

Michael J. Sweeney
Assistant Ethics Counsel
Office Of Attorney Ethics
P.O. Box 963
Trenton, New Jersey 08625

OFFICE OF ATTORNEY ETHICS	:	SUPREME COURT OF NEW JERSEY
	:	District XIV Ethics Committee
Complainant,	:	
	:	DOCKET NO: XIV-07-298E
vs.	:	
STEPHEN R. PHILPITT, ESQ.	:	DISCIPLINARY STIPULATION
Respondent,	:	

THIS STIPULATION is made and entered into between Stephen R. Philpitt, the respondent, and the Office of Attorney Ethics, David E. Johnson, Jr., by Michael J. Sweeney, Assistant Ethics Counsel.

A. GENERAL INFORMATION

Respondent is an attorney-at-law of the state of New Jersey admitted in 1972; he has maintained offices for the practice of law at 15 East Railroad Avenue, Suite B, Jamesburg, New Jersey 08831.

B. UNETHICAL CONDUCT COMMITTED

A random compliance audit was conducted on the books and records of respondent on March 6, 2007 (Exhibit 1). The audit disclosed that respondent negligently misappropriated trust funds totaling \$103,750.61 between June 22, 2006 and March 21, 2007 (Exhibit 2). The negligent misappropriations were caused by respondent's failure to reconcile the trust account. The misappropriation occurred on June 22, 2006 .when respondent issued check

number 14551 in the amount of \$125,000.00 to HDG Management. Respondent disbursed to his client what he believed to be the proceeds of a wire transfer into his attorney trust account on June 21, 2006 in the amount of \$125,000.00. Respondent failed to verify the receipt of the wire. In fact, the funds were never wired to respondent's trust account. Respondent's client ledger card reflected that \$125,000.00 was wired into his trust account and then subsequently disbursed to HDG Management (Exhibit 3). Only the \$125,000.00 disbursement appears on respondent's June 2006 trust account bank statement (Exhibit 4). Because respondent did not properly reconcile his trust account, he was unaware of any problems until the random audit on March 6, 2007 identified a shortage in the trust account. On March 21, 2007, four deposits totaling \$125,000.00 obtained from the client were deposited to the trust account in order to make the account whole (Exhibit 5-A through 5-D). This conduct violated RPC 1.15(a).

In addition to the negligent misappropriation of trust funds, respondent also had the following record-keeping deficiencies in violation of R.1:21-6 and RPC 1.15:

1. A schedule of clients' ledger accounts was not prepared and reconciled monthly to the trust account bank statement.
2. Inactive balances remained in the attorney trust account for an extended period of time.
3. There were old outstanding checks in the attorney trust account.
4. The trust account bank reconciliation prepared by the auditor showed that total trust funds on deposit were in excess of total trust obligations.

Respondent was previously cited with all of the above record-keeping deficiencies as a result of a prior random compliance audit conducted of his books and records on February

1, 2000. This is an aggravating factor.

C. REPRESENTATIONS

By entering into this stipulation, respondent waives the filing of a complaint and public hearing thereon, it being agreed that the matter may proceed directly to the Disciplinary Review Board (hereinafter the Board) in accordance with R.1:20-150 for the sole purpose of determining the extent of final discipline to be imposed. The respondent shall have the right to present relevant and material written evidence of non-causal mitigating factors to the Board, which relate to the issue of the quantum of discipline to be imposed. Ethics counsel shall have an equal right to produce relevant and material written evidence of aggravating factors to the Board directed to the issue of the quantum of discipline to be imposed. Any such mitigating or aggravating evidence shall be in writing and in accordance with the briefing schedule determined by the Board. No evidence may be submitted by either party, which is inconsistent with the essential facts set forth in this stipulation.

It is understood that, other than in this or any reciprocal disciplinary proceeding or proceeding before the Lawyers' Fund for Client Protection, this stipulation is not to be utilized in any matter, whether civil or criminal.

D. OAE'S RECOMMENDED DISCIPLINE

Generally, reprimands have been imposed where there has been a negligent misappropriation of trust funds and the attorney has been cited for failing to reconcile the trust account in a prior random audit. See *In re Conroy*, DRB 05-173 (September 15, 2005) (Exhibit 6). It is, therefore, the OAE's recommendation that respondent receive a reprimand.

It is understood that the OAE's recommended discipline is not binding upon the respondent, or the Disciplinary Review Board.

E. SIGNATURE

/s/ David E. Johnson Jr., Director
July 18, 2007

/s/ Stephen R. Philpitt, Respondent
July 16, 2007