

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-437

IN THE MATTER OF :
 :
PAUL J. FORSMAN :
 :
AN ATTORNEY AT LAW :
 :

Decision
Default: R.1:20-4(f)

Decided: May 20, 2002

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

Pursuant to R.1:20-4(f)(1), the Office of Attorney Ethics (“OAE”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On October 12, 2001 the OAE served respondent with a copy of the complaint by certified and regular mail at his office address. The regular mail was not returned. The certified mail return receipt card was returned on October 22, 2001, signed by “Brian Forsman”. On November 16, 2001 the OAE sent a second letter to respondent, advising him that, if he did not file an answer within five days, the charges against him would be

deemed admitted and the record would be certified to us for the imposition of sanction. The letter also served to amend the complaint to charge a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities), by reason of his failure to file an answer. The record does not state if this second letter was sent by regular or certified mail or both or if the letter was returned to the OAE. Respondent did not file an answer to the complaint.

By letter dated December 5, 2001 the OAE certified the record to us. A copy of the cover letter and enclosures was sent to respondent via regular and certified mail. On December 14, 2001 the OAE forwarded to us a copy of the signed green return receipt card, indicating delivery. The signature on the card does not appear to be that of respondent.

* * *

Ten days before our scheduled review of this matter, respondent filed a motion to vacate the default. Respondent admitted receiving the complaint in mid-October 2001 and alleged that he was unable to answer it timely because his mother had become ill. Specifically, respondent stated, his mother had developed complications from eye surgery, requiring almost around-the-clock assistance from him, her primary caregiver.

As to the allegations of the complaint, respondent conceded that there were errors in his recordkeeping, explaining that time pressures made it difficult for him to detect mistakes made by a number of secretaries that he had trained. Respondent denied that he had willfully failed to cooperate with the OAE, adding that he had been very busy

because of work, education and family responsibilities. He detailed his education and work history, including his completion of an LL.M degree and his current pursuit of a second LL.M.

Although we felt sympathy for respondent's mother's condition, we found that it did not excuse his failure to answer the complaint or, at a minimum, to inform the OAE of his problems and to seek an extension. Similarly, respondent's difficulties in finding good office help, his educational pursuits and his growing job opportunities do not excuse his inattention to his accounting responsibilities. Lastly, the record provides ample evidence that respondent repeatedly failed to cooperate with the OAE.

Because of respondent's failure to provide a satisfactory explanation for his failure to answer the complaint and failure to advance meritorious defenses to the substantive charges, we voted to deny his motion and to proceed with the review of this matter on a default basis.

* * *

Respondent was admitted to the New Jersey bar in 1979. He maintains an office for the practice of law in Toms River, Ocean County. He has no history of discipline.

Count One

On February 23, 1999 First Union Bank notified the OAE that respondent's attorney trust account was overdrawn. By letter dated March 9, 1999 the OAE requested that respondent provide an explanation for the overdraft. When respondent submitted an

unsatisfactory explanation, the OAE scheduled a select audit for May 6, 1999. At respondent's request, the audit was rescheduled for May 26, 1999. On that date, OAE auditor Karen Hagerman conducted an initial audit. Respondent was unavailable for the audit, but provided a memorandum stating that he had discovered unauthorized bank debits in 1998 that had caused the discrepancy in his account. A second audit visit was scheduled for June 2, 1999. Respondent failed to appear for that audit visit and failed to provide the requested financial information on his trust and business accounts. A third visit was scheduled for July 20, 2000. This audit visit disclosed that respondent negligently misappropriated \$2,561.83 between March 25, 1998 and April 13, 2000. The negligent misappropriation was caused by the following:

1) Unauthorized Disbursements

On four occasions between March 25, 1998 and April 13, 2000 First Union Bank removed funds from respondent's trust account to make payments to his home equity account. The disbursements, totaling \$1,061.83, resulted in the negligent misappropriation of client funds on deposit in the trust account. First Union Bank confirmed that respondent did not authorize the disbursements. Respondent's failure to reconcile his trust account on a quarterly basis, however, prevented the errors from being identified and corrected promptly.

2) The Zaleski Matter

Respondent failed to record a disbursed trust check in the amount of \$500 on the Zaleski client ledger card. As a result, the balance remaining on the ledger showed \$500 more than was actually available. When the ledger card balance was brought down to zero on January 5, 1999, the actual balance was negative \$500 because the trust check had not been recorded. This resulted in the negligent misappropriation of other client funds. Again, respondent's failure to reconcile his attorney trust account prevented the errors from being promptly detected and corrected.

3) The Karasik Matter

Respondent failed to record on his client ledger card that a \$1,000 deposit item to his trust account had been returned unpaid by the bank. He subsequently disbursed four checks totaling \$1000 against that deposit. Although the ledger card showed a zero balance, there was actually a negative balance of \$1,000 for the client, which resulted in the negligent misappropriation of other client funds on deposit. Respondent's failure to reconcile his trust account on a quarterly basis, as required by R.1:21-6, prevented the error from being discovered and corrected promptly.

The complaint charged respondent with the negligent misappropriation of client trust funds, in violation of RPC 1.15(b).

Count Two

The audit disclosed that respondent's recordkeeping practices were deficient.

Specifically, the following deficiencies were noted:

- a) A trust receipts book was not maintained.
- b) A trust disbursements book was not maintained.
- c) A schedule of clients' ledger accounts was not prepared and reconciled quarterly to the trust account bank statement.
- d) Client ledger cards were found with debit balances.

Deficiencies "a" through "c" had been previously identified by the OAE in a 1995 random compliance audit of respondent's attorney books and records. By letter dated September 25, 1995 respondent represented to the OAE that he had corrected the cited deficiencies. He subsequently provided the OAE with a certification, accounting for all funds on deposit in his trust account as of November 30, 1995. As the 1999-2000 select audit shows, the recordkeeping deficiencies reoccurred and the trust account was not balanced.

The complaint charged that respondent's failure to properly maintain his books and records in accordance with R.1:21-6 violated RPC 1.15(d).

Count Three

By letters dated April 5, June 21 and August 29, 2001¹ the OAE requested that respondent detail the correction of his recordkeeping deficiencies and certify that all trust

¹ The complaint inadvertently lists the date of the third letter as August 23, 2001.

funds have been identified. The OAE reiterated its request by way of telephone calls to respondent. Although respondent promised to comply with the OAE's demand, he failed to do so.

The complaint charged respondent with a violation of RPC 8.1(b) for his failure to reply to the OAE's requests for information.

* * *

Service of process was proper. A review of the record shows that the facts recited in the complaint support a finding of unethical conduct. The allegations are, thus, deemed admitted. R.1:20-4(f).

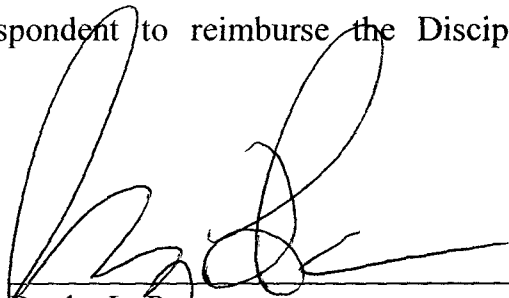
Respondent did not comply with the recordkeeping rules, negligently misappropriated client funds and failed to cooperate with the OAE.

Generally, an admonition or a reprimand is the appropriate discipline for conduct similar to respondent's. See In the Matter of Joseph S. Caruso, Docket No. DRB 96-076 (May 21, 1996) (admonition imposed where the misrecording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed where the attorney had deficient recordkeeping practices and failed to prepare quarterly reconciliations of client ledger accounts, resulting in negligent misappropriation of client trust funds in eleven instances); 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 where the attorney negligently misappropriated client funds as a result of recordkeeping deficiencies); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where the attorney negligently misappropriated client funds after commingling personal and client funds); In re Barker, 115 N.J. 30 (1988) (reprimand for recordkeeping deficiencies, failure to supervise bookkeeper, failure to reconcile attorney records and negligent misappropriation).

Here, respondent's conduct was aggravated by his failure to cooperate with the OAE and failure to answer the complaint, thereby allowing this matter to proceed as a default. We, therefore, determined that an admonition is insufficient discipline and unanimously voted to impose a reprimand. Respondent is hereby forewarned that any future failure to cooperate with the OAE will result in more severe discipline. Two members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.



Rocky L. Peterson
Chair
Disciplinary Review Board

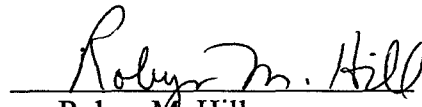
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Paul J. Forsman
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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:			7				2

 5/29/02
Robyn M. Hill
Chief Counsel