SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-003
District Docket No. XIV-2006-0506E

IN THE MATTER OF	
LEONARD S. NEEDLE	
AN ATTORNEY AT LAW	

Decision

Argued: April 21, 2011

Decided: June 28, 2011

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Charles J. Uliano appeared on behalf of respondent.

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 Master Daniel Weiss.[1] The complaint

[1] James Paone, II presided over the first two days of hearing. Because he had a potential conflict, on March 29, 2010, Special Master Weiss was appointed to preside over the case. The parties were given an opportunity to start the proceedings anew, but they declined and waived an additional potential conflict resulting from a letter from respondent to Paone's law partner, who represented a party heir to the estate involved in this disciplinary action.

charged respondent with violating RPC 1.15(a) (knowing misappropriation of trust funds), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness of fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979). For the reasons expressed below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1974. He is a sole practitioner in Fair Haven, New Jersey. He has no history of discipline.

The relevant facts are not in dispute. Respondent stipulated that he issued twelve checks from his trust account to Leonard Needle, P.A., and one trust account check to pay his own property taxes, but did not have personal funds in his trust account to cover the checks. He, therefore, invaded other client trust funds. The central issue is whether respondent's use of the funds was knowing and, if so, whether his mental conditions (depression and adult attention-deficit disorder) were such as to save him from the ultimate penalty of disbarment.

The parties stipulated to the following:

On May 17, 2006, Office of Attorney Ethics (OAE) Assistant Chief Auditor Mary Waldman conducted a random compliance audit of respondent's books and records. During the audit, Waldman

prepared a reconciliation of respondent's trust account as of April 30, 2006, that identified a $17,224.42 shortage. Respondent stipulated that the shortage was caused by the following:

(a) Between December 10, 2004 and September 10, 2005, respondent issued twelve checks payable to "Leonard S. Needle, P.A.," totaling $13,467.20.

(b) On October 26, 2005, respondent paid his personal real estate taxes in the amount of $3,377.22 to the Borough of West Long Branch.

(c) In August 2005, respondent transferred $380 from his trust account to his business account via a "debit memo."

Respondent did not have personal funds in his trust account to cover these disbursements.

Most of the funds that respondent misappropriated came from money due to the heirs of the George Meredith estate. The estate's ledger card showed that respondent issued checks to the Meredith heirs totaling $10,801.36, but subsequently voided them.

After the OAE's audit began, on March 21 and March 22, 2007, respondent deposited $12,213.51 in personal funds into his trust account to pay the beneficiaries of the Meredith estate the amounts they were due, plus accrued interest.

Respondent also stipulated that he had an additional $4,834.50 available to him, when he voided five checks to various title insurance companies "on his January 2005 bank reconciliation," but did not add the funds back to any client ledger. After voiding the checks, he issued checks to himself in the exact amount of three of the five title company checks that he had voided ($859, $492, and $816.50). Although the stipulation is silent in this regard, the amounts owed to the title companies presumably stemmed from real estate closings handled by respondent.

On April 2, 2007, after the OAE audit had begun, respondent deposited personal funds totaling $4,834.50 into his trust account to re-issue the five outstanding voided checks.

None of the parties whose funds respondent utilized gave him permission to do so or knew of his use of their funds.

The following facts were elicited at the hearing below:

Respondent worked at several law firms, until 1981, when he became a partner at the firm that was ultimately named Zager, Fuchs, Kauf and Needle. He remained there until 1994, when the firm dissolved. He has practiced law as a sole practitioner since that time.

Until January 2005, respondent had a secretary, Sharon Anderson, a number of receptionists "off and on," and a

bookkeeper. Prior to Anderson's departure, she had been out for two months, due to an illness. When she left, respondent had to deal with the office daily tasks, including paying the office bills. According to respondent, Anderson "essentially ran the business aspect of the office," including issuing the business and trust account checks through a computer system and maintaining ledgers.

In addition to secretarial problems, respondent claimed that he suffered from depression and adult attention-deficit disorder (ADD).[2] The diagnoses were confirmed by the testimony of respondent's and the OAE's psychiatric expert witnesses and their reports.

In approximately 1998, respondent was retained by executor Scott Meredith to represent the heirs of the Meredith estate. He handled the estate until 2002, when his secretary wrote the final checks to the beneficiaries. Respondent testified that, "[f]or some inexplicable reason," the secretary never mailed them out. He speculated that she did not do so because she was out sick at the time. Respondent had already made interim

[2] The expert witnesses also referred to respondent's condition as ADHD and attention-deficit disorder. For the sake of simplicity, unless otherwise stated, the condition is referred to herein as ADD.

distributions to the beneficiaries. Also, the file contained signed final refunding bonds and releases.

According to respondent, in September 2004, when he was going over his trust account, he noticed a balance for the Meredith estate. He saw that checks written to the beneficiaries two years earlier were stale and had to be "voided out." New checks were then written. When respondent noticed that the beneficiaries had executed the refunding bonds, he began treating the Meredith estate money as if he were entitled to it.[3] He claimed that, at that time, he had a "good faith" belief that he was entitled to the money, as a fee, but, in retrospect, realized that his belief was a "terrible error of judgment" on his part.[4] He admitted, however, that writing new checks to the heirs did not make sense, "if [he] felt he was entitled to the whole amount." He claimed further that, when he used a trust account check to pay for his personal taxes, he was under the mistaken impression that he was entitled to the funds.

With respect to the title company checks, respondent stated the following:

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[3] Respondent had sent the final refunding bonds to the beneficiaries in April 2000. The beneficiaries returned them in May 2000.

[4] During the OAE interview, respondent stated that the estate's executor had paid his fee from the estate account over which the executor had control.

> I never considered those funds relating to specific real estate transactions that had been earmarked for title companies, I never considered those as my own funds.
> Nevertheless, I did transfer, void checks and transfer a balance into my regular account, thereby voiding out any balance in a particular trust account.
> But I did it totally with the intention of -- - the full intention that the title companies would be paid. . . .
> But I treated those monies, and, again, I don't -- I'm not arguing that it was proper, but I treated those monies not for the intention of misappropriating them from other people, but to borrow them as -- to pay a vendor's bill.
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> [1T96-16 to 1T97-11.][5]

According to respondent, he had not planned to repay the borrowed funds within any specific period, but when money was available to him. He did not recall making any specific notes or diary entries to repay the loans, but maintained that he expected to do so at some point in time. [6]

At the start of her May 17, 2006 audit, Waldman did not have the ledger card for the Meredith estate. Therefore, she saw only that respondent had moved funds from his trust account into

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[5] 1T refers to the transcript of the August 19, 2009 ethics hearing.

[6] During the OAE audit, Waldman instructed respondent to reimburse the funds to his clients and title companies, which he did shortly after their meeting.

his business account. At that time, respondent told her that the funds represented his fee from the estate. The estate funds in respondent's trust account were proceeds from the sale of the estate's real estate.

Waldman determined from respondent's records that he had already received an $11,409.32 fee from the estate, which fee he had deposited into his business account. The final estate tax return listed respondent's estimated legal fees as $15,000.

According to Waldman, the bank reconciliation showed that respondent had a trust account shortage of $17,224.42. As of the date of the reconciliation, April 30, 2006, respondent had only $1,843.69 in his trust account. At that time, he needed approximately $19,600 to pay all of his clients and all of his outstanding checks. Waldman determined that the shortage was caused by a series of disbursements that respondent had made from his trust account into his business account from the Meredith estate, by the check for his personal real estate taxes, and by the debit amount from his trust account to his business account. The audit revealed that, when respondent wrote the check for the taxes, he did not have an equivalent amount of his own funds in the trust account, but, instead, used client trust funds for that payment. Respondent admitted that, when he

paid the real estate taxes, he had no protection in place for other client funds.

According to Waldman, the estate ledger card showed that, in September 2004, respondent wrote six checks to the estate beneficiaries that were never negotiated. A seventh check made out to respondent, for $769.07, was the only check in the series that was cashed. That check brought the trust account balance to zero. When respondent re-issued the checks to the beneficiaries, he did not re-issue one to Harold and Jane Moore for $781.79 because, he stated, they had previously been overpaid. He conceded that, in 2004, he was familiar with the "interworkings" of the estate file.

Respondent received the refunding bonds in May through July 2000. The final estate checks were written in 2004. Respondent speculated that a check to executor Scott Meredith for $4,065 may have been the executor's fee, rather than a final distribution. However, check no. 2946 payable to Gilbert Meredith, another beneficiary, was for the same amount. Respondent admitted that he never looked at the estate account to see if Scott had paid himself an executor's commission.

Waldman reviewed respondent's trust account reconciliation as of November 2004 and discovered five checks payable to title

companies that had never cleared. She found three of the checks in the client files.

When Waldman's investigation uncovered the checks that respondent had voided, he explained that he had voided them because "he had thought they had cleared." However, Waldman stated that respondent had issued checks to himself in amounts corresponding to the voided checks. He told Waldman that, "at the time he did this he actually needed the money in his business account for operating expenses, he was living hand to mouth or operating his business hand to mouth at the time and that he was borrowing the money with the intention of paying it back."

At the ethics hearing, respondent testified that, during Waldman's audit, he told her that he had transferred money from his trust account into his business account because he had a low balance or an overdraft in his business account. He further testified that he believed that he had a reserve in his trust account. He conceded, at the ethics hearing, that he had not performed an analysis to determine whether he had personal funds in his trust account, claiming a belief that he had approximately a $10,000 fee from the Meredith estate. However, during the OAE interview, respondent stated that he had taken the funds from the Meredith estate piecemeal, rather than in a

lump sum, because he had some "doubts," presumably about his entitlement to the funds.

As previously noted, respondent conceded, at the hearing below, that it made no sense for him to write checks to the Meredith heirs, if he believed that he was entitled to the entire amount as his fee. He testified that he did not keep track of the amounts he took and that he neither made a list of the amounts nor recorded the amounts on the Meredith ledger. He agreed that what he did was "bizarre" and that whatever he did "[he] didn't consider what [he] was doing." He testified that he had no record of the amounts he had taken to prevent him from exceeding the amount of Meredith estate funds in his trust account. He admitted that it was very careless of him to withdraw in excess of the $10,000 that he had on deposit for the Meredith estate.

Respondent did not provide the estate executor with a written fee agreement for the estate, but claimed that he had requested a $2,000 retainer. He testified that, when he took the Meredith funds from his trust account, he believed that he was entitled to them because he had been involved in litigation for the estate at an hourly rate of $175.

Waldman found that respondent's record computations were accurate. Whenever he made legitimate disbursements or took

fees, he always included a reference to a client matter on the face of the check. He did not, however, make similar client notations on the checks that he had written to his firm and deposited into his business account. Respondent, in turn, denied that, as a matter of course, he would make such notations on checks.

Respondent's trust account bank statements for the period of the audit, May 2004 through April 2006, show that the account was not overdrawn during the audit period. From that Waldman concluded that respondent was monitoring his account. Respondent had told her that he would review the trust account bank statements to determine whether he was entitled to fees. According to Waldman, just looking at a trust account bank statement would not show whether an attorney was entitled to a fee. One would have to review the client ledger cards and documentation within the file.

In his own behalf, respondent testified about his approximate fifteen-year battle with depression and ADD. He stated that, in 1995, his physician had prescribed an anti-depressant. In 1996, he began treating with a psychiatrist. When he complained of problems with his memory, inability to concentrate and distractibility, the doctor added medication for ADD. Respondent switched psychiatrists in 2003.

Respondent claimed that, in 2003 and 2004, his inability to focus affected his ability to practice law. In "a couple" of instances, appeals were dismissed because he failed to timely file briefs. He was able to have the cases reinstated, however. He also missed a deadline for filing a notice of petition for certification, but, in December 2004, was able to remedy that problem as well by filing a successful motion with the Supreme Court. His motion referenced his reliance on his secretary, who was absent at the time. It did not mention, however, that he struggled with depression.

Respondent admitted that, in 2004, if he encountered a problem with his practice, he was able to address it properly. His primary concern was to ensure that his clients did not suffer adverse consequences. He claimed that he was able to protect his clients because he could compartmentalize things. When it came to bookkeeping, however, anything "business-wise," his thinking was "muddled;" he did things "without giving fair consideration to the consequences that would result." He contended that this was a result of his mental condition. He admitted that he "did what [he] did and . . . can't deny it," labeling it an aberration.

Chester Trent, M.D, a Board certified psychiatrist, testified on respondent's behalf. He performed a psychiatric

evaluation of respondent and reviewed reports of other psychiatrists who had treated him. Respondent complained to him of an inability to focus and concentrate. He was also forgetful and withdrawn. Dr. Trent determined that respondent suffered from adult attention-deficit disorder and depression. He stated that persons with ADD have significant difficulty with organizational skills and prioritizing tasks. They can function at a high level in some areas, but not so with their organizational ability or memory. Symptoms of the disorder include inattentiveness, lack of concentration, and difficulty focusing or keeping on track. According to Dr. Trent, although respondent was taking medication for his conditions, he continued to suffer from severe bouts of depression.

Dr. Trent referred respondent to Dr. Peter Rutan for neuropsychological testing to corroborate and diagnose the extent of respondent's ADD. After performing a battery of tests and after an interview, Dr. Rutan diagnosed respondent with ADHD, primarily of the "inattentive type," and dysthymic disorder (a chronic type of depressiveness). Dr. Rutan determined that respondent's verbal IQ was relatively high, but that his performance IQ (for organizational things) was average.

Dr. Trent opined that the fact that Anderson, respondent's secretary, was no longer in respondent's employ at the time of

the incident was a significant factor. According to Dr. Trent, individuals with conditions similar to respondent's require someone to keep track of "scheduling, his activities and the other balls" in the air.

Dr. Trent's conclusion was that respondent

> was not able to consider and reconsider what he was doing enough to figure out that he should have done something other than just take a glance and write the checks, he did not go back and dig up the old data or call people or ask people whether bills had been paid, whether checks had been written, he took for granted what he saw and came to a conclusion and acted upon it and wrote checks.
> So I believe that . . . he did not know, really, what he was doing, in terms of that what he was doing was wrong, although he certainly knew he was writing the check, but he came to a conclusion that was inappropriate.
> Namely that the money was his.
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> [2T42-20 to 2T43-11.][7]

Dr. Trent added that the combination of the ADD and depression could result in a catastrophic mistake, in this case, that respondent thought the Meredith funds were his. Dr. Trent clarified that he was not asserting a McNaughton situation, that is, respondent was not insane, but that he suffered from something equivalent to diminished capacity. Dr. Trent conceded,

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[7] 2T refers to the transcript of the September 9, 2009 ethics hearing.

that respondent was not psychotic, that is, out of touch with reality, and that he did not experience "delusions or hallucinations."

Dr. Trent could not state that this type of mental illness compels individuals to do certain things, but remarked that individuals with ADD can be compelled to act very fast without proper consideration of their acts, to "shoot from the hip . . . a frequent occurrence with people with such difficulties." Dr. Trent had no record of any particular instances where respondent's mental illness compelled him to act in the way he did, although, he stated, it may well have happened.

Dr. Trent understood that respondent looked at his records "and found the money there and found checks that were written and hanging around for a long time and never disbursed and apparently knew there were documents where there had been release of the money for the Estate and he assumed it was his."

When asked whether, "to a reasonable degree of medical certainty or probability," he could concluded that "[respondent] was compelled by a mental illness to act in the way he did," Dr. Trent replied, "I did not find that he either did or did not."

Dr. Trent was aware, from his review of another psychiatrist's records, that respondent was receiving pressure from his wife about their financial problems. Specifically, a

progress note from Dr. Rubin stated, "Wife gives deadline to bring 'active amount of money by 6-5-2005 or she will see a lawyer'."

Dr. Daniel Greenfield, also a Board certified psychiatrist, was retained by the OAE to examine and provide an opinion about respondent's defense. Dr. Greenfield explained that there were four major parts to his review: (1) determining the nature and scope of the evaluation; (2) eliciting the background and history of the patient leading up to the events that led to the evaluation; (3) conducting a battery of tests and inventories; and (4) obtaining a detailed account about what had transpired since the time of the events leading to the evaluation. Dr. Greenfield also reviewed respondent's medical and clinical psychiatric records from respondent's treating psychiatrists. Dr. Greenfield agreed with Dr. Trent's diagnosis that respondent suffered from dysthymia and ADD. He rendered an opinion:

> [I]t is again my psychiatric/ neuropsychiatric/addiction medicine opinion- held with a degree of reasonable medical probability that inferences about [respondent's] underlying mental state and psychiatric/neuropsychiatric/addiction medicine condition during the period of time in question concerning the above-referenced matter, do <u>not</u> support a psychiatric defense for those alleged activities, such as and analogous to "Legal Insanity," according to

> applicable State of New Jersey law, as I understand that law.
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> [Ex.24-30;3T12.][8]

Dr. Greenfield determined that respondent was otherwise cognitively and emotionally able to conduct his law practice acceptably and properly without misappropriating other client's funds. Dr. Greenfield explained that respondent's symptomology, as a result of an underlying defect, would not manifest itself in selective application. In other words, symptoms from the underlying mental disease or defect would not be selective with respect to only one particular case in a busy law practice; "it's not a hit or miss. It's pervasive." In respondent's case, he was able to otherwise adequately run his law practice.

As to the deadlines that respondent missed, Dr. Greenfield remarked that respondent was able to correct his mistakes. He was able to run his law practice even though he made some mistakes. It all occurred around the same time as the Meredith estate problem.[9]

Dr. Greenfield opined that someone suffering from dysthemic disorder, such as respondent, would not be compelled to take other people's money. The symptoms of dysthymia are sadness, low

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[8] 3T refers to the transcript of the July 8, 2010 ethics hearing.
[9] This transcript refers to the Meredith estate/funds as Maritus.

energy, lack of interest, as well as feeling blue and depressed more days of the week than not. Individuals are able to function with dysthymia, but have difficulty doing so. The symptoms of ADD are irritability, distractibility, difficulty focusing and concentrating on tasks, anxiety, and an inability to follow through on complicated tasks. According to Dr. Greenfield, those symptoms, coupled with dysthymia, would not cause a person to take his or her client's money.

Dr. Greenfield did not find that respondent's conditions satisfied any definition of insanity: he was not experiencing delusions or hallucinations or psychotic symptoms, nor was he out of touch with reality. Although respondent was upset, stressed out, worried, anxious, and depressed, he was "in full contact with reality."

Dr. Greenfield opined that, during the time in question, respondent knew what he was doing. According to Dr. Greenfield, during their interview, respondent admitted that he had made a mistake; he was having a hard time running his office at the time of the audit and about a month or two before then. When Dr. Greenfield first interviewed respondent, he inquired of respondent about the nature and purpose of the evaluation. Respondent replied, "I did it, I did it, it was wrong. Shouldn't have, no psychiatric excuse." At the conclusion of his

evaluation, when Dr. Greenfield asked respondent if he believed he had a bona fide psychiatric defense, respondent replied "yes, impaired memory, distraction, impetuous . . . it's an explanation excuse, but not recognizable as a legal defense" to misappropriating client funds. Respondent also told Dr. Greenfield:

> I didn't know that what I was doing was wrong. I made a snap judgment that those funds didn't belong to anybody else because I didn't have the patience or forethought or judgment to think this through. I handled my practice, did other cases, but couldn't manage my practice when Sharon Anderson left.
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> [3T20.]

Respondent told Dr. Greenfield that he "wrote checks, not the full amount, don't know if I billed out my full fee. Whether I don't have the patience, didn't think of the inconvenience, wrote checks to myself, I don't remember. I did it piecemeal too, what I needed when I needed it, left the rest in a savings account for me."

Although Dr. Greenfield agreed that respondent's conditions manifested in forgetfulness, periodic confusion, inattention to detail and poor focus, he noted that respondent suffered from those conditions before, during, and after the Meredith estate problems, but that he was also in contact with reality.

On re-direct, Dr. Greenfield asserted that, after having undergone cross-examination by respondent's counsel, he was even more certain about his opinion testimony.

The special master gave little weight to Dr. Trent's conclusion that respondent was not able to adequately run his law firm. He noted that, although respondent's full restitution to various "parties and institutions" was commendable, it was not a defense to the charges.

The special master found that the evidence confirmed a $17,224.42 shortage in respondent's trust account. He found it noteworthy that (1) there was no "memo" for any case name in any of the checks payable to "Leonard S. Needle, P.A.," or in the check to the Borough of West Long Branch; (2) the checks were written in relatively round figures, in the very early stages of a normal tax year, a different practice from other trust account checks that respondent had written; (3) respondent did not produce expert testimony of any psychologist or psychiatrist currently treating him; and (4) most of the misappropriation stemmed from funds that respondent was holding for heirs of the Meredith estate, even though the file had been closed in 2002, some three years earlier.

The special master found respondent's psychological defense unconvincing. He concluded that respondent appeared capable of knowing what he was doing and that he had a very broad professional background and a fairly extensive and impressive command of the law. He, therefore, had to be aware, at several periods over the years, that the Meredith funds did not belong to him.

The special master was particularly troubled by the fact that respondent's knowing misappropriation of funds happened in the context of representing heirs to an estate. He noted that "[t]he emotional fragility and angst of the heirs in any situation involving death can make client(s) even more vulnerable than usual to ethics violations by their attorney."

In mitigation, the special master found that there was no continuing course of dishonesty; that respondent was very candid with ethics authorities; that he expressed remorse over the event; that he had an otherwise good reputation and good character; that he cooperated with the OAE; and that he took remedial measures. The special master recommended that, notwithstanding this mitigation, respondent be disbarred, consistent with In re Wilson, 81 N.J. 451.

In its brief, the OAE pointed out that respondent was not authorized to take fees from trust account funds that respondent

had earmarked to pay the beneficiaries. The OAE highlighted respondent's familiarity with his accounts, citing, as an example, that he was aware that the Moores (the Meredith estate's beneficiaries), had been overpaid and, therefore, had not re-issued a check to them. The OAE stressed that respondent's testimony that he believed he had fees due to him from the Meredith estate was belied by his own contemporaneous records.

As to the title company funds, the OAE underscored respondent's admission that he did not intend to misappropriate those funds, but merely borrow them to pay a bill.

According to the OAE, respondent's own records and testimony refuted his portrayal of being confused about the identity and amount of funds in his trust account. Waldman found that respondent's ledger was accurate and that there were no errors in the computations entered in the ledger. In addition, when respondent misused the funds, there were no clients identified on the face of the checks. However, when the distributions were legitimate, he always inserted a client reference on the check. Also, respondent's trust account was never overdrawn, from which the OAE concluded that he was monitoring the account.

The OAE gave little credence to respondent's argument that he experienced one catastrophic mistake that caused him to take the money. Instead, the OAE asserted that he had engaged in a pattern of "poor decisions," between December 2004, when he took the first $1,000 check, and October 2005, when he wrote the check for his personal real estate taxes.

The OAE discounted respondent's psychiatric defense of ADD and depression, noting that no attorney has satisfied the stringent Jacob standard (a demonstration by competent medical proofs that the attorney "suffered a loss of competency or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful"). In re Jacob, 95 N.J. 132 (1984). The OAE underscored that, over the years, the Court has rejected attorneys' claims of major depression, narcissistic personality disorder, drug dependency, compulsive gambling, and bipolar disorder as defenses to knowing misappropriation charges.

The OAE urged us to disbar respondent, pursuant to In re Wilson, supra, 81 N.J. 451.

Respondent's counsel, in turn, took the position that respondent had not knowingly misappropriated trust funds, but had been careless, due to "a lack of focus, confusion, disorganization and memory lapse attributable to his depressive

state." Respondent believed that he was entitled to the money remaining in his trust account because the final distribution and refunding bonds had already been executed. He was, therefore, entitled to transfer the money into his business account "to cover any deficits."

As to the checks earmarked for the title companies, counsel argued that respondent never considered the funds his own. "[H]is intention was simply to pay the bill of the title company by borrowing funds." He never intended to permanently deprive clients or the title companies of their money.

Counsel also argued that respondent's ADD and depression resulted in his taking money that the believed was a fee. Counsel urged a finding of no clear and convincing evidence that respondent knowingly misappropriated the funds, and that, accordingly, lesser discipline is warranted for his grossly negligent conduct.

At oral argument before us, counsel argued both that respondent's misappropriation was not knowing, but that, if it were found that it was, the Court should revisit In re Wilson, supra, 81 N.J. 451, and find that respondent's transgressions do not warrant disbarment because he had an impeccable record prior to this incident and, in addition, he was overwhelmed by his psychiatric problems and his medication.

Following a de novo review of the record, we are satisfied that the Special Master's finding that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. We agree that the record amply demonstrates that he knowingly misappropriated trust funds.

The evidence established that, during the ten-month period that respondent misappropriated trust funds, he was suffering from financial problems, living "hand-to-mouth." He candidly admitted that he borrowed the funds earmarked for the title companies. He claimed that he never considered that the funds were his own, when he transferred them into his business account.

Respondent's unauthorized loans from the title companies alone require his disbarment under Wilson. It makes no difference whether he intended to return the money when he took it. "When restitution is used to support the contention that the lawyer intended to 'borrow' rather than steal, it simply cloaks the mistaken premise that the unauthorized use of clients' funds is excusable when accompanied by an intent to return them. The act is no less a crime." [Citations omitted.] In re Wilson, supra, 81 N.J. at 458. Thus, determining whether respondent also misappropriated the Meredith estate funds is unnecessary. Nevertheless, we find that it warrants some discussion.

Respondent argued that he did not knowingly misappropriate the Meredith estate funds because his depression and ADD caused a lack of focus that affected his ability to perform the business aspects of his practice. This caused him to believe that he was entitled to the Meredith funds.

Respondent's own psychiatrist, however, could not conclude that respondent's mental conditions were the cause behind his actions. Although it was Dr. Trent's opinion that respondent was suffering from "something equivalent to diminished capacity," Dr. Trent could not conclude, to a reasonable degree of medical certainty and probability, that respondent was compelled to act the way he did by his depression and ADD: "I did not find that he either did or did not." Dr. Greenfield, too, found that respondent's mental conditions were in no way responsible for his behavior.

Respondent's circumstances bear some similarity to In re Kaplan, 193 N.J. 301 (2006). There, the attorney was disbarred for knowing misappropriation of trust funds, even though he introduced evidence from experts that he suffered from a serious depressive condition that either caused or significantly contributed to his misappropriation. One doctor testified that, given the depth of Kaplan's depression, he would have had great difficulty in performing important tasks in his life, such as

managing his office accounts and files. The clinical opinions were credible, persuasive, and bolstered by the testimony of the attorney's former paralegal and by his own testimony as to his depression and its impact on his life. Notwithstanding the mitigation he presented, Kaplan's own expert stated that Kaplan knew what he was doing when he converted client funds for his own use. Thus, Kaplan did not meet the Jacob standard.

Here, the evidence clearly and convincingly establishes that respondent knew what he was doing when he misappropriated the Meredith estate funds. For example: (1) although he suffered from ADD and depression for many years, he never took other client funds, believing they were his own; (2) the amount of the checks he took corresponded to the amounts of the voided checks; (3) he did not take the Meredith funds in one lump sum but, rather, over the course of a ten-month period, belying Dr. Trent's explanation that he "shot from the hip" or did it impulsively, without thinking; to the contrary, the disbursements were made carefully, without causing an overdraft in his trust account; also, respondent maintained proper and accurate ledgers; (4) he admitted that it did not make sense to write new checks to the beneficiaries, if he believed that he was entitled to the funds; (5) he admitted that he lacked the patience or the forethought to think his actions through; (6) he

admitted to Waldman that he had his "doubts" about his entitlement to the funds; (7) he had no records to substantiate that the funds were fees; (8) his prior fee had been paid by the executor, and not taken from funds he held; (9) he did not make client references on the face of the purported fee checks from the Meredith estate, but did so on the face of other trust account checks; and (10) he was able to handle other aspects of his practice, including rectifying missed deadlines by filing appropriate motions.

Moreover, there is evidence that respondent was motivated to take the funds because of the pressure placed on him by his wife to bring home more money and because of the financial difficulties that he was experiencing at the time.

While respondent contended that his conditions rendered him confused and unable to focus, causing him to form a reasonable belief that he was entitled to the funds, the above factors proved otherwise. Respondent meticulously and systematically withdrew funds from his trust account that were either overlooked or forgotten by their intended recipients.

In In re Noonan, 102 N.J. 157, 160-61 (1986), the Court defined the requirements for a finding of knowing misappropriation:

> The misappropriation that will trigger automatic disbarment that is 'almost

> invariable,' id. at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be 'almost invariable,' the fact is that since Wilson, it has been invariable. [Footnote omitted.]

Nothing in the record before us demonstrates that respondent did not know what he was doing when he repeatedly invaded client funds. Therefore, under In re Wilson, supra, 81 N.J. 451, respondent must be disbarred. We so recommend to the Court.

Member Baugh 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
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 Leonard S. Needle
Docket No. DRB 11-003

Argued: April 21, 2011

Decided: June 28, 2011

Disposition: Disbar

Members	Disbar	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:	8					1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel