SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-372
District Docket Nos. XIV-2009-0538E, XIV-2009-0564E, XIV-2009-0565E, XIV-2010-0144E, and XIV-2010-0365E

IN THE MATTER OF	:	
	:	Decision
CHARLES P. INGENITO	:	
	:	
AN ATTORNEY AT LAW	:	

Argued: May 16, 2013

Decided: June 11, 2013

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Anthony J. Fusco, Jr. appeared on behalf of respondent.

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

This matter was before us on a recommendation for disbarment filed by Special Ethics Master Peter Petrou. The eleven-count amended complaint, filed by the Office of Attorney Ethics (OAE), charged respondent with having violated the following RPCs:

Count One: RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal), RPC 3.3(a)(4) (knowingly offering false evidence to a tribunal), RPC 3.4 (falsifying evidence), RPC 4.1(a)(1) (false statement of material fact to a third person), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice);

Count Two: RPC 3.1 (filing a frivolous complaint), RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process), RPC 3.3(a)(1), RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer), RPC 8.4(c), and RPC 8.4(d);

Count Three: RPC 1.1(a), RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.7(a)(2) (conflict of interest), RPC 3.1, RPC 8.4(c), and RPC 8.4(d);

Count Four: RPC 1.15(a) (knowing misappropriation of client funds), RPC 1.15(b) (failure to promptly deliver funds to which a client is entitled), and RPC 8.4(c);

Count Five: RPC 1.5(a) (unreasonable fee), RPC 8.4(a) (attempt to violate the Rules of Professional Conduct), and RPC 8.4(c);

Count Six: RPC 1.15(d) and R. 1:21-6(c) (failure to comply with recordkeeping rules);

Count Seven: RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and R. 1:21-7(d) (calculating fee based on the gross recovery in a personal injury case);

Count Eight: RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and R. 1:21-7(d);

Count Nine: RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and R. 1:21-7(d);

Count Ten: RPC 1.15(a), RPC 1.15(b), RPC 8.4(c), and R. 1:21-7(d); and

Count Eleven: RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c).

For the reasons expressed below, we agree with the special master's finding that respondent knowingly misappropriated client funds and, therefore, must be disbarred.

Respondent was admitted to the New Jersey bar in 1994. He has no disciplinary history. Currently a solo practitioner, respondent was a member of Festa & Ingenito, LLC, in Hawthorne, Passaic County, at the time of the events in this matter.

Count One – District Docket No. XIV-2009-0538E
The Genella Matter

Vanessa Genella retained respondent to represent her in a personal injury action. On February 18, 2009, the date of the expiration of the statute of limitations in Genella's case, respondent submitted a complaint to the Superior Court, Passaic County, on Genella's behalf. The complaint was stamped "Received" on February 18, 2009. Another copy of that complaint had two "Received" stamps at the top of the page, one dated February 18, 2009 and another dated May 13, 2009, and a stamp at the bottom of the page indicating "Filed – Superior Court of New Jersey."

The defendant in the Genella matter filed a motion to dismiss the complaint based on the statute of limitations, contending that it had not been filed until May 13, 2009. On September 11, 2009, at a hearing on the summary judgment motion, respondent produced a copy of his business account check number 8234 and represented to the Honorable Joseph J. Riva, J.S.C.:

> The complaint that was hand-walked down by my staff members and taken back to the office was dated February 18, 2009. The check accompanying that complaint is dated February 18, 2009. The cover letter with the C.I.S. . . . is dated February 18, 2009.
>
> [Ex.J-4, P.6-5 to 6-11.]

Based on the two different date stamps, Judge Riva inferred that respondent had submitted the complaint on February 18, 2009, that it had been returned to him because of a deficiency, and that he had re-submitted it on May 13, 2009. Judge Riva noted that, according to the court's database, the Genella complaint was filed on May 13, 2009. After examining the complaint and finding no other deficiencies, the judge concluded that respondent had failed to submit the filing fee with the complaint.

At the motion hearing, respondent denied that he, or anyone else in his office, had re-submitted the Genella complaint after February 18, 2009. He also adamantly denied that the filing had any deficiency.

Respondent represented to Judge Riva that his former secretary, Joyce Vasquez, had submitted the Genella complaint. Judge Riva testified, at the ethics hearing, that respondent had claimed that his former secretary had signed check number 8234 and that, because he had had problems with her, he had terminated her employment.[1]

On October 20, 2009, Judge Riva issued an order granting the summary judgment motion and dismissing Genella's complaint, with prejudice. Attached to the order was an October 2, 2009 opinion,

[1] Judge Riva had retired from the bench on September 1, 2010.

revealing that Judge Riva had conducted an investigation to determine when respondent had submitted the Genella complaint and the filing fee. Judge Riva had requested respondent to produce a copy of his bank statements to prove that his filing fee check had been cashed in February 2009. Respondent failed to comply with the court's request. Judge Riva then learned, from the court's finance department, that the clerk's office had received check number 8234 on May 13, 2009.

Judge Riva then compared the Genella filing fee check (check number 8234) with other checks that respondent had issued in payment of filing fees for lawsuits that were submitted in February and May 2009. He determined that the numbers on the checks accompanying complaints filed in February 2009 were in the 7900 range and that those submitted in May 2009 were in the 8200 range. Judge Riva concluded that, in May 2009, respondent inserted the February 18, 2009 date on check number 8234 with the intent to mislead the court into believing that the check had been submitted on the earlier date. Judge Riva referred the matter to the OAE.

On November 12, 2009, respondent submitted a motion for reconsideration of that part of Judge Riva's order referring the matter to the OAE. He specifically stated that he did not seek

reconsideration of the dismissal of the complaint on statute of limitations grounds.

In a certification in support of the reconsideration motion, respondent represented that the signature on check 8234 was different from the signature on the Genella complaint; that his former secretary, Joyce Vasquez, brought the complaint to the court without the filing fee; and that he had terminated her employment due to poor work performance and personal issues. In support of the motion, respondent also submitted his October 7, 2009 affidavit asserting that "Ms. Vasquez was responsible for not timely filing the Complaint and creating this issue."

On December 4, 2009, Judge Riva denied, as moot, respondent's motion for reconsideration of the referral of the ethics matter to the OAE because he had already made the referral.

At the ethics hearing, Vasquez denied that she had taken the Genella, or any other, complaint to the court for filing; that she had ever signed a complaint while employed by respondent; that she had any involvement in the filing of the Genella complaint; that she had access to respondent's checks; or that she had signed any of his checks.

On November 24, 2009, respondent submitted to the OAE, as his reply to the referral by Judge Riva, a copy of his motion

for reconsideration. In January 2010, during an interview with OAE staff, respondent reviewed a series of eight checks, including check number 8234, all of which were issued in early May 2009. After reviewing these checks, respondent conceded that he had completed and signed check number 8234. In a January 22, 2010 letter to the OAE, respondent addressed the Genella complaint:

> Although the complaint was filed in a timely manner, apparently the filing fee check was not attached and sometime there after [sic] the complaint was returned to my office. . . . Ms. Vasquez was the secretary handling this file at the time the statute expired and she was subsequently fired by me as per her final check and unemployment papers. Ms. Vasquez was fired for many issues including poor work performance.
>
> When the returned complaint was discovered with no docket number, I refiled the complaint with the filing fee attached to it, which has been provided to you. The signatures, although different are mine, upon further review. As the attorney in charge of this file I take responsibility for what has transpired.
>
> [Ex.J-11.]

Among the checks that respondent reviewed with the OAE were two checks, dated May 1, 2009, payable to Vasquez. Both checks indicated in the "memo" portion "W/E 5-1-09 Final Pay". Both checks were negotiated on May 12, 2009. The OAE, thus, argued that, contrary to the representations that respondent had made

to Judge Riva and to the OAE, Vasquez could not have signed check number 8234, which was dated May 13, 2009, because she was no longer employed by respondent at that time.

In contrast to his representation to Judge Riva at the summary judgment motion hearing, respondent admitted at the ethics hearing that he had re-submitted the complaint along with a check in payment of the filing fee. He denied that he had intended to mislead the court, asserting that he "was attempting to correct what I saw as, you know, a mistake by the court in never giving me a deficiency notice and to have a check presented to the court that correlated to when I filed the Complaint." He also admitted that he had prepared and signed the check.

Counts Two and Three – District Docket Nos. XIV-2009-0564E (Vilacha Grievance) and XIV-2009-0565E (Conte Grievance)
The Open MRI Matter

For about fifteen years, respondent represented Open MRI & Imaging of Rochelle Park (Open MRI) in obtaining reimbursement of fees incurred by its insured patients from their personal injury protection (PIP) coverage. Although respondent never prepared a writing memorializing his fee agreement with Open MRI, his arrangement provided that, after receiving a recovery

from the insurance carrier, he would collect a fee from the carrier, not from Open MRI.

On May 8, 2007, Edib Djakovac, who had been a passenger in a car accident, received treatment from Open MRI. Djakovac provided Open MRI with the driver's automobile insurance card, indicating that State Farm was the insurer. He also disclosed that he lived in a household in which he or another household member owned a motor vehicle. Because respondent failed to recognize that Djakovac had separate insurance coverage, he was not aware that Electric Insurance Company (Electric) was the responsible insurance carrier.[2] He sought from State Farm reimbursement of the cost of Djakovac's treatment. State Farm ignored respondent's demands for payment.

On August 17, 2007, respondent filed with the National Arbitration Forum (NAF) a demand for PIP arbitration against State Farm.[3] On October 30, 2007, NAF scheduled the PIP arbitration hearing for January 31, 2008, before Dispute Resolution Professional (DRP) Richard Zimmerman, Esq. On January 16, 2008, about two weeks before that hearing took place, State

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[2] According to the testimony at the ethics hearing, if an injured party has insurance coverage through a household member, that party's insurer is the primary PIP carrier, rather than the insurer of the vehicle in which that party was injured.

[3] Although the arbitration demand and accompanying check for the $225 filing fee were both dated August 17, 2007, respondent's cover letter to NAF was dated June 13, 2007.

Farm informed respondent that Electric was the responsible insurance carrier. On January 22, 2008, respondent submitted to Electric a copy of the 2007 arbitration demand.

On January 31, 2008, at the Djakovac arbitration hearing, Zimmerman determined that the submissions were incomplete because it appeared that another PIP carrier may have been responsible. A second hearing was scheduled for June 17, 2008. On February 14, 2008, Electric paid Open MRI's bill for treating Djakovac. On March 4, 2008, State Farm asked respondent to confirm Open MRI's receipt of payment and informed him that it would not pay any of his fees or costs because the demand had been filed against State Farm in error. Also on March 4, 2008, respondent asked Electric to pay his attorney's fees of $850 and the $225 fee for filing the arbitration demand. Electric denied respondent's request for fees and costs.

The second arbitration hearing in the Djakovac matter took place on June 17, 2008. DRP Zimmerman then scheduled a third hearing for September 24, 2008. At the third hearing, respondent asked Zimmerman to award him fees and costs for having obtained payment of Open MRI's bill from Electric in February 2008. Zimmerman denied respondent's request, pointing out that State Farm was not the responsible carrier and that Electric was not a party to the arbitration.

After respondent announced his intention to pursue civil litigation for his fees and costs, Zimmerman replied that he was precluded from filing a lawsuit while the PIP arbitration proceeding was active. Zimmerman then denied respondent's request to withdraw the arbitration against State Farm, citing rules that do not permit a claim to be withdrawn after a hearing has begun. With the consent of State Farm's attorney, Ana Oliveira, Zimmerman adjourned the arbitration hearing to allow respondent to amend his claim to add Electric as a party. Respondent never did so.

In a September 25, 2008 letter to respondent and Oliveira, the NAF summarized what had occurred at the hearing on the previous day and scheduled a fourth hearing for April 28, 2009.

On October 1, 2008, respondent filed a lawsuit in Special Civil Part, on behalf of Open MRI and Festa & Ingenito, LLC, against both State Farm and Electric for fees and costs of $1,725. He alleged in the complaint that plaintiff "has demanded payment from defendants and no part thereof has been paid." He certified that the matter was not the subject of an arbitration proceeding. He neither informed Oliveira that he had filed the complaint against State Farm nor served her with a copy of it.

Bobbi Vilacha, Electric's attorney and the grievant in Docket No. XIV-2009-0564E, asked respondent to dismiss Electric

from the lawsuit. According to Vilacha, if a PIP insurance carrier pays a bill within sixty days of its submission, there is no liability to pay the claimant's attorney's fees. Respondent refused. According to Vilacha, respondent told her that he had used a "shotgun" approach to naming defendants and that he had to get paid. On December 17, 2009, Electric moved for summary judgment.

On December 30, 2009, a default judgment was entered against State Farm. As it turned out, the court clerk's office had failed to serve State Farm, inadvertently sending State Farm's copy of the complaint to Electric.[4]

At some point, Vilacha sent a copy of the default judgment to State Farm. Shortly thereafter, Oliveira informed Vilacha about the PIP arbitration that respondent had filed. In turn, Vilacha told Oliveira about the pending litigation that respondent had filed. On January 22, 2009, State Farm joined in Electric's motion for summary judgment.

At a January 23, 2009 hearing before the Honorable Liliana DeAvila-Silebi, J.S.C., on the summary judgment motions, respondent represented that he had withdrawn the PIP arbitration. After Oliveira informed the court that the

[4] Pursuant to R. 6:2-3(d), in Special Civil Part cases, the court clerk is responsible for serving the complaint on the defendant.

arbitration hearing was scheduled for April 28, 2009, Judge DeAvila-Silebi arranged for Zimmerman to appear at the hearing by telephone. Zimmerman confirmed that the arbitration remained pending, with an April 28, 2009 hearing date scheduled. He also told the court that he had denied respondent's request to withdraw the arbitration and had adjourned the arbitration hearing to allow respondent to file an amended arbitration demand against Electric.

Judge DeAvila-Silebi found that respondent had not withdrawn the PIP arbitration; that the complaint that he filed was frivolous because the NAF had jurisdiction over the matter; that, even in the absence of a jurisdictional issue, Electric could not be held liable because it was not at fault; and that respondent had failed to identify the proper insurance carrier under New Jersey PIP law.

During the hearing, Judge DeAvila-Silebi threatened to sanction respondent for constantly interrupting her. In addition, she made the following comments concerning respondent's failure to disclose the pending PIP arbitration before the NAF:

> Nowhere in any of your papers that you have submitted to the Court have you even mentioned the fact that this case was even filed with the NAF, ever. I have to — I have to find all this out by the other attorneys in the case. And I find that that's disingenuous. You're being totally disingenuous with the Court.

[Ex.J-19,P.105-7 to 13.]

> But you still sit here today and say that you did not request an adjournment. That is quite a feat, that you are capable of doing that. It really is something that causes me to pause.

[Ex.J-19,P.106-3 to 6.]

> [W]hen an attorney comes to a Court and does not reveal to the Court that it may not have jurisdiction because there is a pending matter at the NAF which has been scheduled for April 28th of 2009, that's something that has to be questioned about the ethics.
>
> The ethics rule[s] require that you be completely truthful in Court as an officer of the Court. And the fact that I have to find out from counsel is — quite frankly causes me to pause, and is quite troubling to me. It is quite troubling.

[Ex.J-19,P.107-6 to 16.]

The court entered an order dismissing the complaint based on the absence of subject matter jurisdiction, vacating the default judgment against State Farm, and inviting both Oliveira and Vilacha to submit certifications and proposed orders for attorney's fees. On February 13, 2009, Judge DeAvila-Silebi granted Electric counsel fees of $2,163 and costs of $146.25 and granted State Farm counsel fees of $1,468.50, for a total of $3,777.75. She specifically handwrote on the order as to each award of counsel fees that "Client is not to pay for attorney's fees."

Several days later, on February 16, 2009, respondent filed an "opposition" to the fee awards, which the court treated as a motion for reconsideration. On March 5, 2009, the court denied the motion for reconsideration.

On March 13, 2009, respondent sent a letter to the NAF indicating that he understood that the Djakovac arbitration had been withdrawn on September 25, 2008. On March 19, 2009, the NAF replied that the matter had not been withdrawn and would proceed as scheduled.

On April 28, 2009, the date of the fourth arbitration hearing, respondent sent a fax to the NAF indicating that all parties are aware that the case was pending in the Appellate Division, that he had abandoned the matter in September 2008 and filed a court proceeding, and that he would not pursue the matter through arbitration. Zimmerman received the fax after the hearing had started. He proceeded with the hearing, finding no evidence to support any liability for fees and costs on State Farm's part. On June 12, 2009, he denied respondent's application for fees and costs and dismissed the arbitration demand.

When asked at the ethics hearing whether the arbitration matter was permeated with a lot of confusion, Zimmerman replied:

> [T]his could have been one of the easiest PIP cases ever. All you had to do was read what

> State Farm is telling you, read the PIP application from the patient and see and make one phone call to Electric Insurance. . . . [T]he only confused person was Mr. Ingenito.
>
> [3T29-22 to 3T30-3.][5]

According to Stephen Conte, D.O., the administrator of Open MRI and the grievant in Docket No. XIV-2009-0565E, respondent appeared at his office twice in March 2009, reporting that a judge "did not know what she was doing" and had ordered Open MRI to pay about $3,800 in legal fees to attorneys representing insurance companies in a Superior Court case. Conte asserted that, during the second visit, on March 24, 2009, respondent refused to explain why he had filed a lawsuit when he had received neither the authority nor the instruction to do so, refused to explain why the judge had ordered Open MRI to pay the fees of the insurance companies' lawyers, and refused to provide him with a copy of the order, despite his repeated requests.

On March 25, 2009, respondent sent a letter to Conte confirming that Electric had paid Open MRI's bills as a result of his efforts in filing the arbitration and a lawsuit. Respondent further asserted that "as a result of pursuing billing and arbitration proceedings against the incorrect insurance company and never appropriately billing Electric

[5] 3T denotes the transcript of the January 27, 2012 ethics hearing.

Insurance Company, there has been an award entered for fees and costs."

Conte denied (1) that respondent had informed him of the lawsuit against State Farm and Electric; (2) that he had authorized respondent to file that complaint; and (3) that respondent had told him that he planned to file a motion for reconsideration or an appeal of the order.

Conte then asked Joseph Ariyan, Esq., Open MRI's general counsel, to look into the matter. Ariyan contacted respondent, who told him that the judge had "screwed up" and that someone needed to file an appeal. Although respondent agreed to send Ariyan a copy of the file, including Judge DeAvila-Silebi's order, he failed to do so.

On March 31, 2009, Ariyan sent a letter to respondent, asserting:

> I believe that certain aspects of your conduct in this matter were inappropriate. First, Mr. Conte never authorized or requested you to file a Superior Court litigation. Second, the filing was made by you on behalf of the client after you were well aware that State Farm was not a responsible party and after you knew that Electric had already honored the bill in question. There was no justiciable issue between Open MRI & Imaging of Rochelle Park and the defendant insurers; yet a Complaint was filed against them. Now, unfortunately, this has resulted in the client apparently being responsible for the counsel fees of

> the defendants' counsel; a truly unjust result.
>
> [Ex.J-28,Att.A.]

On April 4, 2009, Ariyan sent another letter to respondent, pointing out that respondent had filed litigation against State Farm and Electric solely to obtain payment of his legal fees, that he had no legal basis to do so, and that he had taken that action without his client's knowledge or consent.

Thereafter, Ariyan contacted Vilacha, Electric's counsel, who informed him that respondent, not Open MRI, had been ordered to pay the fees. In turn, Ariyan told Vilacha that respondent had represented to both him and to Conte that Open MRI had been ordered to pay the fees. Vilacha then provided Ariyan with a copy of Judge DeAvila-Silebi's February 13, 2009 order. Ariyan was shocked to discover that the court had specifically directed that the client was not to pay the counsel fees.

On March 25, 2009, respondent filed with the Appellate Division a notice of appeal of Judge DeAvila-Silebi's order requiring that he pay State Farm's and Electric's legal fees. According to Conte, respondent neither informed him of the appeal nor obtained his consent to file it. Ariyan, too, denied having authorized respondent to file the appeal. On April 7, 2009, Vilacha filed a motion to dismiss the appeal and to require respondent to pay her legal fees for replying to it.

On April 8, 2009, pursuant to R. 2:5-1(b), Judge DeAvila-Silebi submitted to the Appellate Division a letter amplifying her ruling. In that letter, Judge DeAvila-Silebi asserted that respondent had incorrectly represented in the notice of appeal that, because there was no verbatim record, he was exempt from the requirement that he order transcripts of the proceedings below. Judge DeAvila-Silebi stated that there had been a full hearing with testimony, oral argument, and findings and conclusions.

State Farm filed a motion to join in Electric's motion to dismiss respondent's appeal.

On May 11, 2009, the Honorable Edwin H. Stern, P.J.A.D., entered an order dismissing the appeal and suggesting that counsel for State Farm and Electric submit applications for counsel fees with respect to the dismissal motion. On June 11, 2009, the Appellate Division ordered that the fee application proceed before Judge DeAvila-Silebi. On June 23, 2009, Judge DeAvila-Silebi ordered respondent, and not Open MRI, to pay additional fees of $1,320 to Electric by June 30, 2009.

On May 20, 2009, Conte filed an ethics grievance against respondent. On June 2, 2009, respondent sent a fax to Ariyan stating that he had replied to the grievance and "will prosecute

to the fullest extent of the law unless a resolution, satisfactory to my office is reached."

By letter dated May 26, 2009, respondent informed Ariyan that the Appellate Division had dismissed his appeal. In the letter, respondent asserted that he planned to file a lawsuit for reimbursement of time spent, attorney's fees, interests, and costs against "all appropriate parties responsible for forwarding a file for arbitration against the wrong insurance company and what has transpired since." On June 2, 2009, Ariyan replied to respondent's letter, denying that Open MRI was responsible for respondent's damages.

On June 30, 2009, respondent sued Open MRI in Special Civil Part in Bergen County, stating in the complaint that Open MRI "has caused damage to Plaintiff due to PIP arbitrations [sic] files that defendant has referred to Plaintiff to pursue against incorrect insurance companies and/or for monies previously collected." Despite the June 30, 2009 filing date, respondent handwrote the date of May 26, 2009 next to his signature on the complaint.

In a July 24, 2009 letter to respondent, Ariyan protested that the complaint was frivolous and was filed for an improper purpose with an intent to harass Open MRI. He tried to persuade respondent to withdraw the complaint, explaining that, even if a

client had given respondent incorrect insurance information on one or many occasions, no basis to sue the client existed because the attorney is responsible to determine the legitimacy of cases given by the client.

On September 11, 2009, Ariyan again asked respondent to dismiss the lawsuit or, in the alternative, to consent to vacate a default that had been entered against Open MRI. After respondent told Ariyan that he would do neither, Ariyan filed a motion to vacate the default, which the Honorable Joseph Rosa, J.S.C., granted on October 5, 2009. Thereafter, on November 18, 2009, Judge DeAvila-Silebi granted Open MRI's motion to dismiss the complaint with prejudice. The judge denied Open MRI's motion for sanctions.

Respondent then moved for reconsideration, contending that the court had not considered his November 10, 2009 opposition to Open MRI's motion to dismiss the complaint. On January 8, 2010, Judge DeAvila-Silebi denied respondent's subsequent motion for reconsideration, noting in the order that she had considered respondent's "late objection."

Ariyan appealed the order denying Open MRI's motion for sanctions. On December 23, 2010, the Appellate Division reversed and remanded the matter to the judge. In its unpublished decision, the Appellate Division related that Open MRI had "made

the unrefuted suggestion that [respondent's] November 10 letter [opposing the motion to dismiss] was back dated." Following the remand, Judge DeAvila-Silebi ordered respondent to pay sanctions to Open MRI. Respondent complied with that order.

For his part, respondent claimed that his primary contact person at Open MRI was a secretary named Shannon and that he dealt very little with Conte. He claimed that Conte was not organized or helpful and that, over the years, he had received many PIP files from Open MRI with incorrect information.

As to the Djakovac matter, respondent asserted that Open MRI's file had information about State Farm. Although he contacted State Farm, he did not receive a reply to his telephone messages. Respondent testified at the ethics hearing that he did not learn that Electric was the responsible insurer until he attended the third NAF hearing in September 2008. He conceded, on cross-examination, however, that he was aware, as early as March 4, 2008, which was before the second arbitration hearing, that Electric was the primary PIP insurance carrier. As previously noted, respondent knew of Electric's role before the first hearing of January 31, 2007 because, on January 22, 2008, he submitted to Electric a copy of the 2007 arbitration demand.

Respondent asserted that, at the September 2008 arbitration hearing, Zimmerman had given him the option of filing a new

arbitration demand against Electric and incurring another $225 filing fee or suing Electric in Small Claims Court. According to respondent, he understood that the arbitration matter was over. He took no further action in the arbitration proceeding. He denied that Zimmerman had informed him that he could not file a lawsuit while the PIP arbitration was pending. He opted for the lawsuit, which required a fee of only $45. He contended that State Farm was liable for his fee because it never returned his messages, he worked on the PIP matter, and he was entitled to his fees.

Respondent claimed that he had authorization to sue State Farm and Electric on behalf of Open MRI because he had talked to both Conte and Shannon. He asserted that he did not inform Oliveira of the lawsuit because, to his knowledge, she represented State Farm only in the arbitration proceeding. He denied telling Vilacha that he employed a "shotgun" approach, when naming defendants in lawsuits. He also denied demanding that Conte pay the legal fees that Judge DeAvila-Silebi had ordered respondent to pay. He claimed that he sued Conte because he was "fed up" with the financial losses that he had incurred as a result of Conte's way of doing business. He denied having represented to anyone that the judge had ordered Open MRI, not respondent, to pay defense counsels' fees.

Count Four – District Docket No. XIV-2010-0144E
The Ramos Matter

Oscar Ramos, the grievant, retained respondent to represent him in both a workers' compensation claim and a third-party complaint in connection with an April 20, 2005 automobile accident. On October 22, 2008, the Honorable Maureen Mantineo, J.S.C., entered an order restraining respondent from disbursing any funds received in the personal injury lawsuit, based on a pending child support matter.

On November 26, 2008, respondent received $22,956 in settlement of the workers' compensation claim. On April 27, 2009, he settled the personal injury lawsuit for $63,000. In July 2010, respondent was permitted to release the settlement proceeds, on condition that he satisfy Ramos's child support arrearages.

On August 11, 2010, respondent disbursed from the $63,000 settlement proceeds his legal fees (one-third of the recovery) and costs, child support and other liens, a TAME Adjustment of $1,398.39,[6] and the $15,890.27 balance to Ramos. Respondent issued the $1,398.39 TAME adjustment check to himself. He did not tell Ramos that he had received the TAME funds or explain to

[6] As seen below, respondent's accountant developed a software program called Trust Accounting Made Easy, known by its acronym, TAME.

him the purpose of the TAME adjustment. Ramos had not authorized respondent to disburse the TAME funds to himself.

Respondent's counsel arranged for Robert Gelman, C.P.A., who was also the owner of the Trust Accounting Made Easy (TAME) software, to examine respondent's trust account records. On February 4, 2010, Gelman began his review of those records for the period beginning January 1, 2008. Because he did not find any monthly reconciliations, he recreated those reports by gathering information from respondent's records and bank statements.

Although respondent claimed that Gelman had directed him to disburse the $1,398.39 to himself, Gelman denied that assertion, testifying at the ethics hearing that he had never told respondent how to disburse any of his funds, but only documented, on the TAME program, the payments that respondent had made.

On September 10, 2010, eight months after Ramos filed the grievance against respondent, respondent disbursed $1,398.39 to Ramos.

Count Five – District Docket No. XIV-2010-0365E
The Martin Matter

Timothy Martin, the grievant, retained respondent to represent him in the purchase of residential real estate. The

seller's attorney, Walter Hanley, III, Esq., held in escrow Martin's $25,000 deposit. Because Martin was not able to obtain mortgage financing, he canceled the purchase on August 18, 2009, about one month after a scheduled "time of the essence" July 14, 2009 closing. The next day, after respondent informed All-American Abstract, Inc. (All-American) of the cancellation of the transaction, All-American faxed a $300 invoice to respondent.

On August 27, 2009, the parties and their lawyers met at Hanley's office to resolve a dispute that had developed about the return of Martin's $25,000 deposit. They resolved their dispute at the meeting, agreeing that the seller would retain $7,750 of the deposit and Martin would receive the balance.

According to Martin, while at Hanley's office, respondent presented him with a $3,000 invoice from All-American, told him that All-American had waived $500 as a courtesy to respondent, struck the $3,000 figure on the invoice, wrote "$2,500.00 courtesy as per CPI," and said that All-American wanted to be paid immediately. Martin further asserted that respondent also gave him, at Hanley's office, a $2,000 invoice for his legal fees.

Martin later went to All-American's office and obtained a copy of the invoice, which was in the amount of $300. When

Martin showed All-American staff a copy of the $3,000 invoice, he was told that the bill was for $300. All-American denied that anyone associated with the company had prepared the $3,000 invoice.

Martin confronted respondent with both the $300 bill from All-American and the $3,000 invoice that respondent had given to him, suggesting that the latter bill was "phony." According to Martin, respondent replied that he would make up a different phony bill and that he would find another way to get paid.

Michelle Panetta, a former employee of All-American, confirmed that Martin had contacted her, asking whether All-American had issued a $3,000 invoice. She told Martin that All-American's invoice was for $300, not $3,000. She then contacted respondent, asking him where he had obtained the $3,000 invoice. When he replied that he had received it from All-American, she denied that All-American had issued a $3,000 invoice. Respondent failed to comply with her request for a copy of the $3,000 invoice.

On October 9, 2010, Martin paid $300 to All-American and $2,000 to respondent.

For his part, respondent asserted that, at the time that he represented Martin, he usually charged $850 to $950 for a residential real estate transaction. He claimed, however, that,

because the Martin transaction went beyond the amount of work usually required for a standard real estate purchase, he had charged a higher fee.

Respondent alleged that All-American faxed its invoice to his office, that he told Martin that the title company was charging him $300, that he informed Martin that his legal fees were $2,700, that he "whited out" the $300 invoice, and that he inserted $3,000 on the invoice to include both his $2,700 fee and All-American's $300 bill. Respondent explained that he initially marked up All-American's invoice, rather than issuing his own, because he was lazy and because he had represented Martin for a long time.

According to respondent, he and Martin engaged in lengthy negotiations over respondent's $2,700 fee, with respondent ultimately agreeing to accept $2,000 as full payment. In respondent's view, his fee was reasonable, whether it was $2,700 or $3,000, because he had spent a lot of time on the matter. He conceded, however, that he had not maintained time records in the Martin matter.

In turn, Martin denied that respondent had represented that the $3,000 invoice from All-American encompassed both his legal fees and the title cancellation fee.

Count Six – Recordkeeping Violations[7]

On March 25, 2010, the OAE conducted a demand audit of respondent's books and records. Respondent admitted that he failed to maintain a trust receipts journal, a trust disbursements journal, and a running checkbook balance. Gelman testified that, when he began reviewing respondent's records, he found no monthly trust account reconciliation reports.

Count Seven – The Rodriguez Matter

Anna Rodriguez retained respondent to pursue a personal injury claim arising from a January 4, 2005 automobile accident. Although respondent failed to produce a writing memorializing his fee, it is not disputed that he charged a one-third contingent fee. On March 30, 2009, respondent deposited in his trust account an $80,000 check representing the settlement proceeds from the insurance company.

About six weeks later, on May 18, 2009, respondent and Rodriguez signed a settlement statement indicating that the following disbursements were made from the insurance check:

[7] The complaint does not identify a docket number for counts six through eleven.

Respondent's fees		$26,666.00[8]
Respondent's costs		6,909.38
Liens		
Dr. Berger	$460	
Dr. Modugno	750	
Child Support Judgment	1,672[9]	
Total Liens		2,882.00
Client		43,542.62

On May 18, 2009, respondent issued a $43,542.62 check to Rodriguez, representing her share of the settlement proceeds.

Respondent's client ledger card reveals that he made the following disbursements from the Rodriguez settlement funds, which were not disclosed on the settlement statement:

3/31/09	HN Lien	$1,361.27
4/6/09	American Express – pd by phone	3,847.28
5/18/09	Pressler & Pressler	650.00
Total		$5,858.55

Respondent admitted that the above disbursements represented payments of his personal or business expenses: the HN lien related to Health Net (an expense of respondent's law firm), the American Express bill was respondent's personal credit card, and the Pressler & Pressler bill was for a debt that had been turned over for collection. As seen below, respondent claimed that he had sufficient funds of his own, in the trust account, to back up those disbursements, as well as

[8] Respondent admitted that he had wrongfully calculated his one-third contingent fee on the gross, rather than the net, recovery.

[9] On June 2, 2009, after respondent learned that the child support judgment was not against Rodriguez, he issued a check for $1,672 to her.

all of the disbursements made in the subsequent matters in which the complaint charged him with knowing misappropriation of client funds.

As it turned out, the actual costs that respondent incurred in the Rodriguez matter were only $1,050.83. Respondent admitted that he had added his personal expenses of $5,858.55 to that amount and prepared the settlement statement to reflect total costs of $6,909.38. He testified that he should have "transferred from the trust [account] into the business [account] and then [made] the payment directly from the business [account]." He admitted that his actions resulted in a reduction in Rodriguez's settlement share and that he was aware of this impact at the time he made the disbursements.

Rodriguez testified that she had not authorized respondent to use any of her funds to pay his personal expenses.

Respondent admitted that he should have disbursed to Rodriguez $51,422.78 of the $80,000 settlement proceeds, calculated as follows:

Settlement	$80,000.00
Respondent's Costs	-1,050.83
Balance	78,949.17
Respondent's Fees	-26,316.39
Medical Liens	-1,210.00
Client's Share	$51,422.78

Because Rodriguez's share was $51,422.78 and respondent disbursed only $45,214.62 to her (the initial disbursement plus

the erroneous child support lien), respondent should have had $6,208.16 in his trust account to Rodriguez's credit. He claimed that he retained $4,848.55 in his trust account. The client ledger card that respondent provided in support of his claim indicated a zero balance on June 26, 2010, two transfers to the trust account totaling $5,208.55 on January 1, 2010, and a disbursement of $360 to Joseph L. Mecca, Jr. Law Office on October 1, 2010. According to Gelman, as of the date of the ethics hearing, respondent retained $4,848.55 for Rodriguez.

Rodriguez testified that she had not received anything over the $45,214.62 paid on May 18, 2009. Her attempts, including contacting both respondent and his counsel, to obtain the monies still owed to her were unsuccessful. In turn, respondent claimed that, when Rodriguez appeared at the ethics hearing, he had obtained her current address and disbursed $4,848.55 to her, which, he asserted, was the only amount owed to her. He produced no evidence of that payment.

Respondent denied that he was ever out of trust, asserting that he always kept enough funds in his trust account to pay all sums due to his clients. Specifically, he stated that he had received a fee of $120,000 from his representation of a client named Clinton Smith in an unrelated matter and had kept those

funds in his trust account for a period of time.[10] Gelman confirmed that, by maintaining this "cushion," respondent had sufficient funds in his trust account to cover any shortages.

As of the date of the ethics hearing, Gelman still served as respondent's accountant.

Count Eight – The Sabando Matter

Egberto Sabando retained respondent to represent him in a personal injury claim stemming from an April 1, 2005 automobile accident. Although respondent failed to produce a writing memorializing his fee, it is undisputed that he charged a one-third contingent fee. After settling the case, respondent deposited the $35,000 settlement check in his trust account on September 29, 2008. On April 6, 2009, more than six months later, he disbursed the settlement proceeds as follows:[11]

Settlement	$35,000.00
Respondent's fees	-11,666.66
Costs	-3,847.28
Costs	-689.95
Liens: Dr. Berger Report	-350.00
Balance to Client	$18,446.11

Respondent admitted that he had wrongfully calculated his fee on the gross, not the net, recovery.

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[10] Respondent, thus, admitted that he had comingled personal and trust funds, a violation of the recordkeeping rules.

[11] The record does not explain respondent's delay in disbursing the settlement funds.

The settlement statement and the check that respondent issued to Sabando, both dated April 6, 2009, indicated that the payment to the client was "full and final." Respondent testified that the $3,847.28 item shown as "costs" on the settlement sheet was actually a payment of his personal American Express bill. At the ethics hearing, when questioned by his attorney, respondent denied that he had tried to hide this payment:

> Q. Why would you . . . reflect this as a cost in a case when it's your American Express bill?
>
> A. That wasn't what I was trying to do. I was just — at that time all's [sic] I was trying to do is pay the bill. Instead of moving it from trust into business, I just paid it directly out of trust, and I was trying to keep it reflected in the trust account so that I knew what Sabando would be owed.
>
> Q. Were these reflected on your ledger cards?
>
> A. Yes.
>
> Q. Did you make those ledger cards?
>
> A. Yes.
>
> Q. Did you attempt to hide this payment at any time?
>
> A. No. Never. It was on the ledger card from day one. It was in the Settlement Statement.[12]

[12] As previously noted, the $3,847.28 payment appeared as "costs" on the settlement statement.

> Q. Do you understand that Mr. Sabando was shorted that money that you used for your American Express?
>
> A. Well, but then it was, it was mailed to him . . . the amount that he was owed.
>
> [6T30-3 to 6T31-4.][13]

Respondent claimed that the handwritten settlement statement introduced into evidence at the ethics hearing was only a draft, despite the fact that Sabando had signed it and that it contained the notation "full and final." Although the client ledger card reflected the American Express payment, respondent testified that he never provided his clients with copies of his client ledger cards.

Respondent admitted that he should have disbursed to Sabando $22,523.37, instead of $18,446.11, and that he should have maintained in his trust account the difference of $4,077.26. His ledger sheet reflected a zero balance as of July 7, 2009. Thereafter, on January 1, 2010, the sum of $3,847.28 was transferred into that account.

In his answer to the complaint, respondent represented that he would make an immediate deposit of $229.98 and an immediate disbursement of $4,077.26 to Sabando. At the ethics hearing, respondent testified that he had disbursed $3,800 to Sabando,

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[13] 6T denotes the transcript of the February 9, 2012 ethics hearing.

although he did not know when that payment was made. He did not introduce any document to support that representation.

Count Nine – The Marino Matter

Michelle Marino retained respondent in a personal injury matter, after she was involved in a June 6, 2005 accident. Although respondent failed to produce a writing memorializing his fee, it is undisputed that he charged a one-third contingent fee. On February 24, 2009, respondent deposited settlement proceeds of $32,500 in his trust account. The settlement statement, dated June 19, 2009, reflected the following disbursements:

Settlement	$32,500.00
Respondent's fees	-10,833.00
Costs	-950.00
Medical Provider Lien	-3,254.78
Medical Provider Lien	-90.95
Balance to Client	$17,371.27

Respondent testified that both items shown as liens to medical providers were payments for his personal expenses: $3,254.78 for his American Express bill and $90.95 to Greg Tanzer for servicing a sprinkler system. Respondent made those payments on March 18, 2009, about three months before he disbursed the proceeds to Marino. Respondent explained that he had paid the bills in this fashion "out of laziness."

Respondent denied that he had tried to hide his payment of his personal bills, asserting that they had appeared on the client ledger card and on the settlement statement. He conceded, however, that he had not given Marino a copy of the client ledger card and that the settlement statement indicated that the payments were made to medical providers, not American Express or Greg Tanzer.

Marino did not authorize respondent to use her funds to pay his personal expenses.

Respondent acknowledged that he should have disbursed to Marino $21,033.33, rather than $17,371.27, a difference of $3,662.06. As of August 24, 2009, respondent had no funds in his trust account attributable to Marino. On May 19, 2010, respondent issued a $3,345.73 check to her. Gelman asserted that that was the last transaction from the Marino funds. Respondent, thus, continues to owe Marino the sum of $316.33.

Count Ten – The Martinez Matter

On February 25, 2006, William Martinez retained respondent to represent him in a personal injury claim stemming from a December 4, 2005 accident. The retainer agreement provided for a one-third contingent fee. After obtaining a $75,000 settlement on Martinez's behalf, respondent deposited the settlement check

in his trust account on September 30, 2009. Respondent also handled a related workers' compensation matter for Martinez.

Respondent prepared a settlement sheet, dated December 2, 2009, indicating that his fee was $25,000, costs were $768, a workers' compensation lien was $12,827.17, and Martinez's share was $36,404.83. Respondent acknowledged that he had improperly calculated his fee based on the gross recovery.

Respondent conceded that, between November 25 and December 22, 2009, he issued six checks, totaling $29,000, as fees for the Martinez matter. He testified at the ethics hearing that Peter Festa, his partner at that time, had mistakenly issued the final check, number 3279, dated December 22, 2009, in the amount of $3,000. On cross-examination, however, when confronted with a copy of check number 3279, respondent conceded that he had signed the check, which contained the notation "Martinez" in the memo portion. Even before the disbursement of check number 3279, respondent had issued checks totaling $26,000 in fees, notwithstanding that he had calculated his fee as $25,000.

Martinez testified that he had not authorized respondent to receive a $29,000 fee.

Although the settlement statement indicated that the workers' compensation lien was $12,827.17, on December 22, 2009, respondent satisfied that lien with a $4,762.99 payment.

Similarly, despite the $768 costs item on the settlement sheet, respondent's costs were only $274.49.

Respondent, thus, should have disbursed $45,054.02 to Martinez, after deducting from the $75,000 settlement costs of $274.49, fees of $24,908.50, and the workers' compensation lien of $4,762.99. Having previously issued a $36,404.83 check to Martinez, respondent should have held $8,649.19 in his trust account on his client's behalf. As of March 15, 2010, however, respondent's trust account had only $4,557.69 to Martinez's credit, a shortage of $4,091.50.

On March 15, 2010, respondent issued a $4,557.69 check to Martinez. He claimed, however, that, because Martinez had received additional funds in connection with the workers' compensation matter, no other funds were due him in the personal injury case. Gelman testified that, on September 2, 2011, the sum of $3,441 was deposited in respondent's trust account on behalf of Martinez, which was then issued to Festa & Ingenito.

Count Eleven – The Powell Matter

Verdina Powell retained respondent to represent her in a personal injury claim resulting from a July 15, 2006 automobile accident. The undated fee agreement provided for a one-third contingent fee. On May 11, 2010, respondent deposited in his

trust account a $25,000 check in settlement of the Powell matter. More than three months later, on August 26, 2010, he issued a $14,855.64 check to Powell for her share of the settlement.

In addition to receiving fees of $8,052.82 and costs of $841.54, respondent disbursed a $1,250 check to himself, identifying it on the settlement statement as a lien. The fee agreement contained a handwritten note indicating that the law firm had a $1,250 lien. Respondent testified that his partner at the time, Festa, sometimes obtained agreements from clients permitting him to receive his fees from the clients' personal injury settlements for unrelated services that he had provided.

Powell testified that Festa had never done any work for her. According to Powell, when she asked respondent about the lien, he replied that it was for him. Festa, too, denied that he had represented Powell in any matter.

According to respondent, he withheld $1,250 from Powell's settlement proceeds, believing that Festa had a lien for that amount. Thereafter, Powell notified him that Festa had not performed any services for her.

On August 1, 2011, after the OAE had begun investigating the various grievances filed against respondent, he sent Powell a $1,200 check and letter indicating that he had been "directed"

to refund her $1,200. She denied having received the additional $50 that she was due.

Mitigation

In mitigation, respondent testified that, during the relevant times, he was experiencing marital difficulties; that, although he did not wish to end the marriage, his wife filed for and obtained a divorce; that he and his former wife continue to reside in the same household; that he is being treated by Dr. Bonnie Weisner-Guild, a psychologist; and that, also at that time, his law partnership with Peter Festa dissolved. These events, he claimed, affected his ability to properly conduct his law practice.

Respondent produced an April 5, 2012 letter from Dr. Weisner-Guild, stating that she began treating him in August 2006; that, as his marriage deteriorated, his depression and anxiety increased, resulting in impaired judgment and a decreased ability to think; and that his ability to understand the consequences of his behaviors became distorted.

Finally, respondent produced a "character letter" from a chiropractor, Dr. Peter Berger, who asserted that he has known respondent for seventeen years, both personally and

professionally, and that he believes respondent to be "a credit to his profession and a credit to his community."

The special master prepared a thorough and extensive report containing detailed findings of fact and conclusions as to each count of the complaint. For ease of reference, those findings are set out in separate headings.

The Genella Matter

The special master determined that respondent "was willing and prepared to say and do just about anything to escape the consequences of the failure to include the proper fee rendering the filing of the *Genella* complaint untimely". He found that, to conceal respondent's deficient filing, respondent re-submitted the complaint with a backdated check and transmittal letter. He then tried to blame his former employee, Joyce Vasquez, accusing her of fraud, by claiming that the signature on the filing fee check was not his. The special master noted that Vasquez was no longer in respondent's employ on May 13, 2009, when the filing fee check was signed and submitted. Although, before Judge Riva, respondent had insisted that he had no explanation for the fact that the complaint was stamped "received" on two different dates, he later admitted to the ethics investigator that he had re-submitted the complaint, which would account for the two different stamps.

The special master concluded that respondent violated RPC 3.1, RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.4, RPC 4.1(a)(1), RPC 8.4(c), and RPC 8.4(d). He did not find violations of RPC 1.1(a), RPC 1.3, and RPC 3.2, based on the lack of clear and convincing evidence of more than simple negligence for the missed statute of limitations.

The Open MRI Matter

The special master observed that, rather than accept the fact that, under respondent's long-standing agreement with Open MRI, he was not entitled to recover his legal fees, he "instead commenced a series of increasingly and incredibly aggressive, unrestrained, unfounded and abusive procedural maneuvers." These tactics included an unnecessary PIP arbitration proceeding; two civil lawsuits, including one against his own client; and two appeals, all of which resulted in the imposition of multiple sanctions against respondent for frivolous litigation.

The special master found that respondent knew, as early as January 16, 2008, that Electric, not State Farm, was the responsible PIP insurance carrier in Djakovac's case; that he knew, on March 4, 2008, that Electric had paid the claim; and that he had no basis to continue the PIP arbitration on Open MRI's behalf. The special master further found that DRP Zimmerman had denied respondent's request to withdraw the PIP

arbitration matter and that respondent could not have reasonably believed that he could withdraw it.

As to the lawsuit against State Farm and Electric, the special master concluded that respondent did not have a reasonable basis in law or fact for arguing that either company could be liable for fees and costs. At the time that respondent certified, in the complaint, that there was no related arbitration proceeding pending, he knew that that certification was not true. He also knew, on March 13, 2009, when he confirmed with the NAF his understanding that the PIP matter had been withdrawn in September 2008, that that statement was false. By that time, Judge DeAvila-Silebi had ruled that the NAF maintained jurisdiction of the matter.

The special master rejected respondent's testimony that he had not asked his client, Conte, of Open MRI, to pay the fees that Judge DeAvila-Silebi had assessed against respondent. He found that respondent concealed from Conte the fact that the court had specifically ordered respondent to pay the sanction. He further found that the testimony of Conte, Ariyan, and Vilacha established that respondent led Conte to believe that Open MRI had been responsible for the sanction. He also determined that respondent's lawsuit against Open MRI constituted abuse of process and was retaliatory, finding no

basis for respondent to believe that he could recover fees directly from his client.

As to counts two and three, the special master found that respondent violated RPC 1.1(a) by continuing to pursue a claim for payment after his client had been paid; RPC 1.2(a) and RPC 1.4(c) by failing to keep his client informed when he concealed the fact that the sanctions had been assessed against him personally; RPC 1.7(a)(2) by filing a lawsuit on behalf of Open MRI for the sole purpose of seeking a fee, thereby subordinating his client's interests to those of his own; RPC 3.1 by filing frivolous lawsuits against State Farm and Electric, and then against Open MRI; RPC 3.2 by seeking a default judgment against State Farm, knowing that it had disputed the claim; RPC 3.3(a)(1) and RPC 8.4(b) by falsely certifying in his complaint against State Farm and Electric that no related arbitration proceeding was pending; RPC 8.4(c) and RPC 8.4(d) by filing a civil action in an attempt to circumvent the anticipated outcome of the PIP arbitration; and RPC 8.4(d) by filing a retaliatory civil lawsuit against Open MRI, after his appeal of the fee sanction had been dismissed and after Conte had filed a grievance against him.

The special master did not find an additional violation of RPC 1.2(a) or any violation of RPC 1.4(b) concerning the

allegation that respondent failed to keep Open MRI informed about the status of the PIP arbitration and his failure to obtain authority from Open MRI to sue State Farm and Electric. In this regard, the special master found nothing to contradict respondent's testimony that he had communicated with Open MRI's secretary, Shannon. He also did not find an additional violation of RPC 1.7(a)(2) in connection with respondent's appeal of the fee sanction entered against him, reasoning that, as an aggrieved party, respondent had the right to file the appeal.

The Ramos Matter

Here, the special master found that respondent knowingly misappropriated from Ramos the "TAME" adjustment of $1,398.39, concluding that respondent retained this sum as a fee in excess of the agreed contingent fee of one-third of the recovery. He rejected respondent's explanation that, after misunderstanding Gelman's instructions, he had disbursed the "TAME" funds to himself. The special master determined that respondent could not have failed to understand that those funds belonged to Ramos, given that he was an experienced personal injury lawyer, knew the process for calculating a personal injury recovery, and knew that he had already received his one-third contingent fee. The special master, thus, concluded that respondent violated RPC 1.15(a).

Moreover, the special master noted that respondent disbursed the $1,398.39 only after he learned that the OAE had instituted an investigation of this matter. The special master, thus, found that respondent violated RPC 1.15(b). Finally, the special master found that respondent's settlement statement was calculated to deceive his client and to facilitate his retention of funds that did not belong to him, a violation of RPC 8.4(c).

The special master then commented that, during

> the period covered by the hearing, Respondent's conduct reflects a pattern and practice of seeking financial gain, in even the smallest of amounts, in the form of unmerited or unearned fees. This evidence begins with his inexplicably dogged pursuit of a fee in the *Open MRI* matter. The evidence relating to Respondent's handling of trust funds in other matters, as discussed below, further reinforces this conclusion. It shows a pattern and practice of an unabashed series of petty thefts, generally in amounts sufficiently small to embolden Respondent into believing that the missing amounts would remain concealed from the relatively unsophisticated clients victimized by his conduct.
>
> [SMR46-SMR47.][14]

The Martin Matter

Noting the dispute between respondent's and Martin's testimony concerning the $3,000 invoice, the special master

[14] SMR refers to the special master's September 17, 2012 report.

found Martin to be more credible. He reasoned that Martin would have had no cause to question All-American's invoice if respondent had told him that $2,700 of the $3,000 invoice represented his legal fees. The special master remarked that the testimony of Panetta, the former employee of All-American, was consistent with that of Martin. Moreover, the special master noted that, if respondent's explanation that he had included his fee in All-American's invoice were true, he would have offered that explanation, when Panetta had contacted him. Instead, respondent's testimony on this point "appears to be a post-grievance recasting of the facts he was able to contrive with the benefit of more time."

The special master, thus, found that respondent violated RPC 8.4(c) by misrepresenting that a portion of his fee constituted the title company's charge. The special master did not find, however, clear and convincing evidence that respondent's fee was unreasonable, dismissing the charges that he violated RPC 1.5(a) and RPC 8.4(a).[15]

[15] Although the special master did not specifically mention RPC 8.4(a), the complaint charged that respondent's attempt to charge an unreasonable fee was a violation of that rule. Because the special master dismissed the RPC 1.5(a) charge, he presumably also dismissed the RPC 8.4(a) charge.

Recordkeeping Violations

The special master noted that respondent admitted that he failed to maintain trust receipts and disbursements journals and a running checkbook balance. He also noted that Gelman had testified, without rebuttal, that he had found no monthly reconciliations, when he had examined respondent's books and records. The special master, thus, found that respondent violated RPC 1.15(d) and R. 1:21-6(c).

The Rodriguez Matter

The special master found that respondent falsified the settlement statement to conceal his use of his client's funds to pay his personal expenses. The special master observed that, although respondent listed on the client ledger card his payment of his personal or business debts, that document was never available for the client's review. On the settlement statement that respondent provided to the client, however, the personal and business expenses were included with amounts shown as "costs," in a manner that concealed the true purpose of those disbursements. The special master commented that respondent still has not disbursed $6,208.16 to Rodriguez, an amount due to her from the settlement.

The special master found that respondent knowingly used Rodriguez's funds to pay his own expenses, that he issued a

deliberately false settlement statement to Rodriguez, and that he calculated his legal fees on the gross, rather than the net, recovery.

As seen below, the special master rejected respondent's defense of a "cushion" in his trust account in this matter and in all the counts of the complaint in which he found respondent guilty of knowing misappropriation.

As to this count, the special master found violations of RPC 1.15(a) and (b) and RPC 8.4(c), as well as R. 1:21-7(d).

The Sabando Matter

The special master found that respondent knowingly misappropriated Sabando's funds by using them to pay his personal expense, a $3,847.28 American Express bill that he included as "costs" on the settlement statement. He noted that respondent admitted that he had "shorted" Sabando those funds. The special master found that the settlement statement was deliberately false, that respondent knowingly used Sabando's funds to pay his own expenses, that he concealed those expenses by characterizing them as costs, that he improperly calculated his fee on the gross recovery, and that he continues to owe Sabando $4,077.66 from his settlement.

As to this count, the special master found violations of RPC 1.15(a) and (b) and RPC 8.4(c), as well as R. 1:21-7(d).

The Marino Matter

The special master found that respondent knowingly misappropriated Marino's funds and that he misleadingly characterized, on the settlement statement, his American Express bill and an expense for maintenance work on his sprinkler system as liens to medical providers. Respondent's intent in listing these items as costs was to conceal the actual purpose of those disbursements. The special master found that the settlement statement was deliberately false, that respondent did not make partial restitution until the OAE began its investigation, that he wrongly calculated his fee on the gross recovery, and that he still owes Marino $316.33.

As to this count, the special master found violations of RPC 1.15(a) and (b) and RPC 8.4(c), as well as R. 1:21-7(d).

The Martinez Matter

The special master found that respondent knowingly misappropriated his client's funds, noting that he offered no explanation for charging almost triple the amount of Martinez's workers' compensation lien – $12,827.17, instead of $4,762.99 – and almost triple the amount of costs – $768, rather than $274.49. In addition, respondent received even more in fees than shown on his incorrect settlement statement – $29,000 instead of $25,000. Again, the special master determined that respondent

improperly calculated his fees on the gross, rather than the net, recovery, which the special master concluded was an intent to "skim" additional funds from his client's settlement.

The special master did not accept respondent's explanation that he paid Martinez additional funds from a settlement check received from the workers' compensation carrier. The special master reasoned that the subsequent recovery had no impact on respondent's obligation to properly disburse the $75,000 personal injury settlement.

As to this count, the special master found violations of RPC 1.15(a) and (b) and RPC 8.4(c), as well as R. 1:21-7(d).

The Powell Matter

The special master found that respondent knowingly misappropriated Powell's funds, rejecting, as not credible, his testimony that he received an additional $1,250 because he believed that his former partner, Peter Festa, was owed fees for other services provided to Powell. The special master noted that the $1,250 disbursement was made at the same time as the others, when it should have remained in trust, pending the outcome of the issue. Both Powell and Festa had denied that he had performed any work for her. The special master also remarked that respondent disbursed $1,200 to Powell only after the OAE

began its investigation. He found that respondent still owes Powell $50.

As to this count, the special master found violations of RPC 1.15(a) and (b) and RPC 8.4(c).

Overall, the special master found, as additional proof of knowing misappropriation, respondent's "pattern and practice to deceive his clients in order to retain an unearned or impermissible fee as demonstrated by the *Martin, Ramos, Rodriguez, Marino and Martinez* matters."

The special master summarized respondent's ethics infractions as:

> 1) the stunning lack of candor to the tribunal, manipulation of evidence and the callous attempt to redirect blame to a secretary in the *Genella* matter,
>
> 2) the deliberate misleading of a client, along with the initiation and continuation of abusive and harassing litigations in the *Open MRI* matter,
>
> 3) the lack of candor to the client and the doctoring of expense invoices in an effort to obtain a duplicate fee in the *Martin* matter,
>
> 4) the inadequacy and absence of required trust account ledgers, and the failure to conduct regular reconciliations,
>
> 5) the doctoring of settlement statements in each of the remaining matters to conceal the misappropriation of funds owed to personal injury clients by calculating the fee earned against the

> gross rather than the net recovery, and disguising improper disbursements for personal and/or business expenses as charges against the client's share of the recovery.
>
> [SMR82.]

Discounting respondent's mitigating evidence, the special master opined that respondent's ethics transgressions were too serious to be explained or excused by his personal difficulties. He found that, even in the absence of the financial improprieties, an appropriate sanction would require a period of suspension.

The special master found that this was not a case of negligent misappropriation, concluding that respondent used "various ruses" to conceal his knowing use of client funds to pay his personal and business expenses. He rejected respondent's position that he could not be found guilty of knowing misappropriation due to the "cushion" in his trust account, finding that the client ledger cards reflected the amounts that respondent specifically held for his clients, that the settlement statements show that he intended to benefit by deducting his own expenses from the disbursements to his clients, and that he attempted to correct shortages to clients only after the OAE intervened.

Based on the knowing misappropriation infractions and the principles of In re Wilson, 81 N.J. 451 (1979), the special master recommended disbarment.

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

In this case, respondent's conduct revealed a deceitful pattern: he settled a personal injury claim, used some of the client's portion of the settlement proceeds for his own purposes, and made misrepresentations on the client's settlement statement to conceal his defalcation. He also denied his conduct. He attempted to blame others, such as his former secretary, his former partner, and even his own clients for his wrongdoing. Moreover, in the non-knowing misappropriation counts, particularly the Open MRI matter, the scope and magnitude of respondent's misrepresentations, concealments, deceptions, fabrications, and outright lies have been rarely seen.

In the Genella matter, respondent submitted a personal injury complaint on February 18, 2009, the date on which the statute of limitations was scheduled to expire. Because no filing fee accompanied the complaint, the clerk's office deemed it deficient and returned it to him. It was not until May 13,

2009, almost three months later, that he re-submitted the complaint, along with check number 8234 for the filing fee.

After the defendant filed a motion for summary judgment based on the statute of limitations, respondent appeared before Judge Riva, at which time he made numerous misrepresentations. First, he claimed that, on February 18, 2009, his staff hand-delivered to the clerk's office the complaint, the check for the filing fee, and the cover letter, all dated February 18, 2009. Second, when Judge Riva commented that, because the complaint contained two "Received" stamps, it must have been returned due to a deficiency and then re-submitted, respondent denied that the complaint had been deficient or re-submitted. Third, respondent averred that his secretary, Joyce Vasquez, had submitted the complaint and had signed check number 8234, adding that he had fired her for poor performance. After reviewing other checks that respondent had issued in February and May 2009, when filing other lawsuits, Judge Riva concluded that respondent intended to mislead the court by backdating check number 8234.

After the OAE investigator reviewed with respondent other trust account checks that he had signed, respondent finally admitted that he had signed check number 8234. Moreover, at the time that check was issued, May 13, 2009, Vasquez was no longer

employed by respondent and, thus, could not have signed that check. Additionally, notwithstanding respondent's adamant denial to Judge Riva, he testified at the ethics hearing that he had re-submitted the Genella complaint after learning that it had not been filed properly in February. Respondent, thus, took the opportunity to change his position when it suited him.

Respondent continued along the path of misrepresentation when he filed a motion for reconsideration, in which he certified to Judge Riva that Vasquez had submitted the complaint without the filing fee and that she was responsible for failing to timely file the complaint. Furthermore, at this point, respondent virtually abandoned his client, Genella, by limiting this motion to that part of Judge Riva's order referring the matter to the OAE and taking no action to attempt to restore Genella's lawsuit.

During the ethics investigation, respondent submitted a letter to the OAE, in which he accepted responsibility for the failure to file the Genella complaint timely. Notwithstanding this admission, at the ethics hearing, he refused to concede that he had backdated the filing fee check in an effort to mislead the court to believe that it had been submitted in February with the complaint. Instead, he asserted that he had dated the check February 18, 2009 to correct what he viewed as

the court's mistake for failing to issue a deficiency notice, when the complaint was submitted without the filing fee. He blamed his secretary and the court for his own failings.

We find that, in the Genella matter, respondent violated RPC 3.1, RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.4, RPC 4.1(a)(1), RPC 8.4(c), and RPC 8.4(d). We agree with the special master's finding that respondent's failure to timely file the Genella complaint constituted simple, not gross, neglect and that he was not guilty of a lack of diligence or failure to expedite litigation. We, thus, dismissed the RPC 1.1(a), RPC 1.3, and RPC 3.2 charges.

In the Open MRI matter, respondent's pursuit of his fees and costs through arbitration, lawsuits, and appeals was headstrong, inappropriate, and irrational. Here, again, he blamed others, both a judge and a client, for his own misdeeds.

As an experienced PIP attorney, respondent should have been aware that Djakovac had other insurance (Electric) that would have been primary over State Farm, which had insured the driver of the car in which Djakovac had been a passenger. Instead of contacting Electric, respondent sought payment from State Farm, ultimately filing an arbitration proceeding. Before the first arbitration hearing of January 31, 2008 took place, respondent

knew that Electric was the primary carrier. On January 16, 2008, State Farm so informed respondent, who then contacted Electric.

Rather than withdrawing the arbitration proceeding as to State Farm, respondent obtained multiple adjournments, all for the purported rationale of investigating whether an insurance company other than State Farm may have been liable. Respondent continued along this wasteful and improvident course of action even after Electric had paid Open MRI's bill on February 14, 2008, dragging State Farm, and later Electric, along with him.

At the September 24, 2008 arbitration hearing, respondent asked DRP Zimmerman to award him fees and costs, despite his knowledge that State Farm, the only party to the proceeding, was not responsible and that, because Electric was not a party, no award could be entered against it. Zimmerman not only denied respondent's request, but also denied his application to withdraw the arbitration, informed respondent that he could not pursue litigation while the arbitration proceeding was pending, and adjourned the hearing to April 28, 2009 to permit respondent to add Electric as a party to the arbitration. State Farm's attorney, Oliveira, consented to the adjournment.

Zimmerman, thus, could not have made it any clearer to respondent that the arbitration proceeding remained active, that litigation was not an option until the arbitration had

concluded, and that respondent's recourse, if any, was against Electric, not State Farm. Yet, respondent embarked on a course of litigation and misrepresentation in a misguided attempt to have someone – anyone – pay his fees for the PIP matter.

Rather than follow Zimmerman's instructions, respondent sued State Farm and Electric in Special Civil Part on behalf of Open MRI and his law firm. In this regard, the special master found that respondent had obtained his client's consent to file that lawsuit, noting that respondent's testimony that he had notified Shannon, a secretary at Open MRI, of the lawsuit was not rebutted. However, respondent failed to prove that Shannon had the authority to approve of the lawsuit or that she had even done so. Respondent's justification for filing the complaint in Open MRI's name was limited to his representation that he had informed Shannon about the lawsuit, not that she had authorized it. We, thus, find that he had not obtained his client's consent before filing the complaint.

Respondent then brazenly misrepresented, in a certification in the complaint, that the matter was not the subject of an arbitration proceeding. Furthermore, he failed to notify Oliveira that he had filed the complaint. His explanation for this omission – that Oliveira represented State Farm only in the arbitration, not in the litigation – was nonsensical. Oliveira

could not have represented State Farm in a lawsuit that had not yet been filed. The better course would have been to advise her of the litigation and ask her to accept service on State Farm's behalf.

Next, respondent refused to accede to the reasonable request of Vilacha, Electric's attorney, to dismiss her client from the lawsuit, based on the fact that Electric had paid Open MRI's bill within sixty days of its receipt. Vilacha's testimony that respondent replied that he used a "shotgun" approach when naming defendants in lawsuits was credible, as demonstrated by respondent's relentless efforts to recover his fees in this matter.

Respondent's unreasonable litigation strategy continued, when he refused to vacate the default that had been entered against State Farm. Although not responsible for the court clerk's apparent error in sending the complaint to the wrong address, respondent should have extended that courtesy, on discovering that State Farm had not been served. Moreover, the default would not have occurred if he had informed Oliveira about the litigation at the outset.

All of these misdeeds, serious on their own, served only as the precursor to respondent's egregious prevarications to Judge DeAvila-Silebi. At a summary judgment motion hearing, he

flagrantly misrepresented that he had withdrawn the PIP arbitration. When the court obtained Zimmerman's testimony by telephone, Zimmerman confirmed Oliveira's representation that the arbitration proceeding remained pending. Judge DeAvila-Silebi found respondent's failure to disclose the fact that he had filed the arbitration to be disingenuous and questioned his ethics, suggesting that he lacked candor to the court.

Respondent then reached the nadir of his deception. Notwithstanding Judge DeAvila-Silebi's specific order that respondent's client was not to pay the attorney's fees that she had awarded both defense counsel, he patently misrepresented to Conte that the judge, who "did not know what she was doing," had ordered Open MRI to pay the legal fees. Conte was understandably dumbfounded by this news. He had neither authorized the lawsuit, nor been kept informed of its status, and could not fathom why the court would have ordered him to pay the legal fees of the insurance companies.

The deception continued. When Ariyan contacted respondent for an explanation, respondent replied that the judge had "screwed up" and that an appeal had to be filed. For obvious reasons, respondent failed to provide a copy of Judge DeAvila-Silebi's order to Conte or Ariyan, who learned from Vilacha that

it was respondent, not his client, who had been ordered to pay the sanctions.

By filing a motion for reconsideration and a notice of appeal of the sanction order, respondent again submitted pleadings without his client's consent. Both Conte and Ariyan specifically denied having authorized the appeal. In addition, to avoid the expense of ordering the hearing transcript, respondent misrepresented, in the notice of appeal, that no verbatim record existed, a falsehood that Judge DeAvila-Silebi corrected. The Appellate Division not only dismissed the appeal, but suggested that both defendants apply for counsel fees for their appellate services. Following the remand, Judge DeAvila-Silebi ordered respondent to pay Electric's legal fees.

After Conte filed the grievance, respondent told Ariyan that he would file a lawsuit, based on his receipt of a PIP file containing erroneous information. Shortly thereafter, he carried out that threat, suing his client, Open MRI, in Special Civil Part. Despite the obvious frivolous nature of this complaint, respondent refused Ariyan's multiple demands that he dismiss it. Judge DeAvila-Silebi then granted Ariyan's motion to dismiss the complaint, denied respondent's motion for reconsideration and denied Ariyan's motion for sanctions. The order denying Ariyan's

motion for sanctions was reversed on appeal, resulting in Judge DeAvila-Silebi ordering respondent to pay Open MRI's fees.

In the Open MRI matter alone, respondent failed to investigate the PIP claim; filed an arbitration proceeding against an insurance carrier that was not responsible for the client's bill; refused to withdraw that arbitration, after learning that another insurance company was the primary PIP carrier; filed a frivolous lawsuit, without his client's knowledge or consent, against both insurance companies; misrepresented in that lawsuit that no related arbitration proceeding was pending; made misrepresentations to a judge; made misrepresentations to his client, in an effort to have that client pay the sanctions that respondent was specifically ordered to pay; concealed the sanction order from another attorney; told both his client and another attorney that the judge was at fault; filed a frivolous motion for reconsideration without his client's knowledge or consent; filed a frivolous appeal of the sanction order without his client's knowledge or consent; was again sanctioned on appeal; filed a frivolous lawsuit against his client; filed a frivolous motion for reconsideration, which, the Appellate Division suggested, was filed late and back-dated; and was again ordered to pay sanctions.

This appalling course of conduct was costly to respondent's client, Open MRI; its counsel, Ariyan; defendants State Farm and Electric; their attorneys, Oliveira and Vilacha; NAF Arbitration; and the trial and appellate courts, all forced to consume their resources in fending off respondent's spiteful and unwarranted attempts to seek fees to which he was not entitled. Ironically and rightfully, respondent bore the brunt of his own actions, being sanctioned again and again for his ill-advised conduct.

In the Open MRI matter, we find that respondent violated RPC 1.2(a), RPC 1.4(b), RPC 1.4(c), RPC 1.7(a)(2), RPC 3.1, RPC 3.2, RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d). Here, we part company with the special master in two respects. First, the special master found that, by continuing to prosecute a claim for payment, after his client had been paid, respondent engaged in gross neglect. In our view, however, respondent did not neglect the matter; he inappropriately pursued fees to which he was not entitled, misconduct encompassed by other RPC violations. Second, the special master found that, by certifying, in the Special Civil Part lawsuit against State Farm and Electric, that no related arbitration proceeding was pending, respondent engaged in criminal conduct, a violation of RPC 8.4(b). Although such conduct violated other RPCs, there is

no criminal component to that action. We, thus, dismissed the RPC 1.1(a) and RPC 8.4(b) charges.

In the Ramos matter, we find that the evidence clearly and convincingly establishes that respondent knowingly misappropriated $1,398.39 from his client. After settling a personal injury claim and making the proper disbursements, respondent received that sum, which he reflected on the settlement sheet as a TAME adjustment. He did not explain to Ramos the purpose of this payment, which his client did not authorize.

Respondent claimed that his certified public accountant, Gelman, had directed him to disburse those funds to himself. Although respondent attempted to demonstrate that the check was issued as a result of a misunderstanding, he provided no support for that proposition. Moreover, Gelman refuted respondent's assertion. Indeed, Gelman denied that he had ever instructed respondent to disburse any funds.

Respondent reimbursed Ramos only after he had filed the grievance.

Respondent, thus, knowingly misappropriated Ramos's funds and tried to conceal that conduct by creating a misleading settlement sheet, violations of RPC 1.15(a) and (b) and RPC 8.4(c).

In the Martin matter, respondent again set out on a course of deception and misrepresentation. After Martin canceled his real estate closing, All-American faxed to respondent a $300 invoice representing its cancellation fee. Respondent blatantly altered that document to mislead Martin into believing that All-American's bill was $3,000, not $300. He presented this phony invoice to Martin, along with his own bill for $2,000 for legal services. He, thus, sought to obtain a fee of $4,700 from Martin.

Respondent's deception is obvious. Had he explained to Martin, as respondent claimed, that the $3,000 encompassed both his $2,700 fee and All-American's invoice, Martin would not have contacted All-American to verify the amount of its bill. Both Martin and All-American's former employee, Panetta, confirmed that that conversation had taken place. Furthermore, respondent's refusal to provide Panetta with a copy of the $3,000 invoice, as he promised to do, indicates concealment.

Respondent, thus, violated RPC 8.4(c). Because there was no clear and convincing evidence that his legal fees were unreasonable, we dismissed the RPC 1.5(a) and RPC 8.4(a) charges.

As to the recordkeeping charges, respondent admitted that he failed to maintain required trust receipts and disbursements journals and a running checkbook balance, while Gelman reported

that respondent failed to reconcile his trust account, all in violation of RPC 1.15(d) and R. 1:21-6(c).

In the Rodriguez matter, respondent used his client's funds to pay his personal expenses and covered up this impropriety by falsifying the settlement statement. Specifically, respondent paid his health insurance premium, credit card bill, and an overdue bill that had been turned over for collection. These personal debts totaled $5,858.55. He then added that sum to the actual costs of $1,050.83, falsely indicating on the settlement statement that the client's costs were $6,909.38.

Although respondent admitted this conduct and conceded, too, that Rodriguez's settlement share was reduced thereby, his explanation made no sense. He claimed that he should have first transferred the money from the trust account to his business account and then made the payments from his business account. Although attorneys are required to deposit legal fees in their business accounts, these sums were not respondent's legal fees. They were not respondent's monies at all. If respondent meant to pay his personal bills from his legal fees, he was so entitled. He could not, however, use his client's funds for that purpose without Rodriguez's consent, which was not provided.

In addition to misappropriating the funds disguised as costs, respondent also received excessive fees by calculating

his legal fees based on the gross recovery. As of the date of the ethics hearing, respondent still had not disbursed $6,208.16 that was owed to Rodriguez.

The special master properly rejected respondent's defense, advanced in every count charging knowing misappropriation, that he maintained a "cushion" in his trust account. This defense does not apply in a case such as this, where respondent intentionally used his client's monies for his own purposes, created fictitious settlement statements to conceal his thefts, and reimbursed the client, if at all, only after his actions fell under the OAE's scrutiny.

Respondent's actions were not the result of mistake or poor recordkeeping. They were the product of a deliberate campaign to take his client's money and to falsify documents to conceal his theft. He, thus, violated RPC 1.15(a) and (b), RPC 8.4(c), and R. 1:21-7(d).

The Sabando matter is similar to the Rodriguez case. Here, respondent settled a personal injury claim, used his client's funds to pay his American Express bill in the amount of $3,847.28, and falsified the settlement statement by indicating that the $3,847.28 represented costs associated with the prosecution of the client's case.

Again, respondent's explanation was not rational. He claimed that he paid his bill from the trust account, instead of the business account, and reflected the payment on his client ledger card so that he knew the amount that "Sabando would be owed." When his attorney pointed out to him, at the ethics hearing, that Sabando was "shorted" by respondent's use of his funds, respondent replied that he later sent to Sabando the amount that he was owed.

Respondent, thus, implied that he had borrowed the funds, and kept track of this loan on the client ledger sheet. Borrowing from clients without their consent, however, is still knowing misappropriation. In re Wilson, supra, 81 N.J. at 456, defines "misappropriation" as including any "unauthorized temporary use for the lawyer's own purpose." Moreover, respondent produced no proof that he had remitted to Sabando the $4,077.66 that he was owed.

By knowingly misappropriating client funds, concealing the theft by falsifying the settlement statement, and calculating his fee based on the gross recovery, respondent violated RPC 1.15(a) and (b), RPC 8.4(c), and R. 1:21-7(d).

Respondent's conduct in the Marino matter follows the now-familiar pattern. He knowingly misappropriated his client's funds, when he disguised, on the settlement statement, his

personal expenses – this time a $3,254.78 American Express bill and a $90.95 sprinkler maintenance fee – as medical provider liens. He paid those bills about three months before he disbursed any funds to Marino.

Although respondent denied making any effort to hide the payment of these personal bills, claiming that they appeared on the client ledger card and the settlement statement, he admitted that he never provided Marino, or any client, with the client ledger card. He further conceded that the settlement statement did not reflect the payments for his personal expenses, but indicated that those amounts were medical liens.

Respondent admitted that he had miscalculated his contingent fee by basing it on the gross recovery. Although he issued a $3,345.73 check to Marino almost one year after disbursing her share of the settlement proceeds, he still owed Marino $316.33 as of the date of the ethics hearing.

Respondent, therefore, violated RPC 1.15(a) and (b), RPC 8.4(c), and R. 1:21-7(d).

In the Martinez matter, after respondent settled a personal injury case, he inflated both the amount of a workers' compensation lien ($12,827.17, instead of $4,762.99) and the costs of the suit ($768, instead of $274.49). Again, he calculated his legal fees based on the gross, not the net,

recovery. Furthermore, he received $29,000 in fees, when even his own improper calculation provided for a $25,000 fee (one-third of the $75,000 settlement). Again, he tried to blame another. He testified that his partner had issued a $3,000 check, conceding on cross-examination, however, that he had issued and signed that check. Prior to the issuance of that check, respondent had disbursed $26,000 to himself as fees, more than the $25,000 fee that he had improperly calculated. Again, he falsified the settlement statement, listing inflated amounts for both the workers' compensation lien and the costs.

Here, too, respondent's explanation was not logical. He claimed that he had not shortchanged Martinez, because he had issued funds to him from a separate workers' compensation settlement, obtained after he received the personal injury recovery. Martinez, however, was entitled to $45,054.02 from the $75,000 personal injury settlement. Any subsequent receipt of funds from a separate recovery had no impact on Martinez's entitlement to his share of the personal injury recovery.

As of the date of the ethics hearing, Martinez was still owed $4,091.50.

Respondent, thus, violated RPC 1.15(a) and (b), RPC 8.4(c), and R. 1:21-7(d).

In the Powell matter, respondent again knowingly misappropriated client funds, this time creating a fictitious lien. He indicated on the settlement statement that Powell owed $1,250 to his law firm, based on unrelated services that Festa, his partner at that time, had provided to Powell. Both Festa and Powell, however, denied that Festa had performed any work for Powell. Even after agreeing that he was not owed the $1,250, however, respondent disbursed only $1,200 to Powell. He still owes her $50.

Respondent, thus, violated RPC 1.15(a) and (b) and RPC 8.4(c).

In mitigation, respondent produced a letter from a psychologist indicating that he suffered from depression and anxiety as a result of the deterioration of his marriage, resulting in impaired judgment, a depressed ability to think, and a distorted ability to understand the consequences of his behaviors. However, no amount of mitigation will overcome the disbarment sanction required by Wilson. In re Noonan, 102 N.J. 157 (1986). Although attorneys may offer a defense (as opposed to mitigation) to a knowing misappropriation charge by establishing that they suffered from "a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful,"

respondent's proofs did not come close to satisfying that rigid standard announced in In re Jacob, 95 N.J. 132 (1984).

In sum, respondent is guilty of knowingly misappropriating client funds in six cases. Even in the absence of this mandatory disbarment offense, however, he would be subject to severe discipline, if not disbarment, based on the non-Wilson violations in this case. In the Genella, Open MRI, and Martin matters, respondent repeatedly showed disregard for the truth and disdain for his clients, the courts, and other attorneys. As the special master found, respondent was willing to say or do almost anything when it suited his purposes.

Because respondent knowingly misappropriated client funds, disbarment is the only appropriate sanction, under Wilson. We so recommend to the Court.

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: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles P. Ingenito
Docket No. DRB 12-372

Argued: May 16, 2013

Decided: June 11, 2013

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Gallipoli	X					
Yamner	X					
Zmirich	X					
Total:	7					

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel