

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-257  
District Docket No. XIV-05-348E

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

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Decision

Argued: October 20, 2005

Decided: December 8, 2005

Michael J. Sweeney 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 on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violating RPC 1.15(a) (failure to safeguard client funds), RPC 1.15(b) (failure to promptly deliver funds or property to third persons), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), and

R. 1:21-7(g) (failure to set forth in writing contingent fee agreements). The OAE recommended either a reprimand or a censure.

Respondent was admitted to the New Jersey bar in 1990. He maintains a general practice of law in Newark, New Jersey.

In 2003, respondent received a reprimand for commingling personal and trust funds in his trust account, negligently misappropriating trust funds, and failing to properly maintain his attorney records. In re Winkler, 175 N.J. 438 (2003).

The facts of this matter were set forth in the investigative report annexed to the disciplinary stipulation.

#### **RECORDKEEPING VIOLATIONS**

In September 2004, respondent was the subject of an OAE random audit. During the audit, the OAE discovered that he had violated R. 1:21-1A(3) by failing to obtain malpractice insurance required for limited liability corporations. The OAE gave respondent the option of either obtaining malpractice insurance or dissolving the corporation. Respondent opted to dissolve the corporation and submitted to the OAE a copy of his January 14, 2005 request to dissolve his limited liability corporation.

Respondent maintained a trust account (#4155-018-222) and business account (#4154-018-230) at the Fleet Bank.

During the initial audit visit, the OAE determined that respondent's recordkeeping practices did not conform to the requirements of R. 1:21-6, and that he would need a certified public accountant to bring his records into compliance and to identify client funds held in his trust account.

By letter dated October 13, 2004, the OAE identified the following deficiencies in respondent's records:

1. His attorney trust account receipts and disbursements journals were not fully descriptive.
2. He did not maintain a running cash balance in his attorney trust account checkbook.
3. Client ledger sheets were not fully descriptive.
4. A schedule of clients' ledger account balances was not prepared and reconciled monthly to the attorney trust account bank statement.
5. Inactive balances remained in the attorney trust account for an extended period of time.
6. Clients' ledger cards had debit balances.
7. A separate ledger sheet was not maintained detailing attorney funds held for bank charges.
8. Old outstanding checks were not resolved.
9. Deposit slips lacked sufficient detail to identify each item of deposit.

10. As a professional corporation, he had not obtained a policy of "Lawyers' Professional Liability Insurance."

11. Trust account disbursement checks did not properly identify in the "memo" portion the name and/or file number of the client.

12. Certain law firm costs constituting attorney overhead expenses were improperly deducted in the computation of contingent legal fees under R. 1:21-7.

13. Contingent fees were not computed on the net sum recovered after appropriate disbursements were deducted.

14. Clients were not given settlement statements at the conclusion of their matters (R. 1:21-7(g)).

According to respondent, he did not understand any details of "reconciliations" and paid an accountant to maintain his trust account. Respondent, however, failed to monitor his client balances, which caused shortages in his trust account. Respondent's trust account disbursements journal showed deposits to the account, but failed to provide details about the source of funds, clients and amounts, thereby eliminating a proper audit trail for respondent's transactions.

According to the investigative report, respondent's client ledger balances reflected shortages, some of which were caused by his negligent handling of funds and compounded by his failure to reconcile the trust account on a regular basis. The latter would have allowed errors to be discovered and trust funds safeguarded.

### The Folkes Closing

On January 14, 2004, respondent represented Omar Folkes, the purchaser in a real estate transaction. The RESPA statement showed that Folkes was to bring to the closing \$7,133.07 in case, which he did. However, according to Folkes' client ledger card, the only funds credited to that closing were the mortgage proceeds, in the amount of \$150,598.91. The last check that respondent wrote at the time of the closing created a \$7,003.07 shortage reflected on the ledger card.

Until the January 19, 2005 OAE audit, respondent was unaware that he had not deposited the buyer's funds. When he retrieved his file from storage, he discovered an official GreenPoint Bank check for \$7,133.07, bearing the date of the closing. Respondent had inadvertently left the check in the client file. Respondent's failure to deposit the check caused him to invade other clients' funds for more than one year.

On February 1, 2005, respondent met with Folkes to exchange the thirteen-month "outdated" check for a "fresh" check. Respondent could not produce a copy of the new check to the OAE, claiming that he misplaced it. Given the state of respondent's records, the OAE accepted respondent's explanation. Respondent deposited the replacement check into his trust account on February 1, 2005.

### The White Closing

Respondent represented Ruel and Dianne White as the purchasers at a July 30, 2003 real estate closing. According to the investigative report, the client ledger card showed that respondent deposited a total of \$492,722.44 for that transaction. After a number of disbursements, including a December 11, 2003 disbursement for \$40,000, the client ledger card showed a balance of \$2,982.06.

Respondent's work sheets attached to the client ledger card showed that, fourteen months after the closing, respondent improperly issued trust account check #2083 for \$4,538.60 to the Hunterdon Registrar for realty transfer fees, rather than the \$3,399.80 amount shown on line 1204 of the RESPA statement. Respondent deducted \$4,538.60 from the proceeds due to the seller. This resulted in an overdisbursement of \$1,138.80. After the check was paid, the ledger balance was short by \$1,576.54 - in part, due to the realty transfer fee overpayment (\$437.74) and, in part, because the "funding bank" shorted the proceeds by \$364.74. There was an additional unidentified shortage of \$73, for a total shortage of \$1,576.04. Respondent made restitution to the account on March 3, 2005.

**The Ferreira Closing**

Respondent represented Maria Ferreira as the purchaser at an August 8, 2003 real estate closing. Entries on the client ledger card showed that, on September 9, 2003, respondent issued a check for \$1,760 to pay the realty transfer fee, even though the amount of the fee shown on the RESPA statement was \$1,520. The client ledger card showed that the balance left in the account to pay that fee was only \$1,382. Thus, the account was short by \$138. Respondent's overpayment, however, caused an additional \$240 shortage. According to the investigative report, a "worksheet ledger showed that the original shortage of \$138 was caused by an overpayment of taxes displayed on Line 1004, and not supported by the additional monies contributed by underpayment of other expenses."

**The Garcia Closing**

On November 3, 2003, respondent acted as the settlement agent for Katiria Garcia, the purchaser of property located in East Brunswick, New Jersey. According to the investigative report, line 501 of the RESPA statement showed a \$1,000 deposit paid by the buyer:

\$1,000 was deducted from the amount respondent's client brought to closing and also deducted from the seller's proceeds at closing since it was assumed that the seller

was holding the \$1,000 deposit. [The seller's attorney] indicated that the buyer had not given the seller any deposit and that their client . . . received \$1,000 more than reflected on Line 603 on the RESPA because of that fact.

[IR5.]<sup>1</sup>

Respondent's client ledger card for the Garcia closing showed payment to the seller in the amount of \$19,652, rather than the \$18,652 listed on line 603 of the RESPA statement. Respondent had no explanation for the \$1,000 overpayment to the seller. Respondent's payment to the title company, on February 12, 2004, left a shortage on the client ledger sheet of \$102.98. On July 7, 2004, respondent drew an additional trust account check number 2032 to the Middlesex County Register for \$586, which resulted in a total shortage of \$688.98.

#### The Asrifi Closing

Respondent represented Bernice Asrifi, the purchaser, at an August 2003 real estate closing. On October 7, 2003, respondent refunded \$460 to his client. However, he had not yet paid taxes or the title agency. Respondent's client ledger, prepared by his accountant, showed that, after respondent paid the taxes, there remained a balance of only \$830.69. Thereafter, respondent issued

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<sup>1</sup> IR refers to the investigative report, dated July 12, 2005.



a trust account check to the title agency, which resulted in a \$378.31 shortage.

The client ledger worksheet, which reconciled the differences between the client ledger and the RESPA statement, showed that the main cause for the shortage was an overpayment of taxes. Respondent cured the \$378.31 shortage on March 3, 2005.

The investigative report concluded that, in the above six matters, respondent failed to safeguard client funds (RPC 1.15(a)) and failed to reconcile his trust account in accordance with R. 1:21-6 (RPC 1.15(d)). On March 3, 2005, respondent deposited \$3,382.63 of personal funds into his trust account to cover debit balances.

#### The Perez Matter

On September 6, 2001, respondent settled Luz Perez's personal injury matter, but failed to provide her with a signed settlement statement, as required by R. 1:21-7(g). On September 17, 2001, respondent paid Perez \$3,400, paid himself \$3,000, and escrowed \$2,600 to pay Perez's medical bills. Nevertheless, respondent failed to pay a medical provider, Bloomfield Rehabilitation, until April 29, 2003, more than a year and one-half after the settlement. He also failed to return the escrow balance (\$1,500) to Perez until January 27, 2005, more than

three years after the case had been settled. According to the investigative report, respondent was unaware that he had not fully disbursed the escrow funds until his accountant performed a partial reconciliation of respondent's trust account.

#### **The Meneses Matter**

Respondent settled a personal injury matter on behalf of Nicole Meneses, but failed to give her a signed settlement statement. Respondent deposited Meneses' \$90,000 settlement check on December 31, 2002. On that same day, he paid Meneses \$60,000 as her two-thirds share, and took \$22,351.99 as his fee. Respondent escrowed \$1,820.49 from the settlement proceeds to pay medical providers. After the settlement, respondent failed to pay one of the providers for a year and one-half. The balance of the medical bills remained unpaid until January 27, 2005, more than two years after the case was settled. At that time, respondent also turned over to Meneses the balance of the funds that had been escrowed since December 2002.

#### **The Darlene Winkler Matter**

Respondent handled a large number of real estate transactions for his wife, Darlene Winkler. Beginning in April

2002, he deposited and disbursed funds from his trust account for these transactions.

On August 14, 2002, respondent's client trust account ledger showed a shortage of \$818, which continued until he deposited funds into the account on September 26, 2002. On June 30, 2003, the ledger showed another shortage of \$605.84 due to an \$815 check to a title company. The ledger showed a deposit on December 9, 2003, for \$9,500. By December 16, 2003, respondent's ledger card showed another \$605.84 shortage, which was not cured until January 30, 2004, when he deposited additional funds in the account.

Respondent again overdisbursed funds on Darlene's behalf, which created a shortage of \$802.42. Shortages continued to exist until January 12, 2005. On February 28, 2005, respondent disbursed trust account check number 2196 to Darlene for \$1,424.44, which created a shortage of \$3,456.03. The shortage continued until respondent deposited \$4,423.95 on May 24, 2005.

According to the investigative report, respondent negligently misused clients' funds to accommodate disbursements for his spouse and other clients, violating RPC 1.15(a). His failure to reconcile his attorney trust account was the direct cause for the shortages that existed on the client ledger cards. Respondent failed to safeguard clients' trust funds, failed to

reconcile ledger balances to bank statements, failed to provide clients with signed settlement statements, and failed to promptly pay medical providers from escrowed funds.

As noted above, the OAE recommended either a reprimand or a censure, relying on In re Patel, 182 N.J. 587 (2005) (reprimand for negligent misappropriation of trust funds and failure to comply with recordkeeping requirements) and noting respondent's prior discipline and continuing disregard of recordkeeping requirements.

Following a de novo review of the record, we are satisfied that the stipulation demonstrates by clear and convincing evidence that respondent was guilty of unethical conduct.

Respondent's lack of compliance with and understanding of his recordkeeping responsibilities prevented him from safeguarding his client's funds. Not only did he fail to reconcile his trust account on a regular basis, thereby causing the negligent misappropriation of funds, but he also failed to prepare and maintain ledger cards at the time he made disbursements at closings. His accounting practices were so deficient that he misplaced one check for more than a year, causing the invasion of other clients' trust funds. His abysmal recordkeeping practices violated RPC 1.15(d), and the shortages in his accounts -- and consequent negligent misappropriation of client funds -- violated RPC 1.15(a).

Furthermore, respondent failed to obtain malpractice insurance, violating R. 1:21-1A(3), and failed to provide his clients with signed settlement statements, violating R. 1:21-7(g).

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 in respondent's prior matter, where he commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; he 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 needed, 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

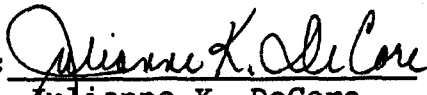
approximately \$5,000 in client funds after commingling personal and client funds; the attorney left \$20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices); In re Gilbert, 144 N.J. 581 (1996) (reprimand 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); and 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).

We believe that a reprimand adequately addresses respondent's ethics transgressions, notwithstanding his prior reprimand. However, given respondent's admitted lack of understanding of the "details of reconciliations," we require that, within ninety days

of the date of the Court Order, he complete an accounting course approved by the OAE. We further require that respondent retain a certified public accountant to perform his monthly reconciliations, and that he submit quarterly reconciliations to the OAE for a two-year period. Members Boylan and Neuwirth 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  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
CORRECTED VOTING RECORD

In the Matter of Maury R. Winkler  
Docket No. DRB 05-257

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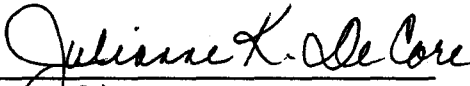
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Argued: October 20, 2005

Decided: December 8, 2005

Disposition: Reprimand

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

  
Julianne K. DeCore  
Chief Counsel