DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of :	:	
	:	
CHARLES G. CANTY,	:	Bar Docket No. 310-02
	:	
Respondent.	:	

ORDER OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

This matter comes to the Board on Professional Responsibility (the "Board") from Hearing Committee Number Four (the "Committee"), which concluded that Respondent violated Rule 1.15(a) of the District of Columbia Rules of Professional Conduct, in that Respondent (1) failed to hold property of a client and/or third persons in his possession in connection with a representation separate from his own property (commingling), and (2) failed to maintain complete records of entrusted funds; and violated the "Required Records" provision of Rule XI, § 19(f) of the District of Columbia Court of Appeals' Rules Governing the Bar ("D.C. Bar R. XI"), in that Respondent (1) failed to maintain complete records of the handling, maintenance, and disposition of all funds belonging to another person, at any time in Respondent's possession, from the time of receipt to the time of final distribution, and (2) failed to preserve such records for a period of five years after the final distribution of such funds. The Committee has recommended that Respondent be reprimanded. Neither Respondent nor Bar Counsel has taken exceptions. The Board hereby orders that Respondent be reprimanded for violating Rule 1.15(a) and D.C. Bar R. XI, § 19(f).

I. PROCEDURAL HISTORY

On December 31, 2002, Bar Counsel filed with the Board a Specification of Charges and a Petition Instituting Formal Disciplinary Proceedings in this matter alleging that Respondent violated the following Rules of Professional Conduct: Rule 1.15(a) and D.C. Bar R. XI, § 19(f).

Respondent admitted to the charge of commingling and denied the remaining allegations. A statement of mitigation was included as a part of Respondent's answer. He did not fully understand that depositing client funds in the same account, which contained personal or operating funds, was commingling. Respondent emphasized that he never stole or misused a client's entrusted funds for any reason and that he never borrowed nor treated a client's entrusted funds as his own. Respondent initially opposed a finding that he violated D.C. Bar R. XI, § 19(f) because based on his reading of that rule, it applies to missing records relating to entrusted funds belonging to another person. His understanding was that because the funds were personal and owned by him, that rule was inapplicable.

This matter was heard by the Committee on February 13, 2003. Bar Counsel and Respondent submitted a Stipulation between Respondent and Bar Counsel (the "Joint Stipulation"). Bar Counsel called no witnesses at the hearing of her case-in-chief, reserving the right to call witnesses and introduce further documentary evidence in rebuttal. Bar Counsel offered Exhibits A through D, and a Joint Exhibit, (D)(1), captioned Stipulation between Respondent and Bar Counsel. These exhibits were received into evidence without objection. Respondent did not defend himself, however, he did testify in mitigation at the sanction portion of the hearing.

After considering the evidence submitted by Bar Counsel and the evidence contained in the Joint Stipulation, the Hearing Committee made a preliminary nonbinding determination that Respondent had violated his ethical obligations as charged.

Bar Counsel stated that she had no evidence in aggravation of sanction to offer in this matter and that Respondent had no history of discipline. After Respondent testified on his own behalf in mitigation, his only exhibit was received into evidence.

At the hearing, Bar Counsel expressed her appreciation of Respondent's extraordinary cooperation and the fact that he took full responsibility for his actions. Bar Counsel submitted Proposed Findings of Fact, Conclusions of Law and Recommendation as to Sanctions on March 10, 2003. Respondent did not file a post-hearing brief.

The Committee issued its Report and Recommendation on May 28, 2003, finding that Respondent violated Rule 1.15(a) and D.C. Bar R. XI, § 19(f) and recommending that Respondent be reprimanded.

II. FINDINGS OF FACT

The Board has reviewed and adopts the Hearing Committee's Proposed Findings of Fact, which are reproduced below for ease of reference, with minor alterations and footnotes omitted:

1. Respondent is an active member of the District of Columbia Bar, having been admitted on September 12, 1994, and assigned bar number 443186. Bar Council's Exhibit ("BX") A.

2. The Hearing Committee heard Respondent testify in mitigation and found his testimony to be fully credible. It fully believed his expressions of regret over the mistakes he has made and his undertaking that he will manage his Interest on Lawyers' Trust Account (IOLTA) in the future in full compliance with the relevant rules.

3. Respondent has an IOLTA account numbered 2066701796367 at First Union National Bank (currently owned by Wachovia Bank). The account is captioned:

Law Office of Charles G[.] Canty
IOLTA Attorney Trust Account

BXB at 1.

4. The Office of Bar Counsel received a notice from the bank that Respondent's IOLTA account was overdrawn by $2.77. After the matter was docketed for formal investigation, Bar Counsel called upon Respondent to account for his handling of the funds in his IOLTA account. BXB at 1-2.

5. From September 1999 to September 2000 (the period of Bar Counsel's inquiry), Respondent treated his IOLTA account as an operating account in that he routinely drew checks for personal expenses or costs associated with the operation of his practice, and deposited his own "personal" funds into the IOLTA account, either in tandem with deposits of entrusted funds or at times when entrusted funds were already present in his IOLTA account. For example:

A. In September 1999, Respondent drew check No. 0503, dated September 9th, for $3.75, payable to the order of "Glen Dale Elementary" and on September 13th withdrew $30. He does not recall the purpose of the check or of the withdrawal. BXB at 2; Joint Exhibit ("JX") 1 at 2.

B. In October 1999, Respondent drew check No. 0504, dated October 5th, in the amount of $10, payable to his physician as an insurance co-payment, and on October 14th withdrew $8. He does not recall the purpose of the withdrawal. BXB at 2; JX 1 at 2.

C. On October 19, 1999, Respondent's IOLTA account became overdrawn by $2.77. BXB at 2; JX 1 at 2.

D. On December 1, 1999, Respondent's IOLTA account remained overdrawn by $2.77. On December 10, 1999, Respondent deposited $160 of his own funds along with a check for $9,900, representing a client's settlement proceeds. Respondent paid his client by check, Nos. 0551 and 0552, dated December 14, 1999 and December 16, 1999, respectively. BXB at 3; JX 1 at 3.

E. Respondent drew check No. 0505, dated December 9, 1999, in the amount of $155, payable to "D.C. Bar," with "Bar Dues" on the memorandum line. BXB at 3; JX 1 at 3.

F. Respondent received $11,500 from his mother. He deposited this money in his IOLTA account on December 14, 1999, and used it to purchase his home. He drew check No. 0554, dated December 16, 1999, for $9,600, payable to himself. The memorandum line states "House/Closing Costs." BXB at 3; JX 1 at 3.

G. Respondent drew check No. 0556, dated December 17, 1999, in the amount of $500, payable to himself. The memorandum line states "Christmas Gifts." BXB at 3; JX 1 at 3.

H. Respondent drew checks (1) No. 0557, dated December 21, 1999, for $850; (2) No. 0559, dated December 23, 1999, for $300; and (3) No. 0563, dated December 31, 1999, for $200, all payable to himself. Respondent's withdrawals were for Christmas gifts and

holiday expenses, as was check No. 0561, dated December 29, 1999, for $200, payable to "Adetutu Canty." BXB at 3-4; JX 1 at 3-4.

I. Respondent drew check No. 0562, dated December 30, 1999, in the amount of $52, payable to "Green Mountain Florist." The memorandum line states "Office Decorations." BXB at 4; JX 1 at 4.

J. With the exception of checks 0551 and 0552, each of the foregoing checks written on Respondent's IOLTA account in December 1999 was for either "private or business related concerns," and was unrelated to the payment of client or third-party entrusted funds. BXB at 4; JX 1 at 4.

K. On December 29, 1999, Respondent deposited into his IOLTA account a settlement check in the amount of $1,250 for a client. Respondent drew check No. 0560, dated December 28, 1999, in the amount of $833.75, payable to the client for her share of the settlement proceeds. This check was honored on January 5, 2000. BXB at 4; JX 1 at 4.

L. Respondent drew six checks on his IOLTA account in January 2000. Each of these checks was written for either "business" or "personal matters," and was unrelated to the payment of client or third-party entrusted funds. *See* BXB at 4-5; JX 1 at 4-5.

M. Respondent drew a number of checks on his IOLTA account during the months of February and March 2000 "for both business and personal matters." BXB at 5; JX 1 at 5. "All of these funds were personal in nature and not related to any client as retainer." BXB at 5; JX 1 at 5.

N. Someone other than Respondent – Adetutu Canty – issued a payment to "Sprint PCS" on check No. 518, dated February 7, 2000, in the amount of $75.05. The signature line bears no signature but states as follows: "Verbally Authorized by Your Depositor." BXB at

5; JX 1 at 5. Although the check reflects Respondent's IOLTA account number, the check itself is markedly different from Respondent's other IOLTA account checks and is captioned:

Adetutu Canty
[street address omitted]
Seabrook, MD 207063345

BXB at 5-6; JX 1 at 5-6.

O. During April 2000, Respondent deposited $6,454.59 into his IOLTA account. All but $1,900 of these funds were "personal in nature and not related to any client as retainer." BXB at 6; JX 1 at 6. Respondent made the $1,900 deposit related to a personal injury matter on April 27, 2000. Respondent paid the full amount of the settlement funds that were due to the client with check No. 0604, dated April 27, 2000. All other disbursements from the IOLTA account were from Respondent's "own personal funds for both business and personal matters." BXB at 6; JX1 at 6.

P. On May 18, 2000, Respondent's IOLTA account contained $644.92, all of which were his own funds. On May 23, 2000, Respondent deposited into the account a settlement check in the amount of $7,000 on a client's behalf. This brought the account's balance to $7,411.94. On May 24, he deposited $100 of his own funds into the account, which brought the balance to $7,511.94. BXB at 6; JX 1 at 6.

Q. On June 1, 2000, the opening balance in the IOLTA account was $7,411.23, which included the client's share of entrusted funds. On June 5, Respondent deposited $600 of his own funds into the IOLTA account. The client's share of the settlement proceeds ($4,669) remained in the IOLTA account until June 8, when check No. 0620 for $4,669 (representing the client's share) was honored. BXB at 7; JX 1 at 7.

R. With the exception of check No. 0620 for his client's share of the settlement proceeds, all of the checks drawn on Respondent's IOLTA account in June 2000 were from his "personal funds for both business and personal matters." BXB at 7; JX 1 at 7.

S. On July 27, 2000, Respondent deposited into his IOLTA account a settlement check in the amount of $10,500 on a client's behalf. He drew check No. 0636, dated August 3, 2000, in the amount of $7,003.50, payable to his client for her share of the settlement proceeds. The bank honored the check on August 3, 2000. BXB at 7; JX 1 at 7.

T. With the exception of check No. 0636, all other withdrawals from Respondent's IOLTA account in July and August 2000 were from Respondent's "own personal funds for both business and personal matters." BXB at 7; JX 1 at 7.

6. Respondent failed to maintain documents sufficient to account for or explain each of the transactions in his IOLTA account from September 1999 to September 2000. BXB at 7; JX1 at 7. For example:

A. Respondent has not maintained records sufficient to determine how the $2.77 overdraft occurred. He "surmis[es] after reviewing the attached bank statement, that the overdraft was an inadvertent mistake." BXB at 8; JX1 at 8.

B. Respondent does not recall the purpose of check No. 0503, dated September 9, 1999, in the amount of $3.75, paid to "Glen Dale Elementary," nor the purpose of his September 13, 1999 withdrawal of $30. BXB at 8; JX1 at 8.

C. Respondent is unsure of the source of certain funds deposited in the IOLTA account in January, February, March, April, June, and August 2000, and does not have records that provide this information. He has stated that his "recollection" is that the deposits were payments for services rendered in connection with the Criminal Justice Act ("CJA").

However, Bar Counsel's review of the deposits in Respondent's IOLTA account from September 1999 through September 2000 does not reveal evidence of deposits of any checks issued in connection with CJA cases. BXB at 8; JX1 at 8.

D. Respondent failed to maintain any records with respect to his IOLTA account for September 2000. BXB at 8; JX1 at 8.

7. Respondent did not understand what commingling was. He knew that he handled occasional personal injury cases in his practice and that he needed to have an IOLTA account to deposit the funds obtained with respect to those cases. Transcript of Hearing Committee Hearing of February 13, 2003 ("Tr.") at 14-15.

8. After Respondent became aware that he had violated the proscription against commingling, he stopped depositing any funds that were not a client's funds into his IOLTA account. Tr. at 16. Shortly before the hearing in this matter, Respondent met with Mr. Reid Trautz of the D.C. Bar's Lawyer Practice Assistance Program ("LPAP") and learned in detail about the management and record-keeping involved in having a trust account for client funds. Tr. at 16; Respondent's Exhibit ("RX") 1 at 1.

III. VIOLATIONS FINDINGS

A. The Rule 1.15(a) Charge

Bar Counsel charged that Respondent violated Rule 1.15(a) of the Rules of Professional Conduct by failing to hold his clients' entrusted funds separate from his own funds, which were deposited into the trust account. Rule 1.15(a) states:

> A lawyer shall hold property of client or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution which is authorized by federal, District of Columbia, or state law to do business in the jurisdiction where the account is maintained and which is a member of the Federal Deposit Insurance Corporation, or the Federal Savings and

> Loan Insurance Corporation, or successor agencies. Other property shall be identified as such and appropriately safeguarded; provided, however, that funds need not be held in an account in a financial institution if such funds (1) are permitted to be held elsewhere or in a different manner by law or court order, or (2) are held by a lawyer under an escrow or similar agreement in connection with a commercial transaction. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

The Board agrees with the Committee that Bar Counsel has established by clear and convincing evidence that Respondent violated Rule 1.15(a) by failing to hold his clients' entrusted funds separate from his own funds, which were deposited into the trust account.

B. The D.C. Bar R. XI, § 19(f) Charge

Bar Counsel charged that Respondent violated D.C. Bar R. XI, § 19(f) by failing to produce documents to identify the source of all of the funds contained in his IOLTA account. D.C. Bar R. XI, § 19(f) provides in relevant part:

> Every attorney subject to the disciplinary jurisdiction of this Court shall maintain complete records of the handling, maintenance, and disposition of all funds, securities, and other properties belonging to another person, or to a corporation, association, partnership, or other entity, at any time in the attorney's possession, from the time of receipt to the time of final distribution, and shall preserve such records for a period of five years after final distribution of such funds, securities, or other properties or any portion thereof.

The Board agrees with the Committee that Bar Counsel has established by clear and convincing evidence that Respondent violated D.C. Bar R. XI, § 19(f) by being unable to produce documents to identify the source of all of the funds contained in his IOLTA account.[1]

[1] The Board's report in *In re Spikes*, Bar Docket No. 276-97 (BPR July 30, 2003), which declined to find that D.C. Bar R. XI, § 19(f) created an independent basis for imposing discipline, preceded the decision in *In re Clower*, 831 A.2d 1030 (D.C. 2003), in which the Court affirmed a violation of D.C. Bar R. XI, § 19(f).

IV. SANCTION ANALYSIS

Bar Counsel in her Proposed Findings filed with the Hearing Committee indicated that the facts of Respondent's misconduct certainly warrant no more than a public censure. The Hearing Committee, believing that Respondent's misconduct falls far short of many of the cases in which public censure was the sanction and that, especially in light of Respondent's cooperation concluded that his misconduct, warrants nothing more than a Board reprimand. The Board concurs with the Hearing Committee's analysis which is reproduced below with minor alteration and without footnotes:

The Board said in *In re Parsons*, Bar Docket No. 072-91, at 3-4 (BPR Feb. 1, 1996), "[w]here no harm to the client is shown, and there are no other aggravating factors, public reprimands and censures remain within the acceptable range of penalties." The sanction in *Parsons,* where the respondent deposited client funds from the settlement of a case in his firm's operating account, was public censure. It is noteworthy that *Parsons* had a prior and serious disciplinary record. *See In re Reback & Parsons*, 513 A.2d 226 (D.C. 1986) (en banc). The question here is how to distinguish the cases that resulted in Board reprimands from those that resulted in public censure. In *In re Ingram*, Bar Docket No. 287-88 (BPR June 29, 1990), *aff'd*, 584 A.2d 602 (D.C. 1991) (per curiam) where the respondent commingled and withheld one-third of his client's settlement proceeds for over a year, the sanction was public censure.[2]

[2] In *Ingram*, the Board noted that the decision in that case preceded the Court's issuance of its opinion in *In re Hessler*, 549 A.2d 700 (D.C. 1988). *Ingram*, Bar Docket No. 287-88 at 14. The *Ingram* facts might well have resulted in a more serve sanction had that case followed *Hessler*, rather than preceded it.

The violations in *In re Jones*, Bar Docket No. 486-94, Order (BPR June 18, 1997), which resulted in a Board reprimand, seem very comparable to those in the present case. The respondent was charged with violating Rule 1.15(a) because of his failure to hold the property of clients or third parties separate from his own property, and Rule 1.17(a) for failure to hold funds that were required to be segregated from his own funds in an account that had the words "trust account" or "escrow account" in its title. *Id.* at 1. As in the present case, all of the relevant facts were established by the parties' stipulation. As in the present case, the respondent established an IOLTA account that was used as his firm's business account. But, unlike Respondent here, the respondent in *Jones* did not use either "trust" or "escrow" in the title of his account. It appears that in *Jones* the commingling lasted for approximately two and one half months, while Respondent's commingling lasted for up to thirteen months. In neither case was the commingling found to be anything but negligent. There were no allegations of misappropriation or dishonesty in either case, nor was any client actually harmed in either case. The respondent in *Jones* did not normally practice personal injury litigation. Respondent's personal injury cases were occasional. In *Jones,* Bar Counsel did not raise any question about the adequacy of record keeping, while that is the second "count" in the present case. Like the respondent in *Jones*, Respondent fully cooperated with Bar Counsel. In addition, he immediately ceased placing non-client funds in his trust account when he realized from Bar Counsel's inquiries that he had violated the Rules. Further, Respondent sought help from the LPAP in establishing proper record-keeping shortly after completing the process of entering into the Joint Stipulation with Bar Counsel.

The other case following *Hessler* that has resulted in a Board reprimand is *In re Curtis*, Bar Docket No. 366-95, Order (BPR Oct. 11, 1996). There, respondent was found to have violated Rules 1.15(a) (commingling) and 1.17(a) (failure to designate trust account). The respondent, who was handling criminal appointment cases, represented her husband and sister-in-law in a personal injury matter shortly after her admission to the Bar. She deposited two checks she received in settlement of the cases in a general account in which she had deposited retainer checks from another client, not realizing that the unearned fees from the retainer checks were considered to be her own funds under Rule 1.15(d). Although she had believed the account she had set up was an escrow account, it was not designated as either an escrow or a trust account, thus putting her clients' funds at risk. The respondent had paid her clients promptly but had not arranged to pay all the medical service providers, and the matter was brought to Bar Counsel's attention by one of the doctors. Without making a detailed comparison, the Board noted that the respondent's violation was "considerably less serious than that in *Parsons*, where a public censure was imposed." *Curtis*, Bar Docket No. 366-95 at 2 *(*citing *In re Parsons*, 678 A.2d 1022 (D.C. 1996)). The Board therefore sanctioned Ms. Curtis with a Board reprimand.

In *Parsons*, the Board stated that post-*Hessler*, "[w]here no harm to the client is shown, and there are no other aggravating factors, public reprimands and censures remain within the acceptable range of penalties." *Parsons*, Bar Docket No. 072-91 at 3-4. The Board noted in its footnote to this statement that in light of the Court's admonition in *Hessler*, since it was recommending a sanction short of suspension, it was recommending a sanction that, unlike a public reprimand, must be approved by the Court. *Id*. at 4 n.1. Perhaps the Board was more comfortable in using a Board reprimand as sanction in *Jones* because more time had passed since

Hessler. Perhaps it chose a Board reprimand because public censure was not one of the two alternatives that the parties and the Hearing Committee suggested.

Bar Counsel discusses *In re Osborne*, Bar Docket No. 462-95 (BPR Dec. 24, 1997), *aff'd*, 713 A.2d 312 (D.C. 1998) (per curiam), a public censure case, and compares Respondent's situation to that of the *Obsorne* respondent. In *Osborne*, the second violation was of Rule 5.3(c)(2), based on the respondent's failure to supervise the firm's bookkeeper as to the proper way to handle his personal funds, and particularly that she should not commingle personal funds with client funds. *Osborne*, Bar Docket No. 462-95 at 4. The Board in *Osborne* set out eleven factors that must be weighed in commingling cases:

> 1- whether the commingling was inadvertent/negligent or whether it was knowing;
>
> 2- whether the attorney was experienced in handling client funds;
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> 3- whether the commingling was an isolated instance or whether it was protracted;
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> 4- the degree of risk to client funds and whether there was any injury to the client;
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> 5- whether the commingling was accompanied by a failure to keep adequate records of client funds or other serious violation;
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> 6 - whether the commingling also included a negligent or unintentional misappropriation;
>
> 7 - whether the commingling involved an intentional misappropriation of client funds;
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> 8 - whether Respondent cooperated fully with Bar Counsel;
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> 9 - whether the attorney had a prior disciplinary record;
>
> 10 - whether the attorney had demonstrated honesty and sense of public responsibility; and
>
> 11 - whether the attorney had taken corrective steps.

Id. at 6-7 (citations omitted).

In the present case, (1) the commingling was inadvertent/negligent and not knowing; (2) the attorney was not particularly experienced in handling client funds; (3) the commingling took place over a 13-month period, clearly not an "isolated instance"; (4) there was no client injury from the commingling and there was little risk to client funds because in each case the client was paid virtually immediately upon Respondent's receipt of the funds; (5) the commingling was accompanied by a failure to keep adequate records; (6) the commingling did not include a negligent or unintentional misappropriation; (7) the commingling did not involve an intentional misappropriation of client funds; (8) Respondent cooperated very fully with Bar Counsel; (9) Respondent has no prior disciplinary record; (10) Respondent has demonstrated honesty and a sense of public responsibility; and (11) Respondent has taken corrective steps. Thus, there are nine positives and two negatives–the commingling took place over a period of time (Item 3) and it was accompanied by a failure to keep adequate records (Item 5).

When we add up the results, it seems that Respondent's violation was somewhat less serious than that of the respondent in *Osborne*. Although the *Osborne* respondent's records were kept clearly and diligently by the law firm's bookkeeper, the respondent's second failure was inadequate supervision of the work of the bookkeeper, who was placing his personal funds as well as clients' funds into the firm's trust account, and was paying respondent's expenses by checks drawn on the trust account. The *Osborne* respondent knew of these errors for almost a year and a half from "some time after January 1994 . . . until approximately June 30, 1995." *Id.* at 3-4. When Respondent learned of his errors, he stopped them immediately. *Osborne* was sanctioned by a public censure. Bar Counsel originally recommended the identical sanction to the Hearing Committee here. The Board finds that it would be more appropriate to sanction Respondent with a Board reprimand, recognizing that the totality of his misconduct appears to

indicate a less serious violation than in *Osborne,* that it was his own cooperation with Bar Counsel that enabled her to prove his commingling by clear and convincing evidence, and that Bar Counsel has not filed an exception to the Hearing Committee's recommendation of a Board reprimand. Cases in which the respondent fails to help Bar Counsel untangle the records have resulted in diversion, which is offered by Bar Counsel for "minor misconduct" and, if successfully completed, results in the dismissal of disciplinary charges. D.C. Bar R. XI, § 8.1(b). Further, the Board notes its observation in *Jones* that it would not have been an abuse of Bar Counsel's discretion to have offered diversion in that case.

Other attorneys post-*Hessler* have received public censure despite serious aggravating factors. In *Graham*, unlike here, the attorney's commingling was "knowing and intentional," and he failed to disburse settlement funds promptly to a third party in violation of Rule 1.15(b). *In re Graham*, 795 A.2d 51, 52 (D.C. 2002) (per curiam).

In *In re Goldberg*, the attorney "knowingly and deliberately placed what he believed to be funds of the firm contained in its payroll account into the firm's escrow accounts which he knew contained the funds of the firm clients." *In re Goldberg*, Bar Docket No. 479-95 at 7 (BPR Apr. 14, 1998), *aff'd*, 721 A.2d 627 (D.C. 1998) (per curiam). Goldberg "took an improper shortcut through the firm escrow accounts in order to quickly solve the problem of dishonored paychecks," due to an IRS levy for failure to pay withholding taxes. *Id.* Goldberg "was put on notice as to the impropriety of using the firm's escrow account to pay salaries [including his own] when an associate of the firm refused to accept her paycheck because it was written on the firm's escrow account." *Id.* Finally, Goldberg had prior discipline (an informal admonition), although neither the Court nor the Board found the fact to be significant. *See id.* at 8. n.4. No

such misconduct accompanied Respondent's deposit and disbursement of funds in his trust account.

As discussed above, in *Osborne*, the attorney did not take action to correct the bookkeeper's practice of commingling when it came to his attention. 713 A.2d at 312.

In *In re Teitelbaum* and *In re Millstein*, probably the least factually egregious of the public censure cases, unlike Respondent, the attorneys had prior discipline: one informal admonition in the former case, and three informal admonitions in the latter. *In re Teitelbaum*, 686 A.2d 1037 (D.C. 1996) (per curiam); *In re Millstein*, 667 A.2d 1355 (D.C. 1995) (per curiam). In both cases, however, the Court and the Board found the prior discipline an insufficient basis to warrant an increased sanction.

In striking contrast to the facts of Respondent's case, in *Ingram*, the respondent was charged with dishonest misappropriation after he deposited the client's settlement check in a non-trust account that dipped below the amount he was obligated to hold in trust for his client. 584 A.2d at 602. The respondent had not paid the client in a lump sum but piecemeal. *Id.* At the hearing, the respondent testified that he had "attempted, through his legal assistant, to deliver the remaining $1,000 to the client . . . but was unsuccessful. He did not write and explain to the client that the money was available, nor did he redeposit the money in the bank and send the client a check." *Id.* The respondent's secretary testified that she had "stapled the envelope [containing the client's final payment] into the client's file kept in a file cabinet in [the attorney's] office," thereby defeating the misappropriation charge. *Id.* Commingling was the only charge proved. The respondent received a public censure despite his "improper treatment [of the funds that] continued even after [he] was aware of a complaint to Bar Counsel involving his handling of the matter and, more significantly, even after he established a trust account for other client

funds." *Id.* at 603. Here, Respondent has educated himself about proper handling of entrusted and other funds and testified that he has acted accordingly.

Finally, public censure has been held an appropriate sanction for an attorney with a record of prior discipline involving dishonesty. In *Parsons*, 678 A.2d at 1022, the Board recommended, and the Court imposed, a censure upon an attorney who operated a substantial personal-injury practice without an escrow account, relying instead on a hazardous "cash-out" procedure to disburse entrusted funds to his clients. *Parsons,* Bar Docket No. 072-91 at 6. A public censure was deemed appropriate despite the fact that the respondent had been previously suspended for six months for dishonesty because the Board concluded that his prior discipline was not relevant to the issue of sanction. *Id.* at 5-6.

V. SANCTION RECOMMENDATION

In determining the appropriate sanction, the Court has considered the seriousness of the misconduct and sanctions for similar misconduct, prior discipline, prejudice to the client, violation of other disciplinary rules, whether the conduct involved dishonesty, the respondent's attitude, and circumstances in aggravation and/or mitigation. *See In re Slattery*, 767 A.2d 203, 214-15 (D.C. 2001); *In re McLain*, 671 A.2d 951, 954 (D.C. 1996); *In re Jackson*, 650 A.2d 675, 678 (D.C. 1994) (per curiam); *In re Hill*, 619 A.2d 936, 939 (D.C. 1993) (per curiam); *see also In re Hutchinson*, 534 A.2d 919, 924 (D.C. 1987) (en banc). The Committee recommended a reprimand, while Bar Counsel recommended no more than a public censure. Based on the Hearing Committee's analysis and the foregoing factors, and the fact that Bar Counsel has not filed an objection to the Hearing Committee's recommendation of a Board reprimand, the Board finds that a Board reprimand is appropriate in this case.

CONCLUSION

Having found that Bar Counsel has proven by clear and convincing evidence that Respondent violated Rule 1.15(a) and D.C. Bar R. XI, § 19(f), the Board issues this reprimand to Respondent.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: _____
Martin R. Baach

Dated: December 31, 2003

This Order was prepared by Ms. Williams. All members of the Board concur in this Report and Recommendation except Mr. Bloomfield, Ms. Frazier and Dr. Payne, who did not participate.