

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-411
District Docket No. XIV-02-660E

IN THE MATTER OF
KENNETH S. MEYERS
AN ATTORNEY AT LAW

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Decision

Argued: March 20, 2008

Decided: May 28, 2008

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a recommendation for discipline (reprimand) filed by the District XIII Ethics Committee ("DEC"). Respondent neglected post-closing obligations in a real estate matter and engaged in poor recordkeeping practices. The complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly disburse funds), and RPC 1.15(d)

(recordkeeping violations).¹ We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1972. On January 15, 1992, he was suspended for three years for gross neglect and lack of diligence in one matter, failure to communicate with the client, making misrepresentations to a court, and conduct prejudicial to the administration of justice. Respondent fabricated a judgment of divorce, caused a judge's false signature to be affixed to the document and then asked his client to lie for him in court. In re Meyers, 126 N.J. 409 (1992). He was reinstated to the practice of law on June 28, 1995. In re Meyers, 140 N.J. 51 (1995).

On April 24, 2007, respondent and the Office of Attorney Ethics ("OAE") entered into a disciplinary stipulation of facts. According to the stipulation, on April 27, 2001, respondent represented Walter Wible in the purchase of real estate in Jersey City. Wible gave respondent, who acted as

¹ Count one also makes a reference to "lack of diligence in violation of RPC 1.4," a rule that addresses an attorney's failure to communicate with the client. The complaint contains no factual support for a charge of failure to communicate with the client. For this reason and for the absence of any evidence that respondent did not adequately communicate with his client, we make no finding of a violation in this context.

closing agent, \$25,079 for closing costs associated with the purchase, including a portion of the \$370,000 purchase price.

Respondent failed to pay \$2,422.98 in real estate taxes at closing. As a result, the taxing authorities took action against the property and issued a tax sale certificate. Almost a year went by before respondent took steps to rectify the matter. On January 17, 2002, he redeemed the tax sale certificate, which had ballooned to \$2,724.05.

After the closing took place, respondent failed to promptly record the deed for seven months, accomplishing that task only on November 8, 2001.

Respondent also failed to record two mortgages Wible had placed on the property. In a May 2, 2002 letter to Wible's subsequent attorney, respondent acknowledged that he had no idea what had become of the originals. Although respondent wrote to the mortgagee in an attempt to determine if he had accidentally sent it the original documents, he had not resolved the issue as of September 11, 2006, the date of the OAE's investigative report. The record is silent on the outcome of the mortgage recordation process.

Finally, respondent failed to disburse \$1,223.16 from the closing proceeds for condominium association fees. As a result, Wible was forced to pay that sum himself. Five years

after the closing was held, on December 13, 2006, respondent finally reimbursed his client for those fees.

The stipulation also addressed an OAE audit of respondent's attorney trust account with Fleet Bank. The audit uncovered numerous recordkeeping irregularities:

- a. A schedule of client ledger accounts was not prepared and reconciled to the bank statements on a monthly basis;
- b. The trust account reconciliation conducted by the [OAE] revealed funds in excess of Respondent's total trust obligations;
- c. Inactive trust account ledger balances remain in the trust account for extended periods;
- d. Trust and business receipts books have not been maintained;
- e. A separate ledger sheet is not maintained detailing attorney funds held for bank charges;
- f. Old, outstanding checks have not been resolved.

[S18.]²

Respondent testified that he stopped using the Fleet account, in late 2006 (with the last deposit in February 2007), and opened a new trust account, in 2007, to handle all future trust account functions. At the DEC hearing, he estimated that the old Fleet trust account contained "tens of

² "S" refers to the undated stipulation.

thousands of dollars" in unidentified funds that still needed to be disbursed to parties.

Disquieted by respondent's revelation, the panel required him to furnish it with bank statements and a full reconciliation of the old account within two weeks of the April hearing. Respondent was unable to do so. However, he began reviewing old files and reconciling bank statements in order to account for the funds. In a July 13, 2007 letter to the panel, respondent reported on his progress. He had identified and disbursed \$347,470.80 of the \$598,272.47 balance in the old account, and vowed to continue reviewing his old files for additional undisbursed funds.

On August 1, 2007, OAE personnel met with respondent to ascertain the status of the funds remaining in the old trust account. That same day, OAE counsel wrote a letter to the hearing panel chair regarding respondent's progress in identifying the funds. OAE counsel commented that "[respondent] is slowly identifying the funds, and disbursing the monies appropriately. He will be sending me copies of bank statements as he receives them, and copies of checks as they are disbursed." OAE counsel further stated that, based on respondent's progress, she "no longer recommend[ed] that he be suspended. Any discipline recommended, however, should include

monitoring the former trust account until it achieves a '0' balance."

As of November 7, 2007, the date of respondent's most recent update letter to the panel chair, he had reviewed an additional 1250 files and had disbursed an additional \$136,000 in identified funds leaving a balance of \$147,878.49 remaining in the old account.

The record does not include balances for the old trust account after November 2007.

Respondent offered an explanation for his actions, claiming that he had a very busy real estate practice during the time period in question and that he had lost his secretary at about that time. His office was in upheaval, while he tried to handle an increasing volume of work. He "in all honesty, couldn't keep up."

The DEC found respondent guilty of gross neglect and pattern of neglect (RPC 1.1(a) and (b)), recordkeeping violations (RPC 1.15(d)), and failure to promptly disburse funds to third parties (RPC 1.15(b)).

After an independent review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. Unquestionably, respondent lost control of Wible's

real estate transaction, and violated some of the RPCs charged in the complaint.

Specifically, respondent failed to take a number of post-closing actions in behalf of his client. He failed to promptly record the deed for seven months after the April 2001 closing, finally accomplishing that task on November 8, 2001; failed to pay \$2,422.98 in real estate taxes at closing and had to redeem a tax sale certificate a year later; at closing, failed to disburse \$1,223.16 for condominium fees and to reimburse his client for five years after the closing; and failed to promptly record two mortgages on the property, leaving the record unclear that he ever did so.

We find it troubling that respondent failed to remedy the situation even after he became aware that action was required of him. For example, he failed to disburse Wible's closing proceeds for condominium fees. Once he realized that he had not done so and that his client had paid them, he was obligated to reimburse Wible, but failed to do so for several years thereafter. Likewise, he failed to promptly record Wible's mortgages on the property. He realized that mistake a year later and unsuccessfully attempted, in 2002, to track down the original documents. He never followed up. As a result, there is still no indication that the mortgages have

been properly recorded. We conclude that respondent's inaction vis-à-vis the post-closing requirements constitutes gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

The complaint also charged respondent with a pattern of neglect, a violation of RPC 1.1(b). For a finding of a pattern of neglect, however, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). We, thus, dismiss this charge, as only one instance of gross neglect is present in this case. Even if this single instance of gross neglect were to be combined with another sole instance of gross neglect found in the prior disciplinary matter, a pattern still would not emerge.

Respondent also violated RPC 1.15(b) for his failure to identify trust account funds and turn them over to the clients and third parties to whom they belonged. As of November 2007, about \$147,000 of unidentified funds remained in respondent's old trust account at Fleet Bank. Although he has made some strides to identify the funds by reviewing thousands of old files and bank statements, the task was still incomplete as of November 2007.

Finally, respondent stipulated various recordkeeping irregularities, violations of RPC 1.15(d) and R. 1:21-6. Indeed, respondent failed to maintain proper client ledger cards and perform monthly reconciliations; maintained funds in the trust account in excess of total trust obligations; left inactive trust account ledger balances in the trust account for extended periods; failed to maintain proper trust and business receipts journals; failed to maintain a ledger sheet for attorney funds held for bank charges; and failed to resolve outstanding checks in the trust account.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.15(b), and RPC 1.15(d) and R. 1:21-6.

Conduct involving gross neglect and lack of diligence in a single matter ordinarily results in an admonition, even if other minor violations are also present. See, e.g., In the Matter of Thomas S. Capron, DRB 04-294 (October 25, 2004) (admonition for failure to discharge a mortgage of record for eight years; gross neglect found); In the Matter of Charles Deubel, III, DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); In the Matter of Laura P. Scott, DRB 96-091 (May 2, 1996) (admonition for attorney who did not remit certain fees to the title company and to the mortgage company

until six months after the closing; the attorney also failed to deposit \$500 in cash into either her trust account or her business account, from which the closing proceeds would then be disbursed; the attorney did not submit to her clients proof of \$97 in "reimbursement for costs/fees" and did not reimburse them for that amount; finally, she failed to reply to her clients' numerous requests for information on potential unpaid closing costs).

Failure to promptly deliver funds to clients or third persons or to keep separately funds in which the attorney and another person claim an interest will also lead to an admonition. In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of Louis N. Caggiano, Jr., DRB 02-094 (May 22, 2002) (attorney deposited into trust account settlement check made payable to attorney and client without first obtaining client's endorsement or permission); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill); and In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (attorney did not transmit to a wife funds

that a husband, the attorney's client, had given him for that purpose and took his fee from funds that the husband gave him to pay the wife's legal fees; the attorney violated RPC 1.15(b) and (c)).

Recordkeeping violations, without the additional component of negligent misappropriation, too, lead to an admonition. See, e.g., In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (failure to maintain an attorney trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions); and In the Matter of Arthur N. Field, DRB 99-142 (July 19, 1999) (attorney did not maintain an attorney trust account in a New Jersey banking institution).

For the totality of respondent's misconduct we find that a reprimand is the appropriate sanction. See, e.g., In re Stoller, 183 N.J. 24 (2005) (reprimand for attorney who, for a

period of almost five years, failed to record mortgages and deeds in two real estate matters and, in addition, failed to maintain records of the transactions for a period of seven years; the attorney's cavalier attitude toward circumstances that he created and failure to take remedial action were considered aggravating factors militating against lesser discipline; violations of RPC 1.1(a), RPC 1.3, and RPC 1.15(a); prior private reprimand nine years before) and In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes, and refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE).

We are aware that respondent received a very serious sanction (three-year suspension) in 1992. We do not believe, however, that this factor should enhance the otherwise appropriate discipline (reprimand) for the aggregate of respondent's infractions here. Respondent's suspension was very serious, but imposed sixteen years ago. In the interim, and until the current transgressions, respondent has practiced law without incident. Also, respondent claimed that his office

had spun out of control after the loss of his secretary and that he could not keep up with his practice. He accepted responsibility for his actions and attempted to comply with the requirement that he "zero out" the old trust account. We are, therefore, persuaded that a reprimand adequately addresses the nature of his conduct in this matter.

We also require respondent to furnish proof to the OAE, within three months of the Court Order in this matter, that he has "zeroed out" the old trust account. If respondent fails to do so, the OAE is to apply to the Court for the appointment of a trustee to complete the task, at respondent's expense.

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 O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

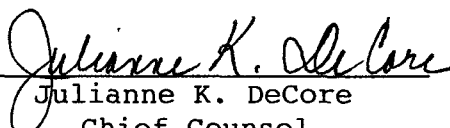
In the Matter of Kenneth S. Meyers
Docket No. DRB 07-411

Argued: March 20, 2008

Decided: May 28, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Censure	Reprimand	Admonition	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