

**OFFICE OF ATTORNEY ETHICS
SUPREME COURT OF NEW JERSEY
P.O. BOX 963
TRENTON, NJ 08625
(609) 530-4008
Presenter: Melissa A. Czartoryski**

SUPREME COURT OF NEW JERSEY
District XIV Ethics Committee
Docket Nos. XIV-2012-0300E (Marmero)
XIV-2012-0301E (Long)

**OFFICE OF ATTORNEY ETHICS,
Complainant**

v.

**ALBERT K. MARMERO AND
DOUGLAS M. LONG, d/b/a as
LONG MARMERO & ASSOCIATES,
LLP,
Respondents**

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

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey (hereinafter "OAE"), P.O. Box 963, Trenton, New Jersey 08625, by way of formal complaint against respondents, Albert K. Marmero, Esq. and Douglas M. Long, Esq. d/b/a Long Marmero & Associates, LLP, says:

GENERAL ALLEGATIONS

1. Albert K. Marmero, Esq. was admitted to the New Jersey Bar in 2003.
2. Douglas M. Long, Esq. was admitted to the New Jersey Bar in 1998.

3. From April 1, 2009 until June 30, 2012 (hereinafter "relevant time period"), respondents were partners in the practice of law and maintained offices for the practice of law at Long Marmero & Associates LLP, 44 Euclid Street, Woodbury, New Jersey 08096.

4. During the relevant time period, respondents maintained the following accounts in connection with their law practice:

- a. Attorney Trust Account No. XXXXXX7442 at PNC Bank;
- b. Attorney Business Account No. XXXXXX2938 at PNC Bank;
- c. Payroll Account No. XXXXXX7434 at PNC Bank;
- d. Credit Card Account No. XXXXXX2946 at PNC Bank.

5. Both respondents had signatory authority over the firm's trust and business accounts.

COUNT ONE

(Failure to Safeguard Property of Clients or Third Parties/Negligent Misappropriation in violation of RPC 1.15(a), and Failure to Supervise a Nonlawyer Assistant in violation of RPC 5.3(a) & (b))

1. The General Allegations are repeated as if set forth herein at length.

2. Respondents' firm was subject to a random audit by the OAE that began on March 8, 2011. Assistant Chief of Random Audit Mary E. Waldman (hereinafter "Waldman") was assigned to conduct the audit.

3. The audit period was from April 1, 2009 through June 30, 2012.

4. Throughout the audit period, the accounting records for all accounts were maintained by Colleen Redman (hereinafter "Redman") using QuickBooks. Respondents Long and Marmero delegated the firms' recordkeeping responsibilities to Redman. Redman is not an attorney.

5. Waldman determined that throughout the audit period, trust account funds were regularly invaded and utilized as a "line of credit" to fund the firm's operating expenses.

6. During the audit period, a cumulative total of \$199,255.42 was "borrowed" from client funds on deposit in the attorney trust account as follows:

\$69,998.01	Trust funds transferred to the business account covering overdrafts [Exhibit 1]
\$ 27,025.00	Payments to Douglas Long, respondent [Exhibit 2]
\$ 35,662.60	September 2010 use of trust account for payroll [Exhibit 3 and 4]
\$ 450.00	Transfer to credit card account [Exhibit 5]
\$ 28,000.00	Payment to Jeff Long / Pattison Sports Group Loan [Exhibit 6]
<u>\$ 38,119.81</u>	Net over disbursements of funds on deposit [Exhibit 7]
\$199,255.42	

7. During the audit period, a cumulative total of \$195,255.42 was "reimbursed" to the attorney trust account as follows:

\$105,618.87	Transfers from business account to the trust account [See Exhibit 1 and Exhibit 8]
\$ 43,104.66	Earned fees deposited to trust to cover payroll and deficits [Exhibit 9]
\$ 12,000.00	Transfer from payroll account [Exhibit 10]
\$ 8,520.00	Transfers from credit card account [Exhibit 11]
\$ 15,000.00	Jeff Long Loan [Exhibit 12]
<u>\$ 11,200.00</u>	Cash Deposits from Partners [See Exhibit 6 and Exhibits 13 and 14]
\$195,443.53	

8. At no time during the audit period did either respondent make any inspection of the firm's books and records for the purpose of confirming that Redman was safeguarding the property of clients and third parties.

9. Had either respondent inspected the firm's books and records during the relevant period, they would have known of Redman's regular and systematic invasion of trust account funds to pay the firm's operating expenses.

10. Set forth with specificity below are examples of individual transactions included in the summarized numbers set forth in paragraphs six and seven:

11. On July 1, 2009 a deposit was made to the trust account in the amount of \$20,894.18 on behalf of client Rosa McLeod (hereinafter "McLeod") [Exhibit 15].

12. Subsequent to that deposit, net transfers of \$20,500.00 were made between the trust and business accounts leaving a balance of \$494.18 in the trust account during the month of July 2009 [Exhibits 16 and 17]. At least \$9,538.77 of the \$20,894.18 deposit in the McLeod matter funds should have been held in trust through the end of July.

13. The McLeod funds were invaded and used to pay business expenses and the firm's payroll taxes on July 30, 2009. [See Exhibit 17].

14. McLeod did not authorize or know about the use of her funds.

15. Check numbers 1102 and 1276 totaling \$9,538.77 payable to Liberty Bell Agency and Rosa McLeod were issued from the trust account on August 5, 2009 and February 28, 2011, after the obligations in the McLeod matter could be funded by a different source. [Exhibits 18, 19 and 19A].

16. On August 10, 2009, \$15,741.93 was transferred from the business account to the trust account [Exhibits 20 and 21].

17. The purpose of this transfer was to cover an overdraft in the trust account caused by the presentation of check #1002 in the amount of \$8,626.19 payable to Liberty Bell Agency in the McLeod matter [See Exhibit 18].

18. Respondents Long and Marmero represented ninety-three tenants of Royal Court Housing in an action against the Housing Authority of Camden which settled for \$800,000. On October 22, 2009, \$400,000 of the settlement was deposited into the trust account. On October 23, 2009, \$200,000 was transferred into the business account for the firm's legal fee [Exhibit 22].

19. On December 2, 2009, trust check # 1116 in the amount of \$13,407.59 was issued to the law firm of Drinker, Biddle & Reath for its share of legal fees in the Royal Court matter, which funds should have been paid from the firm's \$200,000.00 fee taken on October 23, 2009 [Exhibits 23 and 24]. This check invaded funds the firm should have been safeguarding on behalf of the Royal Court tenants.

20. At all times referred to herein, the Royal Court tenants did not know about or authorize the use of their funds.

21. On February 9, 2010, \$12,000.00 belonging to the Royal Court tenants was transferred from the trust account to the business account [Exhibit 25 and 26]. These funds were used to pay business expenses and payroll taxes.

22. By February 9, 2010, the trust account was short by over \$13,500.00 [Exhibit 27].

23. The business account was assessed \$756.00 for overdraft charges in February 2010 [See Exhibit 26].

24. On July 3, 2010, a settlement check in the amount of \$5,000.00 payable to the law firm, Christopher Redman and Kelly Redman was deposited to the business account. **[Exhibit 28]**.

25. The \$5,000.00 was used to partially reduce an overdraft in the business account of \$6,426.22 **[Exhibit 29]**. The overdraft in the business account resulted mainly from a payroll tax payment on July 2, 2010. In July 2010, the business account was assessed \$1,764.00 in overdraft fees.

26. On July 13, 2010, \$2,500.00 of client funds was transferred from the trust account to business account and used to pay the firm's operating expense and cover overdrafts.

27. As of July 15, 2010, the trust account was short \$16,999.82 in funds the firm should have been safeguarding on behalf of clients **[Exhibit 30]**.

28. On July 22, 2010, \$2,476.94 was transferred from the business account to the trust account **[See Exhibits 29 and 31]**. These funds represented the return of funds for Redman, which were then disbursed via trust check #s1130 – 1033 **[Exhibits 32-35]**.

29. On August 25, 2010, a settlement check in the amount of \$15,000.00 payable to Kathleen & John Andolaro and the law firm was deposited to the trust account **[Exhibit 36]**.

30. On August 26, 2010, \$10,000.00 was transferred from the trust account to the business account from the Andolaros' funds **[Exhibits 37 and 38]**. The firm was only entitled to legal fees of \$5,000.00.

31. The Andolaros did not authorize or know about the use of their funds.

32. By August 27, 2010, the business account was overdrawn by \$5,323.33 **[See Exhibit 38]** and the trust account was overdrawn by \$90.92 **[See Exhibit 37]**.

33. As of August 27, 2010, all of the funds which the firm should have been safeguarding on behalf of the Andolaros, for client Barrow and the Royal Court tenants, had been used to pay the firm's business expenses.

34. Barrow did not know about or authorize the use of his/her funds.

35. Kathleen Andolaro was paid \$10,000.00 via trust account check #1149 on September 14, 2010 [Exhibit 39].

36. \$15,000 deposited on September 7, 2010 from Pattison Sports Group LLC was used for the Andolaro payment. [Exhibit 40] Andolaro could not have been paid without use of the Pattison Group money because the trust account balance was insufficient without this deposit [Exhibit 41].

37. Pattison Sports Group LLC is owned by respondent's brother, Jeff Long.

38. Jeff Long was paid \$17,000.00 via trust account check #1251 dated October 7, 2010, even though there were no funds in the trust account for Jeff Long [Exhibit 42].

39. Attorney fees and a second settlement check in the Royal Court tenant matter totaling \$210,075.00 were deposited to the trust account to cover the \$17,000.00 check [Exhibit 43]. Prior to the fees being deposited to the trust account, the balance in trust was only \$554.92.

40. In September 2010, \$36,662.60 in payroll transactions was paid from the trust account [Exhibit 44]. A total of \$37,889.66 in earned fees was deposited to the trust account that month. However, the trust account was overdrawn by \$757.58 as of September 21, 2010. Therefore, any client funds that should have been in the account were also used for payroll.

41. In September 2010, the business account was for overdrawn almost the entire month, resulting in overdraft fees totaling \$1,044.00 [Exhibit 45].

42. The second installment in the Royal Court settlement in the amount of \$200,000.00 was deposited to the trust account on October 4, 2010 [See Exhibits 43, Exhibit 46].

43. \$117,500.00 in legal fees was transferred from the trust account to the business account, even though the firm was only entitled to \$100,000 in fees on this portion of the settlement, thereby invading \$17,500 in funds the firm should have been safeguarding on behalf of Royal Court tenants. The excess funds were needed in the business account to cover overdrafts and payroll taxes [Exhibit 47].

44. On October 19, 2010, Augustina Lopez Vallada (hereinafter "Vallada") was paid settlement proceeds via trust account check #1137 of \$3,222, even though there were no funds in the trust account for Vallada [See Exhibit 46 and Exhibit 48].

45. Funds on deposit for the Royal Court tenants were used to pay Vallada.

46. On November 1, 2010, a cash deposit of \$10,000.00 was made to the trust account [Exhibit 49]. These funds replenished the trust account for the funds misappropriated from Royal Court tenants in October 2010.

47. The cash deposit was a loan from Jeff Long.

48. The loan covered outstanding checks payable to Royal Court tenants. Even with the loan, the trust account became overdrawn by November 8, 2010 [Exhibit 50].

49. On November 12, 2010, Jeff Long was paid \$11,000.00 via trust account check #1267 [Exhibit 51]. This payment created an overdraft in the trust account of \$11,375.73 [See Exhibit 50].

50. As of November 12, 2010, when the trust account was already overdrawn, numerous Royal Court tenant checks were still outstanding. In addition to the outstanding

checks, an additional \$12,000.00 should have still been on deposit in trust for the Royal Court tenants.

51. In an attempt to cover these shortages, on November 15, 2010 a transfer of \$30,000.00 was made from the business account to the trust account [See **Exhibit 50 and Exhibit 52**].

52. By of November 30, 2010, the trust account balance was only \$624.27 [See **Exhibit 50**].

53. In December 2010, a total of \$5,020.00 was transferred from the business account to the trust account to cover checks still clearing from Royal Court tenants. The trust account was overdrawn on several dates in December 2010 as was the business account [**Exhibits 53 and 54**].

54. At the time of the December 2010 overdrafts in the trust account, Royal Court tenant checks in excess of \$3,000.00 were still outstanding, \$12,000.00 should have been on deposit in trust for Royal Court tenants and \$1,312.58 should have been on deposit for McLeod.

55. Between January 2011 and April 2011, transfers continued to be made from the business account to the trust account to cover outstanding checks as they were presented for payment. A cash deposit of \$530.00 was required to cover a trust account overdraft on March 16, 2011 [**Exhibit 55**]. Additionally, Royal Court funds totaling at least \$12,000.00 should have still been in the trust account.

56. On July 14, 2011, \$12,000.00 was deposited to the trust account to cover an overdraft in the amount of \$11,457.49 [**Exhibits 56 and 57**].

57. The overdraft was the result of a \$12,000.00 payment to the Royal Court Homeowners Association [**Exhibit 58**].

58. The \$12,000.00 deposit was a portion of a fee check in the amount of \$49,167.50 payable to the firm [Exhibit 59]. The remaining \$37,167.50 of the fee was deposited to the business account [Exhibit 60].

59. On March 27, 2012, the trust account was short \$29,222.64 for client funds which should have been on deposit [Exhibit 61]. The trust account balance was only \$2,762.12 [Exhibit 62].

60. On March 28, 2012, \$20,000.00 was transferred from the business account to the trust account [See Exhibits 62 and Exhibit 63]. The funds were needed to cover trust account check #1392 dated March 27, 2010 payable to PRB Builders for \$20,000.00 in the Tarter matter [Exhibit 64].

61. The \$20,000.00 settlement in the Tarter matter was deposited one month prior, on February 28, 2012 [Exhibits 65 and 66].

62. The Tarter deposit was used to pay presented outstanding checks as follows: \$1,666.66 Royal Court payments [Exhibit 67], \$14,463.04 for the Basile settlement [Exhibit 68], and \$4,222.38 for the Sharpe settlement [Exhibit 69].

63. On June 1, 2012, the trust account balance was \$2,762.12 [Exhibit 70].

64. By June 7, 2012, the trust account was overdrawn when check number #1393 in the amount of \$3,615.76 posted on June 7, 2012 [See Exhibits 70 and Exhibit 71].

65. \$1000.00 was transferred from the business account to the trust account to cover the shortage [Exhibit 72].

66. The conduct of both respondents as set forth above constitutes the failure to safeguard property of clients and third parties/negligent misappropriation of trust funds in

violation of RPC 1.15(a) and the failure to supervise a nonlawyer assistant in violation of RPC 5.3(a) & (b).

SECOND COUNT

(Recordkeeping in violation of RPC 1.15(d) and R. 1:21-6, Failure to Safeguard in violation of RPC 1.15(a) and ACPE Opinion 454)

1. The General Allegations and the allegations contained in Count One are repeated as if set forth at length herein.

2. The following recordkeeping deficiencies and related violations were detected as a result of the audit:

- A. A schedule of clients' ledger accounts is not prepared and reconciled monthly to the trust account bank statement [R. 1:21-6(c)(1)(H)];
- B. Client ledger cards not maintained [R. 1:21-6(c)(1)(B)];
- C. Deposit slips not properly retained [R. 1:21-6(c)(1)];
- D. Client matters with debit balances [R. 1:21-6(d)];
- E. Trust receipt journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- F. Trust disbursement journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- G. Business receipt journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- H. Business disbursement journals not fully descriptive [R. 1:21-6(c)(1)(A)];
- I. Business account frequently overdrawn [R. 1:21-6(c)];
- J. Electronic trust account transfers are made without proper authorization [R. 1:21-6(c)(1)(A)];
- K. Improper image processed trust account checks [R. 1:21-6(b)];
- L. Improper image processed business account checks [R. 1:21-6(b)];
- M. Checks disbursed against uncollected funds [R. 1:21-6, RPC 1.15(a) and ACPE Opinion 454];
- N. Old outstanding checks are to be resolved [R. 1:21-6(d)].

3. Respondent's conduct as set forth above constitutes recordkeeping violations and related deficiencies in violation of *RPC 1.15(d)* and *R. 1:21-6, RPC 1.15(a) and ACPE Opinion 454*.

WHEREFORE, respondents should be disciplined.

DATED:

February 19, 2014

By:

Charles Centinaro

Charles Centinaro,
Director