

**OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. Box 963
Trenton, New Jersey 08625
Trial Counsel: Michael J. Sweeney, Esq.
609-530-4319**

**SUPREME COURT OF NEW JERSEY
OFFICE OF ATTORNEY ETHICS
Docket Nos. XIV-2013-0054E
XIV-2013-0082E**

**OFFICE OF ATTORNEY ETHICS,
Complainant**

v.

**RICHARD M. DELUCA, ESQ.,
Respondent.**

**COMPLAINT
Misconduct (Complex)
R. 1:20-4(b)**

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey, (hereinafter “OAE”), by way of formal complaint against Richard M. DeLuca, Esq., (hereinafter “Respondent”) says:

GENERAL ALLEGATIONS

1. Respondent was admitted to the New Jersey Bar in 1983.
2. Respondent is a sole practitioner with offices at 90 Grove Street, 2nd Floor, Somerville, New Jersey 08876.
3. At all relevant times herein, respondent maintained the following accounts at TD Bank

in connection with his law practice:

Attorney Trust Account XXXX6997

Attorney Business Account XXXX7890

COUNT ONE

*Recordkeeping Deficiencies in violation of RPC 1.15(d),
R.1:21-6 and RPC 1.15; Improper Commingling RPC 1.15(a);
and Failure to Cooperate with Disciplinary Authorities in
violation of RPC 8.1(b)*

1. The general allegations of the Complaint are incorporated herein as if repeated at length.
2. After receiving overdraft notices on February 15, 2013 and February 20, 2013, the Office of Attorney Ethics conducted a demand audit of Respondent's books and records on April 30, 2013.
3. The following recordkeeping deficiencies were identified at the demand audit on April 30, 2013:
 - (a) Trust funds on deposit exceed trust fund obligations in violation of R.1:21-6(d);
 - (b) Trust account designation improper and must indicate "Attorney Trust Account" or "IOLTA Attorney Trust Account" on bank statements, checks and deposit slips in violation of R.1:21-6(a)(2);
 - (c) No monthly three-way reconciliation of the trust account with journals and checkbooks in violation of R.1:21-6(c)(1)(H);
 - (d) Inactive balances left in the trust account in violation of R.1:21-6(d);
 - (e) No ledger card identifying attorney funds for bank charges in violation of R.1:21-6(d); and

(f) Attorney funds for bank charges exceed \$250 in violation of R.1:15(a)

4. The Respondent's client ledgers totaled \$24,040.68 while the bank statement disclosed a bank balance of \$32,239.01. The difference of \$8,198.33 is an unidentified balance.

5. By letter dated August 5, 2013 (**Exhibit A**) the OAE notified Respondent that he was required to provide an explanation of whose funds were contained in this \$8,198.33 unidentified balance. He was further advised that if he was unable to identify the owner of these funds, that he must take steps pursuant to *R.1:21-6(j)* to turn over said funds to the Superior Court Trust Fund.

6. While Respondent has promised the OAE that he would provide the requested explanation, as of the date of the filing of this complaint, Respondent has not provided the OAE with the requested explanation nor has he notified the OAE of any steps taken to comply with *R.1:21-6(j)*.

7. Additionally, Respondent's client ledgers totaled \$24,040.68, of which \$10,279.87 was attributable to Respondent's legal fees which have remained in his trust account for over one year. By letter dated August 5, 2013, the OAE notified Respondent that this constituted improper comingling in violation of *RPC 1.15(a)* and that the legal fees must be removed and deposited into his business account immediately.

8. While Respondent has promised the OAE that he would provide the requested explanation, as of the date of the filing of this complaint, Respondent has not notified the OAE of any steps taken to comply with *RPC 1.15(a)*.

9. The OAE's letter to Respondent of August 5, 2013 directed Respondent to sign and return a form of Certification to the OAE on or before Thursday, September 5, 2013, certifying as to the steps he had taken to correct deficiencies detected by the audit.

10. On November 1, 2013, Respondent represented to OAE First Assistant Ethics Counsel, Michael J. Sweeney, that he would provide the certification and other information requested in the OAE's August 5, 2013 letter in the following week.

11. As of the date of the filing of this complaint, Respondent has not provided the signed Certification to the OAE.

12. The comingled funds referenced in paragraph 7 above, consisted of \$10,279.87 of legal fees that remained in Respondent's trust account for a period exceeding one year.

13. Respondent's conduct as set forth above violates *RPC 1.15(d)* (Recordkeeping Violations); *RPC 1.15(a)* (Improper Comingling) and *RPC 8.1(b)* (Failure to Cooperate with Disciplinary Authorities).

WHEREFORE, Respondent's should be disciplined.

DATE: December 13, 2013

OFFICE OF ATTORNEY ETHICS

By: Charles Centinaro
Charles Centinaro, Director

OFFICE OF ATTORNEY ETHICS
OF THE
SUPREME COURT OF NEW JERSEY



CHARLES CENTINARO
DIRECTOR



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TRENTON, NEW JERSEY 08625

August 5, 2013

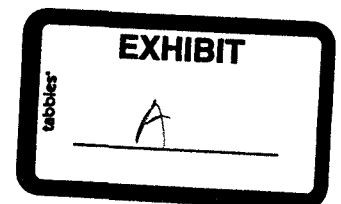
Richard M. DeLuca, Esq.
P.O. Box 1056
Somerville, NJ 08876

RE: Office of Attorney Ethics v. Richard M. DeLuca, Esq.
Docket Nos. XIV-2013-0054E and XIV-2013-0082E

Dear Mr. DeLuca:

The Office of Attorney Ethics has completed its investigation of two overdrafts in your trust account. I enclose a copy of the investigative report of OAE Disciplinary Auditor, Philip H. Ziemiak. I direct your attention to Page 5 of the report which lists the six (6) recordkeeping deficiencies that must be corrected. Please note that items 1, 2 and 3 were previously detected in a random audit conducted in 2006. At that time, you certified that those deficiencies had been corrected. I enclose a form of Certification which you must complete, sign and return to the Office of Attorney Ethics on or before **Thursday, September 5, 2013** certifying as to the steps you have taken to correct these deficiencies.

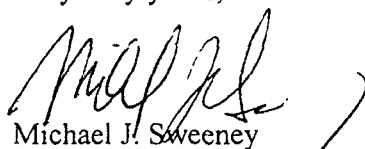
Also, on Page 5 of the report are two additional matters which you must address immediately. First, the trust account contains an unidentified balance of \$8,198.33. Within the above-referenced thirty day period, you must provide to the OAE an explanation as to whose funds are contained in this amount. If you cannot identify the owner or owners of these funds, then you must take steps pursuant to *R.1:21-6(j)* to turn over said funds to the Superior Court Trust Fund. Secondly, it appears that your remaining trust account balance of \$24,040.68 contains \$10,279.87 of your legal fees which have remained in the trust account for over one year. This constitutes improper comingling in violation of *RPC 1.15(a)*. These legal fees must be removed and deposited into your business account immediately.



Richard M. DeLuca, Esq.
August 5, 2013
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At the conclusion of the above-referenced time period, the OAE will be making an evaluation as to the appropriate discipline for your unethical conduct. Your compliance, or lack thereof, with the above directives will heavily weigh upon the level of discipline that is sought. Please be guided accordingly.

Very truly yours,


Michael J. Sweeney
First Assistant Ethics Counsel

MJS/sra
Encl.

cc: Philip H. Ziemiak, Disciplinary Auditor (w/o encl.)

CERTIFICATION

_____, Esquire, of full age, does hereby certify:

(1) I am an attorney-at-law licensed to practice in the State of New Jersey. My principal office is located at _____

_____.

(2) In accordance with the provisions of R.1:21-6(a) (1) & (2), I maintain the following bank accounts:

(a) Attorney Trust Account

Account #: _____

Name of Financial Institution:

(b) Attorney Business Account

Account #: _____

Name of Financial Institution:

(3) The only funds entrusted to me for which I am accountable to my clients, as of _____, within the context of RPC 1:15 are listed by name of client (date) and respective amount on the attached schedule. A bank statement and reconciliation are also attached.

(4) The most current reconciliation of my attorney trust account revealed (please select):

all client funds have been fully accounted for.

excess funds in the amount of \$ _____ were determined to be on deposit in my attorney trust account.

a shortage of funds in the amount of \$ _____ occurred in my attorney trust account.

The **excess trust** **shortage of trust funds** found as a result of the most current trust account bank reconciliation have been remedied as a result of the following actions:

(5) I certify that the statements made by me in this certification and the schedules attached thereto are true and complete to the best of my knowledge. I understand if any of the within statements made by me are willfully false that I am subject to punishment.

(Signature of Attorney)

Dated: _____