

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-223
District Docket Nos. XIV-05-079E,
IIA-05-013E, and XIV-05-080E

IN THE MATTER OF
DANIEL HEDIGER
AN ATTORNEY AT LAW

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Decision

Argued: October 19, 2006

Decided: December 8, 2006

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Anna Navatta appeared on behalf of the District IIA Ethics Committee.

Joseph Castiglia appeared on behalf of respondent.

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

These consolidated matters came before us on a recommendation for discipline (three-month suspension) filed by the District IIB Ethics Committee ("DEC"). One of the matters

was before us as a default in January 2005. On respondent's motion, we vacated the default and remanded the matter for consolidation with all pending matters.

The three matters before us are presented in two separate complaints. The complaints charge respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.15(a) (failure to safekeep property), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 7.5(d) (improper use of a firm name), RPC 8.1(a) (false statements to ethics authorities), RPC 8.1(b) (failure to cooperate with ethics authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1995. At the relevant time, he maintained a law office in Edgewater, New Jersey.

Respondent completed a diversionary program, in November 1999, for violations of RPC 1.3 (lack of diligence), RPC 5.5(a) (unauthorized practice of law), and R. 1:21-6 (recordkeeping violations). In 2004, in a default matter, the Court reprimanded him for misconduct spanning from 2000 to 2001. The misconduct included gross neglect, lack of diligence, failure to communicate with a client and to comply with the client's reasonable requests

for information, and failure to cooperate with disciplinary authorities. In re Hediger, 179 N.J. 365 (2004).

Respondent's counsel argued that we should withhold imposing discipline in this matter until a similar matter pending with the DEC is resolved. Notwithstanding that respondent will likely raise the same defense in subsequent matters, we deny counsel's request and proceed with this matter because it is ripe for our review.

I. The DeMarzo Matter – District Docket No. II A-03-14E

The grievant, John DeMarzo, did not appear at the DEC hearing. The presenter, therefore, relied on respondent's admissions and testimony. The first count of the complaint charged respondent with lack of diligence.

According to the complaint and respondent's admissions, on May 29, 1999, DeMarzo executed a retainer agreement to have respondent pursue a claim against Demarzo's former employer, under the Conscientious Employee Protection Act ("CEPA"). Respondent asserted that he met with DeMarzo to discuss the merits of the claim both before and after DeMarzo signed the retainer agreement. Respondent could not recall the dates of their meetings, however.

Respondent explained that, under CEPA, there is a one-year statute of limitations to file a claim. Because DeMarzo resigned from his job in October 1998, he would have had until October 1999

to file a CEPA claim. Respondent was certain that he had advised DeMarzo about the one-year statute of limitations in a timely fashion. No one elicited further testimony from respondent about the CEPA claim.

Respondent's answer to the complaint stated that, after he investigated DeMarzo's claim, he determined that "it was insupportable and unsound in law." The answer alleged that respondent so informed DeMarzo prior to the expiration of the CEPA statute of limitations; that, after the statute of limitations expired, DeMarzo retained new counsel, who sued DeMarzo's employer on common law principles and also sued respondent; that the suit against the employer was dismissed; and that a judgment was entered against respondent for \$60,000,¹ which was settled for \$10,000 but never satisfied because of respondent's financial situation. The answer denied that respondent was out of contact with DeMarzo for "any extended time," or that DeMarzo had lost his job or become bankrupt as a result of respondent's conduct.

The second count of the complaint charged that respondent failed to reply to a lawful demand for information from a disciplinary authority (RPC 8.1(b)). Respondent admitted those allegations.

¹ The record does not indicate the grounds for DeMarzo's suit against respondent.

Specifically, on September 18, 2003, the DEC sent a certified letter to respondent, requesting a reply to the grievance within ten days. Respondent received the letter on September 19, 2003, but failed to reply to it. Thereafter, on December 8, 2003, the DEC sent a second letter to respondent, by certified mail, warning that, if he failed to reply to the grievance, the facts would be "assumed to be true." Respondent received the letter on December 10, 2003.

On December 23, 2003, respondent telephoned the DEC to request an extension. The DEC granted him an additional twenty days to reply to the grievance, but he again failed to do so. Thereafter, he requested a second extension, citing personal problems. The DEC granted the request and extended the time for him until January 20, 2004. Once again, he did not reply to the grievance.

Respondent denied that his failure to cooperate with the DEC investigation was the result of a willful desire to achieve an improper result. He blamed his inaction on personal problems. The letter, which he previously submitted to us in support of his motion to vacate the default and which detailed his personal problems, was attached to his attorney's brief to us.

At the DEC hearing, respondent blamed the overwhelming personal stresses in his life for his failure to reply to the

DEC's late 2003 and early 2004 requests for information about the grievance. Respondent explained that his mother had been diagnosed with breast cancer in 1993, while he attended law school. In 2001, the cancer metastasized and spread to her bones. As a result, she was required to undergo three years of hormone therapy, during which time she experienced "ups" and "downs." Following the therapy, doctors discovered that she had cancer in her lung, which required the discontinuation of hormone therapy and introduction of chemotherapy. After five or six months of unsuccessful chemotherapy treatments, her doctor prescribed more intensive chemotherapy, which resulted in profound effects on her health and required more of respondent's attention.

Respondent's father was also suffering from ill health at that time and, as a result, provided only limited support to his wife. In January of an unspecified year, respondent's father had two bypass surgeries. He was, thus, unable to provide some of the care that his wife required. During that time period, respondent, an only child, was left with the responsibility of transporting his mother to her treatments.

In April 2005, doctors discovered that the cancer had spread to his mother's brain, resulting in untreatable "neural brain lesions." Respondent remarked that, "ironically," when his mother's condition became terminal, she no longer needed as much care from him.

As of the date of the DEC hearing, respondent's father had retired and was able to provide his wife with more assistance.

According to respondent, his parents' ailments took a toll on his own family, as well as on his professional responsibilities. In 2002, he filed for divorce, which became final in January, (presumably 2004).

Respondent claimed that, although his practice is not very busy, his office has always been understaffed. Therefore, his obligation to care for "a family member . . . was more pronounced" and took more of a toll on his practice because he was solely responsible for it. Currently, respondent works seven days a week and puts in many hours during the week. He hired a paralegal in March 2005.

According to respondent, he was concerned that his failure to reply to the DEC would be perceived as placing his personal circumstances ahead of his duty to cooperate with ethics authorities and, in turn, would affect the most important thing in his life -- his license to practice law.

The DEC concluded that the presenter did not prove by clear and convincing evidence that respondent had violated RPC 1.3. The DEC noted DeMarzo's failure to testify and respondent's testimony that he had advised DeMarzo about the statute of limitations. As to the charged violation of RPC 8.1(b), the DEC

determined that respondent presented extenuating personal circumstances – his parents' serious medical problems. The DEC, thus, found no violation of that rule.

II. District Docket Nos. XIV-05-079E and XIV-05-080E

Because respondent admitted many of the allegations of the complaint, at the DEC hearing the parties stipulated to facts that form the basis of respondent's unethical conduct. The following summarizes the parties' stipulation and additional evidence.

Until December 2002, respondent maintained a solo practice of law in Oradell, New Jersey. From January 1, 2003 to the fall of 2003, he maintained an association with another attorney, David Greenberger. They practiced under the name of Greenberger and Hediger, in Edgewater, New Jersey.

The Cupo Grievance

On March 4, 2003, Michael Cupo, a mortgage broker, filed a grievance against respondent, who was the settlement agent in a real estate matter involving their mutual client, Negar Jenabi. The grievance alleged that respondent failed to disburse funds in connection with the matter.

According to the stipulation, respondent failed to forward the "broker yield spread" to Cupo's employer, Classic

Mortgage Company, as instructed. Cupo stated that the amount of the broker yield spread was \$4,147. Related costs, such as the broker application fee (\$395), the appraisal fee (\$250) and credit report fee (\$19), equaled \$664. Cupo wrote several letters and made several telephone calls to respondent demanding payment. All of his demands went unanswered. Respondent, for his part, claimed that he tried to reach Cupo at the time of the closing and once thereafter. The complaint charged respondent with violating RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence).

Recordkeeping Violations

The complaint charged violations of RPC 1.15(d) (recordkeeping violations, RPC 8.1(a) (providing false information to ethics authorities and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation).

Respondent's client trust ledger card for the Jenabi transaction showed that two payments were made to Classic Mortgage Company for the above items, by way of two attorney trust account checks, nos. 2704 (\$4,147) and 2710 (\$664), drawn on his Washington Mutual Bank trust account.

Respondent's trust account bank statements, however, indicate that checks 2704 and 2710, as well as several other checks from the Jenabi transaction, were never posted to the

trust account and remained outstanding, as of the date of the stipulation, as shown below.

CHECK #	DATE	PAYEE	AMOUNT
2703	1/16/03	Bergen County Clerk	\$ 2,740.00
2704	1/16/03	Classic Mortgage	\$ 664.00
2706	1/16/03	Moore Title Services, Inc.	\$ 1,766.00
2710	1/16/03	Classic Mortgage	\$ 4,147.00
2711	1/16/03	Daniel D. Hediger, Esq.	\$ 1,629.25
		Total	\$10,946.25

[S413.]²

In addition to the outstanding Jenabi checks, other recordkeeping problems were detected. For instance, respondent failed to record on his client ledger card check no. 2713, in the amount of \$15,243.96, payable to Jenabi. The disbursement was posted to his attorney trust account on February 3, 2003. This caused respondent to reflect an incorrect balance of \$15,253.96 on his Jenabi client trust ledger card. "Jenabi received the balance on or before February 3, 2003."

According to respondent's last Washington Mutual attorney trust account bank statement, as of November 20, 2003, he had a balance of

² S refers to the stipulation.

\$129,425.59. Respondent stipulated that as of October 26, 2004, he had not identified those funds, failed to supply all of his relevant trust account records to the OAE, failed to properly reconcile his attorney trust account, and failed to pay Cupo's company the money it was owed.

At the initial August 26, 2003 OAE audit, respondent failed to produce any attorney trust or business account records. He informed the OAE that he maintained some of the records required by the rules, with the exception of three-way reconciliations. He admitted that he could not account for the funds held in his attorney trust account and that he did not maintain all of the required attorney trust account records.

At the September 12, 2003 continuation of the audit, the OAE determined that respondent had failed to maintain the following records in accordance with R. 1:21-6:

- a. trust account cash receipts journal;
- b. trust account cash disbursements journal;
- c. trust account check book register;
- d. some trust account client ledger cards;
- e. trust account schedule of client ledger account balances;
- f. trust account reconciliations;
- g. business account cash receipts journal;
- h. business account cash disbursements journal; and
- i. business account checkbook register.

[S615.]

At the August 26, 2003 demand audit, respondent informed the OAE that he no longer used his Washington Mutual Bank attorney trust and business accounts and that, in approximately March 2003, he had opened new accounts at the Bank of New York. As of the date of the DEC hearing, October 18, 2005, respondent had not closed his Washington Mutual Bank trust account, which, as of November 20, 2003, had a balance of \$129,425.59.

By letter dated September 15, 2003, the OAE directed respondent to reconstruct his attorney trust account records. In an October 2, 2003 certification to the Court, respondent stated that he had obtained the services of accountant Joyce Rothschild to reconstruct his Bank of New York attorney trust account.

On December 1, 2003, respondent submitted limited documentation to the OAE, which included: a three-way reconciliation of his Bank of New York attorney trust account as of October 31, 2003, reconstructed client ledger cards, a cash receipts journal, and a checkbook register, prepared by Rothschild. The documentation, nevertheless, was incomplete and did not comply fully with the OAE's demands.

In a certification dated October 17, 2003, respondent informed the Court that he had obtained the services of Chris D. McKay of Accounting for Attorneys, Inc. to reconstruct his Washington Mutual Bank attorney trust account. However, as of October 26, 2004, respondent had not submitted the necessary records to McKay. As a

result, respondent did not submit to the OAE any reconstructed records of his Washington Mutual attorney trust account.

Respondent's 1998 diversionary agreement with the OAE related to similar recordkeeping violations.

Negligent Misappropriation

Rothschild's reconciliation of respondent's Bank of New York trust account, as of October 31, 2003, revealed that respondent had shortages in his attorney trust account for at least eight clients. The amount of the shortages ranged from \$55 to \$1,000.10, for a total of \$5,512.45.

In a November 30, 2003 letter to the OAE, respondent admitted that, with the exception of three matters, the shortages in his attorney trust account occurred because he mistakenly deposited client funds into the Washington Mutual attorney trust account and then disbursed them from the Bank of New York trust account. The OAE determined that the other shortages were caused by respondent's failure to maintain his records and also by the reasons contained in his November 30, 2003 letter.

Respondent's paralegal, Dawn Angus, testified that she had been employed by respondent since March 2005, and has been helping him to get his bookkeeping records in order. When she first started the bookkeeping, the Bank of New York trust account had a balance

of approximately \$900,000. By going through the appropriate files, she and respondent were able to reduce the outstanding balance to approximately \$269,000. In August 2005, respondent opened a new trust account (Commerce Bank) to deal with new files. As of the date of the DEC hearing, Angus had not yet begun to go through the files relating to the Washington Mutual trust account.

The Law Partnership

The complaint charged that respondent violated RPC 7.5(d) (improper use of a firm name)³ and RPC 8.1(b) (failure to cooperate with ethics authorities).

Respondent's professional relationship with David Greenberger, doing business under the name of Greenberger and Hediger, LLP, was governed by an agreement designated as the "Partnership Agreement."

The agreement states, in relevant part:

WHEREAS the parties desire to share joint expenses associated with the operation [sic] their separate law practices; and,

. . . .

3. Business Purpose. The purpose for which the partnership is organized is the

³ RPC 7.5(d) states:

Lawyers may state or imply that they practice in a partnership only if the persons designated in the firm name and the principal members of the firm share in the responsibility and liability for the firm's performance of legal services.

sharing of joint expenses relative to the operation of each party's separate and distinct law practice. The partnership shall be in name only for the purpose of sharing facilities and expenses which the parties herein, and subsequently by agreement, identify as common. Each party shall maintain a separate legal practice and separate business and trust account.

. . . .

7. Expenses. Each party shall bear the expenses incurred with regard to the operation of his practice. Said expenses shall be paid independently of the other party

The parties shall share the following expenses:

- a. postage machine
- b. telephone charges (including line installation and maintenance charges)
- c. equipment leases and maintenance (computer, fax, copier)
- d. hardware and software
- e. accounting for partnership
- f. insurance (hazard, professional liability)
- g. supplies and stationary
- h. rent and security deposits
- i. Internet web site hosting

8. Profits and Losses. The parties shall retain the profits and assume the losses earned or incurred by their respective practices.

9. Partnership Services

. . . .

15. Noncompetition. The parties agree that during the course of the partnership arrangement, neither party shall (1) solicit, or seek to represent or advise, any of the clients of the other party or (2)

perform any work for any client of the other party, except as provided in Paragraphs 9(b) and (c) hereof; without the written consent of the other party.

[Ex.OAE30.]

The complaint alleged that respondent and Greenberg's partnership was not a true partnership, even though they so stated or implied.

The OAE requested that respondent provided it with specific documentation relating to his partnership with Greenberger, including the partnership agreement. Respondent, however, failed to comply with the OAE's request.

The OAE obtained a copy of the agreement from Greenberger. For his part, respondent alleged that he had not provided the agreement because "he was not physically in possession" of it.

Failure to Cooperate with Disciplinary Authorities

By letter dated June 10, 2003, the OAE sought a reply to the Cupo grievance, to no avail. Thereafter, by letter dated August 8, 2003, the OAE directed respondent to appear before it on August 26, 2003, for a demand audit of his books and records. Even though respondent appeared at the audit, he failed to produce the materials requested by the OAE.

Although the OAE rescheduled the demand audit to September 12, 2003, in order to give respondent enough time to produce the

required records, he again failed to do so. On the day of the audit, respondent informed OAE representatives that he did not maintain proper attorney trust and business records and was, therefore, unable to account for his clients' trust funds.

As a result, on September 15, 2003, the OAE issued a letter to respondent, pointing out the deficiencies in his accounting practices and directing him to submit various records, to reconstruct his attorney trust account records, and to submit the reconstructed records to that office by October 27, 2003. The OAE's letter informed respondent that, if he did not comply with its requests on or before that date, the OAE would seek his immediate temporary suspension.

Respondent failed to submit the requested information by the deadline. Prior to the deadline, however, on September 25, 2003, the OAE filed a Petition for Emergent Relief with the Court, seeking respondent's immediate temporary suspension from the practice of law.

On October 20, 2003, respondent's then attorney, Michael Kingman, requested that the Court defer action on the OAE's petition, and grant respondent thirty days to comply with the OAE's requests because he had retained an accountant to help him get his trust account into compliance. On October 27, 2003, the Court ordered respondent to comply with the OAE's requests and

submit all documents and record reconstructions within thirty days of the order. The Court warned respondent that failure to "comply completely" with the OAE's investigation would result in his immediate suspension, without further notice to him.

Respondent did not comply with the Court's Order. Thirty-four days later, on December 1, 2003, the OAE requested that the Court immediately suspend respondent, in accordance with the terms of its order. On that same date, after the OAE had filed its motion with the Court, respondent submitted to the OAE a portion of his records.

On December 11, 2003, after the OAE reviewed respondent's submission, it withdrew its motion for temporary suspension based on "respondent . . . apparently, mak[ing] a good faith effort to comply with the OAE's requests for documentation, even though respondent did not produce all of the records the OAE had requested."

On December 16, 2003, the Court dismissed the OAE's motion for respondent's temporary suspension. As of October 26, 2004 (the date of the ethics complaint), respondent had not submitted to the OAE all requested documentation in the Atlas letter dated September 15, 2003.

At the DEC hearing, attorney Brian M. Chewcaskie stated that he had agreed to act as respondent's proctor.

As to the Cupo matter, the DEC found that "respondent did not act reasonably diligent [sic] and promptly in representing the interests of his client, Negar Jenabi." Presumably, the DEC found

only a violation of RPC 1.3, as it made no mention that respondent's representation of Jenabi was grossly negligent.

The DEC also found clear and convincing evidence that respondent engaged in recordkeeping violations, provided false information to ethics authorities, and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation. The DEC noted only that, throughout the years, respondent's practice had a "pattern of not keeping proper records" and that he failed to obtain assistance from any programs available to him prior to the hearing. The DEC did not elaborate on the conduct that formed the basis for its finding that respondent violated RPC 8.1(a) and RPC 8.4(c).

The DEC additionally found that respondent negligently misappropriated client trust funds (RPC 1.15(a)) and engaged in recordkeeping violations (RPC 1.15(d) and R. 1:21-6). The DEC noted that respondent "retained fees that were due him in his trust account" and failed to properly and timely transfer fees from the trust account into the business account.

The DEC further found that respondent improperly used a firm name (RPC 7.5(d)) and failed to cooperate with ethics authorities (RPC 8.1(b)). As to RPC 7.5(d), the DEC pointed to paragraph 16 of the partnership agreement which states:

Each party agrees to indemnify and hold the other party harmless for any loss or damage, including the payment of any malpractice insurance deductible and increased premiums,

caused by actions, inactions, or negligence of one party.

The DEC concluded that, because RPC 7.5(d) does not require an intent to deceive, respondent violated that rule. The DEC also found a violation of RPC 8.1(b) for respondent's failure to produce the partnership agreement (failure to cooperate with disciplinary authorities).

The DEC recommended a three-month suspension, contingent upon respondent's bringing his records into compliance within six months. The DEC added that, if respondent fails to comply, he should be "investigated by the OAE within six months and . . . his prior history and behavior . . . [should] be given the fullest consideration possible [in] any subsequent proceedings."

In his brief to us, respondent's counsel argued that, although respondent's conduct was improper, it was not deliberate or intended to injure any client. Counsel pointed out that respondent had tried to reform his recordkeeping practice to conform to the rules, had accepted a proctorship, and had agreed to accept the imposition of limitations on his practice. Counsel stated that, through "counseling" and family support from his new wife, respondent had become better equipped to deal with the emotional distress caused by the events described to us. Counsel argued that a reprimand is sufficient discipline for respondent's violations.

The OAE, in turn, stressed that respondent's remedial efforts to comply with the recordkeeping rules began in earnest only after the filing of the formal ethics complaint (February 4, 2005). The OAE urged the imposition of a suspension and underscored that respondent's efforts to reconcile his trust account was still ongoing three years after the grievance was filed. The OAE noted:

Indeed, despite hiring accountants and making promises to the Court to avoid temporary suspension, respondent's own testimony indicated that sincere efforts on his part to resolve recordkeeping inadequacies only began in the year 2005. He consistently failed to produce records requested by the OAE, failed to abide by court order, failed to give the necessary records to his own accountant to begin the process of reconciling the trust accounts. Up until the point when he truly began to address the recordkeeping issues, he remained a danger to clients and at risk to misappropriate funds.

[OAEb5.]⁴

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

On a procedural note, respondent's counsel argued that the DeMarzo matter was not properly before us because it had been dismissed below and no appeal had been taken. We determined that the matter is properly before us under our prior order consolidating it with the OAE matters. After consolidation, the

⁴ OAEb refers to the OAE's letter-brief dated January 4, 2006.

complaints were treated as one and, following a hearing, submitted to us for our de novo review. We now turn to our findings.

In the DeMarzo matter, we agree with the DEC that there was no clear and convincing evidence that respondent violated RPC 1.3. Notwithstanding the entry of DeMarzo's judgment against respondent, respondent's claim of communications with DeMarzo about the lack of merit to the claim, prior to the expiration of the statute of limitations, was not refuted. We, therefore, dismiss the charge that respondent lacked diligence in handling the matter.

Unlike the DEC, however, we find that respondent's personal circumstances do not excuse his failure to cooperate with the DEC investigation. Aware of the problems that beset respondent's family at the time, the DEC twice extended the time for his submission of a reply. Respondent did not comply with the extended deadlines. Although his family's illnesses may serve to mitigate his conduct, they do not excuse it. We, therefore, find that he violated RPC 8.1(b).

In the Cupo matter, respondent was required, pursuant to the lending instructions, to forward the "broker yield spread" (\$4,147) to Classic Mortgage Company. However, respondent did not send the funds to the mortgage company, despite its letters and telephone calls. Respondent's failure to promptly turn over those funds and

funds to others violated RPC 1.15(b) (failure to promptly deliver funds to a third person).⁵

Furthermore, although respondent's client trust ledger card for the Jenabi transaction showed the issuance of two checks to the mortgage company, his trust account bank statement showed that those checks, as well as several other checks relating to that transaction, were never posted to the trust account and, therefore, remained outstanding. Simply stated, although respondent wrote several checks in connection with the transaction, he never disbursed them. In this regard, respondent lacked diligence. In addition, respondent admittedly failed to comply with the recordkeeping requirements, a violation of R. 1:21-6 and RPC 1.15(d).

The complaint also charged that respondent provided false information to ethics authorities when he misrepresented to the OAE that he had some of the trust account records required by the rules and told the OAE that he no longer used one of his trust accounts, thereby creating the impression that the account had been closed.

We find that respondent's statement to the OAE regarding the status of his records was intended to mislead it that his records were not in the abysmal condition that they were. We consider this misleading statement as an aggravating factor. We find misleading,

⁵ Although the complaint charged that respondent violated RPC 1.15(a) (failure to safeguard client funds), section (b) more properly addresses respondent's misconduct.

also, respondent's October 17, 2003 certified statement to the Court that he had obtained the services of Chris McKay to reconstruct his Washington Mutual Bank attorney trust account. As of the date of the complaint, October 26, 2004, respondent had not provided the documents to McKay. Moreover, even as of the date of DEC hearing, October 18, 2005, that trust account had not been reconciled.

On the other hand, we cannot find, to a clear and convincing standard, that respondent intended to deceive the OAE that his Washington Mutual Bank account had been closed. His statement that he no longer used that account and that he had opened a new account at the Bank of New York does not equate to a misrepresentation that the Washington Mutual Bank had been closed, but simply that he was no longer using it. We, thus, find no violations of RPC 8.1(a) and RPC 8.4(c) in this context.

In addition to having violated the recordkeeping rules, respondent also negligently misappropriated client trust funds (RPC 1.15(a)). He created shortages in his Bank of New York trust account by depositing client trust funds into his Washington Mutual trust account and then disbursing those funds from the Bank of New York trust account.

Finally, the complaint charged that respondent violated RPC 7.5(d) (improper use of a firm name) and, once again, RPC 8.1(b)

by not providing the OAE with a copy of the partnership agreement between him and Greenberg.

As to RPC 7.5(d), the language of the partnership agreement clearly and convincingly demonstrates that respondent's and Greenberger's partnership was in name only. Its purpose was to share joint expenses, but to maintain separate law practices. We find, thus, that respondent violated RPC 7.5(d).

We cannot find, however, that respondent's failure to give the OAE a copy of the partnership agreement violated RPC 8.1(b). Because respondent claimed that the agreement was not in his possession, there is no clear and convincing evidence that he willfully failed to turn it over to the OAE. On the other hand, his failure to reply to the Cupo grievance, to produce his books and records at the August 8, 2003 and September 12, 2003 audits, and to submit various records by October 27, 2003, as directed by the Court, violated RPC 8.1(b).

Altogether, thus, respondent violated RPC 1.3, RPC 1.15(a), RPC 1.15(b), RPC 1.15(d) and R. 1:21-6, RPC 7.5(d), and RPC 8.1(b).

As to a violation of RPC 7.5(d), In re Felson, 172 N.J. 314 (2002) is instructive. The attorney was reprimanded for violating several rules relating to the way he advertised his law firm in the yellow pages: RPC 7.5(a) for using a firm name that did not include the full or last name of one or more of the lawyers in the firm; RPC

7.5(d) for implying that he practiced in a partnership with other attorneys, when he did not; and RPC 7.1(a)(1) for publishing an ad that was false and misleading.

Cases involving attorneys who fail to properly deliver funds to clients or third persons have resulted in admonitions or reprimands. See, e.g., In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed on attorney who, for three-and-a-half years, held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill); In re Dorian, 176 N.J. 124 (2003) (reprimand for attorney who failed to satisfy medical liens and failed to cooperate with disciplinary authorities); and In re Grossman, 145 N.J. 570 (1996) (reprimand for attorney who failed to notify prior counsel that a matter had been settled and that monies had been received, contrary to his representation that he would do so; the attorney also failed to remit to prior counsel the portion of the funds to which he was entitled).

Furthermore, respondent was guilty of recordkeeping deficiencies and negligent misappropriation of client funds. Generally, a reprimand is imposed for these violations. See, e.g., In re Winkler, 175 N.J. 438 (2003) (reprimand for attorney who

commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew \$4,100 in legal fees from his trust account before depositing the 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 reprimanded for the negligent misappropriation of \$31,000 in client funds and failure to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (reprimand for negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); and In re Gilbert, 144 N.J. 581 (1996) (reprimand imposed for attorney who negligently misappropriated in excess of \$10,000 in client funds and violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts).

A reprimand may still result for violations of RPC 1.15(d) even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. See In re Toronto, 185 N.J. 399 (2005) (attorney reprimanded for 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) (reprimand imposed on attorney who 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) (reprimand imposed on attorney who 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 into 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 reprimanded for negligently misappropriating client funds as a result of numerous recordkeeping violations and

commingling personal and clients' funds; the attorney had received a prior reprimand).

For the totality of respondent's misconduct, coupled with the aggravating factors present in this matter (his ethics history and misleading comments to both the OAE about his trust account and to the Court about hiring an accountant) we find that a censure is required. In assessing the proper measure of discipline, we have considered the effect that respondent's compelling personal circumstances must have had on his professional responsibilities. Respondent testified that his mother's cancer metastasized in 2001, requiring her to undergo three years of hormone therapy. His mother was undergoing treatment during the time that ethics authorities were investigating his conduct. We recognize that respondent's parents' health issues, as well as his own marital woes, must have taken an extreme toll on his emotions. Certainly, his state of mind at the time must have prevented him from devoting his full attention to his law practice.

We do not believe, thus, that discipline greater than a censure is warranted.

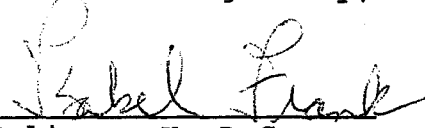
Respondent should be required to provide proof to the OAE that his Washington Mutual Bank trust account has been reconciled and closed, and also provide quarterly trust account reconciliations to the OAE for a two-year period. In addition,

we require respondent to practice under the supervision of an OAE-approved proctor for two years. 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

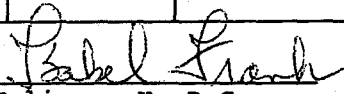
In the Matter of Daniel D. Hediger
Docket No. DRB 06-223

Argued: October 19, 2006

Decided: December 8, 2006

Disposition: Censure

Members	Suspension	Censure	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

By 
Julianne K. DeCore
Chief Counsel