Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-024
District Docket No. XIV-2019-0427E

In the Matter of

Michael Albert Hanamirian

An Attorney at Law

Decision

Argued: July 16, 2020

Decided: December 14, 2020

Hillary K. Horton appeared in 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), pursuant to R. 1:20-14(a), following an order from the Supreme Court of Pennsylvania, effective July 1, 2019, suspending respondent for two years. The Supreme Court of Pennsylvania

stayed the suspension and placed respondent on probation for one year, subject to certain conditions. The OAE asserted that respondent was found guilty of violating the equivalents of New Jersey RPC 1.15(a) (commingling and negligent misappropriation) and RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6).

For the reasons set forth below, we determine to grant the OAE's motion and to impose a one-year suspension, with conditions.

Respondent earned admission to the New Jersey bar in 1988, to the Pennsylvania bar in 1987, and to the District of Columbia bar in 1989.

From September 27, 2010 through August 8, 2011, respondent was administratively ineligible to practice law in New Jersey for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

At the relevant times, respondent maintained an office for the practice of law in Philadelphia, Pennsylvania. He has no disciplinary history in New Jersey.

On March 27, 2020, respondent, who was represented by counsel, and the Disciplinary Board of the Supreme Court of Pennsylvania filed a Joint Petition in Support of Discipline on Consent (Joint Petition), on which the

Supreme Court of Pennsylvania relied in determining to discipline respondent. The facts set forth in the Joint Petition are as follows.

Harvey and Regina Kennedy, a married couple, retained respondent to represent them in a personal injury action for a 40% contingent fee. On September 28, 2012, respondent filed a complaint in behalf of the Kennedys in the Philadelphia County Court of Common Pleas. After respondent settled the case, the defendant's counsel forwarded to respondent two checks, totaling $39,319, payable to the Kennedys and to respondent's law firm, in full settlement of the Kennedys' claims. As the fee agreement permitted, respondent endorsed both checks in behalf of himself and the Kennedys and deposited them in his Interest on Lawyers' Trust Account (IOLTA). After deducting his 40% fee and $1,280.18 in costs, he should have held, inviolate, $23,591.40 in behalf of the Kennedys and their medical providers.

Respondent's partner, who served as a lawyer and bookkeeper within the firm, however, had failed to inform respondent of imbalances in the IOLTA until respondent became the subject of an investigation by the Pennsylvania Office of Disciplinary Counsel (ODC). Consequently, respondent unknowingly failed to maintain the Kennedys' settlement funds of $23,591.40 intact in his IOLTA.

Further, Diane Hinkle retained respondent to represent her in a personal injury action for a 40% contingent fee. On June 8, 2011, respondent settled Hinkle's claim. On July 20, 2011, the tortfeasor's insurance company issued a $15,000 settlement check payable to Hinkle and to respondent's firm. Hinkle previously had received medical benefits from the Department of Public Welfare (DPW) to help pay for her medical treatment. After deducting his 40% fee, respondent should have held, inviolate, $9,000 in behalf of Hinkle and the DPW.

By letter dated July 26, 2011, respondent informed the DPW that he represented Hinkle and had settled her matter; inquired whether the DPW would be asserting a lien for any benefits paid; requested a reply within fourteen days; and stated that, if he did not receive a reply, he would distribute the settlement funds. On November 17, 2011, respondent sent the DPW a second letter, again asking whether it intended to assert a medical lien. By letter dated December 23, 2011, the DPW reminded respondent of the statutory responsibility imposed when an attorney represents a medical assistance recipient, and requested certain information.[1] Respondent failed to promptly

[1] Pennsylvania Welfare Code 62 P.S. §1409 provides, in pertinent part, that no distribution may issue in any settlement without first satisfying the DPW's interest, and that failure to comply may result in penalties, including a $5,000 civil penalty.

provide the required information to the DPW. On January 12, 2012, the DPW sent respondent a Statement of Claim form, asserting that Hinkle owed the DPW $16,878.79. On March 22, 2012 respondent asked for more information regarding the DPW's claims, but failed to complete the Statement Of Claim form.

On March 27, 2012, respondent sent a letter to the DPW, acknowledging receipt of its January 12, 2012 letter; informing the DPW of the settlement and of the tortfeasor's policy limit of $15,000; and asking the DPW to review the disbursement sheet respondent had prepared. Respondent also requested the DPW's permission to make the following disbursements from the $8,133.37 in net proceeds remaining after the disbursement of attorney's fees and costs: $4,066.69 to DPW and $4,066.68 to Hinkle. Between July 26, 2011 and December 14, 2012, respondent had made one $3,000 distribution to Hinkle.

In addition, respondent had represented Hinkle in a prior matter, which resulted in a large recovery that, respondent claimed, Hinkle had "squandered." As a result, respondent agreed to hold Hinkle's funds and to provide disbursements to her at regular intervals in order to moderate her spending, but he did not hold the funds in a non-IOLTA or other investment vehicle, as is required in Pennsylvania.

On April 2, 2012, respondent sent a copy of his fee agreement with Hinkle to the DPW, and sent a letter to Hinkle enclosing his proposed distribution sheet and a copy of his March 27, 2012 letter to the DPW.

On September 4, 2012, respondent filed a praecipe[2] to issue a writ of summons in the Court of Common Pleas of Philadelphia County in a separate matter in behalf of Hinkle against M.A.G. Enterprise, Inc. (MAG). On December 12, 2012, after respondent settled the matter for $325,000, he mailed Hinkle's executed release and W-9 form (a request for a taxpayer identification number) to MAG's insurance company. On that same date, the insurance company issued a check for the settlement amount to Hinkle and to respondent's firm. On December 14, 2012, respondent deposited the check in his IOLTA, and after deducting his 40% contingent fee, held $195,000 in trust for Hinkle and the DPW.

By letter dated December 14, 2012, respondent informed the DPW that he had settled Hinkle's matter against MAG, but did not disclose the amount of the settlement. According to the Joint Petition, respondent did not intend to conceal the amount of the settlement from the DPW.

[2] A praecipe is a document that commences a civil action, prior to the filing of a formal complaint.

In an April 12, 2013 letter, the DPW reiterated to respondent its original claim for $16,878.79 in the first Hinkle matter, but agreed to compromise that claim to 50% of the settlement ($4,066.69) from the $15,000 recovery; requested the payment with a copy of the final distribution sheet; and notified respondent that, if he brought another action resulting in additional funds, the DPW reserved its right to seek recovery of the unpaid portion of its claim.

On June 25, 2013, the DPW informed respondent, via letter, that it was investigating a welfare fraud complaint against Hinkle and requested verification of all claims, dates, and distributed funds, pending and final. By letter dated July 8, 2013, respondent sent to the DPW copies of checks he had issued to Hinkle, and a copy of the DPW's June 25, 2013 letter, and asserted that there had been no final distribution, because the DPW had not yet confirmed its lien amount. On July 15, 2013, the DPW telephoned respondent, discussed the MAG settlement, and informed him that Hinkle's claim had to be updated.

By letter to respondent dated July 23, 2013, the DPW reiterated its claim for $4,066.69 against the $15,000 settlement in the first Hinkle matter. Although respondent denied receiving the letter, he admitted that he was aware of the ongoing fraud investigation and that the DPW's claim might increase. Respondent further admitted that he failed to promptly pay the DPW in 2013,

but claimed that the DPW had not contacted him regarding Hinkle's matters from 2014 through 2016.

In 2016, when he audited his files in connection with the Pennsylvania disciplinary complaint, respondent realized that he had failed to pay the DPW lien. Consequently, on December 13, 2016, he issued to the DPW a $16,878.79 check as payment in full for all of Hinkle's claims, along with a final distribution sheet. Respondent was entrusted with $203,204.49 from Hinkle's settlements: $181,800.07 was owed to Hinkle; $16,878.79 was owed to the DPW; and $4,445 was owed to American Lawsuit Funding for an advance made to Hinkle. As detailed above, respondent made multiple distributions to himself and to Hinkle prior to satisfying the DPW's lien.

In addition, respondent admitted certain recordkeeping violations, including his failure, from 2010 through 2017, to update his IOLTA account number on required forms. Respondent further admitted that, although he employed a lawyer-bookkeeper, ultimately, respondent was responsible for the violations.[3] He was unable to identify the clients for whom he had made 133

[3] Respondent's admitted failure to supervise the attorney-bookkeeper could implicate a violation of RPC 5.1 (failure to supervise a subordinate lawyer) or RPC 5.3 (failure to supervise a nonlawyer employee), but neither the ODC nor the OAE charged him with failure to supervise. Because the record does not reveal whether the attorney-bookkeeper was subordinate to respondent, it is not clear whether he had any supervisory authority in this regard.

IOLTA deposits, totaling $2,692,395.80, between June 1, 2011 and February 4, 2016. Also, the lawyer-bookkeeper was unable to determine which client funds were included either in an opening IOLTA balance of $105,064.17, on June 1, 2011, or for most of the IOLTA transactions that occurred prior to July 1, 2012.

Respondent and his firm were unable to produce complete check registers or ledgers showing payee, date, and amount of each check, withdrawal, and transfer; the payor, date, and amount of each deposit; and the matter identified for each IOLTA transaction. Specifically, respondent could not provide complete records for a $3.5 million settlement from a 2008 estate matter. In addition, respondent was unaware that, between December 2011 and June 2015, twenty-three IOLTA checks, totaling $95,500, had been issued to an employee of the firm whose legal matter had been resolved in 2010, and for whom the payment records were incomplete.

Further, from December 2012 through April 2013, six IOLTA checks totaling $140,861 were issued to the Merrill Lynch investment account of respondent's lawyer-bookkeeper. In addition, from June 2011 through November 2016, IOLTA funds were withdrawn and deposited in respondent's operating account in round numbers in excess of, and with no correlation to, the amount of fees earned. Most of these bank transactions did not list a client

name or matter. Also, the lawyer-bookkeeper admitted having electronically transferred funds from the IOLTA to the operating account without informing respondent.

Once the ODC began its investigation, respondent resumed bookkeeping responsibilities, resumed noting the client name on disbursement checks, and ceased electronic transfers. Respondent and the lawyer-bookkeeper failed to document transactions from the IOLTA to an American Express credit account; a Citibank credit account; a Wells Fargo loan account; and a USI Affinity malpractice policy. Respondent was unaware of these transfers from the IOLTA, because it had not been overdrawn.

Periodically, from 2012 through 2016, the IOLTA had insufficient funds to cover all clients' funds, and, as a result, the firm disbursed funds to clients incrementally, and failed to promptly disburse entrusted funds to at least thirty-six clients and fifty-nine third parties. Specifically, from May 21, 2012 through December 16, 2016, $854,913.37 was transferred, via thirty transactions, from the firm's operating account to the IOLTA to cover the chronic shortages in the IOLTA, some of which were completed after respondent knew of the ODC's investigation. Respondent was unaware of the IOLTA shortages and did not make these transfers.

Between November 28 and December 16, 2016, the lawyer-bookkeeper transferred a total of $580,000 from his personal Merrill Lynch investment account to the IOLTA, to increase the balance to support the entrusted funds. Thus, for the first time in nearly four years, the IOLTA balance was sufficient to cover all entrusted funds.

Respondent admitted that his misconduct violated the New Jersey equivalents of RPC 1.15(a) and RPC 1.15(d). In mitigation, the ODC acknowledged that respondent did not convert the funds for his own use; the lawyer-bookkeeper led respondent to believe the finances were being properly maintained; respondent did not become aware of the deficiencies until the ODC investigation; he expressed sincere remorse and accepted responsibility for the misconduct; he cooperated with the investigation; he took remedial steps to remedy the deficiencies; and he had no disciplinary history.

On July 1, 2019, the Supreme Court of Pennsylvania granted the Joint Petition and suspended respondent for two years, stayed the suspension, and imposed a one-year period of probation, subject to the following conditions: respondent shall continue to maintain the IOLTA records pursuant to Pa.R.P.C. 1.15(c); he shall submit the records to the ODC quarterly; he shall select a CPA or other qualified professional approved by the ODC to review his records and certify them for accuracy to the ODC; he shall comply with any

ODC request for corrected or supplemental records, without a subpoena; he shall maintain all books and records pursuant to Pa.R.P.C. 2.25(c) in electronic form, readily accessible; he shall comply with all requests from the ODC for records, without a subpoena; his probation term shall not expire until he has provided the ODC with all required and appropriate records; and any failure to comply shall result in his transfer to suspended status for the two-year term.

On July 18, 2019, respondent reported his Pennsylvania discipline to the OAE.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d

217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted). Notably, respondent stipulated to the facts and ethics violations by entering into the Joint Petition with Pennsylvania disciplinary officials.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (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;
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> (D) the procedure following in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter, because the unethical conduct warrants substantially different discipline. Accordingly, we determine to grant

the OAE's motion for reciprocal discipline and to impose a one-year suspension, with conditions.

Respondent stipulated that he violated RPC 1.15(a) by commingling and negligently misappropriating client and third-party funds, and violated RPC 1.15(d) by failing to comply with recordkeeping requirements of R. 1:21-6. Some of the RPC 1.15(a) and RPC 1.15(d) violations are intertwined.

Specifically, in respect of the RPC 1.15(a) violations, from 2012 through 2016, respondent's IOLTA contained shortages for significant periods, including the period during which he was required to hold the Kennedys' funds. He failed to promptly disburse funds to the parties in the Hinkle matter, as well as to approximately thirty-five other clients and fifty-nine third parties. From May 2012 through December 2016, $854,913.37 was transferred, via thirty transactions from the firm's operating account to the IOLTA, to cover the chronic shortages. Further, from June 2011 through February 2016, respondent could not identify the clients for whom 133 IOLTA deposits, totaling $2,692,395.80, had been made. Moreover, from June 2011 through November 2016, funds were transferred from the IOLTA to the operating account in round numbers, which were not connected to fees earned, and most did not identify a client name or matter.

Additionally, in 2012 and 2013, the lawyer-bookkeeper transferred $140,861 from the IOLTA to his personal Merrill Lynch account, and in 2016, he transferred $580,000 from his personal Merrill Lynch account to the IOLTA, to cover the missing entrusted funds. He also improperly transferred funds from the IOLTA to the operating account, including unauthorized electronic transfers.

Respondent further violated RPC 1.15(d) by his inability to identify which client funds constituted the $105,064.17 opening IOLTA balance in June 2011; inability to identify clients for most of the IOLTA transactions prior to July 1, 2012; and failure to preserve documentation of disbursements to American Express and Citibank revolving credit accounts.

Finally, respondent failed to maintain complete financial records from 2011 through 2016, including complete check registers or separate ledgers showing the payee/payor, date, and amount of each check, deposit, withdrawal, and transfer, and the matter associated with each transaction.

Although respondent's lawyer-bookkeeper led him to believe that the firm's financial records complied with recordkeeping requirements, respondent admitted the recordkeeping violations, and his responsibility for the violations.

In sum, we find that respondent violated RPC 1.15(a) and RPC 1.15(d). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

The OAE recommends a reprimand, relying, in part, on In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited $8,000 in his trust account 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; after the transaction was canceled, 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, in violation of RPC 1.15(d)) and In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust account funds, violations of RPC 1.15(a) and RPC 1.15(d)).

Although respondent did not file a reply to the OAE's motion, he appeared for oral argument and emphasized to us that his partner had served as

the lawyer-bookkeeper, and thus handled all the banking and bookkeeping responsibilities. Nevertheless, respondent accepted full responsibility and was extremely contrite and remorseful for his misconduct.

In addition to the cases that the OAE cited, the following precedent provided us guidance regarding the appropriate sanction. Generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230 N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

Here, however, respondent's misconduct far surpassed that found in typical negligent misappropriation cases, based on his apparent abdication of his recordkeeping obligations, and his lawyer-bookkeeper's utter failure to comply with the IOLTA and recordkeeping rules. Respondent's failure to comply with recordkeeping rules resulted in his failure to maintain proper

financial records for at least five years, including the inability to identify millions of dollars in numerous client funds and transactions. Further, respondent completely relied on his lawyer-bookkeeper's representations that the finances were being properly maintained.

In In re Kim, 222 N.J. 3 (2015), the Court imposed a six-month suspension on an attorney who had no knowledge of his recordkeeping obligations, and no formal recordkeeping system; he kept track of his financial matters, including his receipts and disbursements, in his head. In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 5-6). As a result, his attorney trust account eventually suffered a shortage. Id. at 59.

In Kim, we determined the attorney's "arrogance in believing that his mental juggling of his trust funds was sufficient [was], in a word, astonishing." Id. at 63-64. We voted to impose a three-month suspension due to Kim's "extreme recklessness in handling client and escrow funds for so many years." Id. at 65. As stated above, the Court imposed a six-month suspension.

In In the Matter of Dennis Aloysius Durkin, DRB 19-254 (June 3, 2020), a very recent case, we applied the Kim precedent and imposed a one-year suspension. In that case, the attorney's complete lack of a recordkeeping system neither jeopardized nor resulted in the invasion of trust account funds, but he relied on estimates and maintained a running balance of his attorney

trust and business accounts in the form of a Quickbooks check register, which identified neither the client nor the matter. Id. at 81-83. The Court agreed. In re Durkin, 243 N.J. 542 (2020).

Here, similar to the reckless and willful disregard of recordkeeping obligations present in Kim and Durkin, respondent's inability to identify millions of dollars in numerous client funds and transactions is egregious and alarming.

In crafting the appropriate discipline to be imposed, we also consider aggravating and mitigating factors. In mitigation, the record before us contains no evidence that respondent converted the funds for his own use; the lawyer-bookkeeper led respondent to believe the finances were properly maintained; respondent did not become aware of the deficiencies until the ODC began its investigation; he expressed sincere remorse and accepted responsibility for the misconduct; he cooperated with the investigation; and he took steps to remedy the deficiencies. Moreover, respondent has no disciplinary history in more than thirty-one years at the bar and promptly reported his Pennsylvania discipline to the OAE.

In aggravation, from 2012 to 2016, $1,434,913.37 was deposited from respondent's operating account and his lawyer-bookkeeper's personal Merrill Lynch investment account into respondent's IOLTA to cover shortages,

affecting at least thirty-six clients and fifty-nine third parties. Further, from 2011 to 2016, respondent had unidentified client funds totaling $2,797,459.97 languishing in his IOLTA, including the opening deposit, as well as 133 subsequent deposits. In total, respondent's misconduct impacted at least thirty-six clients, and involved millions of dollars in IOLTA funds, over a period of five years. In our view, in light of the egregious economic harm respondent caused to numerous clients, a one-year suspension is warranted.

Accordingly, we determine to grant the motion and impose a one-year suspension, which is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Additionally, we require that respondent submit to the OAE monthly attorney trust account reconciliations, on a quarterly basis, for a two-year period, and that respondent complete, within ninety days of the date of the Court's Order of discipline, two OAE-approved recordkeeping courses with proof of completion to be submitted to the OAE.

Chair Clark and Members Boyer and Petrou voted to impose a three-month suspension with the same conditions. Member Singer voted to impose a censure with the same conditions.

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
Bruce W. Clark, Chair

By: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Albert Hanamirian
Docket No. DRB 20-024

Argued: July 16, 2020

Decided: December 14, 2020

Disposition: One-Year Suspension

Members	One-Year Suspension	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark		X			
Gallipoli	X				
Boyer		X			
Hoberman	X				
Joseph	X				
Petrou		X			
Rivera	X				
Singer			X		
Zmirich	X				
Total:	5	3	1	0	0

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel