

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-336  
District Docket No. XIV-05-90E

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IN THE MATTER OF  
MARCIA S. KASDAN  
AN ATTORNEY AT LAW

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Decision

Argued: January 17, 2008

Decided: April 8, 2008

John J. Janasie 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.

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The OAE requested the imposition of either a reprimand or "such other lesser discipline as we may determine to be appropriate in

this matter" for respondent's stipulated violations of RPC 1.15(a) (negligent misappropriation) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations). Respondent requested the imposition of a reprimand. For the reasons expressed below, we determine to reprimand respondent for her stipulated misconduct.

Respondent was admitted to the New Jersey bar in 1978. At the relevant times, she maintained an office for the practice of law in Hackensack.

On July 17, 1989, the Supreme Court imposed a three-month suspension on respondent for grossly neglecting one client matter, failing to communicate with the client in three matters, misrepresenting the status of matters to three clients, and issuing a trust account check against insufficient funds in one matter. In re Kasdan, 115 N.J. 472 (1989).

On April 30, 1993, the Supreme Court suspended respondent for three years. In re Kasdan, 132 N.J. 99 (1993). In that matter, two weeks before the 1989 three-month suspension was to begin, respondent asked the Supreme Court to stay the suspension. The Court denied her request. Nevertheless, respondent continued to practice law.

In two matters, she intentionally failed to disclose her suspension to her clients, her adversaries, and the courts,

thereby misrepresenting to them that she was a duly licensed attorney fully eligible to practice. Respondent's misrepresentations were of particular concern to the Court because, in the 1989 matter, respondent had assured the Court that she would not make misrepresentations to her clients. In addition, respondent failed to comply with the requirements imposed on suspended attorneys.

In a third matter, involving an ill-fated real estate transaction, respondent failed to safeguard funds (RPC 1.15(a)), failed to notify the client or third party of the receipt of funds and to deliver the funds (RPC 1.15(b)), failed to segregate funds in which she and another person claimed an interest (RPC 1.15(c)), committed various recordkeeping violations (RPC 1.15(d)), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)).

Respondent was reinstated on July 30, 1996, and ordered to practice under the supervision of a proctor for a two-year period and until further order of the Court. In re Kasdan, 145 N.J. 567 (1996). On October 6, 1998, the Court entered an order terminating the proctorship. In re Kasdan, D-46 September Term 1998 (October 6, 1998). At oral argument, respondent

represented to us that she has a continuing relationship with the proctor.

On October 22, 2007, respondent and the OAE finalized a disciplinary stipulation, in which it was agreed that respondent had negligently misappropriated client trust funds in one matter, improperly issued trust account checks made payable to cash, and committed a number of recordkeeping violations. According to the stipulation, an OAE audit of respondent's attorney trust and business account records uncovered several deficiencies.

Specifically, on November 10, 2004, respondent issued a \$5000 bank check, payable to Lakeland Bank, with the notation "Virginia Cowart." The bank then issued a cashier's check in that amount, which respondent sent to Cowart. At the time that respondent wrote the check, she held no funds for the benefit of Cowart in her trust account. She, therefore, invaded other client funds held in her trust account.

Respondent explained to the OAE that she had intended to disburse the funds from her business account, which had sufficient monies to cover the check. However, when she completed the bank check, she "inadvertently noted the wrong account number which was only 2 digits different."

Based on the OAE's review of respondent's books and records and "the circumstances surrounding the disbursement," the OAE found no clear and convincing evidence of knowing misappropriation on respondent's part. The OAE concluded that the invasion of client funds "appears to have been a mistake due in part to the recordkeeping deficiencies detailed below."

In another matter, respondent represented a client named "Larroy" in the November 26, 2003 sale of his home. After the closing, respondent did not disburse all proceeds due Larroy. Instead, pursuant to Larroy's request, she made periodic disbursements to him, in various amounts, between November 25, 2003 and September 22, 2004.

On February 24, 2004, pursuant to Larroy's request, and in violation of R. 1:21-6(c)(1)(A), respondent issued two separate checks, made payable to "cash," in the total amount of \$5000. During the OAE's investigation, Larroy signed an affidavit confirming that respondent had done so at his request.

Respondent also admitted, during the OAE investigation, that she had not maintained her attorney trust account records in accordance with R. 1:21-6. The OAE's audit uncovered the following violations:

- Attorney personal funds were commingled in trust account with client funds.
- There were no monthly reconciliations conducted.
- No running balance was kept in the checkbook.
- Deposit slips were not sufficiently detailed.
- Earned attorney's fees were not timely withdrawn from the trust account.

Based on the stipulated facts, respondent acknowledged having violated RPC 1.15(a), RPC 1.15(d), and R. 1:21-6.

Following a review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical. She invaded client funds, a violation of RPC 1.15(a), when she mistakenly wrote the trust account number on the bank check that she had used to obtain a cashier's check for Cowart. Respondent also violated R. 1:21-6 and RPC 1.15(d), when she issued two trust account checks made payable to cash and did not properly maintain her attorney records.

There remains the quantum of discipline to be imposed for respondent's negligent misappropriation and failure to abide by the recordkeeping rules. Generally, a reprimand is imposed for

recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Conner, 103 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 other clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled); 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 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).

A reprimand may still result even if the attorney's disciplinary record includes a prior recordkeeping violation or even other ethics transgressions. See, e.g., In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered); 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 he needed funds, without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); and In re Marcus, 140 N.J. 518 (1995)



(attorney negligently misappropriated client funds as a result of numerous recordkeeping violations and commingled personal and clients' funds; the attorney had received a prior reprimand).

Notwithstanding respondent's serious disciplinary history, we note that she has practiced law without incident for nearly twelve years. Therefore, we believe that a reprimand is sufficient discipline for her negligent misappropriation and recordkeeping violations in this matter.

Chair O'Shaughnessy and members Baugh, Lolla, and Neuwirth 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  
Louis Pashman  
Vice Chair

By: \_\_\_\_\_  
Julianne K. DeCore  
Chief Counsel

**Draft**

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-336  
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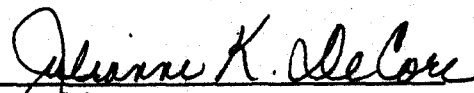
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Disciplinary Review Board  
Louis Pashman  
Vice Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Marcia S. Kasdan  
Docket No. DRB 07-336

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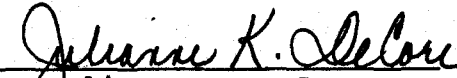
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Argued: January 17, 2008

Decided: April 8, 2008

Disposition: Reprimand

| Members       | Disbar | 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         |         |              |                     |
| Total:        |        |            | 5         |         |              | 4                   |

  
Julianne K. DeCore  
Chief Counsel