

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-303

IN THE MATTER OF :
MICHAEL P. BALINT :
AN ATTORNEY AT LAW :
:

Decision

Argued: November 15, 2001

Decided: February 5, 2002

Brian D. Gillett appeared on behalf of the Office of Attorney Ethics.

Donald S. Driggers appeared on respondent's behalf.

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 respondent and the Office of Attorney Ethics ("OAE"). From 1998 through 2000, respondent negligently misappropriated client funds, in violation of RPC 1.15(a), failed to safeguard client funds, in violation of RPC 1.15(b), and failed to comply with the recordkeeping requirements of R.1:21-6 and RPC 1.15(d). In addition, respondent stipulated that his wrongdoing amounted to gross neglect, pattern of neglect and lack

of diligence, in violation of RPC 1.1(a), RPC 1.1(b) and RPC 1.3, respectively.

Respondent was admitted to the New Jersey bar in 1976. On December 4, 2001 the Supreme Court imposed a reprimand and an indefinite proctorship for gross neglect, pattern of neglect, lack of diligence, failure to expedite litigation and failure to communicate with clients in three matters. In re Balint, 170 N.J. 198 (2001). On the same day the Supreme Court imposed a second reprimand for similar misconduct in three additional matters. In re Balint, 170 N.J. 244 (2001).

The stipulation between the parties was the result of improprieties uncovered during the OAE's investigation of respondent's recordkeeping practices during the investigation of the host of matters for which respondent recently received the two separate reprimands, noted above.

During the audit, which began in early 2000, it was discovered that respondent had committed numerous recordkeeping violations, including failing to maintain trust receipts and disbursements journals, failing to perform quarterly reconciliations of his attorney trust account, failing to utilize individual client ledger sheets and allowing funds to remain inactive in the trust account. As a result of the OAE's initial findings, respondent retained an accountant, Daniel R. Bonamaci, C.P.A., to reconstruct his accounts for the time period from January 1998 through January 2000.

In May 2000 the OAE received Bonamaci's initial accounting and a letter from

respondent. The stipulation details the events that followed:

15. On May 17, 2000, letters from respondent and from [Bonamaci] were hand delivered to the OAE, as a follow up to the OAE's letter of January 21, 2000 concerning the reconstruction of his trust account records. (Exhibits 23 and 24). In his letter, respondent accepted full responsibility for his failure to comply with the record keeping requirements. (Exhibit 23). He also attached copies of letters to clients and third parties indicating the distribution of funds that had accumulated in his trust account, though the checks themselves were not yet issued, pending the completion of Bonamaci's analysis. (Exhibits 23A through 23H).
16. Bonamaci's letter and attachments summarized the reconciliation of respondent's primary and active trust account, PNC Bank account # 81-0209-2301. (Exhibit 24). He states that this account is current and the reconciled bank balance is only \$48.37 short of the total amounts reflected on the client ledger cards. The balance of \$41,784.40 in respondent's inactive PNC Bank trust account #81-0245-7008, could not be reconciled to any client ledger cards. Bonamaci traced the source of these funds in the inactive trust account to the last deposit which was made on August 31, 1998. On that date, a check in the amount of \$55,975.10 from Mark and Janine Balascak in connection with a real estate closing was deposited to that account. (Exhibit 25). These funds were should [sic] have been deposited to respondent's primary and active trust account. (PNC Bank account #81-0209-2301).
17. The reconstructed Balascak client ledger sheet (Exhibit 26) details all the disbursements on the Balascak matter. The total amount disbursed was \$318,981.11, which equals the total funds provided by the client, \$263,006.01 in mortgage proceeds and \$55,975.10 in personal funds which were mistakenly deposited to the wrong trust account. Respondent disbursed \$55,975.10 from his primary trust account, #81-0209-2301, while the client funds were actually in the inactive PNC trust account, #81-0245-7008. The balance of \$41,784.40 in the inactive trust account, as of the letter of May 16, 2000, was the result of transferring \$19,349.77 to the primary trust account. (Exhibit 27). In his letter, Bonamaci stated that he would continue to monitor respondent so that he will continue to

be in compliance with the record keeping requirements, and attempt to determine which clients' funds were being held in the inactive trust account. (Exhibit 24).

18. Pursuant to the OAE's request, by letter dated May 26, 2000, Bonamaci submitted a trust reconciliation with a list of clients and client ledger sheets. (Exhibit 28). This reconciliation did not address which clients' funds were being held in respondent's inactive trust account #810-245-7008 [sic].
19. On June 27, 2000, a meeting was held with respondent and Bonamaci at the office of Bonamaci, Coletti, P.C., Inc. (Exhibit 29). After reviewing respondent's records and the reconciliation, it was determined that respondent was still unable to account for \$23,448.47 of client funds. In addition to the unreconcilable trust funds, respondent had a number of uncompleted client matters for which funds were still being held in trust.
20. The OAE has prepared and annexed two summaries listing:
 - a. All matters for which respondent was holding funds in his trust account and that have been resolved since the commencement of the audit, i.e., the balance of the escrowed funds has been distributed and all the necessary documents filed (Exhibits 30 through 30-21); and
 - b. All matters for which respondent was holding funds in his trust account and are currently pending, with the respondent's explanation (Exhibits 31-1 through 31-11)[.] These exhibits also explain the six instances where respondent expended funds in excess of available client funds, thus negligently misappropriating client funds (Exhibits 31-5, 31-7, and 31-8 through 31-11).
21. According to the OAE's investigation, from December 18, 1997 through April 30, 2001, respondent failed to disburse

approximately \$17,402.87 in funds that he held for clients to clients or to third parties involved in the transactions. (Exhibits 30 through 30-16).

In September 2000, February 2001 and June 2001, Bonamaci submitted further reconciliations to the OAE. The parties stipulated that, as of June 7, 2001, the unaccounted for client funds totaled \$2,042.47.

Respondent also stipulated that, in six separate real estate transactions, between December 8, 1998 and September 29, 2000, he negligently misappropriated a total of \$3,700 in escrow funds. The misappropriations ranged from as little as \$30 in one matter to as much as \$1,645 in another.

Finally, respondent stipulated violations arising out of an August 27, 2000 grievance filed by Darren A. Fairey. According to the grievance, in September 1997 respondent failed to file a discharge of mortgage after the Faireys refinanced their mortgage. Also, in a 1999 litigation matter for the Faireys, he obtained a judgment in their favor, but neglected to record it.

On October 30, 2000 respondent informed the OAE that, in September 2000, he sent the Faireys' new counsel all of the documentation for the 1997 refinancing and a canceled mortgage. Respondent also reimbursed the Faireys' \$35 mortgage cancellation fee and the attorney's \$100 legal fee for securing a discharge of mortgage.

* * *

Upon a de novo review of the record, we were satisfied that there is clear and

convincing evidence of unethical conduct.

In all, respondent stipulated that he negligently misappropriated client funds, in violation of RPC 1.15(a), failed to safeguard client funds, in violation of RPC 1.15(b), and violated the recordkeeping rules, R. 1:21-6 and RPC 1.15(d). With regard to his failure to disburse clients' and third parties' funds that remained in his inactive trust account, respondent admitted that he also violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect) and RPC 1.3 (lack of diligence).

There is significant mitigation in this matter. Respondent is a recovering alcoholic. As a result of respondent's heavy drinking, his law practice went into a tailspin in early 1998. That behavior continued into March 1999, when his secretary/office manager/bookkeeper of more than twenty years left without notice. A month later he finally sought counseling for his alcohol addiction. In May 1999 he was forced to move his office into his house and was hospitalized for anemia.

In October 1999 respondent joined Alcoholics Anonymous ("AA"). As of July 31, 2001, the date of the stipulation, respondent was still attending AA meetings on an almost daily basis.

In a July 30, 2001 letter to us, the OAE recommended the imposition of a reprimand. The OAE reasoned that the misconduct in this matter occurred during the same time period as the wrongdoing in the recent reprimand matters. In addition, the OAE pointed out that the within misconduct is similar to that found in the prior matters:

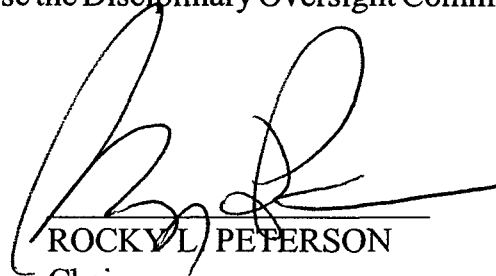
gross neglect, lack of diligence, failure to safeguard client funds and the like. In fact, if this matter were confined solely to Fairey, we might have considered that misconduct part and parcel of the offenses for which respondent has already been disciplined. However, the additional violations uncovered by the reconciliations warrant the imposition of additional discipline.

Ordinarily, a reprimand would be sufficient discipline for numerous recordkeeping violations, even when combined with other violations, such as a pattern of neglect or negligent misappropriation. See, e.g., In re Butler, 152 N.J. 448 (1998) (reprimand imposed where the attorney, in a series of nine real estate transactions, engaged in a pattern of neglect by failing to record mortgages and mortgage discharges in a timely manner, and who also admitted numerous recordkeeping violations; prior private reprimanded in 1992 for failure to obtain a canceled mortgage document from the county clerk in a real estate matter and for failure to cooperate with disciplinary authorities); In re Saijwani, 165 N.J. 563 (2000) (reprimand imposed where the attorney committed numerous trust and business account recordkeeping violations by failing to maintain records required by R. 1:21-6 and who, in one matter, exhibited a lack of diligence); In re Gilbert, 144 N.J. 581 (1996) (reprimand imposed where the attorney negligently misappropriated more than \$10,000 in client funds, failed to comply with recordkeeping requirements, including commingling personal and trust funds and depositing earned fees in the trust account; the attorney also failed to properly supervise

his firm's employees with regard to the business and trust accounts).

In unanimously imposing only a reprimand here, we gave great weight to the mitigating factors present, including respondent's cooperation with the OAE, his forthrightness about his alcoholism, which affected his law practice at the time of the within events, and the obvious measures that he has undertaken to regain control of his life and his law practice. We also required respondent to provide the OAE with quarterly trust account reconciliations for a period of one year and proof that he is continuing to attend regular AA meetings or participating in a similar program approved by the OAE. One member did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.



ROCKYL PETERSON
Chair
Disciplinary Review Board

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


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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:			8				1

 2/28/02
 Robyn M. Hill
 Chief Counsel