

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-184

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IN THE MATTER OF  
DAVID OLANDAN DAVENPORT  
AN ATTORNEY AT LAW

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Decision

Argued: June 20, 2002

Decided: October 7, 2002

Richard J. Engelhardt 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 motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's six-month suspension in the District of Columbia.

Respondent was admitted to the New Jersey bar in 1986 and has no prior discipline. On July 18, 1991 he was placed on the Supreme Court's ineligible list of attorneys for

failure to pay the annual attorney assessments to the New Jersey Lawyers' Fund for Client Protection. Respondent remains ineligible to date.

Respondent's suspension in the District of Columbia followed his commingling of personal and trust funds and negligent misappropriation of client funds, in violation of Rule 1.15(a), the equivalent of our RPC 1.15(a). The matter came to the attention of District of Columbia ethics authorities as the result of an overdraft in respondent's attorney trust account.

The facts that form the basis for respondent's suspension are contained in a February 7, 2000 report prepared by the Hearing Committee for the District of Columbia Court of Appeals, Board of Professional Responsibility, which recommended the imposition of a six-month suspension for respondent's misconduct. The report also cited several compelling mitigating circumstances, as follows:

- 1) no client was harmed;
- 2) the bank honored the overdraft check;
- 3) respondent immediately covered the overdraft with other funds once informed of it;
- 4) inadvertence led to respondent's deposit of a retainer into the wrong account;
- 5) there was no evidence of dishonesty on respondent's part;
- 6) respondent recognized the seriousness of his misconduct;
- 7) respondent had no prior discipline;
- 8) respondent's practice was motivated by a real desire to help his clients; and
- 9) a six-month suspension would have a devastating impact on his sole practice.

[Exhibit C]

Nevertheless, the Board of Professional Responsibility was constrained by a strict policy in the District of Columbia of imposing no less than a six-month suspension for commingling and negligent misappropriation of funds. Exhibit C. The District of Columbia Court of Appeals adopted the recommendation and, as memorialized in an April 17, 2001 opinion, suspended respondent for six months. Exhibit C.

Specifically, during 1997 and 1998 respondent commingled personal and trust funds by leaving retainers and fees in his trust account and drawing checks against those funds to pay personal and business expenses. On one occasion, as a result of respondent's mistaken belief that he had deposited a retainer in his trust account, one of those checks caused the negligent misappropriation of client funds.

Respondent readily admitted his misconduct to the District of Columbia ethics authorities.

The OAE urged us to impose a reprimand.

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Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline and to impose an admonition.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states as follows:

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face

of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

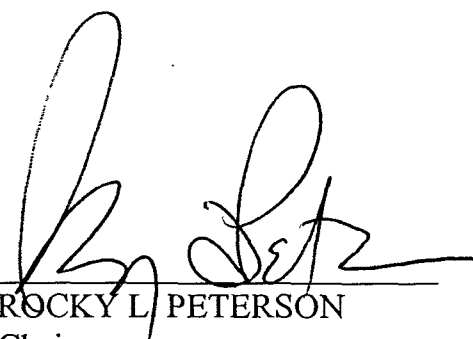
(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subparagraph E applies, however, since respondent's misconduct would not have resulted in a six-month suspension in New Jersey. Although District of Columbia precedent requires a suspension for commingling and negligent misappropriation, in New Jersey, attorneys found guilty of commingling and negligent misappropriation generally receive either an admonition or a reprimand. See, e.g., 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 where 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 Goldstein, 147 N.J. 286 (1997) (reprimand where the attorney negligently misappropriated client funds as a result of recordkeeping deficiencies) and In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand where the attorney negligently misappropriated client funds after commingling personal and client funds).

Here, because of the numerous mitigating factors advanced by respondent and cited in the OAE's brief, we believe that an admonition sufficiently addresses the extent of respondent's misconduct. We, therefore unanimously determined to impose an admonition. Two members did not participate.

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

  
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 David Olandan Davenport  
Docket No. DRB 02-184

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Argued: June 20, 2002  
Decided: October 7, 2002  
Disposition: Admonition

<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>				7			2

*Roby M. Hill 10/8/02*  
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Robyn M. Hill  
Chief Counsel