

Handwritten initials: "Hank" and "C. H."

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-335
District Docket No. XIV-07-297E

IN THE MATTER OF
PATRICIA WESTON-RIVERA
AN ATTORNEY AT LAW

Decision

Argued: January 17, 2008

Decided: March 11, 2008

Michael J. Sweeney 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 came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The OAE requested the imposition of either an admonition or a reprimand for respondent's violations of RPC 1.15(a) (negligent

misappropriation), RPC 1.5(a) (unreasonable fee), and RPC 1.15(d) (recordkeeping deficiencies). Respondent requested the imposition of an admonition on the grounds that she has enjoyed an unblemished career of nearly thirty years, and that a reprimand will harm her solo practice. For the reasons expressed below, we determine to reprimand respondent for her stipulated misconduct.

Respondent was admitted to the New Jersey bar in 1979. At the relevant times, she maintained an office for the practice of law in Maplewood. She has no disciplinary history.

In September 2007, the parties entered into a disciplinary stipulation in which they agreed that respondent had negligently misappropriated trust funds in two client matters; charged an excessive fee in eighteen personal injury matters by calculating the fee based on gross settlement proceeds and deducting improper overhead charges from the client's share of the settlement proceeds; and committed fourteen different recordkeeping violations. According to the stipulation, the OAE conducted a random audit of respondent's attorney records on

November 29, 2006, followed by a demand audit on March 20, 2007. The audit uncovered respondent's negligent misappropriation of trust funds in two client matters.¹

In the first matter, during an unspecified period, respondent represented Feraby Kennedy, the administratrix of the estate of Ossie Kennedy, which had real estate for sale in Newark. The estate agreed to pay respondent \$10,000 for her representation. At the outset, respondent took \$5000 of her fee, leaving the estate's trust account balance at \$75,000.

Thereafter, respondent disbursed \$45,130.26 for the payment of liens and \$30,700 to Kennedy, which resulted in a negative balance of -\$830.26. Respondent then paid the \$5000 remainder of the fee due her, which further reduced the balance to negative -\$5,830.26.

The trust account remained overdrawn from April 27 until November 2, 2006, when respondent deposited a \$6000 business account check into the trust account. Respondent did not know

¹ The stipulation did not identify which of the two audits uncovered respondent's negligent misappropriations. Accordingly, as with the stipulation, we will refer only to the "audit."

about the misappropriation because she had not reconciled her trust account records on a monthly basis, as required by the rules.

In the second matter, respondent represented her son, George Brantley, in an August 18, 2005 real estate transaction. Respondent made trust account disbursements that were not listed on the RESPA statement and as to which there were insufficient funds in the trust account. In particular, on October 5, 2005, the bank paid a \$729 check to Weichert Realtors, which overdrew the trust account by -\$678.70.

It was not until November 2, 2006 – more than a year later – that respondent deposited the funds to cover the shortage. As with the Kennedy estate, respondent did not know that the account was overdrawn because she had not reconciled her trust account records on a monthly basis.

The audit also detected respondent's improper computation of her contingent fee in eighteen client matters. Specifically, she calculated the fee based on the gross settlement proceeds. In addition, she "deducted improper overhead charges from the client's share of the personal injury settlements."

Finally, the audit uncovered the following recordkeeping violations:

1. Trust account designation is improper [R.1:21-6(a)(2)] because the bank statement is not titled, "attorney Trust Account";
2. Business account designation is improper [R.1:21-6(a)(6)] because the bank statement and checks are not titled, "Attorney Business Account";
3. No trust receipts journal maintained [R.1:21-6(c)(1)(A)];
4. No trust disbursements journal maintained [R.1:21-6(c)(1)(A)];
5. Business receipts journal is not fully descriptive [R.1:21-6(c)(1)(A)] because the source of the deposit is not included in the entry;
6. Client ledger cards not fully descriptive [R.1:21-6(c)(1)(B)] because the source of the deposits is not included; checks are listed after all deposits are entered, regardless of the date of the deposits; dates are not accurate; and no running balance is maintained on the ledger card;
7. Client ledger cards with debit balances [R.1:21-6(d)];
8. Inactive balances left in trust account [R.1:21-6(d)] because the attorney failed to promptly pay to clients the balance of refinances and purchases held on the ledger cards;
9. No individual ledger card for each client [R.1:21-6(c)(1)(B)];

10. No monthly reconciliation with client ledgers, journals and checkbook [R.1:21-6(c)(1)(H)];

11. No running checkbook balance [R.1:21-6(c)(1)(G)];

12. Facsimile rubber stamp used for trust checks [R.1:21-6(c)(1)(A)] despite the fact that respondent believed the signature stamp was not used for the trust account. This auditor identified trust check #2368, dated March 22, 2004, payable to the respondent's client, Alexander Graves for \$6,500 clearly signed by a signature stamp;

13. Client identification not indicated on check (duplicate sub-account numbers assigned) [R.1:21-6(c)(1)(G)]; and

14. No settlement statement signed by attorney provided to client at conclusion of contingent fee matter [R.1:21-7(g)].

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. Respondent negligently misappropriated client trust funds, in violation of RPC 1.15(a), when she caused a negative balance in the trust funds held for the benefit of the Kennedy estate and in the trust funds held for the Brantley real estate transaction. The negative balances were the result of respondent's failure to abide by her obligation to reconcile her trust account on a monthly basis.

In addition, respondent violated R. 1:21-7(d) when she improperly computed her fee in eighteen personal injury matters.

That rule provides, in pertinent part:

The permissible fee . . . shall be computed on the net sum recovered after deducting disbursements in connection with the institution and prosecution of the claim, whether advanced by the attorney or by the client, including investigation expenses, expenses for expert or other testimony or evidence, the cost of briefs and transcripts on appeal, and any interest included in a judgment.

In eighteen cases, respondent computed the contingent fee based on the gross sum recovered and deducted overhead charges from her clients' share of the proceeds. Inasmuch as she took a contingent fee greater than that to which she was entitled, her fee was unreasonable. Accordingly, she violated RPC 1.5(a), which prohibits an attorney from charging an unreasonable fee.

Finally, respondent violated R. 1:21-6(c) and RPC 1.15(d) by virtue of all the violations identified by the audit.

There remains the quantum of discipline to be imposed for respondent's negligent misappropriation, failure to abide by the recordkeeping rules, and collection of an unreasonable fee. Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In

re Philpitt, ___ N.J. ___ (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 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); and In re Goldstein, 147 N.J. 286 (1997) (attorney negligently misappropriated clients' funds and failed to maintain proper trust and business account records).

In addition, either an admonition or a reprimand is imposed when an attorney charges an unreasonable or excessive fee. See, e.g., In the Matter of Angelo Bisceglie, Jr., DRB 98-129 (September 24, 1998) (admonition for attorney who billed a board of education for legal work not authorized by the full board; the fee charged was unreasonable, but did not reach the level of overreaching; attorney also violated RPC 1.5(b), by failing to communicate to his client, in writing, the basis or the rate of his fee); In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997) (admonition for attorney who received a fee of \$500 in excess of the contingent fee permitted by R. 1:21-7(c)); and In re LaRosa, 185 N.J. 275 (2005) (reprimand for attorney who, in eight matters, charged excessive fees by improperly calculating contingent fees based on the gross recovery and deducting overhead charges; prior admonition for ex parte conversation with a juror after a trial).


Here, although respondent overcharged eighteen clients, she has practiced law for nearly thirty years without incident. Moreover, the OAE advised us at oral argument that she has made restitution to the clients who were overcharged. With the mitigating circumstances in mind, we find that a reprimand

adequately addresses the totality of respondent's conduct in this case.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

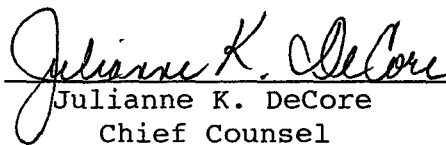
In the Matter of Patricia Weston-Rivera
Docket No. DRB 07-335

Argued: January 17, 2008

Decided: March 11, 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