

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-307

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IN THE MATTER OF :  
: STUART B. DONEGAN :  
: AN ATTORNEY AT LAW :  
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Decision  
Default [R.1:20-(f)]

Decided: January 4, 2002

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

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

Respondent was admitted to the New Jersey and Pennsylvania bars in 1992 and the Colorado bar in 1993. Although he has no history of discipline, he was temporarily suspended on May 22, 2001, pending the disposition of allegations that he knowingly misappropriated client funds. In re Donegan, 167 N.J. 591 (2001).

On July 2, 2001, the OAE mailed a copy of the complaint, by regular and certified mail, to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual. The certified mail receipt was returned signed by a Bryan Stephens and indicated delivery on July 11, 2001. The regular mail envelope, forwarded to a Philadelphia address believed to be respondent's, was returned as "addressee unknown." Because the OAE was aware that respondent had abandoned his office in Cherry Hill, New Jersey, and that an attorney/trustee had been appointed to take over his practice, it did not forward a second letter to that address.

Also on July 2, 2001, a copy of the complaint was sent to respondent's last known home address in Marlton, New Jersey, by regular and certified mail. The certified mail envelope was returned with a handwritten note of "MLNA" (moved left no address). The regular mail envelope was not returned.

On July 9, 2001, the complaint was served by publication in the New Jersey Lawyer and the New Jersey Law Journal.

Respondent did not file an answer.

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Respondent was charged with four counts of knowing misappropriation of client funds, in violation of RPC 1.15(a), RPC 8.4(c) (dishonesty, fraud, deceit and

he issued trust account check number 1038 to himself, in the amount of \$11, to cover overnight mail costs. During a December 12, 2000 hearing before bankruptcy Judge Judith H. Wizmur, respondent testified that he had kept the balance of the Bernardo funds in his trust account. Based on the entries in respondent's client trust ledger for Bernardo, this statement was false. On August 20, 1999, respondent had issued trust account check number 1045 to himself, in the amount of \$5,000, and deposited it in his business account on that same day. Respondent then used the funds from his business account to pay for personal business expenses. Respondent had not been authorized by his client, the court or the bankruptcy trustee to disburse Bernardo's escrow funds to himself.

As of September 17, 1999, respondent's business account balance was \$776.46, indicating that Bernardo's funds and any other funds in his business account had been almost entirely depleted. By March 17, 2000, respondent's trust account balance for all clients had fallen to \$320.85. From March 11, 1999 through March 17, 2000, respondent did not make any payments to the bankruptcy trustee in Bernardo's behalf, either from his trust account or his business account.

On November 21, 2000, respondent made a \$3,400 cash deposit to his attorney trust account and wrote "Biddle" on the deposit slip. Biddle was one of respondent's clients. On Bernardo's ledger card, respondent credited the entire amount of the Biddle deposit to Bernardo.

On November 22, 2000, respondent deposited into his trust account two bank checks in the amounts of \$3,908.15 and \$250, payable to himself. Respondent credited \$1,600 of the November 22, 2000 deposit to Bernardo. A notation at the bottom of respondent's client ledger card for Bernardo stated "\*dep on 11/22 two items 1600 for J. Bernardo." The Biddle deposit of \$3,400, together with the \$1,600 deposit, covered the \$5,000 deficit in Bernardo's funds.

At the December 12, 2000 hearing before Judge Wizmur, respondent did not inform her that he had taken Bernardo's funds for himself or that, in November 2000, he had deposited his own funds, as well as funds from other clients, into his trust account to cover the shortage he had created.

On November 28, 2000, respondent forwarded to the bankruptcy trustee a \$5,382.13 check on behalf of Bernardo.

During a January 22, 2001 OAE demand audit, respondent admitted that he paid himself \$5,000 from Bernardo's trust funds. According to the complaint, respondent acknowledged that he was not entitled to disburse any fees to himself in the Bernardo matter and he surmised that he had done so by mistake. The complaint charged that, in addition to misappropriating Bernardo's trust funds, respondent also misappropriated Biddle's funds when he paid Bernardo's obligation to the bankruptcy trustee, using funds he had received from or on behalf of Biddle.

## **Count Two**

### **The Dempsey Matter - District Docket No. IV-01-004E**

Daniel and Virginia Dempsey, respondent's clients in a bankruptcy matter, gave him \$24,237.10, between June 27, 2000 and April 9, 2001. Respondent did not deposit the Dempsey's funds into his trust account, but instead misappropriated them for his own business and personal use. He was not authorized by his client, the court or the bankruptcy trustee to use the Dempsey funds.

On June 28, 2000, respondent misrepresented to the bankruptcy court and the bankruptcy trustee that he was holding \$6,000 for the Dempseys, which could be forwarded to the bankruptcy trustee within seven days. Based on the entries in the client trust ledger for Dempsey, respondent should have known that his statement was false. Respondent's trust account ledger for the Dempseys reflected no deposits on their behalf until November 22, 2000. Moreover, on August 23, 2000, respondent misrepresented to the court and the bankruptcy trustee that he was holding \$7,100 for the Dempseys and that an additional \$3,000 would be available by August 25, 2000.

On December 12, 2000, respondent falsely testified before the bankruptcy court that he had been holding at least \$6,000 in trust for the Dempseys between October 11 and October 18, 2000. According to the complaint, respondent knew at the time that his testimony was false.

As noted above, the trust account ledger for the Dempseys showed that respondent first made a deposit in their behalf on November 22, 2000, in the amount of \$2,558. The complaint alleged that the deposit made at that time was not the cash or checks that the Dempseys had given to respondent as of that date. In fact, the Dempseys had given him a total of \$24,237.10 by that date.

On November 22, 2000, respondent deposited \$4,158.15 into his attorney trust account. He credited \$2,558 of that amount to the Dempseys. Noted at the bottom of the Dempseys' client ledger was "\*DEP on 11/22 2558.00 to Dempsey 1600 Joe Bernardo."

Thereafter, on November 27, 2000, respondent deposited \$3,680.55 into his attorney trust account and noted on the deposit slip the name "DiDomenico." The deposit item was a First Union Bank check. On the line captioned sender, the names "Ricky and Sandra DiDomenico" appeared. The check was made payable to "Steward Donegan in trust." Respondent credited the DiDomenico deposit to the Dempseys.

On November 28, 2000, respondent forwarded to the bankruptcy trustee, on behalf of the Dempseys, trust account check number 1086 for \$6,000 and two money orders totaling \$1,000.

As of December 29, 2000, respondent's attorney trust account balance was \$818.58. According to the complaint, respondent failed to offer a valid explanation for the handling of the Dempseys' funds. Thus, by paying the Dempseys' financial obligation to the

bankruptcy trustee with funds received from the DiDomenicos, respondent invaded and misappropriated the DiDomenico funds.

### **Count Three**

#### **The Wigfall Matter - District Docket No. IV-01-003E**

Respondent represented John Wigfall in a bankruptcy matter. Wigfall gave respondent \$4,975 in connection with his case. On December 12, 2000, in testimony before Judge Wizmur, respondent acknowledged receipt of that amount, as follows: \$1,200 (bankruptcy refund), \$1,650 (bankruptcy trustee payment), \$475 (money orders) and \$1,200 paid to himself in trust on September 20, 2000. Respondent misrepresented to the court that, as of September 27, 2000, he was holding \$4,975 in his trust account on Wigfall's behalf. According to the complaint, respondent knew that his statement was false. Respondent's attorney trust account balance as of September 21, 2000 was \$200.85 and as of September 29, 2000 was \$180.85.

Respondent's client trust ledger reflected that, before October 10, 2000, he did not hold any money in trust for Wigfall. The ledger showed only one deposit of \$5,000 for Wigfall on October 10, 2000. According to the complaint, that entry was inaccurate. Respondent had made only one trust account deposit in the month of October 2000: a \$11,548.78<sup>1</sup> deposit on October 5, 2000, consisting of two items — an attorney trust account

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<sup>1</sup> Although the exhibit seems to show a deposit other than \$11,548.78, a letter from the Equity Bank indicates that a deposit in that amount was made on October 5, 2000.

check for \$11,073.78 payable to "Stuart Donegan, Esq. Att. Trust Acct.," bearing the notation "Gurnari from Evans," and a check in the amount of \$475 payable to John Wigfall, bearing the notation "Balboa adjustment."

Respondent's client ledger for Wigfall showed that, on October 10, 2000, he issued trust account check number 1078 to Atlantic Mortgage, in the amount of \$5,000. However, this was a false ledger entry. Check number 1078 for \$5,000 was payable to himself and cleared the banking process on October 10, 2000. Respondent was not authorized by his client, the court or the bankruptcy trustee to use Wigfall's funds for his personal and/or business use.

In November 2000, respondent's associate wrote to the bankruptcy trustee, indicating that respondent's trust account check number 1083 for \$4,975 had been sent to Atlantic Mortgage on Wigfall's behalf. According to the complaint, that check was actually issued to Robert M. Wood, on November 29, 2000, in the amount of \$3,388.

On December 12, 2000, respondent testified before Judge Wismur that the associate's letter was incorrect. Respondent misrepresented to the court that \$4,500 had been forwarded to Atlantic Mortgage on November 7, 2000 on Wigfall's behalf and that he had deposited a \$475 money order payable to the bankruptcy trustee into his attorney trust account. According to the complaint, no payment was made to Atlantic Mortgage on Wigfall's behalf.



**Count Four**

**The Stock Matter - District Docket No. IV-01-022E**

The complaint alleged that, on August 13, 1999, Charles J. Stock gave respondent check number 3057 for \$30,000, with the notation "In Trust." The check was to be remitted to Stock's mortgagee, Aurora Mortgage Company. On August 13, 1999, respondent deposited the check into his attorney trust account at Equity National Bank, noting on the deposit slip "Stock, Charles." From August 1999 through March 2000, the following activity took place in respondent's attorney trust account:

<u>DATE</u>	<u>CK.NO.</u>	<u>TO/FOR</u>	<u>CK.AM'T.</u>	<u>DEPOSIT</u>	<u>BALANCE</u>
08/10/99		Beginning Balance			\$132,251.13
08/16/99		Charles Stock check		\$30,000.00	\$162,251.13
08/16/99	1041	Joseph & Johanna Saylor	\$ 4,000.00		\$158,251.13
08/20/99	1045 *	Stuart Donegan	\$ 5,000.00		\$153,251.13
08/27/99	1043	Isabel Balboa	\$ 1,500.00		\$151,751.13
09/10/99	1047	Kalobius	\$16,969.12		\$134,782.01
09/21/99	1048 *	Stuart Donegan	\$10,000.00		\$124,782.01
09/24/99	1050 *	Stuart Donegan	\$10,000.00		\$114,782.01
09/27/99	1044	Champion Mortgage	\$ 2,500.00		\$112,282.01
09/27/99	1049	Joseph Saylor	\$ 8,000.00		\$104,282.01
10/01/99				\$ 205.00	\$104,487.01
10/06/99	1051	Rte.66 Auto Mall	\$12,695.32		\$ 91,791.69
10/08/99	1053	Clinton Biddle	\$ 3,500.00		\$ 88,291.69
10/19/99	1052	Isabel Balboa	\$ 205.00		\$ 88,086.69
10/28/99	1054	Ernest Kalobius	\$ 7,350.00		\$ 80,736.69
11/03/99	1055	Clinton Biddle	\$ 2,000.00		\$ 78,736.69
11/05/99	1056 *	Stuart Donegan	\$ 5,000.00		\$ 73,736.69
11/12/99	1057 *	Stuart Donegan	\$ 5,000.00		\$ 68,736.69
11/15/99				\$ 2,887.50	\$ 71,624.19
11/18/99	1058	Robert M. Wood	\$ 2,592.00		\$ 69,032.19
11/22/99	1062 *	Donegan & Schroedinger	\$ 3,000.00		\$ 66,032.19
11/24/99	1061	Stern, Lavinthal et als.	\$ 2,887.50		\$ 63,144.69

12/02/99	1063	*	Stuart Donegan	\$ 7,000.00	\$ 56,144.69
12/07/99	1064	*	Stuart Donegan	\$ 5,000.00	\$ 51,144.69
12/13/99	1065		Clinton & Barbara Biddle	\$20,000.00	\$ 31,144.69
12/14/99	1059		Norwest Mortgage	\$ 2,823.84	\$ 28,320.85
12/15/99	1066	*	Stuart Donegan	\$ 5,000.00	\$ 23,320.85
01/24/00	1067	*	Stuart Donegan	\$ 3,000.00	\$ 20,320.85
01/26/00	1068	*	Stuart Donegan	\$ 4,000.00	\$ 16,320.85
01/31/00	1069	*	Stuart Donegan	\$ 2,000.00	\$ 14,320.85
01/31/00	1070	*	Stuart Donegan	\$ 1,000.00	\$ 13,320.85
02/25/00	1071	*	Stuart Donegan	\$ 3,000.00	\$ 10,320.85
03/10/00	1072		unknown	\$ 830.00	\$ 9,490.85
03/14/00				\$ 830.00	\$ 10,320.85
03/17/00	1073		unknown	\$ 10,000.00	\$ 320.85

\*Total of \$68,000.00 to Stuart Donegan

Respondent was not authorized by his client, the court or the bankruptcy trustee to use the Stock funds for his personal and/or business purposes. In response to the OAE's request for an explanation of his handling of the Stock funds, respondent produced a client trust ledger for Stock that incorrectly showed a deposit of Stock's funds to the trust account on October 1, 1999. The Stock trust account client ledger also incorrectly reflected the issuance of check number 1046 for \$30,000 to Aurora Mortgage Company on October 20, 1999. Check number 1046 was never negotiated. Moreover, respondent could not produce the original trust account check number 1046. He produced a photocopy of the front only of a check that he claimed to be number 1046. Respondent also submitted to the OAE a trust account bank statement that had been altered to show the \$30,000 deposit and a \$30,000 payment by check number 1046 in October 1999. The unaltered October 1999 trust account bank statement showed that there was no deposit of funds in the amount of \$30,000

or payment in the amount of \$30,000 during the month of October 1999. Moreover, Aurora Mortgage Company never received payment in Stock's behalf. Stock's \$30,000 deposit was entirely depleted as of March 17, 2000. Respondent's attorney and trust accounts were closed on April 27, 2001.

**Count Five - District Docket No. XIV-01-176E**

In connection with the OAE investigation of the Stock matter, respondent gave the OAE a trust account bank statement for the month of October 1999, which he had altered to hide the misappropriation of Stock's funds. The altered bank statement resembled a computer-generated transaction printout, but was not similar to other trust account bank statements that respondent provided to the OAE. The altered statement showed an October 1, 1999 deposit of \$30,000 and a corresponding debit in the amount of \$30,000 on October 28, 1999, when trust account check number 1046 purportedly cleared. The statement showed differing ending balances in different parts of the statement: \$110,736.69 and \$80,736.69.

The OAE obtained a copy of the accurate trust account bank statement for October 1999, which was similar to the altered bank statement produced by respondent. The true statement showed an ending balance of \$80,736.99. Respondent's November 1999 attorney trust bank statement showed a beginning balance of \$80,736.69, which was inconsistent with the altered statement, but consistent with the true bank statement. The true bank

statement did not show a \$30,000 deposit in October 1999 or a check number 1046 for \$30,000.

According to the complaint, respondent produced a photocopy of his trust account check number 1046, which differed greatly in appearance from every other check respondent issued. Respondent explained that the check had been typed and not handwritten. Respondent added that his October checks were printed by using a computer program, but that he was unable to learn the program and, therefore, returned to handwriting his trust account checks. According to the complaint, respondent knew that this explanation was false when he made it. Every check issued from respondent's trust account before and after October 20, 1999 was handwritten. The exception was check number 1046.

Respondent also submitted to the OAE a letter from Equity Bank dated December 9, 1999, indicating that his trust account check number 1046 had been posted to his account, but that the original check had been misfiled and a photocopy of the missing item was being enclosed with his monthly bank statement. That letter, too, was a fabrication. A June 7, 2001 letter from Equity Bank indicated that both the October 1999 statement and the December 9, 1999 letter were fabricated.

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Service of process was properly made in this matter. Following a de novo review of the record, we found that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

The complaint contains sufficient facts to support the charges. In the Bernardo matter, the bankruptcy court ordered respondent to hold in escrow the balance of proceeds from a real estate sale, \$5,382.13. In violation of the court order, respondent disbursed to himself \$5,000 on August 20, 1999. Eight months later, on November 21, 2000, he took funds from a client named Biddle, in the amount of \$3,400, and credited them to Bernardo's trust account ledger. On the next day, respondent deposited extra funds and credited an additional \$1,600 to Bernardo. As a result of respondent's transactions, he knowingly misappropriated Bernardo's trust funds, as well as Biddle's. He also made misrepresentations to the bankruptcy court about the funds he was holding in his trust account. His conduct, thus, violated RPC 1.15(a), RPC 1.15(c) and RPC 8.4(c).

Similarly, in the Dempsey matter, respondent knowingly misappropriated funds from this client. He later deposited funds belonging to another client into his trust account and credited them to the Dempseys. Respondent also made misrepresentations to the bankruptcy court about the funds he was holding for the Dempseys.

In the Wigfall matter, respondent failed to deposit Wigfall's funds into his trust account at the time of their receipt. He misrepresented to the court that, as of September 27,

2000, he was holding \$4,975 in his trust account in Wigfall's behalf. However, his client trust ledger reflected that, before October 10, 2000, he was not holding any funds in his trust account for Wigfall. Moreover, while his client ledger showed that he had issued a \$5,000 trust account check for Wigfall to Atlantic Mortgage, that check had been issued to himself. Respondent also misrepresented that a \$4,975 trust account check had been written to Atlantic Mortgage, when it had actually been issued to someone else. Lastly, respondent made misrepresentations to the bankruptcy court about the distributions of Wigfall's funds.

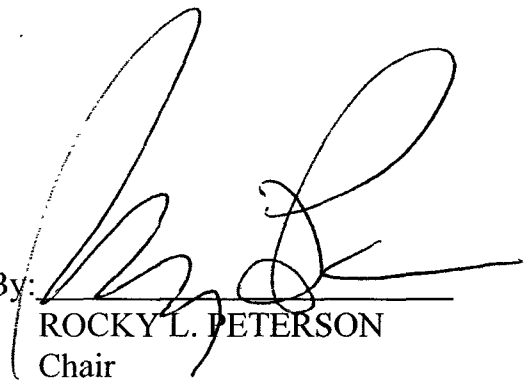
In the Stock matter, respondent received \$30,000 from his client to pay Stock's mortgage company. Even though the funds were deposited into his attorney trust account, he misused Stock's funds for his own personal and/or business purposes. Respondent's client trust ledger for Stock incorrectly reflected that Stock's funds had been deposited on October 1, 1999 and that respondent had issued a check to Aurora Mortgage Company for \$30,000. The check, however, was never negotiated. In response to the OAE's audit, respondent altered a bank statement, a check and a letter from the bank.

Unquestionably, respondent knowingly misappropriated funds from his clients Bernardo, Dempsey, Wigfall and Stock, in violation of RPC 1.15(a) and RPC 1.15(c). He also made misrepresentations to the bankruptcy court about the status of each of his clients funds, in violation of RPC 8.4(c). In Stock, respondent created documents purporting to be bank documents, in order to cover up his misappropriation. His conduct in this regard was a violation of RPC 3.3(a)(4) (knowingly offering false evidence); RPC 3.4(a) (unlawfully

altering a document or other material having evidentiary value); RPC 3.4(b) (falsifying evidence by creating documentation to mislead the OAE); RPC 8.1(a) and (b) (making false statements of material fact and failing to disclose facts necessary to correct a misapprehension known to have arisen in the matter) and RPC 8.4(c).

Because of respondent's knowing misappropriation of client funds, we unanimously determined that, under In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985), he must be disbarred. Three members did not participate.

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

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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

In the Matter of Stuart B. Donegan  
Docket No. DRB 01-307

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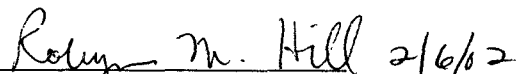


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Decided: January 4, 2002

Disposition: disbarment

<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						
<b>Total:</b>	6						3

  
 Robyn M. Hill  
 Chief Counsel