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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-173
District Docket No. XIV-05-0211E

IN THE MATTER OF :
JOHN S. CONROY, IV :
AN ATTORNEY AT LAW :

Decision

Argued: July 21, 2005

Decided: September 15, 2005

Melissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us based on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted having violated RPC 1.15 and R. 1:21-6 (recordkeeping).¹

¹ No subsection of RPC 1.15 was specified. Sections (b) (failure to promptly deliver funds) and (d) (failure to comply with R. 1:21-6) are applicable.

Respondent was admitted to the practice of law in New Jersey in 1980. He has no history of discipline.

The facts are set out in the investigative report, which is attachment A to the stipulation.

Respondent practices law as a sole practitioner. He maintains the books and records for the firm bank accounts. During the time relevant to this matter, respondent maintained his accounts in First Union National Bank (now Wachovia Bank).

Respondent was the subject of a previous random audit in March 1994. Several recordkeeping deficiencies were noted at that time:

1. Trust account designation improper.
2. No trust receipts journal.
3. No trust disbursements journal.
4. No trust ledger for each client.
5. No trust ledger for attorney funds on deposit.
6. No trust account reconciliation. A certification of the account was required.

[IR2.]²

By letter dated November 9, 2004, the OAE notified respondent that a random audit of his attorney books and records would be conducted on December 3, 2004. According to respondent's trust account records, as of October 29, 2004, he should have been holding \$4,600 for his client Chester. See discussion below. On that date, however, the cash balance in

² IR refers to the investigative report.

the trust account was \$1,796.45, indicating a shortage of \$2,803.55.

The 2004 audit revealed that respondent negligently misappropriated \$2,803.55 of client trust funds, as a result of unmonitored service charges totaling \$1,054.45 and four debit transactions totaling \$1,749.10. Without authorization, the bank had charged the trust account to offset four overdrafts in respondent's attorney business account. The charges occurred in April 1999, October 1999, November 1999, and March 2003. Respondent claimed no knowledge of the charges. He never reviewed the business account statements and did not recall seeing debit advices for the transactions. In addition, respondent never opened his trust account bank statements because, to his knowledge, there was no activity in the trust account. The account, thus, was not reconciled.

In addition to the debits totaling \$1,749.10, the account was being regularly assessed bank fees. The bank charges accounted for the additional shortage of \$1,054.45. Respondent was unaware that the account was being charged, having believed that the account was opened as a non-service fee account.

Respondent became aware of the shortage as he prepared for the OAE audit. In November 2004, he reimbursed his trust

account \$1,749.10 from his business account.³ In December 2004, the bank credited the trust account \$576 toward the service charges. Thereafter, in January 2005, respondent reimbursed the trust account \$494.45, which represented the balance of the service charges, including \$16 that had been charged toward the end of 2004.

Recordkeeping Violations

By letter dated January 3, 2005, respondent was advised that the following recordkeeping deficiencies had been found as a result of the audit:

1. A business disbursements book is not maintained. [R.1:21-6(b)(1)(A)].
2. Funds received for professional services are not deposited into the business account. [R.1:21-6(a)(2)].
3. A schedule of clients' ledger accounts is not prepared and reconciled monthly to the trust account bank statement. [R.1:21-6(c)(1)(H)].

[Ex.8.]

Failure to Promptly Turn Over Funds

Respondent represented a client, James Chester, in a matter that settled in January 1998. Respondent initially held \$6,200 in escrow for a workers' compensation lien. In September 1998,

³ Respondent notified the bank, which credited his trust account \$1,749.10.

the escrow was reduced to \$4,600. Respondent's file contained two pieces of correspondence, dated February 1998 and August 1998, attempting to negotiate the lien. As of February 2005, the Chester funds remained in respondent's account, pending resolution of the workers' compensation lien. Respondent admitted that he "lost track of this matter."

The investigative report noted that respondent fully cooperated with the OAE and acted swiftly to reimburse his trust account and to reply to the OAE's deficiency letter. In addition, in respondent's reply to the deficiency letter, he cited his mother's illness (she died in 1998) and his depression as mitigating factors.

Respondent stipulated that he failed to promptly pay funds to his client, negligently misappropriated trust funds, and committed recordkeeping violations, contrary to RPC 1.15 and R. 1:21-6.

The OAE recommended that respondent receive an admonition.

Upon a de novo review of the record, we find that the stipulated facts sufficiently establish that respondent's conduct was unethical.

We are unable to agree, however, with the measure of discipline urged by the OAE. Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Lehman, 182 N.J. 589 (2005)

(reprimand for attorney who negligently misappropriated trust funds and failed to comply with recordkeeping requirements); 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 the deposit of corresponding settlement funds; the attorney believed that he was withdrawing against a "cushion" of his own funds left in the account); In re Rosenberg, 170 N.J. 402 (2002) (reprimand for 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 in his trust account, and then withdrew his fees from the account as needed, without determining if he had sufficient fees from a particular client to cover the withdrawals); In re Blazsek, 154 N.J. 137 (1998) (reprimand for attorney who negligently misappropriated \$31,000 in client funds, and failed to comply with recordkeeping requirements); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand for attorney who negligently misappropriated \$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); In re Gilbert, 144 N.J. 581 (1996) (reprimand for attorney who negligently misappropriated in excess of \$10,000 in client funds; the attorney also violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; in addition, the attorney failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts); In re Marcus, 140 N.J. 518 (1995) (reprimand for attorney who negligently misappropriated clients' funds as a result of numerous recordkeeping violations and commingled personal and clients' funds; the attorney had received a prior reprimand); In re Imperiale, 140 N.J. 75 (1995) (attorney reprimanded for deficient recordkeeping and negligent misappropriation of \$9,600 in client funds); and In re Lazzaro, 127 N.J. 390 (1992) (reprimand for attorney whose poor recordkeeping resulted in negative client balances and a trust account shortage of more than \$14,000).

If mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In the Matter of Michael A. Mark, DRB 01-425 (February 13, 2002) (admonition by consent for attorney who negligently misappropriated client funds for a period of two years, as a result of failure to follow proper recordkeeping procedures; the misappropriation occurred when the

attorney erroneously withdrew a legal fee of \$4,000, failed to reimburse the trust account for bank service charges in the amount of \$100, mistakenly advanced client costs in the amount of \$350 from the trust account, instead of the business account, and failed to reconcile the account on a quarterly basis; an OAE audit also disclosed several recordkeeping violations; mitigating factors were the attorney's prompt replacement of the trust funds and his hiring of a CPA to reconstruct the trust records, correct all recordkeeping deficiencies, and insure that all client funds were on deposit; prior three-month suspension); In the Matter of Cassandra Corbett, Docket No. DRB 00-261 (January 12, 2001) (admonition where the attorney's deficient recordkeeping resulted in a \$7,011.02 trust account shortage; in imposing only an admonition, the Disciplinary Review Board considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records); In the Matter of Joseph T. Mongelli, DRB 00-293 (November 27, 2000) (admonition for attorney who negligently misappropriated \$65,000 in client funds when his bookkeeper inadvertently posted a deposit on the wrong ledger card; as a result of this mistake, the attorney's disbursement to a client exceeded funds on deposit for that client; although the attorney promptly asked the client to return the excess funds, it took the client four months to

replace them; several strong mitigating factors considered); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition where the attorney's deficient recordkeeping resulted in the negligent misappropriation of \$6,500 in client trust funds; in mitigation, the attorney fully cooperated with the OAE, took subsequent steps to straighten out her records, and had no prior discipline); and In the Matter of Joseph S. Caruso, Docket No. DRB 96-0076 (May 21, 1996) (admonition imposed where the wrong recording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account; in imposing only an admonition, the Disciplinary Review Board considered that the attorney was newly admitted to the bar at the time, corrected all deficiencies, implemented a computerized system to avoid reoccurrences, and fully cooperated with the OAE; also, the attorney's conduct caused no harm to clients).

Although we consider respondent's lack of previous discipline in his twenty-five years at the bar as a mitigating factor, we are unable to impose only an admonition.⁴ Respondent should have been even more guarded in his handling of his attorney accounts because of his prior audit and prior recordkeeping violations. Even though he had not been

⁴ We did not consider the mitigating factors respondent set forth because of the passage of time between those events and his ethics derelictions.

disciplined for his recordkeeping improprieties, he should have recognized the importance of being mindful of the recordkeeping requirements. Furthermore, had respondent opened his bank statements, he would not have "lost track" of the Chester matter, since he would have been reminded that the funds remained in his account and the matter would have been resolved.

Accordingly, we determine that a reprimand is appropriate discipline. In addition, respondent is to provide the OAE with quarterly reconciliations of his attorney accounts for a period of two years.

Members Robert Holmes, Esq., Louis Pashman, Esq., and Reginald Stanton, Esq. did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of John S. Conroy, IV
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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley			X			
O'Shaughnessy			X			
Boylan			X			
Holmes						X
Lolla			X			
Neuwirth			X			
Pashman						X
Stanton						X
Wissinger			X			
Total:			6			3


Julianne K. DeCore
Chief Counsel