

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-259
District Docket No. XIV-03-594E

IN THE MATTER OF
MARVIN S. DAVIDSON
AN ATTORNEY AT LAW

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Decision

Argued: September 23, 2004

Decided: November 4, 2004

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 stipulation between the Office of Attorney Ethics ("OAE") and respondent, pursuant to R. 1:20-15(f).

Respondent stipulated to facts showing that he engaged in the negligent misappropriation of client funds and recordkeeping deficiencies.

Respondent was admitted to the New Jersey bar in 1969. At the relevant times, he maintained a law office in Orange, New Jersey.

Respondent received a three-month suspension in 1995, for improperly witnessing and acknowledging documents, and preparing a power of attorney containing false representations, violating RPC 8.4(d) (conduct prejudicial to the administration of justice), and for advancing funds to a client in connection with litigation, violating RPC 1.8(e). In re Davidson, 139 N.J. 232 (1995).

The disciplinary stipulation incorporated by reference and relied on the OAE's investigative report to provide the factual basis for respondent's misconduct.

Respondent is practicing law in a partnership with another attorney. Although both have signing authority for the firm's checks, respondent is fully responsible for the office's attorney accounts and recordkeeping.

The OAE conducted a demand audit of respondent's records for the period from June 1, 2000 through May 31, 2002; additional information was obtained on July 25, 2002 and October 29, 2002. The audit disclosed that, from October 2000 through August 2002, respondent negligently misappropriated client trust funds totaling \$28,004.78. Respondent's accountant reconstructed

respondent's IOLTA trust account records and confirmed the OAE's findings. As a result, respondent deposited \$28,004.78 into his attorney trust account to cover over-disbursements, bank errors, and bank charges.

For nine years, respondent had utilized the services of an independent bookkeeper to reconcile his attorney accounts. Although the bookkeeper reconciled the trust account checkbook balance to the bank balance on a monthly basis, she did not reconcile the client ledger balances. Respondent was aware that the bookkeeper was not reconciling the client ledgers, but believed that the bank reconciliation was sufficient. He was not aware that there were negative balances, presumably in the client ledgers.

After the audit and respondent's accountant reconstruction of his records, respondent made deposits on various dates "to correct the negative balances." In August 2003, respondent's accountant submitted to the OAE a trust account reconciliation as of May 31, 2003. As of the date of the investigator's report, May 13, 2004, respondent's attorney trust account appeared to be in trust.

As a result of the OAE audit, the following recordkeeping deficiencies were also uncovered:

1. Client ledger sheets were not fully descriptive.

2. Client' ledger sheets were found with debit balances.

3. A schedule of clients' ledger accounts was not prepared and reconciled quarterly* to the trust account bank statement.

4. Inactive balances remained in the attorney trust account for an extended period.

5. Old outstanding checks were identified in the attorney trust account.

6. Deposit slips lacked sufficient detail to identify each item of deposit.

7. The business bank account designation was improper.

*Effective September 2002, the rule was amended to require monthly, rather than quarterly reconciliations.

[IR3¹.]

The OAE investigator concluded that respondent's failure to reconcile the attorney trust account directly resulted in the negligent misappropriation of trust funds, in violation of R. 1:21-6 and RPC 1.15. The investigator further concluded that, if the trust account had been properly reconciled on a quarterly basis, the errors would have been detected and corrected in a timely manner. Finally, the investigator found no evidence that respondent knowingly misappropriated client funds or benefited from those funds.

Respondent cooperated fully with the OAE, acted swiftly to retain an accountant, and had his trust account reconstructed.

¹ IR refers to the investigative report.

The OAE recommended discipline in the range of a reprimand to a censure.

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.

Because respondent stipulated that he negligently misappropriated client funds by failing to properly reconcile his attorney account, and that he was deficient in his recordkeeping practices, the only issue left for determination is the appropriate discipline.

Ordinarily, either an admonition or a reprimand is imposed for negligent misappropriation of client funds. See, e.g., In re Davenport, 174 N.J. 552 (2002) (admonition for commingling personal and trust funds and negligently misappropriating funds); In the Matter of Bette Grayson, DRB Docket No. 97-338 (May 27, 1998) (admonition for failing to prepare quarterly reconciliations of client ledger accounts to trust account bank statements, resulting in the negligent misappropriation of client trust funds in eleven instances, totaling \$6,590.69); In the Matter of Joseph S. Caruso, DRB Docket No. 96-076 (May 21, 1996) (admonition for recordkeeping violations leading to the negligent misappropriation of client funds); In re Blazsek, 154 N.J. 137 (1998) (reprimand where attorney negligently

misappropriated client funds and failed to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (reprimand for failure to comply with recordkeeping requirements and for negligent misappropriation of client funds); In re Imperiale, 140 N.J. 75 (1995) (reprimand where attorney negligently misappropriated \$9,000 in client trust funds and failed to comply with recordkeeping requirements); In re Mitchell, 139 N.J. 608 (1995) (reprimand where attorney negligently misappropriated client funds and failed to maintain required records); and In re Lewinson, 126 N.J. 515 (1992) (public reprimand for failing to maintain adequate business records for two years leading to a series of negligent misappropriations of clients' trust funds).

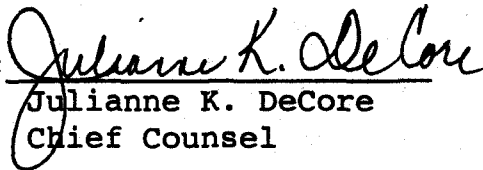
A reprimand has still been imposed where, in addition to poor accounting practices, other violations are present. See In re Mirsky, 176 N.J. 421 (2003) (reprimand for lack of diligence, failure to communicate with the client, commingling personal and trust funds, negligent misappropriation of client trust funds, and failure to place unearned fees in the trust account); In re Hinds, 138 N.J. 277 (1994) (public reprimand for negligent misappropriation of client trust funds, failure to comply with recordkeeping requirements, gross neglect, lack of diligence and failure to cooperate with disciplinary authorities).

In imposing discipline, we considered that respondent's misconduct occurred because of a mistake, not venality, that he took steps to rectify the problems once he learned of them, including hiring an accountant, and that he cooperated fully with the OAE investigation. We have also considered respondent's prior discipline, a three-month suspension, but note that it arose from conduct unrelated to inadequate recordkeeping practices.

Based on the above cases and on respondent's prior discipline, we determine that a reprimand, rather than an admonition, more appropriately addresses his misconduct in this matter. Members Barbara Schwartz and Spencer V. Wissinger, III 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

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

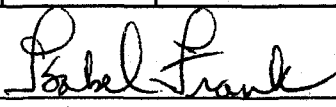
In the Matter of Marvin S. Davidson
Docket No. DRB 04-259

Argued: September 23, 2004

Decided: November 4, 2004

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	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

By  11/1/04
Julianne K. DeCore
Chief Counsel