SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 16-410
District Docket Nos. XIV-2015-0354E
and XIV-2015-0355E

IN THE MATTER OF	:
ROBERT H. LEINER	:
AN ATTORNEY AT LAW	:

Decision

Decided: June 27, 2017

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count formal ethics complaint charged respondent with having violated RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.3(a)(5) (failure to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal), RPC

5.5(a)(1) (practicing law while ineligible), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Respondent also was charged with knowing misappropriation of client funds, as defined by the Court in In re Wilson, 81 N.J. 451 (1979). For the reasons set forth below, we recommend respondent's disbarment for the knowing misappropriation of escrow funds, as defined by the Court in In re Hollendonner, 102 N.J. 21 (1985).

Respondent was admitted to the New Jersey bar in 1994 and the Pennsylvania bar in 1993. At the relevant times, he maintained an office for the practice of law in Westmont.

Respondent has been temporarily suspended and/or administratively ineligible on four different and overlapping occasions, for different reasons, between June 2005 and June 2016. During that period, respondent also received a reprimand for unrelated misconduct.

Specifically, effective June 24, 2005, the Court temporarily suspended respondent from the practice of law for failure to comply with a determination of the District IIIB Fee Arbitration Committee. In re Leiner, 184 N.J. 213 (2005). He was

reinstated more than three and one-half years later, on January 5, 2009. In re Leiner, ___ N.J. ___ (2009).

In the interim, on October 20, 2005, the Court reprimanded respondent for his violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (now (b)) (failure to keep a client informed about the status of the matter and to comply with reasonable requests for information), RPC 1.16(d) (failure to protect a client's interests upon termination of representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Leiner, 185 N.J. 246 (2005).

Effective October 27, 2014, respondent became administratively ineligible to practice law, due to his failure to comply with R. 1:28A, which governs the administration of the IOLTA fund. He was reinstated on January 20, 2015.

Effective November 17, 2014, respondent became ineligible to practice law, due to his failure to comply with the mandatory continuing legal education (CLE) requirement for one or more of the compliance-reporting years from 2011 through 2014. He was reinstated on February 17, 2015.

Effective June 10, 2016, respondent was temporarily suspended from the practice of law for failure to comply with a stipulation of settlement entered in a District IV Fee

Arbitration Committee matter. In re Leiner, 225 N.J. 6 (2016). He was reinstated on July 7, 2016. In re Leiner, 225 N.J. 531 (2016).

Service of process was proper. On September 6, 2016, the OAE sent a copy of the formal ethics complaint to respondent's office address, 210 Haddon Avenue, Westmont, New Jersey, by regular and certified mail, return receipt requested. The United States Post Office (USPS) database reflected no delivery information for the certified letter, which was not returned to the OAE. The letter sent by regular mail also was not returned.

On November 2, 2016, the OAE sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The USPS database reflected no delivery information for the certified letter, which was not returned to the OAE. The letter sent by regular mail also was not returned.

As of December 2, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

This matter arises out of a grievance filed with, and a referral made to, the District IV Ethics Committee (DEC) within days of each other, in early January 2015. The grievance was filed on January 7, by respondent's client, Robert Romalino, who claimed that, among other things, respondent had failed to both deposit in his trust account $4,500, given to him by Romalino and his uncle, Frank Muratore, Jr., and to then disburse the funds to a third party in satisfaction of an outstanding balance owed by Romalino and Muratore.

On January 9, 2015, the Trial Court Administrator for the Superior Court of New Jersey Burlington Vicinage (TCA) reported respondent to the DEC, as it appeared that he had been practicing law while ineligible and that he had made misrepresentations about his eligibility status to the courts.

The DEC docketed both matters and assigned the investigation to Ronald Katkocin, Esq. Because the OAE has charged respondent with failure to cooperate with ethics authorities in both matters, and the basis underlying each charge rests on many of the same letters and telephone calls, we set forth the facts underlying both RPC 8.1(b) charges.

On April 9, 2015, Katkocin sent a copy of the Romalino grievance to respondent at his Westmont office address and requested a written reply within ten days. Respondent did not comply with Katkocin's request.

On April 30, 2015, Katkocin sent another copy of the Romalino grievance, as well as a copy of the TCA's referral, to respondent at the same address and requested a written reply to both within ten days. Respondent did not comply with Katkocin's request.

On May 21 and June 16, 2015, Katkocin left a voicemail message for respondent at his law office. Respondent did not reply to the messages.

On June 17, 2015, Katkocin called respondent at his residence. After eighteen rings, the telephone remained unanswered, with no ability to leave a message.

On June 18, 2015, Katkocin wrote to respondent and reminded him of his obligations under R. 1:20-3(g)(3) (requiring an attorney to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information) and RPC 8.1 (presumably (b)) (rendering the failure to comply with R. 1:20-3(g)(3) an ethics violation). Respondent ignored this letter as well.

On July 16, 2015, Katkocin went to respondent's Westmont office location, but no one answered the door. At Katkocin's request, an attorney whose office was near respondent's agreed to tell respondent to call Katkocin the next time she saw him.

The next day, respondent called Katkocin and acknowledged that he had received Katkocin's letters. Katkocin scheduled respondent for an interview on the afternoon of July 20, 2015, but, at respondent's request, it was rescheduled to the following day. Although respondent appeared for the interview, he brought no files or paperwork with him. Thus, the complaint alleged, respondent never provided a written reply to the ethics grievance and the TCA's referral.

Based on what appeared to be an allegation of knowing misappropriation, in the Romalino grievance, both the grievance and the TCA's referral were transferred to the OAE for continued investigation. On November 4, 2015, the OAE wrote separate letters to respondent, informing him of the transfer, enclosing another copy of the grievance and referral, and requesting that he provide a written reply to each of them by November 16, 2015. The letters were sent to respondent at his Westmont office address by regular and certified mail, return receipt requested.

On November 9, 2015, respondent signed for the certified letter regarding the referral. "Barb Block" signed for the

letter regarding the grievance. The letters sent by regular mail were not returned to the OAE. Respondent failed to reply to both letters.

By letter, dated January 15, 2016, the OAE extended to January 29, 2016, respondent's deadline to submit a written reply to the grievance and the referral. Further, the OAE informed respondent that, if he continued to fail to cooperate with the investigation, the OAE would charge him with a violation of RPC 8.1(b) and seek his temporary suspension. The letters were sent to respondent's office address by regular and certified mail, return receipt requested. On January 19, 2016, "B. Block" signed for both certified letters. The letters sent by regular mail were not returned to the OAE. Respondent did not reply to either letter.

The formal ethics complaint issued on September 7, 2016. By that time, respondent still had not communicated with the OAE.

Based on the above allegations, respondent was charged with two counts of failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

The matter resulting in the TCA's referral involved respondent's representation of Toney Holliday, whose murder trial was scheduled to begin on December 2, 2014, in the Burlington County Vicinage, before the Honorable Terrence R.

Cook, J.S.C. As stated above, respondent was ineligible to practice law from October 27, 2014 to February 16, 2015. Thus, he was ineligible to practice law on the date scheduled for Holliday's trial.

During the week of November 17, 2014, Judge Cook and Presiding Judge Jeanne Covert, P.J.Cr., contacted respondent regarding his eligibility status. Respondent acknowledged his CLE ineligibility but stated that he would resolve the matter prior to the December 2, 2014 trial date.

On November 24, 2014, respondent informed Judge Cook that, by the December 2, 2014 trial date, he would be eligible to practice law and, thus, proceed. Accordingly, Judge Cook confirmed with all counsel that the trial would take place, as scheduled.

On December 1, 2014, members of Judge Cook's staff unsuccessfully attempted to communicate with respondent three times to obtain written verification of his eligibility. At approximately 3:15 p.m., Judge Cook was able to reach respondent, who stated that he would provide written confirmation of his eligibility when he returned to his office, which would be within thirty to forty-five minutes. Respondent was told that Judges Cook, Covert, and Assignment Judge Ronald

E. Bookbinder, A.J.S.C., would be waiting for his written confirmation of eligibility.

Judge Cook's secretary and Jury Management staff waited for respondent's facsimile until 5:00 p.m., but none arrived. Nevertheless, Jury Management staff instructed 190 jurors to appear for jury selection on the following day.

On the morning of the December 2, 2014 trial date, respondent still had not provided written verification of his eligibility to practice law. Thus, Judge Cook adjourned Holliday's trial until further notice.

Moreover, respondent failed to inform the court that Holliday had filed an ethics grievance against him, which he had received on November 25, 2014. According to the complaint, on March 5, 2015, the OAE administratively dismissed the Holliday grievance, pursuant to R. 1:20-3(f), pending resolution of the criminal proceeding.

On December 9, 2014, Michael Riley, Esq., replaced respondent as counsel for Holliday.

On January 5, 2015, while still ineligible, respondent appeared before the Honorable Janet Z. Smith, J.S.C., in a special civil trial, as counsel for Abatis Holdings, LLC and Abatis Security, LLC. The ethics complaint provides no further detail(s) about the appearance.

On Friday, January 9, 2015, while respondent was inside the Burlington County Courthouse, the Honorable John L. Call, Jr., J.S.C., confronted him, questioning why he was there. Respondent told Judge Call that he had been reinstated and was eligible to practice. Judge Call directed respondent to prove to Judge Bookbinder that he had been reinstated, but respondent failed to do so.

Based on the above allegations, the complaint charged respondent with the following RPC violations:

- RPC 3.3(a)(1), by knowingly making a false statement of material fact to a tribunal when he told Judge Cook, on November 24 and December 1, 2014, and Judge Call, on January 9, 2015, that he had been reinstated to the practice of law;

- RPC 3.3(a)(5), by knowingly failing to disclose to Judge Smith, on January 5, 2015, that he was ineligible to practice law;

- RPC 5.5(a)(1) and R. 1:28A-2(d), by appearing before Judge Smith while he was on the IOLTA ineligible list;

- RPC 5.5(a)(1) and R. 1:42-1, by appearing before Judge Smith while he was on the CLE ineligible list;

- RPC 8.4(c), by stating to Judges Cook, Covert, and Call that he had been reinstated to the practice of law even though he remained ineligible; and

- RPC 8.4(d), by misrepresenting his eligibility status to the court on December 1, 2014, resulting, in part, in 190 jurors reporting for duty on December 2, 2014, with the trial, involving three defendants, having to be adjourned.

The matter resulting in the filing of the grievance involved respondent's representation of Romalino and Muratore, who were the owners of an Atlantic City condominium (Atlantic City property), which they had rented to an unidentified individual. On an unidentified date, the Chelsea View Condo Association (Association) filed an enforcement action against Muratore for unpaid condo fees. Also, on an unidentified date, Romalino and Muratore retained respondent to conduct due diligence accounting services of the arrearages and negotiate a settlement of the overdue balance. Although respondent later assured Romalino that he had provided such diligence and had obtained an agreement to satisfy the balance with the Association's attorney, Marc Friedman, that was not true.

Specifically, on August 25, 2010, respondent e-mailed Friedman and offered to settle the dispute via a $2,000 down payment, followed by monthly payments of $1,000 until the arrearages were satisfied. On September 1, 2010, Friedman presented a counter-offer of a $3,000 down payment, followed by monthly payments of $1,500 until the arrearages were satisfied.

The parties did not reach a settlement. Nevertheless, on October 1, 2010, at respondent's request, Muratore issued a $2,500 check to him, representing payment of the outstanding balance, which respondent was to deposit in his "escrow account" and send to the Association. Unbeknownst to Muratore and Romalino, however, respondent neither deposited the check into his attorney trust account nor forwarded the funds to Friedman. Instead, as shown below, he deposited the check into his attorney business account and spent the money.

Several months later, respondent requested an additional $2,000 from Muratore and Romalino, which would permit their tenant at the Atlantic City property to have complete access to Association amenities. Romalino issued a check to respondent in that amount, which was negotiated on January 18, 2011. Respondent never forwarded the $4,500 to Friedman. Instead, as shown below, he simply cashed the $2,000 check and used the funds for other purposes.

On March 3, 2011, Romalino sent the following e-mail to Friedman:

> Marc,
>
> Two check payments were made...One on 10/07/10 [sic] in the amount of $2500 from Frank Muratore and the other on 01/14/11 from Romalino-Muratore Joint Account in the amount of $2,000. These payments were made to our attorney Robert Leiner and he advised

> us that these checks were deposited into his escrow account and forwarded to you. He also stated that he was closely working out a payment arrangement so that you would remove the judgment and my Tenant would begin making his regular payments again to us. He also assured us that the two of you had worked out an agreement so that my Tenant would be afforded all the rights and privileges of the complex while we were adhering to this payment plan. Could you please advise if any of this is in fact not true?
>
> Thanks
>
> [Ex.16.]

In an e-mail of the same date, Friedman forwarded to Romalino the August 25 and September 1, 2010 e-mails exchanged between him and respondent and stated:

> Dear Mr. Romalino:
>
> As stated in my letter, neither I nor the Association has received any payments.
>
> I am providing you with copies of the only written communications between the parties.
>
> In one subsequent conversation Mr. Leiner advised me his client's money was deposited into this [sic] trust/escrow account.
>
> When I received no further communication, collection efforts were continued.
>
> [Ex.16.]

When Romalino confronted respondent about the $4,500, respondent claimed that he had forwarded the funds to Friedman and that they had spoken about the matter. Thus, on March 22, 2011, Romalino e-mailed Friedman, informed him of respondent's claim, and requested that Friedman "advise to their receipt or confirmation that you have had communications with him and we are on a path to resolving this matter." Friedman replied that he still had "not received a check nor any communication from your attorney."

At some point, however, Romalino communicated with respondent, who continued to claim he had sent the $4,500 to Friedman and that they had had a conversation about the matter on March 30, 2011. In a March 31, 2011 e-mail to Friedman, Romalino wrote:

> Marc,
>
> Can you please advise...My attorney Mr. Leiner has assured me that he has sent the $4500 AND had a conversation yesterday with you regarding our account. Can you please let me know if this is in fact true and if you have received the funds? Thanks
>
> [Ex.16.]

The next day, Friedman sent the following reply:

> Mr. Romalino,
>
> I regret to inform you that Mr. Leitner [sic] did not converse with me on Wednesday, March 30 as I was out of the office all day nor did he leave a message on my answering machine. To be absolutely clear, I have had no communication with him whatsoever nor am I nor the Association in receipt of any funds other than those obtained through the rent Levy.
>
> Please be guided accordingly.
>
> [Ex.16.]

Thereafter, Romalino negotiated the matter directly with Friedman. On an unidentified date, Romalino paid $4,500 to Friedman directly to resolve the matter.

Based on the content of Romalino's grievance, the OAE subpoenaed the records of respondent's TD Bank attorney accounts. The records demonstrated that, as of September 30, 2010, the trust account balance was -$25, with no deposits having been made that month. No deposits were made in October 2010, including the $2,500 check issued by Muratore to respondent, on October 1. As of the last day of that month, the trust account balance was -$70. On November 30, 2010, the trust account was closed and the -$70 was charged off.

In respect of respondent's attorney business account, as of October 1, 2010, the balance was $187.89. On that same date, respondent deposited Muratore's $2,500 check, which raised the balance to $2,687.89. Yet, respondent never issued a $2,500 check to Friedman or to the Association. Instead, on October 1, 2010, respondent issued a $2,400 check to "Mike Rufo." Further, respondent continued to draw down funds to the point that, as of October 5, 2010, the business account balance was $5.21. Respondent was never authorized to use Muratore's $2,500 for payment to anyone other than Friedman on behalf of the Association.

By January 3, 2011, the business account balance was negative $1,944.86, after the bank paid a $2,000 check, issued by respondent in December 2010. Although respondent had deposited Muratore's $2,500 check into the business account, he never deposited Romalino's $2,000 check, even though, at the time it was given to him, the business account was his only attorney account. Rather, on January 18, 2011, respondent presented the $2,000 check to Romalino's bank for payment. Respondent did not forward the $2,000 to either Friedman or to the Association. Respondent was never authorized to use the $2,000 sum for payment to anyone, including himself, other than Friedman on behalf of the Association.

The business account reflected a negative balance in January and February 2011, with no deposits having been made in either month. By March 2, 2011, the balance had reached negative $1,724.86; thus, the account was closed, and the balance charged off.

When the ethics investigation was transferred to the OAE, Katkocin reported that respondent had claimed that the $4,500 represented a portion of a $10,000 loan from Romalino to respondent. Romalino denied respondent's claim, stating that he had never lent any funds to respondent.

Romalino further stated to Katkocin that respondent was in the process of paying past-due rent and utility bills for properties owned by Romalino and Muratore, which respondent either had rented or used. Respondent's payment plan included the $4,500, which, Romalino confirmed, had been repaid in full. Romalino was adamant, however, that respondent was never authorized to use that $4,500 sum for any purpose other than to pay Friedman or the Association.

Based on the above facts, the second count of the complaint charged respondent with having violated the following RPCs:

- RPC 1.15(a) - in that respondent knowingly misappropriated $4,500 in client funds, in violation of the principles of In re Wilson, 81 N.J. 451 (1979);

- RPC 8.4(b) - in that respondent knowingly committed the criminal act of theft, which reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects; and

- RPC 8.4(c) - in that respondent knowingly engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in his misstatements to his client about the status of the $4,500 and communications with Friedman.

* * *

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

As stated previously, R. 1:20-3(g)(3) requires an attorney to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. RPC 8.1(b) renders the failure to comply with R. 1:20-3(g)(3) an ethics violation. In both matters, respondent flagrantly violated RPC 8.1(b), first, by ignoring the DEC's and the OAE's requests that he reply to the grievance and the referral and, second, by appearing for the interview without any files or paperwork.

When respondent appeared before Judge Smith, on January 5, 2015, as counsel for the parties in a special civil trial, he

was ineligible to practice law, due to his failure to comply with IOLTA and CLE requirements. Thus, he violated RPC 5.5(a)(1) (unauthorized practice of law).

RPC 3.3(a)(1) prohibits an attorney from knowingly making a false statement of material fact or law to a tribunal. Similarly, the failure to disclose to a tribunal a material fact, knowing that the omission is reasonably certain to mislead the tribunal, is a violation of RPC 3.3(a)(5). Respondent violated RPC 3.3(a)(1), by informing Judges Cook and Call that he had been reinstated to the practice of law, when he knew that was not true. Further, he violated RPC 3.3(a)(5), by failing to inform Judge Smith that he was not eligible to practice law when he represented some of the parties during the special civil trial.

RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent violated that Rule when he stated to Judge Cook, on December 1, 2014, that he would provide written confirmation of his eligibility within forty-five minutes, knowing it to be untrue. He also violated the Rule when he told Judge Call, on January 9, 2015, that he had been reinstated to the practice of law.

Respondent engaged in conduct prejudicial to the administration of justice, a violation of RPC 8.4(d), when, due to his dishonesty, 190 jurors were instructed to appear for a trial that could not go forward because he was ineligible to practice law.

Finally, respondent knowingly misappropriated the monies given to him by Romalino for the purpose of satisfying the arrearages owed to the Association on the Atlantic City property. Contrary to the allegations of the complaint, however, the funds were not client funds, but rather escrow funds.

Client funds are held by an attorney on behalf, or for the benefit, of a client. Escrow funds are funds held by an attorney in which a third party has an interest. Escrow funds include, for example, real estate deposits (in which both the buyer and the seller have an interest) and personal injury action settlement proceeds that are to be disbursed in payment of bills owed by the client to medical providers.

In this case, the $4,500 paid by Romalino to respondent represented escrow funds. Although the monies originated from the client, respondent was to pay the funds over to the Association. Thus, at the time respondent received the funds, both Romalino and the Association had an interest in them. Romalino's interest was to see the monies turned over to the

Association to satisfy his debt, and the Association's interest was to receive them.

Attorneys are disbarred for the knowing misappropriation of both client and escrow funds. In this case, respondent was charged with knowing misappropriation of client funds, not escrow funds. The complaint, however, plainly states that respondent requested payment of the $2,500 and asserted that it would be deposited into his escrow account and forwarded to the Association in satisfaction of the arrearages. Similarly, respondent requested the additional $2,000, which also was to be paid to the Association. Further, he affirmatively represented to Romalino that he had paid the $4,500 over to Friedman, counsel for the Association.

To be sure, a finding of a Hollendonner violation in the absence of a Hollendonner charge is at variance with our dismissal of another disciplinary case, In re Roberson, 210 N.J. 220 (2012), in which, similarly, the complaint charged a violation of Wilson, but not Hollendonner. Roberson may be distinguished from the facts of this case, however.

In Roberson, we found that dismissal was required because, based on the facts of that case, a defense to a Wilson charge could vary greatly from a defense to a Hollendonner charge. In the Matter of James O. Roberson, Jr., DRB 11-262 (December 20,

2011) (slip op. at 17-18). The difference between Roberson and this case is that respondent's defenses to the charges would be the same, whether he was charged with a Wilson violation or a Hollendonner violation.

Specifically, respondent's defense to a Wilson charge would be that Romalino had given him permission to use the monies for another purpose. Similarly, his defense to a Hollendonner charge would be that both Romalino and the Association had given him permission to use the monies for another purpose. Yet, the complaint clearly alleges that Romalino never gave respondent permission to use the $4,500 for any purpose other than to satisfy the debt owed to the Association. Thus, respondent's defense to both a Wilson and a Hollendonner charge would fall, solely on the ground that Romalino had not authorized him to use the monies for his personal benefit.

Moreover, the allegations of the complaint placed respondent on notice that he was being charged with the knowing misappropriation of escrow funds and, therefore, it cannot be said that his due process rights would be violated by a finding of knowing misappropriation under Hollendonner, instead of Wilson. Thus, the reference in the complaint to Wilson, rather than Hollendonner, is a matter of form over substance.

To conclude, respondent must be disbarred for knowingly misappropriating escrow funds. In re Hollendonner, supra, 102 N.J. at 26-27. Accordingly, we need not determine the appropriate quantum of discipline for respondent's other ethics infractions.

Members Gallipoli and Hoberman did not participate.

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
Bonnie C. Frost, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert H. Leiner
Docket No. DRB 16-410

Decided: June 27, 2017

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7		2

Ellen A. Brodsky
Chief Counsel