SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-228
District Docket No. XIV-2005-187E

IN THE MATTER OF	
CHARLES STEPHEN BARTOLETT	
AN ATTORNEY AT LAW	

Corrected
Decision

Argued: October 15, 2009

Decided: December 16, 2009

Nitza I. Blasini appeared on 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 came before us on a recommendation for disbarment filed by special ethics master Joseph A. McCormick, Jr., Esq., based on what he determined to be respondent's knowing misappropriation of escrow funds, intended for the

satisfaction of a lien held by the Gloucester County Board of Social Services ("Social Services").[1] In addition, the special master recommended a one-year suspension for respondent's violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation) as a result of his false statement to Social Services that the funds had been placed in his "escrow" account (presumably, his trust account). The special master also recommended the imposition of a reprimand for respondent's deposit of a settlement check into his business account without the endorsements of all payees.

For the reasons stated below, we determine to impose a three-month prospective suspension on respondent for his failure to safeguard escrow funds (conduct that, in essence, constituted negligent misappropriation), his misrepresentation to Social Services, and his deposit of the settlement check into the business account without the payees' endorsements.

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[1] As will be discussed below, although the caption of the disciplinary case included respondent's law partner and spouse, Kim Michelle Kline, the special master dismissed the charges against her.

Respondent was admitted to the New Jersey bar in 1983. At the relevant times, he was a partner with Bartolett and Kline, located in Margate and Philadelphia.

In 2003, respondent received two three-month suspensions. The first, effective August 1st of that year, proceeded on a default basis and included gross neglect, lack of diligence, failure to communicate with the client for whom respondent had handled several matters, failure to communicate, in writing, the basis or rate of his fee, concurrent conflict of interest, misrepresentation of the status of the cases to the client, failure to turn over his client's files upon request, failure to maintain a bona fide office for the practice of law in New Jersey, failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice (that is, his failure to comply with a bankruptcy court's order). In re Bartolett, 176 N.J. 511 (2003). The office address at issue was 7707 Bayshore Drive in Margate, which was a single-family home in a residential neighborhood owned by respondent's parents-in-law.

Respondent's second three-month suspension, effective November 1, 2003, stemmed from his gross neglect, lack of diligence, failure to communicate with the client (in two client

matters), improper calculation of a contingent fee, failure to memorialize the contingent fee, conflict of interest involving an improper business relationship with a client, failure to maintain a bona fide office for the practice of law in New Jersey, and failure to cooperate with disciplinary authorities. In re Bartolett, 177 N.J. 504 (2003). The same Margate office address was at issue.

Here, in the first count of a two-count complaint, the Office of Attorney Ethics ("OAE") charged respondent with having violated In re Advisory Committee on Professional Ethics Opinion 635, 125 N.J. 181 (1991) ("Opinion 635") and RPC 8.4(c), as a result of his failure to obtain the payees' endorsements on a settlement check, prior to its deposit into the firm's business account.[2] In addition, respondent was charged with having violated RPC 1.15(a) (failure to safeguard funds) and RPC 8.4(c), as a result of his misrepresentation to Social Services that he had escrowed $7946 for the purpose of satisfying its

[2] The issue of respondent's deposit of the check into the business account, instead of the trust account, will be discussed in detail below.

lien against the settlement proceeds and his failure to escrow the funds, which he then dissipated.

The second count of the complaint charged respondent and Kline with the knowing misappropriation of at least $76,624.11 in estate funds that were to be distributed to three charities, under the terms of the last will and testament of decedent Emily Hinkle ("Hinkle"), a violation of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, 81 N.J. 451 (1979) (disbarment for attorneys who knowingly misappropriate client funds), and In re Hollendonner, 102 N.J. 21 (1985) (disbarment for attorneys who knowingly misappropriate escrow funds).

Special Master McCormick presided over a three-day hearing, which took place on October 21, October 22, and October 24, 2008. He heard testimony from OAE auditor Barbara Galati; Social Services employee Debra Newman; former associate counsel to Social Services Timothy D. Scaffidi; Kathryn J. Peifer, the executive director of the Pennsylvania Lawyers' Fund for Client Security ("Pennsylvania Fund"); Suzanne Hecht, a former associate with Reed Smith Shaw & McClay; Howard Eliot Merlin, the vice president for fiscal affairs at Lincoln University; and Christopher Douglas Pott, the chief financial officer of the American Leprosy Missions.

On March 30, 2009, the special master issued his report. With respect to count one, he found that respondent violated Opinion 635, when he failed to have all payees endorse the settlement check, prior to its deposit into his business account. The special master found no violation of RPC 8.4(c) because his client received all funds to which she was entitled. For this transgression, the special master recommended a reprimand.

In addition, the special master found that respondent violated RPC 1.15(a), when he failed to maintain the $7946 that he claimed to have escrowed for the purpose of paying the Social Services lien. Although the complaint only charged respondent with failure to safeguard funds, the special master found that respondent had knowingly misappropriated the $7946 because he had deposited it into his business account and used it for his own purposes. Finally, the special master found that respondent violated RPC 8.4(c) by virtue of his misrepresentation to Social Services that the funds had been escrowed.

The special master dismissed the second count of the complaint as to both respondent and Kline for lack of clear and convincing evidence, due to the destruction of their records in

a fire, the death of the executor of the estate, and the passage of time.

The special master recommended respondent's disbarment for his knowing misappropriation of the $7946 that was owed to Social Services. He also recommended the imposition of a one-year suspension for respondent's misrepresentation to Social Services that the funds had been placed in escrow.

As a preliminary matter, we note that our review of the dismissal of the second count of the ethics complaint is limited to the charges against respondent only and does not include Kline. As to respondent's case, R. 1:20-15(f)(1) provides that "[a]ll recommendations for discipline received by the Board, except for admonitions and those consent matters that are reviewable only as to the recommended sanction, shall be promptly heard de novo on the record on notice to all parties." In addition, we are charged with reviewing "any portion of the charges dismissed by the trier of fact." Ibid. Thus, counts one and two, as to respondent, are properly before us.

Kline, however, was the subject of count two only, which was dismissed as to both parties. When an ethics charge is dismissed, after a hearing, on the basis that there has been no unethical conduct, we review the matter only if the original

grievant or the OAE files an ethics appeal. R. 1:20-15(e)(1)(ii). In this case, no appeal from the special master's determination as to Kline was filed. Moreover, the OAE has stated that it agrees with the special master's decision. Thus, the dismissal of the second count as to Kline is not before us.

Respondent and Kline testified about their law practice and its status as of the date of the hearing. Each of them explained that they had utilized "Bartolett and Kline" letterhead, which reflected office locations in Philadelphia and Margate. They also maintained trust and business accounts in the name of Bartolett and Kline. Notwithstanding respondent's 2003 suspension, his name was not removed from the firm's bank accounts, because, he testified, he did not believe it was required for suspensions of that length.

According to respondent and Kline, they each had their "own separate clients." Most of Kline's clients were in New Jersey, while most of respondent's were in Philadelphia. He handled the Pennsylvania cases; she handled the New Jersey cases.

The Philadelphia office was located in a house formerly owned by respondent and Kline, but now owned by Kline's parents. The Margate office was located at 7707 Bayshore Drive, the

location that the Supreme Court had ruled, in 2003, not to be a bona fide office.

In 2000, Kline's mother, Shirley, had a stroke, causing Kline to wind down her practice to part-time status. Respondent and Kline claimed that, when Shirley had the stroke, they discontinued the Philadelphia practice and moved everything, including the firm's records, to the Margate office.

On July 8, 2002, a fire at the Margate property destroyed all of the firm's files, computer discs, and hard drives. The building was condemned, gutted, and rebuilt. Consequently, all records pertaining to the two client matters at issue in this case were lost.

Assistant Atlantic County prosecutor Renée Grossman Malamut testified that she witnessed the blaze and assisted the family in its attempt to recover anything that had survived the fire. According to Malamut, all papers and personal property were destroyed; "there was absolutely nothing salvageable."

The Eldridge Matter – Count One

Respondent testified that he had represented Michelle Eldridge in a number of matters, prior to his retention to pursue, on her behalf, a personal injury claim arising out of a

1991 automobile accident. Ultimately, the claim proceeded under the uninsured motorist provision of a policy held by Eldridge's father, Michael Pratt.[3]

Debra Newman, a human services specialist with Social Services, testified that, in March 1992, she learned that Eldridge had a "possible pending resource," as the result of the auto accident. On May 7, 1992, Eldridge signed an agreement to repay to Social Services the amount of welfare that she would receive between the date that her personal injury claim arose and the date that it was resolved and the funds disbursed.

On June 17, 1992, Newman wrote to respondent, informed him of Eldridge's legal obligation to repay the public assistance received during the time that her insurance claim was pending, enclosed a copy of the signed agreement to repay, and stated that Social Services expected his "cooperation in securing [its] repayment at the time any funds are disbursed." Newman also advised respondent to contact attorney Joseph A. Alacqua, Social

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[3] Kline testified that she had no involvement with the Eldridge matter and that she knew nothing of the "escrow question" until respondent brought it to her attention.

Services' solicitor, if he had any questions "pertaining to the validity and/or legality of the above procedure."

On December 13, 1993, Newman wrote to respondent and informed him that $10,407 was due to Social Services for the period from November 12, 1991 to December 31, 1993, and that the figure would increase at the rate of $403 per month.

On August 22, 1995, respondent wrote to Alacqua and explained that Eldridge could not file a lawsuit against the driver responsible for the accident, as the driver could not be located. Moreover, he stated, as of that date, Eldridge had received from the insurance company only the payment of her medical bills. Because Social Services did not provide Eldridge with medical coverage, respondent asserted, no lien attached to these payments.

Respondent acknowledged, at the disciplinary hearing, that he had received prior notices regarding the Social Services lien. Moreover, he admitted that he knew about Social Services' claim as of the date of this 1995 letter to Alacqua. He was not certain that Social Services had been entitled to any money, however, which, he claimed, was "one of the reasons why [he] waited until it was in a judgment form for it to be paid."

On September 8, 1995, Newman wrote to respondent and informed him that, as of April 30, 1994, the amount of the lien was $11,919, representing child support paid to Eldridge. The letter provided respondent with instructions for satisfying the lien.

On August 1, 1997, the insurance company issued a $32,700 check payable to Eldridge, Pratt, and Bartolett & Kline. A week later, the check was deposited into Bartolett and Kline's business account, instead of its trust account. Respondent testified that, when he received the check, he called Eldridge and her father to make arrangements for them to endorse it, to sign releases, and to schedule the distribution of the proceeds. However, respondent claimed, Eldridge was so anxious for the money that she granted him permission "to just deposit it so it could clear as soon as possible," after which he could disburse her share of the proceeds to her. Respondent never reduced Eldridge's oral permission to writing.

On August 25, 1997, respondent wrote the following letter to Newman:

Dear Ms. Newman:

> I know that I have received notices from you and from Mr. Alacqua regarding this matter. Please be advised that my client did not file suit regarding this accident. She did receive today $30,000.00 from her uninsured motorist insurance for this accident.
>
> I have reviewed the Agreement to Repay dated 5/7/92 signed by Michele Eldridge. I do not believe that any of that money is owed to you under this release. It states that the amount to be repaid equals the welfare paid for the persons for whose support that person is resonsible [sic]. I understand that the welfare paid in the amount of $11,919.00 was paid solely for Ms. Eldridge's children. This recovery of $30,000.00 is solely for Ms. Eldridge's pain and suffering, work loss, and medical bills. None is for the benefit of the children and hence none of this is owed to you.
>
> My fee in this matter was a one third contingency fee. Of the $11,919.00 you claim is owed, at the most $7,946.00 would be owed. I have put this amount in my escrow account, pending a final release from you. Please advise. [Emphasis added].
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> [OAEaEx.2][4]

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[4] "OAEaEx.2" refers to respondent's August 25, 1997 letter to Debra Newman.

Respondent conceded that there was "no question" that he was aware of Social Services' lien, that he had agreed to escrow the funds, and that he had stated to Social Services that he had escrowed the monies but that he never did so. Respondent explained that he had "forgotten" to escrow the monies in his trust account:

> A. I forgot – I forgot because it was my thought at that time that we could immediately make the payment to [Social Services] and be done with it, and that's why I didn't put it in an escrow account, only to find out that I didn't have the agreement [sic] deal that I thought we had.
>
> . . . .
>
> Q. And is it still your testimony that you forgot about depositing that check into the trust account?
>
> A. Inadvertently, yes, it was my – it's my recollection that when the money was received that I made the distribution to – to Miss Eldridge, you know, after getting a release, that I attempted to contact Mr. Alacqua or whatever because we had the deal and I was prepared to make the payment.
>
> Sometime at that time then I found out, I guess, that he wasn't there or there were other attorneys involved and – and that, no, they wanted more than that as the lien, and my client adamantly refused to pay more, and yes, at that time, you know, I thought it was going to be settled so that's why I didn't inadvert – I didn't put it in the

> escrow – trust account because I was going to make distribution.
>
> When I found out it wasn't, I should have put it in the escrow account, or it should have been there in the first place, I know, but I did forget, yes.
>
> [3T125-9 to 3T127-17.][5]

Respondent never placed the $7946 in escrow in his trust account. The funds remained in his business account. Respondent and Kline spent the monies on business and personal expenses.

On September 2, 1997, Newman wrote to respondent and informed him that Social Services was owed $13,218 and that the amount was increasing at the rate of $424 per month. She enclosed a copy of the regulation that required the recipient of assistance to repay the amount received and stated that it included the recipient's children who live in the same house.

Attorney Timothy D. Scaffidi testified that, from early 1999 until sometime in 2006, he was associate counsel to Social Services. Among other duties, Scaffidi was responsible for

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[5] "3T" refers to the transcript of the October 24, 2008 hearing before the special master.

recovering monies that were paid to Social Services clients, as the result of personal injury lawsuits.

Apparently, between September 1997, the date of Newman's rejection of respondent's proposed payment, and April 1999, the issue of repayment to Social Services remained stagnant.

On April 26, 1999, Scaffidi wrote to respondent and informed him that Social Services was owed $13,218 in the Eldridge matter. He also cited the regulation that required Eldridge to reimburse Social Services for assistance paid on behalf of her children.

A year and a half later, on October 24, 2000, Scaffidi wrote to respondent and inquired about the status of the $7946, stating: "I am interested in having you confirm or verify whether the amount of $7,946.00, which you advised would be held in escrow . . . is still being held in escrow or has been released to Ms. Eldridge."

Respondent could not recall having received Scaffidi's letters of April 26, 1999 and October 24, 2000. He claimed that he did not pay the escrow in 2000, 2001, or 2002 because "they wanted more of the escrow."

As Newman testified, respondent's non-responsiveness to Scaffidi's inquiries resulted in Social Services' filing a

lawsuit against respondent and Eldridge, presumably in 2001. On May 13, 2004, Social Services obtained a default judgment against Eldridge and respondent in the total amount of $10,394. Ultimately, Social Services levied upon respondent's trust account and obtained $7,952.08.[6] As of October 21, 2008, however, the judgment had not been fully satisfied.

Respondent recalled having been sued by Social Services and making one court appearance in that matter. He claimed that he was advised by the OAE investigator to wait to pay the funds due to Social Services until after the entry of a court order, directing the seizure of the funds. He then asked Kline to deposit $10,000 into the trust account on August 12, 2004. Respondent testified that the source of these funds was a portion of the attorney's fee that he had earned in an estate matter (Emily Hinkle), which was kept in a separate account over which Kline held power of attorney.

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[6] Respondent asserted that the account was levied upon with his "permission," inasmuch as he did not object to the notice of levy.

Respondent testified that Eldridge had contacted him, in the fall of 2002, after she had been sued by Social Services for the lien. After discussing the matter with her, they agreed not to contest Social Services' claim for the funds. At about the same time, Scaffidi, too, reminded respondent of the need for the escrow.

When asked why he had not replenished the funds until two years later, respondent stated that he did not realize, at the time, that the funds were not in escrow in his trust account:

> A. Well, again, I was reminded of the lien, but I didn't realize that the lien was not in an escrow account – or that the money for the lien was not in an escrow account until – until 2004, whenever I made that deposit.
>
> Q. Well, what caused you to remember that the money was not in the business account or the trust account intact in 2004?
>
> A. It probably was the first time I saw or that I looked at a statement.
>
> Now, I'll remind you that the fall of 2002 was after the fire, and the location, we were having a lot of trouble with mail being forwarded to the different locations that we were staying and so forth.
>
> In the fall of – I think it was the winter of 2000 – I think it was early 2004, if I recollect, that – that we were able to move back into the location at 7707 Bay Shore Drive. So I'm not sure what mail we

received in between that time period, and that would include bank statements.

[3T139-10 to 3T140-13.]

Respondent denied that he had never paid the lien. He claimed that it was satisfied when the court ordered it out of his trust account.

The Emily Hinkle Estate – Count Two

Respondent testified that his grandmother had introduced him to Emily Hinkle and the future executor of her estate, Edward G. Linton. The grandmother recommended respondent when she learned that Hinkle needed an attorney.

When respondent first met with Hinkle, he learned that she had not paid any income taxes in approximately ten years. Because Hinkle did not trust attorneys, she required respondent to work closely with Linton, in straightening out her affairs. Respondent testified that Hinkle was a difficult person.

Respondent stated that, for a couple of years, he spent many days with Hinkle, going through her papers. Her records were in a shambles. In the course of this work, he realized that she had "a substantial estate," but no estate plan.

Initially, he was able to set up a trust, with Linton as trustee.

Respondent claimed that his fee agreement with Hinkle provided for him to "help her put her finances in order" and to help her with estate planning, including overseeing the trust during her lifetime. When Linton became executor, respondent became his attorney.

Throughout his representation of Hinkle, respondent submitted periodic statements to her, which she would sign. He believed that he had charged her a $150 hourly rate. Respondent and Hinkle's agreement provided that he would not be paid until after she had passed away. Respondent acknowledged that this was a "pretty unusual" agreement and was the first of its kind for him. He believed that, when he became counsel to Linton as executor, they also entered into a written fee agreement at a $150 hourly rate.

Respondent claimed that he had "releases signed by Miss Hinkle for all the hours that [he] had spent with the understanding that . . . [he] wasn't going to be paid until, you know, later on after I handled her estate." He also had "signed statements" from Linton, agreeing to his "reimbursement."

Respondent spent more than 400 hours working on Hinkle's matters.

Respondent and Kline testified that her only involvement with Hinkle's will was as a witness to her signature. However, he believed that they probably had discussed some tax issues involved in the Hinkle matter. Nevertheless, Kline was able to confirm the accuracy of respondent's testimony regarding the amount of time he spent working with Hinkle, the amount of the fee, and the circumstances leading up to the opening of the New Jersey bank account.

Respondent testified that Linton handled all of the banking for Hinkle and then for her estate. According to respondent, after Hinkle died, and throughout the administration of her estate, Linton maintained control of all estate assets, none of which were in respondent's name.

OAE disciplinary auditor Barbara M. Galati testified about the $57,437.35 at issue in the Hinkle estate matter. The estate account was located at First Union Bank and held in care of Edward G. Linton, the executor. From December 1999 through May 3, 2002, the account was inactive, with a balance of $57,437.35.

On May 8, 2002, Linton closed the First Union account. A check in the amount of $57,437.35 was issued to the estate. On

May 23, 2002, an account was opened at New York Community Bank (hereafter, the "New Jersey bank account"), into which the check was deposited. It was the last time that respondent saw Linton, who died in 2003.

The account was identified as follows:

Estate of Emily Hinkle
Edward Linton – Executor
Michelle Kline – POA
7707 Bayshore Dr
Margate, NJ 08402

Kline had signatory authority over this bank account. According to respondent, Kline's name was on the account because "we were operating under the letterhead of Bartolett and Kline."

According to respondent, the $57,000 represented the attorney's fees and costs that were owed to him for 400 hours of work that he did for Hinkle, while she was alive, and for the work that he did for Linton, as executor of Hinkle's estate. He explained that the fees were held in the account from December 4, 1999 through May 3, 2002, because a very cautious Linton was concerned that tax issues might arise. Linton wanted some funds available for that purpose. According to respondent, this was the reason why he did not place the funds into his business account.

Eventually, respondent and Linton agreed that respondent would take his fee in piecemeal, though Linton did not have to approve each withdrawal. Because Linton still wanted to maintain some control over the funds, respondent suggested that the New Jersey account remain in Linton's name, with a power of attorney to Kline. The agreement with Linton regarding the establishment of Kline's power of attorney was presumably destroyed in the 2002 fire.

After Linton's death in 2003, the money remained in the New Jersey account because "that was kind of a crazy time."

Two disbursements were made during the month of June 2002: $400 on June 3 and $1600 on June 10. The $400 check was deposited into the personal account of Kline's mother, Shirley. Similarly, a July 20, 2002 check, payable to Kline, in the amount of $700, was deposited into Shirley's account.

Between December 20, 2002 and January 24, 2005, a total of $26,000 was removed from the estate account and deposited into Shirley's personal account. As of February 11, 2005, the estate account balance was $3,648.29.

Between June 3 and August 31, 2002, four estate account checks, totaling $7600, were issued to respondent and deposited into his personal bank account. Between March 3, 2003 and March

25, 2005, $9700 was removed from the estate account and deposited into the Bartolett and Kline business account.

On August 12, 2004, $10,000 was taken from the estate account and placed into the firm's trust account. Galati testified that she "believe[d]" that this money was "for the Eldridge matter." On March 26, 2005, $1000 was removed from the estate account and deposited into the firm's business account. On April 28, 2005, there was a closing withdrawal in the amount of $1,649.90. As of May 11, 2005, the estate account had a zero balance.

Respondent did not know if he had directed Kline to make the withdrawals from the New Jersey bank account. He stated that business expenses had to be paid and that she was the person who handled the banking. Respondent told her that the monies were "our fee so it can be used as long as we didn't take it all out at once and give poor Mr. Linton a heart attack."

Kline testified that she opened the New Jersey account with respondent's Social Security number because it was his fee. She added that, as they drew down the account, the funds were reported as income. She could not explain why she did not write "legal fee" on the memo line of the checks drawn against the New Jersey bank account. She acknowledged that such omission was

sloppy. She explained that funds were often put into her mother's personal account because they represented repayments of loans from her mother; at the time, she was doing a lot of banking for her mother and paying her mother's bills.

Respondent identified the inheritance tax return for Hinkle, which listed $50,000 in attorney fees due Bartolett and Kline. He stated that he had "guessed" the amount of the fee due, as the estate had not yet been fully administered. Although some of the fee already had been earned, he had taken none of it. Respondent was shown what purported to be the estate's "first and final accounting," which reflected a $25,000 fee due the firm for "estate administration," in addition to $126.29 in costs advanced. Respondent could not state that this was the final form of the accounting, as he no longer had the file.

Hinkle's will left one-quarter of her residuary estate to the following five charities: Lincoln University; the American Leprosy Mission, Inc.; Helping Hand Rescue Mission of Philadelphia; American Printing House for the Blind; and Maine Seacoast Missionary Society. Respondent was able to state with certainty that all of the beneficiaries under Hinkle's will were paid by Linton because he saw Linton write out the checks and

mail them. Linton did not do anything outside of respondent's presence.

Respondent claimed to have obtained releases from all of the charities that were beneficiaries under the will. He recalled specifically that the check for the American Leprosy Mission was sent to its New York address, although he was not sure when. All of the papers relating to the estate had been destroyed in the fire.

Representatives of two of the charities – Lincoln University and the American Leprosy Mission – testified that their organizations had not received any distribution of funds, under the terms of Hinkle's will. Howard Eliot Merlin, vice president for fiscal affairs at Lincoln University, testified that he first learned of the Hinkle bequest after he received a letter from the OAE, informing him that they were pursuing "irregularities in the Hinkle estate." In response, Merlin ordered a review of the university's records and concluded that it had not received any distribution from the estate. He also contacted Lincoln University's former outside counsel, the Reed Smith law firm, and learned that they had no record of either a declination or receipt of the funds. The university's master file for the estate included correspondence from Reed Smith

regarding the unsatisfactory accounting that respondent had provided.

At some point, Lincoln University filed a claim with the Pennsylvania Fund. Kathryn J. Peifer, the executive director of the Pennsylvania Fund, testified that, on July 12, 2007, the Fund approved an award in favor of Lincoln University and against respondent, in the amount of $25,541.37, which was paid on August 1, 1997.

Peifer testified that respondent had been provided with notice of Lincoln University's claim when it was made and that he had replied to it. Peifer recalled that respondent had taken the position that the claim should be denied because the university was not his client and he had not handled its funds. Rather, he claimed that the executor had distributed the funds to all beneficiaries. Moreover, respondent stated that all of his business records had been destroyed in the July 2002 fire.

On September 21, 2006, the New Jersey Lawyers' Fund for Client Protection rejected the university's claim, "due to insufficient proof of dishonest conduct and insufficient nexus to New Jersey."

Suzanne Hecht testified that she was an associate with the Philadelphia office of the Reed Smith law firm from 1989 through

1998. At the time, Reed Smith represented Lincoln University. Hecht worked on Lincoln University matters, including a matter involving the Hinkle estate.

Lincoln University forwarded for Reed Smith's review an accounting, receipt release, and refunding agreement prepared by respondent. After Hecht had reviewed the information, she had some questions, which she made the subject of a letter to respondent. Accordingly, she advised Lincoln University not to accept respondent's proposed accounting.

Hecht did not have success in receiving additional information from respondent. Thus, on May 19, 1992, she wrote to him and advised him that, until she received the information, Lincoln University would not sign the receipt, release, refunding, and indemnification agreement. After Hecht failed to hear anything from respondent, she wrote another, more detailed, follow-up letter to him, on August 18, 1992. Yet another letter was written to him in December 1994.

To the best of Hecht's knowledge, Lincoln University never signed any release and never received its bequest. She never resolved any of the issues with respondent.

Respondent acknowledged that Reed Smith had questioned the accounting that he submitted, but he claimed that Lincoln

University signed a release because it wanted the money. According to respondent, Lincoln University was paid its share. He stated that, at the time, Lincoln University was embroiled in an internal dispute, as well as a dispute with Reed Smith.

Respondent was shown his February 14, 1992 letter to Lincoln University, in which he proposed that $20,000 be withheld to cover potential tax liability by the estate. Ultimately, respondent testified, $20,000 in taxes was paid. He believed that more than $20,000 was actually due, but Linton agreed to pay the difference out of his commission.

In December 2005, the OAE notified the American Leprosy Mission that it had reason to believe that Hinkle had bequeathed money to the organization. The OAE asked if the organization had received any monies from the estate. On February 7, 2006, James R. Lyon, Sr., the chief financial officer of American Leprosy Missions, replied to the letter, stating that the organization had received no funds from the estate.

Christopher Douglas Pott succeeded Lyon as the chief financial officer of the American Leprosy Mission in Greenville, South Carolina. Pott testified that, based on his conversations with Lyon, the organization had no record of having received any distribution from the Hinkle estate.

Kline stated that she was entitled to no fee with respect to the Hinkle estate because respondent "did all the work." At times, respondent would confer with her about tax issues on his cases, as she had an LLM in taxation. She did not recall having discussed any of Hinkle's issues. Indeed, she was "a little insulted that [Hinkle] didn't want anything to do with a female attorney."

Respondent maintained, on the one hand, that he believed that he had been very careful documenting his actions in the Hinkle estate and in the Eldridge matter. Yet, he also stated, on the other hand, that he kept his time records by hand on a piece of paper. Moreover, he did not have the records to back up his claims.

In the Eldridge matter, the special master found that respondent had improperly endorsed the $32,700 check issued to "Michele Eldridge & Michael Pratt & Bartolett & Kline, Esqs.," in violation of Opinion 635, inasmuch as he had no written power of attorney permitting him to endorse the check on behalf of the payees. The special master found, however, that the improper endorsement was not a violation of RPC 8.4(c).

With respect to the Social Services' lien, the special master found that the agency had provided respondent with a copy

of the executed agreement for repayment; that Social Services had informed respondent that approximately $10,000 of the $32,000 in proceeds was due to be repaid to Social Services; that, although respondent had rejected Social Services' claim to reimbursement, he never took any affirmative steps to dispute the agency's entitlement to any repayment; that respondent's letter to Social Services misrepresented that he had escrowed $7946; that Social Services obtained a $10,394 default judgment against respondent; that Social Services was able to obtain only $7,952.08, through an account levy; and that the balance of the judgment remained unpaid. The special master concluded that respondent had violated RPC 1.15(a) and RPC 8.4(c), when he misrepresented to Social Services that he had escrowed the monies. The special master rejected respondent's claim that he had "forgotten" about the need to escrow the funds, noting that Social Services had contacted him a number of times, eventually having to sue him for the monies.

The special master also concluded that respondent had knowingly misappropriated the funds:

> The proceeds check was placed in the Business Account of Bartolett and the funds were used by him. Although the Respondent indicated that this was inadvertent, he took no steps to remedy the situation for years.

> As such, it must be concluded that this was a knowing misappropriation of funds in violation of *RPC* 1.15(a).
>
> [SMR10-SMR11].[7]

According to the special master, it was irrelevant that respondent did not agree that Social Services was entitled to any of the proceeds awarded to Eldridge. Until the issue was resolved, respondent was required to keep the funds in escrow. Moreover, respondent misrepresented that he had escrowed the funds. The special master wrote: "Public policy requires that the public be able to rely upon the representation of an attorney in this regard. Respondent failed in this responsibility and such failure must be considered a violation." The special master concluded that respondent's misrepresentation constituted a violation of RPC 8.4(c).

With respect to the second count of the complaint, the special master observed that it is an estate's executor who has the fiduciary duty to make the distributions required by a will. He further noted that no evidence established that any estate

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[7] "SMR" refers to the special master's report.

funds were transferred to respondent or that he, as opposed to the executor, was to make the distributions.

Similarly, the special master found, no evidence that the executor had objected to the transfer of the $57,000 from the First Union account to the New Jersey bank account. Therefore, the special master reasoned, neither respondent nor Kline had knowingly misappropriated any estate funds.

As mentioned above, the special master recommended the imposition of a reprimand for respondent's violation of Opinion 635. For respondent's knowing misappropriation of Social Services' funds, the special master reluctantly recommended his disbarment. He explained:

> I will state that I am troubled by this discipline because I did not find any intent by Bartolett to steal the money. The failure to escrow the funds seem [sic] to have been caused by a lack of good bookkeeping procedures and the overall unorganized nature of his practice. Later, it appeared to be complicated by financial pressures on the Respondent.
>
> If I believed that I did have discretion, I would not have determined that Bartolett be disbarred for I would have determined that a period of substantial suspension was indicated (*i.e.* three to five years). However, the *Wilson* Rule does not provide such discretion. Further, I have concluded that this is a *Wilson* rule

> situation despite the fact that this was not the contention of the OAE in its pleadings.
>
> [SMR15.]

Finally, the special master recommended a one-year suspension for respondent's misrepresentation to Social Services about having escrowed the $7946.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

We begin our analysis by noting the complaint did not charge respondent with either knowing or negligent misappropriation, despite the existence of clear and convincing evidence that respondent, in fact, misappropriated the $7946 that he claimed to have escrowed. At oral argument before us, however, the presenter informed us that, due to the lack of records caused by the passage of time, the OAE determined that it could not prove a case of knowing misappropriation. Instead, the presenter acknowledged, this was a case of "negligent misappropriation." Respondent did not object to the presenter's characterization of his use of the funds as negligent misappropriation.

For the reasons expressed below, we are unable to agree with the special master's conclusion that respondent knowingly misappropriated the $7946. As respondent testified, he believed that he and Social Services had an agreement, whereby he would turn over the $7946 in satisfaction of the lien. Respondent testified that, at some point, Social Services wanted more than $7946 as a lien, which his client refused to pay. Thus, he "didn't put it in the escrow – trust account because [he] was going to make distribution." Respondent contended that, when he learned that Social Services would not accept the $7946 and when his client "adamantly refused" to agree to the payment of more than that sum, he had forgotten to put it into the "escrow account," where, he claimed "it should have been . . . in the first place." Because nothing in the record clearly and convincingly demonstrates that respondent's conduct was intentional, we find that his failure to deposit the funds in his trust account and his subsequent use of the funds constituted a negligent misappropriation, rather than a knowing

misappropriation. In this context, respondent violated RPC 1.15(a).[8]

As to the other charges, the special master correctly ruled that respondent had violated Opinion 635 when he deposited the $32,700 check without the endorsements of Eldridge and Pratt. The opinion permits an attorney to endorse a client's name to a settlement check under "extraordinary circumstances" and then only by means of a power of attorney granted by the client(s). Opinion 635, supra, 121 N.J. at 186-87. In this case, respondent failed to follow such procedure.

The special master also correctly ruled that, notwithstanding respondent's deposit of the check without the proper endorsements, respondent did not violate RPC 8.4(c) because the client had requested that he put the check through immediately and she did receive her monies.

The special master also properly dismissed the second count of the complaint. Respondent claimed that it was Linton, the executor of the estate, who had made all the distributions under

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[8] RPC 1.15 "SAFEKEEPING PROPERTY," in the case subparagraph (a), encompasses the offense of negligent misappropriation.

the terms of Hinkle's will. Thus, if some of the beneficiaries were not paid, such failure would be due to Linton's actions, not respondent's. Unfortunately, Linton is dead, and respondent's records have been destroyed.

In terms of the $57,000 in estate funds that respondent and Kline expended, there was no proof that the funds were anything other than attorney's fees that were owed to respondent for his years of work for Hinkle and, later, for Linton. The terms of the fee agreement, as described by respondent, were odd, to say the least. But there is no evidence that they were anything other than what respondent claimed. In this regard, it is telling that the OAE has decided not to pursue this charge any further.

At the very least, respondent's misrepresentation to Social Services that he had escrowed the $7946 warrants the imposition of a reprimand. See, e.g., In re Lowenstein, 190 N.J. 59 (2007) (attorney intentionally failed to notify an insurance company of the existence of a lien that had to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien) and In re Aqrait, 171 N.J. 1 (2002) (despite being obligated to escrow a $16,000 deposit in a real estate transaction, the attorney failed to collect it but made a

misrepresentation by causing it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

As for the other violations, failure to obtain a proper endorsement and negligent misappropriation, the appropriate discipline for each of these infractions is an admonition and a reprimand, respectively. An admonition likely would be imposed for respondent's failure to have Eldridge and her father endorse the settlement check, prior to its deposit into his business account. See, e.g., In the Matter of Louis N. Caggiano, Jr., DRB 02-094 (May 22, 2002) (attorney deposited into his trust account a settlement check payable to him and his client without his client's endorsement; attorney paid the client her share of the settlement after the check cleared). As with a misrepresentation, negligent misappropriation warrants a reprimand. See, e.g., In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled).

When considered together, the aggregate of violations would merit a censure. However, there is respondent's disciplinary history to consider. He has been suspended twice for three-month periods. We, thus, find that another three-month suspension, to be served prospectively, is the appropriate measure of discipline for respondent's ethics violations in this case.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles S. Bartolett
Docket No. DRB 09-228

Argued: October 15, 2009

Decided: December 16, 2009

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel