

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-406
District Docket No. XIV-07-313E

IN THE MATTER OF
JOHN WISE
AN ATTORNEY AT LAW

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Decision

Argued: March 20, 2008

Decided: May 20, 2008

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Lewis B. Cohn 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to violating RPC 1.15(a) (failure to safeguard trust funds -- negligent misappropriation) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations). The OAE recommended

either a reprimand or a censure. We find that the circumstances of this case warrant the imposition of a reprimand.

Respondent was admitted to the New Jersey bar in 1983. He maintains a law practice in South Orange, New Jersey.

In 1995, respondent was reprimanded for recordkeeping deficiencies that resulted in his negligent misappropriation of client trust funds totaling \$9,000. In re Wise, 139 N.J. (1995). The following year, he was admonished for his lack of diligence and failure to communicate in a matrimonial matter. Specifically, after obtaining a court order to enforce litigant's rights, respondent took no further action in the matter and failed to return his client's telephone calls. In the Matter of John F. Wise, DRB 96-163 (June 26, 1996). Finally, in 2005, respondent consented to a reprimand for his gross neglect and lack of diligence in a bankruptcy matter. In re Wise, 185 N.J. 167 (2005).

The New Jersey Lawyers' Fund for Client Protection report shows that respondent was ineligible to practice law from August 8, 1985 to May 8, 1987, for failure to pay his annual assessment.

We now turn to the facts of this matter.

As the result of a random compliance audit completed on March 28, 2007, the OAE discovered that respondent had negligently misappropriated funds from the "Omar Nieves to Lima - Real Estate matter." On November 24, 2004, prior to having any

funds on deposit in his trust account for the Nieves matter, respondent issued a \$3,660 trust account check (#2409) to Nieves. This disbursement resulted in the invasion of other client funds.

On January 26, 2005, in connection with the Nieves matter, respondent deposited \$7,152 into his trust account. Thereafter, he issued a \$2,954.50 trust account check (#2418) to Omar Nieves and Stella Lima, and a trust account check (#2419) for \$537.50 to himself. The transactions reduced the Nieves client ledger to a zero balance. The \$3,660 trust account shortage lasted for sixty-two days.

The OAE's 2005 audit of respondent's books and records, which concluded in March 2007, uncovered seven recordkeeping deficiencies. In 1993 and 1999, the OAE had detected four of the same deficiencies in prior random audits of respondent's books and records. The continuing deficiencies are denoted by an asterisk.

*A. The attorney trust account receipts journal is not fully descriptive [R. 1:21-6(c)(1)(A)].

B. The attorney trust account disbursement[s] journal is not fully descriptive [R. 1:21-6(c)(1)(A)].

*C. Clients['] trust ledger sheets are not fully descriptive [R. 1:21-6(c)(1)(B)].

D. A separate ledger sheet is not maintained detailing attorney funds held for bank charges [R. 1:21-6(d)].

*E. Inactive trust ledger balances remain in the attorney trust account for an extended period of time [R. 1:21-6(d)].

*F. A schedule of clients' ledger account balances is not prepared and reconciled monthly to the attorney trust account bank statement. [R. 1:21-6(c)(1)(H)].

G. The attorney trust account bank reconciliation prepared by the auditor showed total trust funds on deposit were in excess of total obligations by \$28,385.10[.] [R. 1:21-6(d)].

[S31B2.]¹

As a result of failing to reconcile his attorney trust account on a monthly basis, respondent did not discover that, between November 9, 2004 and January 6, 2005, he had issued from his trust account seventy-four checks, totaling \$47,435.99, for business expenses. He mistakenly believed that the checks had been issued from his business account. The OAE determined that the error occurred because respondent's accounting firm had ordered laser checks for respondent and had provided to the check company the wrong bank account number. After respondent learned about the mistake, he "made correcting deposits."

¹ S refers to the disciplinary stipulation.

The OAE concluded that respondent's use of his trust account had not been intentional because he had listed the disbursements in his attorney business account disbursements journal and had sufficient funds in his business account to cover the disbursements. According to the stipulation, had he reconciled his trust account in accordance with R. 1:21-6, respondent would have "detected and corrected [the error] in a timely fashion."

The stipulation listed, as mitigating factors, respondent's full cooperation with the OAE investigation and his representation that he had implemented procedures to prevent the recurrence of negligent misappropriation and recordkeeping deficiencies.

Respondent submitted a certification supplementing the stipulation. Respondent certified that he was "out-of-trust" in the Nieves situation as a direct result of his past recordkeeping practices; when he became aware of the shortfall in his trust account, he replenished the amount with his own funds.

As to respondent's improper use of his trust account for business expenses, respondent explained, in his certification, that his former accountant/bookkeeper had ordered laser checks for his business account that inadvertently bore his trust account number. According to respondent:

As these checks were thereafter used, appropriate entries were made in the practice's business account disbursement journal but monies reflected on the checks were being disbursed from the trust account. The problem was compounded by the fact that when I received the first bank statements on the business and trust accounts in early December 2004 after I began using the laser checks, there was insufficient activity in both accounts to indicate that anything was seriously awry. By the time I received the next statements on the two accounts, approximately \$47,000 had been inadvertently disbursed from my trust account. I immediately took steps to transfer monies so that payment would be made on all issued checks, and discontinued using the laser checks.

[C6¶13.]²

Respondent also recounted the difficulties he has had with his recordkeeping systems. He claimed that, in the early stages of his career, the demands of his practice (primarily bankruptcy, as a sole practitioner) made it "practically impossible" for him to devote the time required for recordkeeping.

Respondent added that the 1993 OAE random audit had disclosed a series of deficiencies that had contributed to his negligent misappropriation of funds and a "series of monies that had gradually accumulated in [his] attorney trust account for

² C refers to respondent's certification, dated February 26, 2008.

which [he] was unable to identify a particular client or clients to whom such monies should be disbursed." As years passed, the "chances of identifying the clients to whom these monies belonged and disbursing these monies became more and more remote." The sum of unallocated funds grew to more than \$40,000.

According to respondent, in the past, he had hired numerous individuals with accounting backgrounds to put his records in order and assist in the identification of the unaccounted for sums, to no avail. Finally, after the OAE random audit in 2005, respondent retained the services of Robert Gelman, who has dealt directly with the OAE to correct his past deficiencies and to establish an accounting system to keep him in compliance with the recordkeeping rules. With Gelman's help, respondent has been able to identify a number of recipients for the "unaccounted for funds" and to make disbursements to them. At oral argument before us, respondent asserted that he has deposited with the court the \$19,000 that remains "unaccounted for."

In addition to the mitigation listed in the stipulation, respondent noted his long involvement in pro bono activities through the Volunteer Lawyers for Justice and the recognition that he received for such activities from the Essex County Bar Association, in the form of the Kuttner Pro Bono Attorney Achievement Award.

Following a review of the stipulation, we find that the facts contained therein fully support a finding that respondent's conduct was unethical.

Respondent engaged in the negligent misappropriation of funds and recordkeeping deficiencies, some of which remained unresolved from the time that two earlier OAE random audits were performed.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated \$103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); 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 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 depositing corresponding settlement funds, believing that he was withdrawing

against a "cushion" of his own funds left in the trust account); 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); and In re Goldstein, 147 N.J. 286 (1997) (negligent misappropriation of clients' funds and failure to maintain proper trust and business account records).

A reprimand may still result even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. See, e.g., In re Toronto, 185 N.J. 399 (2005) (negligent misappropriation of \$59,000 in client funds and recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and a reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account); 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); 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).

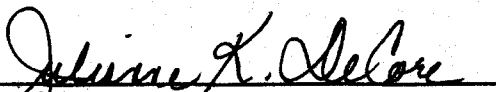
Here, too, respondent has an ethics history which, we note, includes a prior negligent misappropriation of client funds and recordkeeping violations (1995 reprimand). Because we find that respondent has cooperated with the OAE and has finally found the assistance necessary to keep his books and records in compliance with the recordkeeping rules, we determine that discipline no greater than a reprimand is sufficient for respondent's current transgressions.

Member 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
William J. O'Shaughnessy, Chair

By:


Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of John Wise
Docket No. DRB 07-406

Argued: March 20, 2008

Decided: May 20, 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:			8			1


Julianne K. DeCore
Chief Counsel