 2012 for a demand audit. On October 2, 2012, OAE Disciplinary Investigator Wanda Riddle left a voice message on respondent's office telephone, reminding him that he was required to appear at the OAE the next day. Respondent did not appear.

Several months later, on January 2, 2013, OAE First Assistant Ethics Counsel Michael J. Sweeney sent a letter to respondent, directing him to appear at the OAE for a demand audit on January 24, 2013. Subsequently, the audit was re-scheduled for January 30, 2013.

The day before the audit, on January 29, 2013, respondent provided his written reply to the allegations of the grievance and then appeared at the OAE for the demand audit.

On March 19, 22, 26, and April 5, 2013, Riddle attempted to contact respondent by telephone to obtain additional information and documents for the audit. Respondent failed to return her telephone calls. Riddle also attempted to obtain the additional information and documents by way of three separate letters to respondent. He failed to reply to the letters as well.

On April 9, 2013, the OAE directed respondent to appear for a second demand audit, on April 25, 2013. Although respondent failed to appear, the OAE proceeded with its audit, based on the records it had in its possession, as well as the records subpoenaed from the bank in which respondent held his accounts. That audit revealed that respondent's trust and receipts journal was not fully descriptive; he had client ledger cards with debit balances; he had inactive balances in his trust account; he did not conduct monthly three-way reconciliations of his trust account; he did not have a running checkbook balance; he had commingled personal funds in his trust account by not removing earned fees therefrom; and he had deposited special fiduciary funds into his trust account, as opposed to their own account, as required by R. 1:21-6(a)(1).

On May 13, 2013, the OAE moved for respondent's temporary suspension, based on its inability to fully investigate the matter. The motion was granted on June 5, 2013. The OAE was

particularly concerned about a guardianship matter in which Riddle could not account for over \$27,000. The resulting temporary suspension spurred respondent to begin to cooperate with the OAE. He immediately contacted that office and made arrangements to cooperate fully, which he has done since.

At the beginning of his testimony, respondent again stipulated to all of the allegations of the complaint and acknowledged that he had not complied with the recordkeeping rules and had failed to promptly disburse client funds.

Respondent addressed his failure to cooperate by explaining that he had "panicked". He knew that his records were out of order and attempted to fix them, before the OAE saw them. He was unable to do so. He further explained that, after law school, he had become a law clerk and then opened his own practice, that he had never worked for a firm, and that he lacked a mentor or anyone with whom he could consult, without paying significant sums of money, which he did not have.

Respondent also noted that his problems began prior to the Cohen matter, in 2010. In the fall of that year, he was hospitalized for retinal surgery and was out of the office for several weeks. Prior to that surgery, he was also hospitalized for six weeks, following a suicide attempt caused by depression, for which he has been under the care of a doctor. In the midst

of these challenges, respondent noted that he also went through a traumatic marital separation and eventual divorce. The separation began after his release from the hospital, in October 2010, and lasted through the spring of 2011. Eventually, in September 2011, he was served with the formal complaint for divorce. That divorce was finalized on May 5, 2012.

Respondent claimed that these various issues made it very difficult for him to keep up with his bookkeeping and that the more he attempted to fix the problems, the worse they became. It got to the point where he did not know how to fix the issues. Therefore, he simply left the funds where they were, a circumstance that also explained the commingling of his fees and trust funds. He was emphatic, however, that, no matter how severe his personal financial situation or his medical issues became, he had never taken clients' money.

Respondent testified that he is aggressively seeking employment with a law firm or with the State, in order to focus on what he does best, that is, advocating for people in court and leaving the administrative work to someone else.

Based on the mitigating factors, respondent urged the imposition of an admonition for his conduct in this matter. The OAE, in turn, suggested that a reprimand is the appropriate discipline, in large part because of respondent's lack of

cooperation with that office. In aggravation, the OAE noted that the commingling lasted many years.

The DEC found that, although respondent maintained both a trust and a business account, his recordkeeping practices were deficient, in violation of RPC 1.15(d). Also, the DEC noted that respondent did not remove earned fees from his trust account within a reasonable time. This impropriety notwithstanding, the DEC declined to find respondent guilty of commingling. The DEC remarked that respondent's failure to promptly withdraw his earned fees from the trust account was the product of his poor recordkeeping practices, rather than intent to commingle personal and trust funds. The DEC, thus, dismissed the charged violation of RPC 1.15(a).

The DEC found, however, that \$250 belonging to Cohen remained in respondent's trust account for over nine years, instead of being returned promptly to the client, as required by RPC 1.15(b).

Finally, the DEC determined that the OAE's numerous attempts to conduct an audit of respondent's accounts, while he "put his head in the sand," and his failure to reply to the grievance constituted a failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

In aggravation, the DEC noted that respondent's failure to

cooperate with the OAE led to his temporary suspension.

In mitigation, the DEC considered respondent's lack of disciplinary history, the absence of personal gain, the lack of injury to clients, his extensive health issues at the time of his behavior, his service to the public, and numerous character references.

Giving considerable weight to the mitigating factors and to the presenter's statement that respondent was entirely cooperative, after his temporary suspension, and has worked hard to reconcile his accounts, the DEC found that the appropriate quantum of discipline for respondent's conduct in this matter was an admonition. The DEC strongly suggested that respondent attend a continuing legal education course in basic bookkeeping and continue to work with the OAE on sorting out his records and setting up a reliable system, to avoid such issues in the future.

Following a review of the record, we find that, in DRB 14-186, the stipulation contains sufficient evidence to support a finding that respondent violated RPC 1.15(b), when he failed to disburse \$5,565.99 in the Iannotti matter, since February 2010; \$3,524.16 in the Ciekurs matter, since February 2006; \$2,264.45 in the Cecchi matter, since December 2003; and \$20,902.84 in the Tydeman matter, since October 1997. The record also supports a

finding that respondent violated RPC 1.15(d) by not maintaining complete and current bank statements and failing to keep special fiduciary funds in their own, separate fiduciary accounts.

After a de novo review of the record, we find that, in DRB 14-187, the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. Despite the DEC's conclusion to the contrary, we find that respondent violated RPC 1.15(a) by leaving earned fees in his trust account for extended periods, an impropriety known as commingling. Once earned, respondent's fees became his property and should have been promptly removed from his trust account.

Also, respondent conceded that he violated RPC 1.15(b) by failing to disburse \$250.80 to Cohen, since 2004, and that his recordkeeping practices were deficient. On February 19, 2013, he finally disbursed the funds to Cohen.²

Finally, respondent ignored the DEC investigator's repeated letters and telephone calls attempting to obtain his reply to the grievance, ignored the OAE's requests for the production of documents for the audit, and failed to appear at scheduled audits, violations of RPC 8.1(b). Only after he was temporarily suspended did he cooperate with the OAE.

² This information is taken from page four of the investigative report, which is attached to the hearing panel report as Exhibit 13.

We now turn to the appropriate measure of discipline for the aggregate of respondent's infractions. Ordinarily, failure to promptly deliver funds to clients, will lead to an admonition, even when accompanied by other, non-serious infractions, such as recordkeeping violations. See, e.g., In the Matter of Samuel M. Manigault, DRB 13-370 (February 28, 2014) (attorney did not keep a running cash balance for his attorney trust account checkbook, failed to prepare or reconcile the client ledger account balance with his monthly trust account bank statements, and maintained an unidentified trust account balance of \$47,040.27, all in violation of RPC 1.15(b) and (d)); In the Matter of Vincent L. Galasso, DRB 13-132 (October 23, 2013) (attorney failed to disburse funds to a medical provider, failed to perform monthly three-way reconciliations, and, in an unrelated matter, negligently misappropriated funds by inadvertently making a deposit in his business, rather than his trust account, in violation of RPC 1.15(a), (b), and (d), compelling mitigation included that the negligent misappropriation was caused by a mistaken deposit into the attorney business account as opposed to the attorney trust account, the attorney's long use of an accountant, his unblemished professional history of thirty-five years, the absence of harm to clients, and the lack of personal benefit

from the errors); In the Matter of Pasquale F. Giannetta, DRB 10-138 (July 1, 2010) (attorney failed to promptly disburse funds to medical providers; failed to comply with recordkeeping requirements, including the failure to reconcile his attorney records; and inadvertently transferred funds from his trust account instead of his business account, resulting in a negligent misappropriation of client funds; violations of RPC 1.15(a), (b), and (d) were found; mitigation considered included that the attorney took full responsibility for his actions, which were unintentional and not for personal gain; no client suffered a loss as a result of his actions; and he promptly retained an accountant to bring his attorney books and records into compliance); In re Cerza 202 N.J. 337 (2010) (in two real estate matters, attorney delayed disbursing escrow funds to the designated recipients, violations of RPC 1.3 and RPC 1.15(b); failed to comply with the recordkeeping rules, a violation of RPC 1.15(d); and, in one matter, failed to comply with a client's reasonable requests for information, a violation of RPC 1.4(b)); and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill and failed to comply with the recordkeeping rules, in violation of RPC 1.15(b) and RPC 1.15(d); the attorney also

practiced law while ineligible).

An admonition is also the usual measure of discipline for the commingling of personal and trust funds. See, e.g., In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011); In the Matter of William P. Deni, Sr., DRB 07-337 (January 23, 2008); and In the Matter of Edward M. Farynyk, DRB 95-168 (February 20, 1996).

Admonitions are also imposed for failure to cooperate with disciplinary authorities, if, as here, the attorney does not have a disciplinary record. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to district ethics committee's requests for information about two grievances); and In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance).

Here, respondent failed to promptly disburse a total of over \$30,000, in four client matters, stemming as far back as 1997. Further, he clearly failed to manage his attorney records

in accordance with the rules, including a failure to keep fiduciary funds in a separate account, and commingled personal and trust funds. Finally, he failed to promptly cooperate with disciplinary authorities in their attempt to obtain a reply to the grievance and to audit his accounts, until they obtained a temporary suspension of his license.

If DRB 14-186 (stipulation) were to be considered alone, it is likely that respondent would receive an admonition for his failure to promptly disburse trust funds and recordkeeping violations. In DRB 14-187 (admonition), a reprimand would likely be the appropriate discipline for all of respondent's transgressions.

In that matter, though, the DEC gave great weight to several mitigating factors. Specifically, respondent suffered from a significant medical condition that took a very serious and nearly deadly turn, around the time of many of his violations. He then went through a difficult divorce from his wife, as well as some additional medical issues. He also admitted that he should not be handling the administrative responsibilities of running a solo practice and stated that he is seeking work at an organization that will have a built-in system of support for those requirements. He continues to work with the OAE to resolve the outstanding balances in his trust

account and, despite the severity of his recordkeeping lapses, it does not appear there was any injury to clients. Also, he was not motivated by personal gain and has no prior discipline.

At oral argument before us, respondent explained that he is no longer a sole practitioner, but of counsel to a law firm. Its accounting department handles all bookkeeping and other financial matters. He also explained that the funds at issue were still in his account, because it had proved very difficult to find the people to whom they belong. Therefore, he is in the process of filing the proper motions to deposit those funds into court.


After consideration of the relevant circumstances, which include the mitigating factors present here, we find that a reprimand is adequate discipline for the totality of respondent's transgressions. We determine to require him, within 30 days of the date of the Court's order, to take whatever steps are necessary to deposit with the Superior Court Trust Fund all unidentified funds remaining in his trust account.

Members Yamner and Rivera 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
Bonnie C. Frost, Chair

By: 
Eileen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of John J. Palitto, Jr.
Docket Nos. DRB 14-186 and DRB 14-187

Argued: September 18, 2014

Decided: December 16, 2014

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera						X
Singer			X			
Yamner						X
Zmirich			X			
Total:			7			2


Ellen A. Brodsky
Chief Counsel