

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-164
District Docket Nos. XIV-2013-0447E;
XIV-2014-0696E; and XIV-2015-0356E

IN THE MATTER OF :
STEPHEN P. CHATBURN :
AN ATTORNEY AT LAW :
:

Corrected Decision

Argued: July 20, 2017

Decided: November 8, 2017

Andrea Rose Fonseca-Romen 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 disciplinary stipulation filed by the Office of Attorney Ethics (OAE). Respondent admitted violations of RPC 1.1(a) (gross neglect), RPC 1.5(b) (unreasonable fee), RPC 1.15(a) (commingling and negligent misappropriation), RPC 1.15(b) (failure to promptly disburse funds to client or third party), RPC 1.15(d) and R. 1:20-6 (recordkeeping), and RPC 5.3(a), (b) and (c) (failure to

supervise nonlawyer employee). The OAE recommended a censure. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1974. On June 30, 1989, he received a private reprimand for gross neglect, lack of diligence, and failure to communicate with his clients in two matters. In the Matter of Stephen P. Chatburn (DRB 89-099 and DRB 89-100) (June 30, 1989).

On March 31, 1992, respondent received a public reprimand for gross neglect, lack of diligence, pattern of neglect, and failure to communicate with his clients in three matters. In re Chatburn, 127 N.J. 248 (1992).

Effective December 16, 2013, the Supreme Court temporarily suspended respondent for failing to cooperate with the ethics investigation in this matter. In re Chatburn, 216 N.J. 337 (2013). On January 15, 2014, respondent was reinstated, effective retroactively to December 16, 2013. In re Chatburn, 216 N.J. 403 (2014).

On August 24, 2015, the Court entered an Order declaring respondent ineligible to practice law for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He remains ineligible to date.

The facts are contained in a May 4, 2017 stipulation (S) between respondent and the OAE.

I. The Recordkeeping Deficiencies

From August 1, 1990 to February 28, 2014, respondent maintained an attorney trust account (ATA1) and attorney business account (ABA1) at Wells Fargo Bank. From January 24, 2014 to June 30, 2015, when respondent dissolved his law practice and ceased practicing law, he maintained an attorney trust account (ATA2) and attorney business account (ABA2) at Susquehanna Bank.

On December 26, 2013, after respondent's temporary suspension, he applied for reinstatement, claiming that a law firm employee fraudulently had intercepted his office mail. On January 7, 2014, respondent filed an amended application for reinstatement.¹

Multiple OAE demand audits revealed numerous recordkeeping deficiencies. Specifically, from December 2012 through December 2013, respondent:

- a) failed to maintain trust receipts and disbursements journals [R. 1:21-6(c)(1)(A)];
- b) failed to maintain client ledger cards [R. 1:21-6(c)(1)(B)];
- c) failed to maintain a client ledger card identifying attorney funds for bank charges [R. 1:21-6(d)];

¹ As previously stated, on January 15, 2014, the Court reinstated respondent, effective retroactively to December 16, 2013.

d) failed to prepare three-way reconciliations of his trust account on a monthly basis [R. 1:21-6(c)(1)(H)];

e) comingled personal funds in the ATA1 from 2012 through 2013 [R. 1:21-6(a)(1) and (2)]; and

f) failed to maintain business receipts and disbursements journals [R. 1:21-6(a)(2) and R. 1:21-6(c)(1)(A)].

[S¶22-¶29.]

Respondent stipulated that he had delegated his recordkeeping responsibilities to a nonlawyer office manager, Joseph Schlafer. Thereafter, Schlafer delegated his responsibilities to Nicole Petitta, another nonlawyer employee.²

Although R. 1:21-6 required respondent to review his attorney books and records on a monthly basis, he failed to do so. Instead, he directed Schlafer to supervise Petitta's recordkeeping.

As a result of respondent's failure to comply with the recordkeeping Rules, he did not discover that, between December 2012 and December 2013, Petitta had stolen client funds from ATA1. By his "general lack of oversight over ATA1, Respondent permitted Petitta to access and steal client funds thereby negligently misappropriating client funds."

² An attorney's recordkeeping duties are non-delegable. See, In re Barker, 15 N.J. 30,35-36 (1989).

On March 19, 2015, a Burlington County grand jury returned an indictment charging Petitta with theft by deception of funds in excess of \$75,000 from respondent and the law firm of Chatburn & Tighe. Respondent stipulated that his conduct violated RPC 1.15(a), RPC 1.15(d), and RPC 5.3(a) through (c).

II. The DeSoto Personal Injury Matter

On a date not identified in the record, Dale DeSoto retained respondent to represent him in a personal injury matter. Apparently, after settling the case, on December 11, 2013, respondent deposited a settlement check for \$125,000 into ATA1.

Respondent's settlement statement for the matter listed the following proposed disbursements:

Settlement Proceeds	\$125,000	\$125,000
Total Costs	(\$12,655.52)	\$112,344.48
Chatburn & Tighe Fee	(\$37,448.16)	\$74,896.32
Rawlings Co. Medical Lien	(\$40,000)	\$34,896.32
Chatburn & Tighe Fee on Compromised Lien (\$50,828.77 - \$40,000 = \$10,828.77 x 33 1/3%)	(\$3,609.59)	\$31,286.73
Balance Due to DeSoto		\$31,286.73

[S134;Ex.3,Ex.4.]

Respondent stipulated that he took an additional \$3,609.59 fee for having negotiated the compromise of a lien. That amount,

when added to the \$37,448.16 legal fee, yields a total fee in excess of the 33 1/3% fee allowed under R. 1:21-7(c)(1). By taking the additional fee, respondent deprived DeSoto of \$3,609.59 of the settlement proceeds to which he was entitled.

On January 24, 2014, after discovering that Petitta had stolen \$1,010 of the DeSoto settlement funds from ATA1, respondent transferred the balance of the DeSoto settlement funds (\$123,990), into ATA2. Thereafter, he made the following disbursements on account of the matter:

Check number	Description	Amount
1001	Dale DeSoto	\$31,286.73
	Total Client Proceeds	\$31,286.73
1010	Chatburn & Tighe	\$28,033.63
1017	Chatburn & Tighe	\$20,000.00
1028	Chatburn & Tighe	\$18,000.00
1011	Andrew Fletcher - Expert Fee*	\$995.74
1016	Kaplan, Leaman & Wolfe Court Reporters*	\$353.00
	Total Fees & Costs	\$67,382.37

*Note: Respondent paid a total of \$1,348.74 (check number 1011 for \$995.74 and check number 1016 for \$353.00) directly from ATA2. Respondent previously paid the remaining \$11,306.78 of the \$12,655.52 total costs from his business account.

[S141.]

Respondent was entitled to only \$50,103.68 in fees and costs, but disbursed \$66,033.63 to himself - \$15,929.95 more than he was entitled to receive. Because he disbursed his fees

and costs in the matter over a period of months, he comingled legal fees with client funds. Moreover, he failed to satisfy Rawlings' \$40,000 medical lien, "because he mistakenly believed that the medical lien [had been] paid from the attorney business account, prior to settlement."

Respondent's errors when calculating the settlement figures led him to believe that, of the total \$125,000 DeSoto settlement funds, he was entitled to receive \$92,364.53. Thus, according to the stipulation, respondent "over disbursed the settlement believing that he was utilizing either the earned fees of \$37,448.16 and \$3,609.59, reimbursed costs totaling \$11,306.78, in addition to funds from the reimbursement of the \$40,000 Rawlings lien."

The funds remaining in the ATA2 after respondent completed the disbursements, plus Petitta's theft, totaled \$25,320.90 "(\$125,000 - the sum of \$67,382.37 + \$31,286.73 + \$1,010)." Respondent mistakenly believed that those remaining funds belonged to him, and later disbursed them to other clients whose funds Petitta previously had stolen from ATA1.³

³ Presumably, the OAE was satisfied that respondent's belief was reasonable, that Rawlings' medical lien had been paid out of business account funds prior to settlement, and that the \$25,320.90 of DeSoto's funds disbursed to other clients had been respondent's own funds.

As of May 4, 2017, the date of the disciplinary stipulation, respondent had neither paid Rawlings' outstanding medical lien nor reimbursed DeSoto the excessive contingent fee.

According to the stipulation, respondent admitted that he: was grossly negligent in his handling of the funds in the DeSoto matter, a violation of RPC 1.1(a); "negligently misappropriated the DeSoto settlement" and comingled personal funds in the attorney trust account, violations of RPC 1.15(a); failed to promptly deliver funds to his client and a third party medical provider following settlement, a violation of RPC 1.15(b); and charged an excessive contingent fee, a violation of RPC 1.5(b).

III. The Failure to Supervise Schlafer

On December 23, 2011, Clara Merchant was involved in a slip and fall in an Acme Food Market. On a date not identified in the record, Schlafer, respondent's office manager, led Merchant to believe that Chatburn & Tighe would represent her in a negligence action against Acme.

Thereafter, Schlafer assigned Merchant's matter a Chatburn & Tighe file number, and sent multiple letters to Acme in connection with the case. Schlafer represented to Acme that the law firm represented Merchant for her claim.

Schlafer handled the matter for almost two years thereafter, without respondent's supervision. In September 2013, shortly before the two-year statute of limitations was due to expire, Schlafer informed Merchant that the law firm declined to represent her.

Respondent stipulated that Schlafer held himself out as an attorney to potential clients, including Merchant, although he was not licensed to practice law. Respondent admitted that he did not adequately supervise Schlafer, in violation of RPC 5.3(a), (b), and (c).

In aggravation, the parties cited respondent's failure to "remediate his conduct, despite opportunities to do so;"⁴ his 1989 private reprimand; and the economic harm to his client and/or a third party.

In mitigation, the parties acknowledged that respondent no longer practices law.

* * *

Following a review of the stipulation, we are satisfied that the facts recited therein clearly and convincingly establish that respondent's conduct was unethical.

⁴ The factual portion of the stipulation contains no facts addressing opportunities to remediate respondent's conduct.

From December 2012 through December 2013, respondent delegated his recordkeeping responsibilities to two nonlawyer employees, Schlafer and Petitta. Despite his obligation to review his attorney trust and business account records, he failed to do so, instead permitting Schlafer to oversee Petitta's bookkeeping practices. As a result, respondent did not immediately discover Petitta's theft of more than \$75,000 of client funds from the trust account. Those thefts constituted negligent misappropriation on respondent's part, a violation of RPC 1.15(a).

Respondent stipulated that he violated RPC 5.3(a), (b), and (c) by his failure to supervise Petitta and Schlafer. That RPC requires an attorney to first adopt and then maintain reasonable efforts to ensure that the conduct of nonlawyer employees is compatible with the professional obligations of the lawyer (subsection (a)), and then to ensure that the conduct of a nonlawyer, over whom the lawyer has direct supervisory authority, is compatible with the lawyer's professional obligations (subsection (b)). The Rule further holds a lawyer responsible for the misconduct of a nonlawyer employee, over whom the lawyer has direct supervisory authority, if the lawyer orders or ratifies the conduct; knows of the conduct at a time when its consequences can be avoided or mitigated, but fails to

do so; or fails to make a reasonable investigation of circumstances that would disclose past instances of misconduct by the nonlawyer that evidence a propensity for such misconduct (subsection (c)).

The record establishes that respondent made no effort to ensure that Petitta's conduct was compatible with his professional obligations. Indeed, so egregious was respondent's failure, that in just a year, Petitta was able to steal in excess of \$75,000 in trust account funds.

Respondent similarly failed to adequately supervise his office manager, Schlafer, who was so emboldened by respondent's lack of supervision that he was able to pose as an attorney in the office. In the Merchant matter, he led both the client and the alleged tortfeasor, Acme, to believe that he was the Chatburn & Tighe attorney assigned to the case. For two years thereafter, Schlafer corresponded with Acme, unfettered by any actual supervision by respondent.

In respect of both Petitta and Schlafer, respondent failed to make reasonable efforts to ensure that their conduct was compatible with his professional obligations and those of the law firm, violations of RPC 5.3(a).

Likewise, according to the stipulation, respondent directed Schlafer to oversee Petitta, facts that establish respondent's

direct supervisory authority over them. As such, respondent was required to make reasonable efforts to ensure that their conduct was compatible with respondent's professional obligations as a lawyer. By his failure to do so, respondent violated RPC 5.3(b).

The stipulation, however, contains insufficient facts to support a finding that respondent: 1) ordered or ratified the conduct involved; 2) knew of the conduct at a time when its consequences could be avoided or mitigated but failed to take reasonable remedial action; or 3) failed to investigate circumstances that would have disclosed past instances of conduct by Schlafer and Petitta that were incompatible with respondent's professional obligations as a lawyer. The only mention in the stipulation of remediation appears in a paragraph in which the parties recite failure to remediate as an aggravating factor. For lack of clear and convincing evidence, therefore, we dismiss the RPC 5.3(c) charge.

In respect of the recordkeeping violations, respondent failed to maintain trust receipts and disbursements journals, business receipts and disbursements journals, and a client ledger card identifying attorney funds for bank charges. He also failed to prepare three-way reconciliations of the attorney trust account on a monthly basis, all in violation of RPC 1.15(d) and R. 1:21-6.

In the DeSoto personal injury matter, respondent took a \$3,609.59 fee on a compromised lien, in addition to the one-third maximum legal fee permissible in a contingent fee matter. Thus, his fee was excessive, in violation of RPC 1.5(b).

As an apparent result of poor recordkeeping, respondent over-disbursed to himself \$15,929.95 of settlement funds, including the above \$3,609.59, on account of his legal fees and costs for the matter. Because he also mistakenly believed that Rawlings' \$40,000 medical lien had been paid out of business account funds prior to settlement, he took those funds as well, instead of remitting them to his client and to Rawlings. His failure to promptly deliver those funds to Desoto and Rawlings violated RPC 1.15(b).

Respondent's calculation errors led him to take \$92,364.53 of the \$125,000 settlement, which the parties stipulated were "earned fees of \$37,448.16 and \$3,609.59, reimbursed costs totaling \$11,306.78, in addition to funds from the reimbursement of the \$40,000 Rawlings lien." Because respondent did not immediately disburse his legal fees and costs, withdrawing them instead over a period of months, respondent comingled the funds belonging to him with client funds in the trust account, a violation of RPC 1.15(a).

The sum of \$25,320.90 remained in the trust account after respondent completed the DeSoto disbursements. He then disbursed the \$25,320.90 to other clients whose funds Petitta had previously stolen, mistakenly believing that those remaining funds, too, belonged to him. In this respect, respondent negligently misappropriated client and escrow funds, a violation of RPC 1.15(a).

Finally, in the DeSoto matter, respondent stipulated that he had acted with gross negligence when handling DeSoto's settlement funds. RPC 1.1(a) states that a lawyer shall not "[h]andle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence" (emphasis supplied). The stipulation, however, contains no evidence that respondent neglected DeSoto's matter. To the contrary, it appears that he settled the case for \$125,000. Thereafter, respondent made a series of disbursement errors that were rooted in poor recordkeeping, issues already addressed by other findings herein. For lack of clear and convincing evidence that respondent grossly neglected DeSoto's personal injury case, we dismiss the RPC 1.1(a) violation.

The only remaining issue is the appropriate sanction for respondent's violations of RPC 1.5(b), RPC 1.15(a) and (b), RPC 1.15(d), and RPC 5.3(a) and (b).

Attorneys who fail to supervise their nonlawyer employees typically receive discipline ranging from an admonition to a censure, depending on the presence of other ethics infractions, past discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal \$142,000 from his trust account, causing a shortage of \$94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole \$272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (admonition for attorney who failed to supervise his paralegal, who also was his client's former wife; the paralegal forged a client's name on a retainer agreement, a release, and two settlement checks; the funds were never returned to the client; mitigating factors included the

attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife and whose recordkeeping practices were so poor, resulting in a \$14,000 invasion of client or third-party funds; the paralegal-wife stole the funds by negotiating thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise non-attorney employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have disclosed the mysterious scheme, specifically: client ledgers, receipts and disbursements journals, trust and business account bank statements and deposit slips, and cancelled checks; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies); In re Hofing, 139 N.J. 444 (1995) (reprimand for attorney who failed to supervise his bookkeeper, who then embezzled almost \$500,000 in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one

person, had signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included the attorney's lack of knowledge of the theft, his unblemished disciplinary record, his reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury that he sustained); and In re Key, 220 N.J. 31 (2014) (censure for attorney who failed to ensure that his nonlawyer employees recorded the attorney's time spent on client matters, a violation of RPC 5.3; the attorney also violated RPC 3.1 when, while his appeal from an adverse fee arbitration award was pending, he filed an answer to his clients' civil complaint seeking to enforce the award and asserted a counterclaim for the purpose of relitigating the reasonableness of his fee; the attorney knew that the court was without jurisdiction while the fee appeal was pending and, further, that he was barred from relitigating the fee arbitration panel's determination; further, after we dismissed his appeal from the fee award, he did not withdraw his counterclaim; the attorney also failed to record expenses and costs incurred on behalf of his clients, a violation of RPC 1.15(d); two prior admonitions and a reprimand for recordkeeping violations). But see In re Stransky, 130 N.J.

38 (1992) (one-year suspension for attorney who completely delegated the management of his attorney accounts to his wife/secretary/bookkeeper and improperly authorized her to sign trust account checks; over the course of one year, the attorney's wife embezzled \$32,000 in client funds; the Court found that the attorney was "completely irresponsible in the management of his attorney accounts and totally abdicated his fiduciary responsibilities to his clients;" no mitigating factors noted).

Respondent's case is somewhat similar to that of the attorney in Murray, who received a reprimand. Like respondent, Murray fell prey to a scheme to misuse trust account funds, as a result of having failed to adequately supervise nonlawyer employees, maintain proper attorney books and records, and reconcile the trust account. Like the attorney in Hofing (reprimand), respondent's failure to supervise his bookkeeper resulted in embezzlement by the bookkeeper. Hofing, like respondent, also failed to reconcile his trust account bank statement, albeit for years. Hofing, however, had significant mitigation, an element not present here.

There are similarities with Key (censure) as well. Both Key's and respondent's failure to supervise nonlawyer staff

occurred in the presence of both other misconduct and prior discipline.

Here, there are serious aggravating factors. Specifically, respondent caused tremendous harm in the DeSoto matter. More than three years after improperly disbursing the Rawlings lien funds to other clients, respondent has not satisfied that \$40,000 lien. Moreover, he has not returned to DeSoto \$3,609.59, representing the excessive fee that he took in his personal injury case.

There is also respondent's prior discipline to consider — a 1989 private reprimand for misconduct in two matters, and a 1992 public reprimand for misconduct in three matters.

The only mitigation offered by the parties is that respondent no longer practices law. However, we do not view that as a mitigating factor, since respondent is free to practice law at any time, subject only to compliance with CPF requirements.


In light of respondent's continued failure to repay the nearly \$44,000 that remains outstanding as a result of his wrongdoing, we consider a censure to be insufficient. Rather, for all of the harm, respondent's prior discipline, and his failure to address the funds owed to DeSoto and Rawlings, we voted to impose a three-month suspension.

We also require respondent to reimburse DeSoto \$3,609.50 and the \$40,000 lien amount to Rawlings prior to reinstatement. In addition, upon reinstatement, respondent is to provide the OAE with quarterly reconciliations of his attorney trust account and practice under the supervision of an OAE-approved proctor for a period of two years.

Member Hoberman did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Stephen P. Chatburn
Docket No. DRB 17-164

Argued: July 20, 2017

Decided: November 8, 2017

Disposition: Three-month suspension

Members	Three-month Suspension	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1



Ellen A. Brodsky
Chief Counsel