

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-308

IN THE MATTER OF :
MAURY R. WINKLER :
AN ATTORNEY AT LAW :

Decision

Argued: October 17, 2002

Decided: December 9, 2002

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Bernard K. Freamon appeared on behalf of respondent.

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

This matter was before us based on a stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent stipulated to facts showing that he violated RPC 1.15 (negligent misappropriation of trust funds and commingling) and RPC 1.15(d) (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1990. He maintains an office for the practice of law in Newark, New Jersey. He has no disciplinary history.

In August 2000, the OAE audited the attorney books and records of the law firm of Winkler, Bevacqua & Simmons for the year 1997 because of an unrelated ethics grievance. The audit revealed that the firm's records were "unreliable due to missing records, neglect of mandated recordkeeping practices, and numerous trust accounting deficiencies."

Between 1996 and 1998, the firm employed two outside accountants. However, the first accountant lost many of the firm's records when someone broke into his car. The second accountant was imprisoned for crimes unrelated to his work for the firm. The firm was unable to recover all of its records from that accountant. Because of these problems, the firm discontinued using accountants sometime in 1998. Respondent admitted that "[n]o other bookkeeping of any substantial nature was performed by any person thereafter."

According to the stipulation, in 1993 or 1994, respondent and his law partner, Vincent Bevacqua, used their personal funds to open the firm's trust account. Thereafter, each kept \$2,000 to \$3,000 of personal funds in the account as a "cushion" to avoid invading clients' funds. Due to the lack of records, the OAE was unable to substantiate respondent's and Bevaqua's statements that they had deposited personal funds in the account. Nor was the OAE able to obtain the records from the firm's bank.

On November 3, 1997, the firm's trust account balance was \$1,825.80, indicating that the \$4,000 to \$6,000 "cushion" had been substantially depleted. However, according to the stipulation, respondent was unaware of the trust account balance.

On December 12, 1997, respondent transferred \$4,600 from the firm's trust account to its business account. According to respondent, \$4,100 of the \$4,600 was for fees for the firm's representation of Shirley Robinson in a personal injury action. Although respondent had settled the Robinson case prior to December 12, 1997, he had not yet received the settlement funds. Respondent did not deposit the settlement funds until December 31, 1997. On December 19, 1997, respondent's partner, presumably Bevacqua, transferred \$4,100 from the trust account to the business account. Those withdrawals invaded clients' funds. On that same day, respondent deposited \$1,027.72 in the account because he "became aware of [the account's] low balance."

According to the stipulation, respondent and Bevacqua withdrew the funds because they believed that they had sufficient fees in the trust account to cover the withdrawals.

The OAE concluded that there was no clear and convincing evidence that respondent had knowingly misappropriated trust funds because (1) respondent was not the only person with access to the firm's trust account; (2) respondent contended that he believed that there was a sufficient "cushion" of personal funds in the trust account, a contention that could not be disproved due to the lack of records; (3) there were no large

deficits in the account that should have put respondent on notice that he was invading trust funds; (4) there were no other “red flags,” such as bounced checks or client complaints of late payments, that would have indicated trust account problems; and (5) the invasion of clients’ funds occurred only twice and for only twenty days.

The OAE’s audit also revealed the following recordkeeping violations:

1. a separate client ledger card was not maintained for each client;
2. a schedule of client ledger accounts was not prepared and reconciled to the trust account bank statement;
3. deposit slips lacked sufficient detail to identify each deposit item;
4. a running balance was not kept in the trust account checkbook;
5. the business account’s designation was improper;
6. the business account was frequently overdrawn;
7. the receipts and disbursements books for the trust and business accounts were not fully descriptive; and
8. trust account checks were made payable to cash, rather than to a named payee.

According to the stipulation, respondent fully cooperated with the OAE’s investigation, created all of the required records, began to regularly reconcile his accounts and completed an ICLE course in legal ethics. Furthermore, no client lost funds. Since the stipulation states that respondent left the firm in June 1999 to start a solo practice, the regular reconciliation of accounts presumably refers to respondent’s own attorney records.


negligent misappropriation of client trust funds in eleven instances); In re Rosenberg, 170 N.J. 402 (2002) (reprimand where the 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, 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); In re Gilbert, 144 N.J. 581 (1996) (reprimand for commingling, negligent misappropriation of client funds, recordkeeping violations and failure to properly supervise the firm's employees); In re Lazzaro, 127 N.J. 390 (1992) (reprimand where the attorney's poor recordkeeping resulted in negative client balances and a trust account shortage of more than \$14,000).

The OAE cited two cases where the attorneys received three-month suspensions. However, in those cases, the attorneys' conduct was more egregious than that of respondent. In In re Gallo, *supra*, 117 N.J. 365, the attorney used his trust account to pay all of his business expenses, using fees left in the account. Because he failed to keep a running balance or to use client ledger cards, the attorney never knew exactly how much money was in the account or precisely whose money it was. On two occasions, checks to clients were returned for insufficient funds. The attorney also deposited settlement funds that a client had given him to invest into his personal investment account. In In re James, *supra*, 112 N.J. 580, the attorney used his trust account as a second business account for

client expenses and employee payroll tax escrows, “totally abdicated” his trust account responsibilities to his secretary and negligently misappropriated client funds in four matters. On several occasions, the attorney’s secretary had advised him that his trust account did not contain sufficient funds to satisfy outstanding client obligations. Yet, rather than review his records, the attorney simply transferred funds from his business account to his trust account.

Based on the foregoing, we unanimously determined that a reprimand is the appropriate discipline for respondent’s negligent misappropriation, commingling of personal and trust funds and recordkeeping violations.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

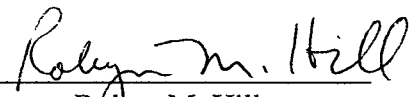
In the Matter of Maury R. Winkler
Docket No. DRB 02-308

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Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Wissinger</i>			X				
Total:			9				

 12/16/02
 Robyn M. Hill
 Chief Counsel