

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 14-194  
District Docket No. XIV-2011-0077E

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IN THE MATTER OF :  
MICHAEL J. WEBER :  
AN ATTORNEY AT LAW : Decision

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Argued: November 20, 2014

Decided: December 16, 2014

Maureen G. Bauman appeared on behalf of the Office of Attorney Ethics.

Robyn M. Hill appeared on behalf of respondent.

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

This matter was before us as a post-hearing ethics appeal filed by the Office of Attorney Ethics (OAE), following the District IX Ethics Committee's (DEC) dismissal of the complaint against respondent.<sup>1</sup> That complaint charged respondent with violating R. 1:21-6 (recordkeeping) and RPC 1.15(d).

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<sup>1</sup> Although the DEC dismissed the complaint without prejudice, one dissenting member, the panel chair, recommended an admonition.

The OAE recommended that respondent receive a censure. Respondent's counsel urged us to impose an admonition. For the reasons expressed below, we determine that a reprimand is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1998. He has no disciplinary history.

The instant matter arises from respondent's alleged failure to comply with an agreement in lieu of discipline (ALD), also known as diversion, entered into with the OAE, pursuant to R. 1:20-3(i)(2)(B). The conduct that gave rise to the ALD was as follows:

Respondent was the subject of a random audit in 2008, which uncovered in excess of 800 inactive trust ledger subaccounts for numerous real estate clients, totaling approximately \$935,000. These funds had not been disbursed for some time, after the transactions had closed. No disciplinary proceedings against respondent were initiated at the time of the 2008 random audit.

On February 15, 2011, the OAE was notified of an overdraft in respondent's attorney trust account. The OAE determined that the overdraft had resulted from a clerical error and that respondent was not at fault. Nonetheless, the OAE conducted a demand audit of respondent's records, at which time the OAE discovered that the \$935,000 in client funds, identified in 2008, still had not been disbursed.

Because the OAE deemed the recordkeeping deficiencies uncovered during the 2011 audit as minor misconduct, it entered into an ALD with respondent, on October 11, 2011. In the ALD, respondent admitted a violation of R. 1:21-6 and RPC 1.15(d). The ALD was premised on seven conditions with which respondent was required to comply, within six months of the ALD's execution. When respondent did not do so, the OAE filed an ethics complaint against him.

At the beginning of the DEC hearing, the parties stipulated that respondent had satisfied all but one condition of the ALD, namely, that he had failed to zero out all of the inactive attorney trust account balances. At the time of the hearing, \$417,615 related to 588 subaccounts remained in respondent's trust account. Only the issue of aggravating and mitigating factors was before the DEC.

Respondent testified that, after the 2008 audit, he hired a certified paralegal with substantial experience, who he believed would have the necessary skills to perform reconciliations and clear the subaccount balances. Unfortunately, that step failed to produce the anticipated results.

Respondent further testified that, beginning in 2009, he gave everyone in his office the task of resolving one file per day. However, after the economy crashed, he had to lay off his entire staff. Although he initially thought that the project

would take a few months, once he dug into the process himself, he realized that this timeline was not realistic. Soon thereafter, a slew of personal issues ensued, making that task much more difficult.

Specifically, during the process of clearing the trust account, respondent's law partnership with another attorney dissolved acrimoniously. His former partner did not cooperate with his inquiries into the subaccounts for her matters, a circumstance that hampered his ability to identify the proper recipients of the funds for those files.<sup>2</sup> Also, during the relevant times, specifically, when the real estate market crashed, respondent lost several properties that he owned to foreclosure, became indebted to the Internal Revenue Service (IRS) for \$150,000, and saw his cash flow completely disappear. He eventually filed a Chapter 13 bankruptcy petition, whereby he entered into a payment plan with the IRS and restructured the debt on his current home. More significantly, in a short period, his father was diagnosed with cancer, followed by a similar diagnosis for his mother. His mother eventually lost her battle with cancer and his father, although overcoming his

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<sup>2</sup> At oral argument before us, respondent's counsel estimated that only fifty matters of the many hundreds making up the overall balance in respondent's trust account may be attributed to his former partner.

original diagnosis, now suffers from dementia and is under respondent's full-time care.

Respondent also clarified that he profoundly underestimated the vast amount of time and effort needed to deposit the unidentified funds with the Superior Court Trust Fund. He testified that, when he attempted to do so, the Superior Court required him to provide what he considered to be an impractical amount of detail as to the funds' rightful recipients, before it would accept those transfers. Additionally, he faced a further obstacle: the Superior Court's refusal to allow him to transfer those funds in a bulk fashion.

Respondent explained that he has worked both on his own, with support staff, and, most recently, with his wife, as his bookkeeper, to identify and locate the proper recipients of the inactive attorney trust balances. Often, these parties had either closed their businesses or relocated, without providing a forwarding address. Additionally, some clients no longer owned the property that was the subject of the real estate transaction. Respondent believes, however, that with his wife and the new system they have implemented the balances can be completely eliminated in twelve to eighteen months. As indicated below, that balance is currently \$340,000.

The OAE argued that many of the mitigating factors that respondent offered, specifically, the challenges with the size

and scope of the work needed to clear these balances should actually serve as aggravating factors, because respondent failed to do something he should have done many years ago. The OAE pointed out that, when he was given additional time, in 2012, he was no closer to clearing the balances in question than he had been in 2008. Although the OAE conceded that clearing the balances is a huge undertaking, it contended that respondent caused the problem and that he has had ample time to correct it.

The majority of the DEC panel recommended that the OAE's complaint be dismissed, without prejudice, subject to being reopened, if respondent does not complete the distribution of all inactive trust account balances remaining in his subaccounts, within twelve months of the date of its decision. The DEC found that respondent could not be found culpable of unethical conduct simply by failing to comply fully with the terms of the ALD. The DEC concluded that respondent had achieved substantial compliance with the terms of the ALD and presented undisputed evidence of his ongoing efforts to comply with it, by disbursing a significant portion of the funds in question. The DEC found that the enormity of the task involved in identifying and distributing the many trust account balances was clearly not properly considered, when the OAE gave respondent only six months to complete the disbursements.

Additionally, the DEC observed that, in 2008, when the OAE learned of the approximate \$935,000 in undisbursed trust account balances, it took no action to discipline respondent and gave him a corrective action plan to remedy the situation. That suggested to the DEC a minimal level of concern, on the OAE's part, for respondent's noncompliance. Based on respondent's and the OAE's underestimate of the amount of time needed to complete the conditions of the 2011 ALD, as well as respondent's substantial compliance and extraordinary personal and financial difficulties, the DEC determined that unethical conduct had not been proven by clear and convincing evidence.

As previously mentioned, the panel chair dissented. He noted the mitigation testimony that respondent presented and stated that, while he sympathized with the many plights that respondent has suffered, his failure to disburse the remaining, inactive subaccount balances, in accordance with the ALD, constituted a per se act of unethical conduct by the ALD's explicit terms. The panel chair pointed to a number of opportunities given to respondent, over a substantial period, to clear the trust account balances: first, in 2008, when the OAE gave him a corrective action plan, and second, in 2011, when the ALD provided an additional six months. Consequently, respondent had years to remedy the situation. Additionally, the panel chair determined that, as a policy matter, discipline is

required so as not to undermine the use of ALDs. He emphasized that parties to ALDs should be able to rely on them as binding agreements. As indicated earlier, the panel chair recommended an admonition.

Following a de novo review of the record, we are satisfied that the record clearly and convincingly establishes that respondent's conduct was unethical.

Respondent violated RPC 1.15(d), by allowing a huge balance to remain inactive in his trust account, over the course of many years. In 2011, he entered into an ALD with the OAE, admitting these violations. As part of the ALD, he agreed to several conditions, in order to avoid formal discipline. He completed all but one of those conditions. Initially, he agreed to zero out more than \$900,000 from his trust account, within six months of the ALD. As of the date of his appearance before us, \$340,000 remained in his trust account.

Respondent presented mitigating factors, such as an explanation of the work he has done, along with the magnitude of the difficulties that he has encountered in doing so. These difficulties included the unanticipated challenge of sending monies to the Superior Court Trust Fund when, despite all diligence, the true owner of the monies for a subaccount cannot



be found.<sup>3</sup> Respondent readily acknowledged that he underestimated how cumbersome the entire process would be and asked that he be given an additional twelve to eighteen months to complete the task.

The OAE, on the other hand, pointed out that respondent has had much more than six months to comply with the ALD. He was made aware of these balances in 2008 and, by the time of the DEC hearing, more than one-third of that balance still remained in his trust account. Therefore, according to the OAE, respondent should be disciplined.

We agree with the OAE. Respondent has had six years to clear the unidentified balances in his trust account, but has failed to do so. Unquestionably, the personal challenges he has endured were unfortunate. In fact, six months was not enough time to clear these balances, even without the personal challenges. But when that time crosses the six-year mark and the problem remains unresolved, respondent's seeming inability to show any appropriate sense of urgency cannot be tolerated.

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent

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<sup>3</sup> At oral argument before us, counsel stated that "a lot of the money belongs to failed lenders," a circumstance that poses a difficulty in locating them.

misappropriation of clients' funds. See, e.g., In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified); In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the OAE revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct); 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 outstanding, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Jeff E. Thakker, DRB 04-258 (September 24, 2004) (attorney failed to maintain a trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); 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); 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); and In the Matter of Arthur N.

Field, DRB 99-142 (July 19, 1999) (attorney did not maintain an attorney trust account in a New Jersey banking institution).

Respondent has no disciplinary history and there is no evidence of negligent misappropriation. We acknowledge the difficulties that he experienced in his personal life with the loss of his mother and the health decline of his father, for whom he now cares. The inescapable fact, however, is that respondent has had over six years to rectify these balances. At oral argument before us, counsel for respondent stated that there remains about \$340,000 to be disbursed and that the goal is to complete that task in six months. When asked what the plan was, counsel replied as follows:

He has a plan. His plan is in place. He has, first of all since this occurred, he has handled many closings. Many short sales additionally . . . [A]ll of those [new] matters are resolved. There are no uncollected funds that continue. He has a part-time person who takes care of that exclusively. He recognizes that the issue of properly resolving distribution of funds in his trust account is important. And he has maintained that since the time of the audit . . . .  
. . . .

At this point in time, in addition to the one individual that he has working part time on clearing the old accounts, his current associate and paralegal are resolving approximately two accounts per day. He hopes that this will result in clearing twenty matters per week and he is also working on the matter and is trying to clear


another ten per week. And he hopes that it will be cleared in the next six months.

Notwithstanding the asserted plan, it is our view that escalation of the baseline admonition traditionally imposed on attorneys who commit recordkeeping violations is appropriate in this case, in light of the extended period that respondent has let this issue fester, without an appropriate resolution. We, therefore, determine that respondent should be reprimanded.

Member Singer would have imposed an admonition. Vice-Chair Baugh 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:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Michael J. Weber  
Docket No. DRB 14-194

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Argued: October 16, 2014

Decided: December 16, 2014

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Frost			X			
Baugh						X
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer				X		
Yamner			X			
Zmirich			X			
Total:			7	1		1

  
Ellen A. Brodsky  
Chief Counsel