

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-041
District Docket No. XIV-2014-0698E

IN THE MATTER OF
EDWARD GLEN JOHNSON
AN ATTORNEY AT LAW

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Decision

Argued: April 19, 2018

Decided: August 1, 2018

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand, filed by the District IIB Ethics Committee (DEC). The nine-count complaint charged respondent with violations of RPC 1.15(a) (six counts) (negligent misappropriation); RPC 1.15(d) and R. 1:21-6 (five counts) (recordkeeping); and RPC 1.7(a)(1) and (2) (three counts) (conflict of interest). For the reasons stated below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1989. On August 4, 2009, he was admonished for failure to safeguard funds. Respondent allowed one of two clients he represented in a real estate transaction to invest all of the closing proceeds without the knowledge or consent of the other. In the Matter of Edward Glen Johnson, DRB 09-049 (August 4, 2009).

The record and the evidence in this matter are neither clear nor cogent. The Office of Attorney Ethics (OAE), however, clarified various issues in its post-hearing submission to the panel. Subsequently, in his submission to us, respondent agreed with the DEC's findings of fact and recommendation that he receive a reprimand. The OAE also urged the imposition of a reprimand.

In connection with an ongoing investigation, respondent met with OAE investigators, on March 23, 2015, and was required to produce the necessary documents to show compliance with the recordkeeping rules. Respondent was unable to do so, explaining that he had lost his records due to a computer crash. With the help of an accountant, respondent prepared reconstructed ledger sheets. After a review of the re-created records, the OAE filed a complaint.

Count One: The Dacres-Wilson Matter

In 2007, respondent represented Barlow Dacres in the sale of real estate in Irvington to Delworth K. Wilson and Mona Murphy (the Irvington transaction). Pursuant to an escrow agreement that the parties entered into, Dacres issued an escrow check for \$2,500, which was deposited into respondent's trust account, to be held pending receipt of necessary documents. Respondent failed to keep the escrow money intact on two separate occasions during the approximately eight-year period he held the money in his account.

Specifically, on July 17, 2013, respondent made a \$55,000 wire transfer that reduced the Dacres sub-account balance to \$2,350, \$150 less than the \$2,500 escrow amount he was required to hold. The next day, July 18, 2013, respondent deposited \$61,000 into the Dacres sub-account, curing the deficit.¹

Then, on September 19, 2013, after respondent made several other deposits, check number 8047 for \$140,603 cleared his trust account, leaving a balance of \$2,350, \$150 less than the \$2,500 escrow amount that he was required to hold in respect of the Irvington transaction. That shortage was not cured until after March 8, 2016.

¹ Respondent was handling other transactions for Dacres, aside from the Irvington property transaction.

Respondent testified that, at the relevant times, he maintained legal fees of \$200 in connection with an unrelated matter (the Lane/Robinson matter), covering the inadvertent shortage in the Dacres sub-account.

In its post-hearing written summation to the hearing panel, the OAE conceded that respondent's \$200 fee from the Lane/Robinson matter was sufficient to cover the Dacres shortage of \$150, and, therefore, no negligent misappropriation occurred.

Count Two: Failure to Maintain Three-Way Reconciliations

Respondent admitted, in his amended verified answer to the complaint, that he did not prepare monthly three-way reconciliations prior to the OAE's investigation. The OAE investigator also testified that, during his interview, respondent conceded that he did not keep those reports or records.

Count Three: The Varona Matter

On June 5, 2014, respondent issued check number 8182 for \$2,762.77 in connection with the Varona matter.² Prior to respondent's issuance of the check, the Varona ledger showed an

² The record contains little to no information regarding any of the client matters at issue, other than the clients' names.

account balance of \$1,804.26. The check cleared on June 9, 2014, leaving a balance of (\$958.51). The ledger cards for the Varona matter show no further entries.

In its post-hearing written summation, the OAE asserted that, as respondent admitted in his testimony, he did not promptly deposit checks for his legal fees into his attorney business account. Those fees remained in his trust account. Respondent claimed that he had sufficient legal fees in his trust account to cover the Varona shortage.

The OAE conducted a review of respondent's client ledgers, and found the following attorney's fees in his trust account, during the June 9 to August 1, 2014 period:

- Check number 8179, issued on June 4, 2014, for \$1,200 in the Arias matter. This check cleared on July 8, 2014;
- Check number 8233, issued on July 30, 2014, for \$1,300 in the Silva matter. This check cleared on November 5, 2014; and
- Check number 8234, issued on July 30, 2014, for \$435 also in the Silva matter. This check cleared on August 1, 2014.

[OAESp.4].³

Thus, according to the OAE, respondent's fees covered the shortage from June 9 to July 8, 2014, and from July 30 to August

³ "OAES" refers to the OAE's post-hearing summation, dated August 8, 2017.

1, 2014. A shortage existed, however, from July 9 to July 29, 2014.

Count Four: The Rosario Matter

On January 1, 2011, respondent's ledger card for the Rosario matter indicated a balance of \$13,106.84. On January 11, 2011, respondent initiated a wire transfer from the Rosario sub-account for \$19,306.84, leaving a balance of (\$6,200). That negative balance remained until September 14, 2011, when respondent transferred \$4,700 from PRO REO, another client for whom he was holding funds, to Rosario. This transfer left a negative balance in the Rosario sub-account of \$1,500, which remained until October 31, 2011, when a deposit for \$1,500 cleared respondent's trust account, leaving a zero balance in the Rosario sub-account.

In its review of respondent's client ledgers, the OAE found the following attorney's fees in his trust account from January 31 to March 29, 2011 and March 30 to October 31, 2011:

- Check number 7482, issued on January 8, 2011, for \$1,293, in the Rosario matter. This check cleared on March 30, 2011;
- Check number 7551, issued on August 19, 2011, for \$3,379.35, in the PRO REO matter. This check cleared September 6, 2011;
- Check number 7567, issued on September 12, 2011, for \$1,500, in the Whitening matter. This check cleared on November 21, 2011; and

- Check number 7568, issued on September 12, 2011, for \$325, also in the Whitening matter. This check cleared on October 7, 2011.

[OAEsp.4-5].

According to the OAE, check number 7482 covered a shortage of \$378.46 from January 31 to March 29, 2011. In respect of the \$6,200 shortage, the OAE stated in its summation brief:

However, the shortage of \$6,200 was never fully covered by respondent's remaining fees in his trust account from March 30, 2011, to October 30, 2011. Rather, the shortage was reduced to \$2,820.65 from August 19, 2011, to September 6, 2011. It was reduced to \$4375 from September 12, 2011, to October 7, 2011. Then the shortage was reduced to \$4700 from October 8, 2011, to October 31, 2011.

[OAEsp.5].

Count Five: The BMO/Burse Matter

On April 29, 2012, a \$5,000 deposit was made into respondent's trust account under the BMO sub-account. On May 14, 2012, respondent issued check number 7630, for \$6,000, from the BMO account, which cleared the account on May 22, 2012, leaving a negative \$1,000 balance. On May 15, 2012, a deposit for \$1,000 had been made, thereby eliminating any negative balance noted on the client ledger. Respondent maintained that, because check number 7630 cleared the account on May 22, 2012, after the

additional \$1,000 deposit was made, there was never an actual shortage.

On June 27, 2012, respondent initiated a \$55,340.99 wire transfer from the BMO sub-account, resulting in a \$51,270.99 deficit on the BMO client ledger. The following day, June 28, 2012, respondent transferred \$63,000 to the BMO sub-account from another client, Lawrence, for whom he was holding money, curing the deficit.

On April 26, 2013, respondent initiated a \$50,000.91 wire transfer, resulting in a (\$35,918.73) balance on the client ledger. Four days later, on April 30, 2013, respondent made a \$38,500 deposit, curing the deficit.

On January 10, 2014, respondent withdrew \$18,363.83 from the BMO sub-account, leaving a balance of (\$15,984.58) on the client ledger. On March 13, 2014, he deposited \$1,000, reducing the deficit to (\$14,984.58). On April 10, 2014, respondent initiated an internal transfer for \$3,000 from Frazier, another client for whom he held funds, further reducing the deficit to (\$11,984.58). On June 3 and June 6, 2014, respondent made deposits of \$5,000 and \$21,000 respectively, eliminating the deficit.

Finally, on May 7, 2015, respondent initiated a \$70,000 wire transfer that left a deficit of (\$5,115.28) in the BMO sub-

account. On May 29, 2015, respondent initiated an internal transfer for \$5,200 from Greene, another client for whom he was holding funds, curing the deficit and leaving a balance of \$84.72 in the BMO sub-account.

In its post-hearing review of respondent's client ledger cards regarding the BMO matter, the OAE found the following attorney's fee still in his trust account, from April 26 to April 30, 2013:

- Check number 7739, issued on February 23, 2013, for \$1,500 in the Dennis/Bennet matter. This check cleared on June 18, 2013

[OAESp.5].

As the OAE points out, this fee was insufficient to cover the \$35,918.73 shortage for the entire period of the shortage.

The second shortage of (\$15,984.58) occurred on January 10, 2014. Deposits totaling \$31,000, made from March 13 to June 6, 2014, eventually corrected that shortage. Id.

A review of respondent's client ledgers, however, showed the following attorney's fees still in the trust account from January 10 to June 6, 2014:

- Check number 8091, issued on February 14, 2014 for \$450 in the DSA Holdings matter. This check cleared on February 18, 2014;
- Check number 8092, issued on February 14, 2014 for \$2,500 also in the DSA Holdings matter. This check cleared on February 18, 2014;

- Check number 8110, issued on March 21, 2014, for \$350 in the Delgado matter. This check cleared on March 24, 2014;
- Check number 8111, issued on March 21, 2014, for \$2,000 also in the Delgado matter. This check cleared on April 4, 2014;
- Check number 8118, issued on April 8, 2014, for \$1,500 in the Frazier matter. This check cleared on April 25, 2014;
- Check number 8119, issued on April 8, 2014, for \$450 also in the Frazier matter. This check cleared on April 9, 2014;
- Check number 8122, issued on April 14, 2014, for \$1,500 in the Terrero matter. This check cleared on June 6, 2014; and
- Check number 8138, issued on April 22, 2014, for \$1,500 in the Some matter. This check cleared on June 3, 2014.

[OAESp.5-6].

Those fees did not cover the entire shortage for the entire period of the second shortage.

The third shortage (\$5,115.28) occurred on May 5, 2015. Respondent corrected it on May 29, 2015, via a transfer of \$5,200 from the Greene ledger. In its review of respondent's client ledgers, the OAE found the following attorney's fees still in the trust account, from May 5 to May 29, 2015:

- Check number 8436, issued on May 8, 2015, for \$950 in the Demink Carpenter matter. This check cleared on June 3, 2015; and
- Check number 8446, issued on May 20, 2015, for \$1,200 with no description from the Hoyos/Hayes matter. This check cleared on June 3, 2015.

[OAESp.6].

Those fees did not did not cover the entire shortage. Accordingly, the OAE contends that respondent negligently misappropriated BMO client funds from April 26 to April 30, 2013, from January 10 to June 6, 2014, and from May 5 to May 29, 2015.

Count Six: The PRO REO Matter

On September 14, 2011, respondent transferred \$4,700 to his client Rosario, from his client PRO REO's sub-account, leaving a deficit of \$3,200.62 on the client ledger card for PRO REO. The negative balance remained for two years until respondent issued the following checks:

- On October 17, 2013, check number 8049, for \$2,000;
- On October 27, 2013, check number 8054, for \$1,433;
and
- On February 18, 2014, check number 8098, for \$7,000.

This increased the deficit in the PRO REO sub-account to \$13,633.93. On February 18, 2014, respondent received a wire for \$185,000, eliminating the deficit.

Subsequently, on April 23, 2014, respondent initiated a \$158,966.07 wire transfer from the PRO REO sub-account, leaving

a deficit of \$638.43. Respondent increased the negative balance of the sub-account to \$5,334.83, by issuing the following checks:

- On May 3, 2014, check number 8141, for \$2,477.40;
- On May 5, 2014, check number 8143, for \$801;
- On May 5, 2014, check number 8144, for \$70; and
- On May 8, 2014, check number 8140, for \$1,348.

As of May 8, 2014, the balance of the PRO REO sub-account was (\$5,334.83).

On May 14, 2014, respondent initiated an internal transfer for \$5,500 from the Varona sub-account to the PRO REO sub-account, curing the deficit.

As with the previous matters, the OAE reviewed respondent's client ledger cards, which showed the following attorney's fees still in his trust account, from September 14, 2011 to February 18, 2014:

- Check number 7567, issued on September 12, 2011, for \$1,500 in the Whitening matter. This check cleared on November 21, 2011;
- Check number 7576, issued on September 24, 2011, for \$1,025 in the Cooper matter. This check cleared on October 31, 2011;
- Check number 7578, issued on October 12, 2011, for \$500 with no description in the Bergen City matter. This check cleared on October 14, 2011;
- Check number 7579, issued on October 12, 2011, for \$500 in the Bergen City matter. This check cleared on February 29, 2012;

- Check number 7590, issued on November 5, 2011, for \$1,575 in the Craig Smith matter. This check cleared on December 5, 2011;
- Check number 7642, issued on June 29, 2012, for \$1,200 in the Lawrence matter. This check cleared on August 6, 2012;
- Check number 7642 (#2), issued on June 29, 2012, for \$868 in the Lawrence matter. This check cleared on August 10, 2012;
- Check number 7680, issued on August 27, 2012, for \$1,300 in the Pastor matter. This check cleared on November 8, 2012;
- Check number 7716, issued on November 17, 2012, for \$1,500 in the Cadet matter. This check cleared on January 19, 2013;
- Check number 7729, issued on January 31, 2013, for \$1,500 in the Garcia/Hernandez matter. This check cleared on March 18, 2013;
- Check number 7739, issued on February 23, 2013, for \$1,500 in the Dennis/Bennet matter. This check cleared on June 18, 2013; and
- Check number 7763, issued on March 24, 2013, for \$1,500 in the Wilson matter. This check cleared on July 29, 2013.

[OAEsp.6-7].

Those fees were insufficient to cover the shortage. Further, the Whitening fee was credited under the Rosario misappropriation and the Dennis/Bennet fee credited under the BMO misappropriation.

A second shortage occurred on April 25, 2014, for \$638.43, which was corrected on May 14, 2014, when respondent transferred \$5,000 to PRO REO.

A review of respondent's client ledgers showed the following attorney's fees still in his trust account from April 25 to May 14, 2014:

- Check number 8122, issued on April 14, 2014, for \$1,500 in the Terrero matter. This check cleared on June 6, 2014; and
- Check number 8138, issued on April 22, 2014, for \$1,500 in the Some matter.

[OAEsp.7].

Although those amounts covered the shortage during the period, the OAE notes that these legal fees were credited toward the shortage of \$15,984.58 in the BMO matter, and, therefore, should be discounted.

Count Seven: Miscellaneous Bank Fees

Respondent's attorney trust account ledger detailed the following bank fees:

- On August 23, 2013, for \$117.51, leaving a balance of (\$117.51);
- On August 22, 2014, for \$117.44; and
- On August 22, 2014, for \$41.77, leaving a balance of (\$276.72)

[1T88-89].⁴

⁴ "1T" refers to the May 24, 2017 hearing transcript.

Respondent corrected these shortages on April 13, 2015, by depositing \$600.

The OAE's review of respondent's client ledger cards showed the following attorney's fees still in the trust account from August 23, 2013 to April 13, 2015:

- Check number 8330, issued on October 17, 2014, for \$1,200 in the DaSilva matter. This check cleared on January 6, 2015;
- Check number 8351, issued on December 5, 2014, for \$1,500 in the Ferreira matter. This check cleared on December 19, 2014;
- Check number 8386, issued on February 22, 2015, for \$1,100 in the Moody matter. This check cleared on March 27, 2015;
- Check number 8402, issued on March 27, 2015, for \$1,200 in the Espinoza matter. This check cleared on April 17, 2015; and
- Check number 8403, issued on February 27, 2015, for \$350 also in the Espinoza matter. This check cleared on March 9, 2015.

[OAESp.9].

Even though the amounts of the fees covered the shortages created by the bank charges/fees, they did not cover the entire shortage period, and respondent was unable to identify additional checks to cover the entire shortage period.

Count Eight: Conflict of Interest

On review of respondent's ledger cards, the OAE discovered that respondent held funds in trust for four private lenders –

BMO, PRO REO, Aquarius Consulting, and J/Team — as well as for real estate clients whom he also represented in transactions with these lenders.

The OAE contended that, in New Jersey, in a real estate transaction, an attorney is permitted to serve as a settlement agent and a closing agent. Hence, the attorney owes a duty to three parties - the buyer, the financial institution, and the seller - to deposit and disburse accordingly. The OAE further contended that respondent not only served as settlement agent for the buyer and the lenders, but also represented two or three parties.

In turn, respondent argued that he did not represent these clients within the same transaction, but, rather, certain clients had retained him subsequent to the transactions at issue. Hence, he maintained that he did not engage in dual representation. He made clear that none of the parties involved (or the principals of any of these parties) had a relationship with one another prior to the transactions, and that BMO, PRO REO, and J/Team are not lenders. Further, he testified that, in each of these cases, the other party had separate legal counsel.

Count Nine: Recordkeeping Violations

At the close of its case, the OAE withdrew count nine of the complaint, which alleged additional recordkeeping violations.

* * *

Respondent testified that the deficits presented by the OAE were inaccurate because checks would clear after additional monies were wired into the trust account. Alternatively, he argued that he always had sufficient trust funds, in the aggregate. Additionally, he regularly left his fees in the trust account, until he needed them. Hence, he claims there was never a shortage in the account because his fees compensated for any deficit.

Respondent also explained that his records were incomplete due to a computer crash. Once the OAE investigation began, he hired an accountant to reconstruct his records. After the OAE initiated this matter, respondent began to use a title company to serve as closing agent in all of his real estate transactions.

In his brief to us, however, respondent expressed agreement with the determination of the panel, including its recommended discipline, and argued that the aforementioned defenses serve as mitigation.

The DEC determined that respondent violated RPC 1.15(a) by failing to properly safeguard client funds in the Dacres, Varona, Rosario, BMO/Burse, and PRO REO client sub-accounts. The DEC further determined that respondent violated RPC 1.15(a) by allowing his trust account balance to fall into deficit status because of bank fees.

Moreover, the DEC determined that respondent violated RPC 1.15(d) and R. 1:21-6(1)(H) by failing to maintain monthly three-way reconciliations of his attorney trust account and failing to promptly remove his legal fees from his trust account.

The DEC further found respondent guilty of the violation of RPC 1.15(d) and R. 1:21-6(c)(1)(A) alleged in counts five and six of the complaint, inasmuch as he had made a transfer that was insufficiently funded on specific client ledger cards. Yet, the panel asserted that this violation is a "rehashing" of the RPC 1.15(a) violations found in those same counts (the BMO and PRO REO matters). The DEC stated that if "the OAE intended that this particular rule to cover [sic] a separate violation, the Panel does not have sufficient information to make such a ruling."

Finally, the DEC dismissed, for lack of clear and convincing evidence, the alleged violations of RPC 1.7(a)(1) and

(2) (conflict of interest) in counts four and five of the complaint. The DEC determined that the OAE failed to produce any evidence concerning the true relationship between respondent and each of the clients, such as engagement letters, HUD statements, or other evidence that could have supported the allegations. Similarly, the DEC dismissed the alleged violation of RPC 1.7(a)(1) and (2) set forth in count eight of the complaint, acknowledging its suspicions, but finding that the OAE had not fleshed out the exact relationship of all the parties.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The record supports the DEC's findings that respondent violated RPC 1.15(a) and RPC 1.15(d). Further, the DEC was also correct in its finding that the record lacks clear and convincing evidence to support the alleged violation of RPC 1.7(a)(1) and (2).

Specifically, despite improperly maintaining his attorney fees in his trust account, which covered some shortages therein, respondent negligently misappropriated \$958.51 of client funds in the Varona matter, from July 9 to July 29, 2014, in violation of RPC 1.15(a).

Similarly, from March 30 to October 30, 2011, respondent negligently misappropriated \$4,700 in the Rosario matter. From April 26 to April 30, 2013, from January 10 to June 6, 2014, and from May 5 to May 29, 2015, respondent negligently misappropriated various amounts of client funds in the BMO matter. Finally, from September 14, 2011 to February 18, 2014, respondent negligently misappropriated various amounts of client funds in the PRO REO matter.⁵

Additionally, respondent admitted that, prior to his interviews with the OAE, he had not prepared monthly three-way reconciliations of his trust account. His failure to do so not only led to significant negligent misappropriation of client funds, but also violated RPC 1.15(d) and R. 1:21-6(c)(1)(H). Moreover, respondent failed to deposit his earned legal fees into his attorney business account, in violation of RPC 1.15(d) and R. 1:21-6(a)(2).

In its post-hearing summation, the OAE conceded that respondent's defense in the Dacres matter, that he maintained his legal fees in his trust account sufficient to offset that

⁵ We acknowledge that respondent's almost routine movement of monies between sub-accounts, in a vacuum, prompts some suspicion in respect of his possible knowledge of his unauthorized use of his clients' funds. However, the age of these transactions and the loss of the original records precludes a deeper investigation or other conclusion.

sub-account's shortage, defeated the allegation of negligent misappropriation. The DEC correctly determined that respondent failed to safeguard \$150 of escrow funds. In other words, but for the \$200 legal fee that respondent improperly retained in his trust account, he would have invaded other client funds. Thus, we find that respondent failed to safeguard the Dacres funds, but not that he negligently misappropriated other client funds.

Like the DEC, we conclude that the OAE failed to prove, by clear and convincing evidence, that respondent engaged in multiple conflicts of interest. Respondent explained that, although these clients were involved in transactions with each other, he did not represent each client concurrently. It was only after an initial transaction that he represented the additional parties.⁶

The record leaves many questions unanswered, and the number of crossover clients from one matter to the next is suspicious, especially in light of the amount of money moved between sub-accounts. But the age of these transactions, the fact that respondent's books had to be recreated after a computer crash,

⁶ It would appear that RPC 1.9 (duties to former clients) may have been implicated in at least one transaction, but a violation of that RPC was not charged. Thus, we make no determinations in that respect. See R. 1:20-4(b).

and the lack of any supporting evidence presented by the OAE, such as engagement letters, retainer agreements, or HUD documents, leaves us no choice but to dismiss the alleged violations of RPC 1.7(a)(1) and (2).

In sum, we find that respondent violated RPC 1.15(a) and (d).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney deposited into his trust account \$8,000 for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77 belonging to other clients; when the deal fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading the other clients' funds, a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused

him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and ran afoul of the recordkeeping rules by writing trust account checks to himself and making cash withdrawals from his trust account, practices prohibited by R. 1:21-6; although the baseline discipline for negligent misappropriation is a reprimand and, in a default matter, the otherwise appropriate level of discipline is enhanced, a reprimand was viewed as adequate in this case because of the attorney's unblemished professional record of thirty-six years and his health issues); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated client funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

A reprimand may still result even if the attorney's disciplinary record, as it does here, includes either a prior recordkeeping violation or other ethics transgressions. In re Toronto, 185 N.J. 399 (2005) (attorney negligently

misappropriated \$59,000 in client funds and recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and a reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account); and In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered).

Although the presence of compelling mitigating factors may reduce the reprimand to an admonition (see, e.g., In the Matter of Harold J. Poltrock, DRB 13-325 (January 23, 2014)), we discern the presence of no compelling mitigating factors in this case.

Based on the foregoing, even in light of respondent's prior admonition for failure to safeguard escrow funds in a real estate transaction, we determine that the proper quantum of discipline for his negligent misappropriation and various


recordkeeping violations is a reprimand. Although respondent has been a member of the bar for almost thirty years, and the record contains no evidence of harm to his clients as a result of his misconduct, in our view, this mitigation is insufficient to reduce the otherwise proper discipline. Thus, we determine to impose a reprimand.

Additionally, we require respondent to submit, to the OAE, monthly reconciliations of his attorney trust account, on a quarterly basis, for two years.

Members Boyer and Joseph 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 Edward Glen Johnson
Docket No. DRB 18-041

Argued: April 19, 2018

Decided: August 1, 2018

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer			X
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2



Ellen A. Brodsky
Chief Counsel