

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-016
District Docket No. XIV-02-567E

IN THE MATTER OF
SPIRO T. MICHALS
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: March 17, 2005

Decided: April 25, 2005

Michael J. Sweeney 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 was before us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violations of RPC 1.15 and R. 1:21-6 for commingling personal and client funds, negligently misappropriating funds, and not complying with the recordkeeping rules.

Respondent was admitted to the New Jersey bar in 1991. He maintains a law office in Red Bank, New Jersey. He has no history of discipline.

Although the stipulation did not specifically incorporate the investigative report by reference, it stated that "[t]he complete factual circumstances of respondent's misconduct [were] set forth in the investigative report of Karen J. Hagerman, Senior Compliance Auditor annexed hereto as Attachment A." The factual basis for respondent's misconduct was, therefore, gleaned from the investigative report.

Respondent became the subject of an OAE select audit after Sovereign Bank notified the OAE about an overdraft in respondent's attorney trust account.

According to respondent, his wife, who was also his law partner, was only practicing law part-time while raising their two children. Respondent was the only signatory on the law firm's bank accounts during the audit period. During the audit period, September 2000 to August 2002, the firm maintained two attorney trust accounts and one business account at the Sovereign Bank. Respondent admitted that he commingled business and trust funds, and that "wire transfers from the business account to the trust account were made as a result of [their] firm running out of business checks" in April or May 2002.

The investigation revealed that, although respondent's wife was not a signatory on any of the firm's accounts, she was permitted to transact business over the Internet and/or telephone, and that she withdrew funds from the firm's accounts and made transfers to pay personal or business debts. She had also mistakenly paid credit card bills from the attorney trust account. In addition, respondent permitted the use, presumably by his wife, of a signature stamp on the primary trust account checks when he was not in the office.

The OAE's review of respondent's transactions from the primary trust account revealed that he had commingled funds from September 2001 to September 2002 and that he routinely deposited or transferred personal funds to his trust account to have sufficient funds on deposit to pay for personal debts. The OAE identified ninety-six checks totaling \$36,989.75, which were drawn on the primary trust account for respondent's personal debts.

The commingling of personal and trust funds and the payment of personal debts from respondent's primary trust account resulted in an overdraft of \$187.43. Respondent transferred \$500 from his business account to correct the overdraft. According to the investigative report, respondent negligently misappropriated \$187.43 of client trust funds for two days. In addition,

respondent negligently misappropriated \$2,000 from his secondary trust account for one day, also because of the commingling of funds and use of the trust account for the payment of personal debts. Respondent covered this trust account shortage by utilizing \$2,000 out of a \$6,500 settlement on his grandmother's behalf. His grandmother authorized the use of \$2,000 of her funds on deposit in respondent's trust account.

Respondent also engaged in the following recordkeeping violations:

- a. His attorney trust account receipts journal was not fully descriptive (R. 1:21-6(c)(1)(A)).
- b. His attorney trust account disbursement journal was not fully descriptive (R. 1:21-6(c)(1)(A)).
- c. He did not maintain a separate ledger sheet for each trust client (R. 1:21-6(c)(1)(B)).
- d. A schedule of clients' ledger account balances was not prepared and reconciled monthly to the attorney trust account bank statement (R. 1:21-6(c)(1)(H)). Respondent did not perform quarterly reconciliations.
- e. A facsimile signature rubber stamp was used to sign attorney trust account checks (R. 1:21-6(c)(1)(A)).
- f. Attorney trust account checks were made payable to cash, rather than a named payee (R. 1:21-6(c)(1)(A)).
- g. Attorney personal funds were commingled with client trust funds (RPC 1.15(a)).

h. Funds received for professional services were not deposited into the attorney business account (R. 1:21-6(a)(2)).

i. The designation on respondent's bank statement for his attorney business account was improper. In accordance with R. 1:21-6(c)(2), his bank statements, checks, and deposit slips had to be designated as attorney business account, attorney office account or attorney professional account.

j. His attorney business account receipts journal was not fully descriptive (R. 1:21-6(c)(1)(A)).

k. His attorney business account disbursement journal was not fully descriptive (R. 1:21-6(c)(1)(A)).

Also, respondent practiced law while on the Supreme Court's list of ineligible attorneys for eleven days for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund"). Respondent claimed that his ineligibility was due to an oversight that was rectified as soon as he became aware of the situation.

The OAE recommended the imposition of an admonition for respondent's violations of RPC 1.15 and R. 1:21-6.

As mitigation, respondent noted that he has no prior discipline; that he complied fully with the OAE's requests for information; that he had no prior or subsequent overdrafts; and that he made a good faith effort to ensure compliance with the Court rules.

Respondent explained that, although his wife did some work for the firm, he was basically a sole practitioner. He also claimed that his wife wrote checks from the attorney trust account without advising him and then forgot to note the checks in the ledger, thereby causing the overdrafts. According to respondent, the bounced check that precipitated the OAE investigation was used in a personal matter; he has made office and bank account management a greater priority; his wife is now aware of her obligation to post all transactions and not to use the trust account for personal matters; and he no longer stamps trust account checks or writes trust account checks out to cash.

As to practicing law while ineligible, respondent explained that he failed to timely mail his payment to the Fund. He blamed it on a serious lack of diligence in his office management, which has been corrected.

Following a review of the record, we are satisfied that the stipulation contains clear and convincing evidence that respondent was guilty of unethical conduct. Respondent violated RPC 1.15(a), R. 1:21-6 and, therefore, RPC 1.15(d) (recordkeeping violations), although this RPC was not specifically mentioned in the stipulation.

Respondent commingled trust and personal funds, used his trust account for personal obligations and, as a result,

negligently misappropriated trust funds for very brief periods of time — two days in one instance and one day in another instance. According to respondent, he ran out of business account checks and, therefore, had to transfer money into his trust account to have sufficient funds on deposit to pay his personal debts. This commingling occurred for approximately one year. There is no evidence that respondent's invasion of client funds resulted from anything more than neglect, and was likely due to his numerous recordkeeping deficiencies.

The stipulation mentions that respondent practiced law during his eleven-day ineligibility period, but does not charge that this conduct violated any RPC. Otherwise stated, respondent and the OAE did not specifically stipulate that respondent's conduct in this context was unethical. Although we could consider this impropriety as an aggravating factor, we decline to do so because of the brief period of respondent's ineligibility, which was caused by management oversight.

Generally, reprimands have been imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Winkler, 175 N.J. 438 (2003) (reprimand where 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 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, 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); In re Blazsek, 154 N.J. 137 (1998) (reprimand where the attorney negligently misappropriated \$31,000 in client funds, and failed to comply with recordkeeping requirements); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where the attorney negligently misappropriated approximately \$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 where the attorney 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); In re Marcus, 140 N.J. 518 (1995) (reprimand where the attorney negligently misappropriated client 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); 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).

Where compelling mitigating factors have been present, the discipline has been reduced from a reprimand to an admonition. See, e.g., 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; mitigating factors were the attorney's reimbursement all missing funds, admission of wrongdoing, cooperation with the OAE, and the hiring of an accountant to reconstruct her records); 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; mitigating factors were the attorney's full cooperation with the OAE, her subsequent steps to straighten out her records, and the absence of prior discipline); In the Matter of Joseph S. Caruso, Docket No. DRB 96-0076 (May 21, 1996) (admonition imposed where the mis-recording of a deposit led to a trust account shortage and where the attorney committed a number of violations in the maintenance of his trust account; in imposing only an admonition, it was 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; moreover, the attorney's conduct caused no harm to any clients).

In view of the fact that respondent's trust account shortage was limited to one day in one instance and two days in another instance, that this is his first encounter with the ethics system, that he cooperated fully with the OAE investigation, that he assumed complete responsibility for the problems with his law practice, and that he has made recordkeeping a priority, we determine that an admonition is sufficient discipline for his conduct in this matter. Members Matthew P. Boylan, Esq. and Robert C. Holmes, 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

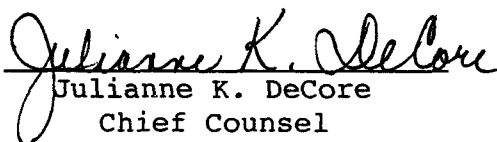
In the Matter of Spiro T. Michals
Docket No. DRB 05-016

Argued: March 17, 2005

Decided: April 25, 2005

Disposition: Admonition

Members	Disbar	Admonition	Reprimand	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan					X
Holmes					X
Lolla		X			
Pashman		X			
Schwartz		X			
Stanton		X			
Wissinger		X			
Total:		7			2


Julianne K. DeCore
Chief Counsel