

# DISCIPLINARY REVIEW BOARD

## OF THE SUPREME COURT OF NEW JERSEY



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June 22, 2010

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: In the Matter of Tyrone McDonnell  
Docket No. DRB 10-171  
District Docket No. XIV-07-605E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (three-month suspension or such lesser discipline as the Board may determine is warranted) filed by the Office of Attorney Ethics, pursuant to R. 1:20-10(b). Following a review of the record, the Board agreed that a three-month suspension is the appropriate discipline for respondent's violation of RPC 1.15(a) (failure to safeguard client funds) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

Specifically, respondent represented Eric Allen and John Balletto in various business transactions and became friendly with both men. In 2006 and 2007, respondent allowed Balletto to deposit funds into his attorney trust account and to disburse funds from that account for loans to third parties. Also, during 2006 and part of 2007, respondent allowed Allen to deposit funds into his trust account and to disburse funds from that account for Allen's personal expenses. Respondent provided Allen with "endorsed" trust account checks that Allen completed by inserting the payee information and the amount of the check.

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Respondent failed to carefully monitor his trust account while Allen and Balletto were using it and failed to keep an accurate accounting of their deposits and disbursements. As a result of respondent's failure to properly "monitor and control" his trust account, Allen disbursed funds in excess of his own deposits, resulting in the invasion of funds belonging to respondent's clients.

In mitigation, the parties noted respondent's cooperation with the OAE and lack of prior discipline; his ending the use of his account by Allen and Balletto; his engaging the services of an accountant to ensure that his records are maintained in accordance with R. 1:21-6; the absence of harm to any clients; his replacement of all missing funds; his lawsuit against Allen; his involvement in his church and community activities; and his position as the source of financial support for his children, father, and mentally-challenged sister. The parties also cited respondent's serious medical condition, which resulted in two comas in 2009.

Generally, a reprimand is the discipline imposed when the misappropriation of client's funds is the result of negligence. See, e.g., In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because the attorney did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline) and In re Conner, 193 N.J. 25 (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).

When the misappropriation is the result of more than mere negligence, harsher discipline is imposed. In re Gallo, 117 N.J. 365 (1989) (attorney suspended for three months for poor recordkeeping practices, including leaving earned legal fees in his trust account, paying all of his operating expenses from his trust account, failing to keep a running balance of the account, and never using client ledger cards, which resulted in

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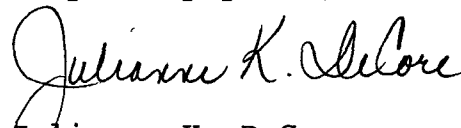
the attorney's never knowing how much money was in his trust account or to whom the funds belonged) and In re James, 112 N.J. 580 (1988) (the attorney was suspended for three months for poor accounting procedures that caused the invasion of clients' funds, including leaving substantial fees in his trust account and using his trust account to pay employee payroll taxes, at times making disbursements in excess of funds deposited in the trust account for that purpose; the attorney was found to have been seriously and inexcusably inattentive to the accounting and bookkeeping details of his practice).

Guided by the above precedent, the Board determined that respondent's conduct is deserving of a three-month suspension.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 11, 2010.
2. Stipulation of discipline by consent, dated May 11, 2010.
3. Affidavit of consent, dated April 29, 2010.
4. Ethics history, dated June 22, 2010.

Very truly yours,



Julianne K. DeCore  
Chief Counsel

JKD/sj  
Encls.

c: Louis Pashman, Chair, Disciplinary Review Board  
Charles Centinaro, Director, Office of Attorney Ethics  
Janice Richter, Deputy Ethics Counsel,  
Office of Attorney Ethics  
Tyrone McDonnell, Respondent