SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-384
District Docket No. XIV-2011-0684E

IN THE MATTER OF	
DAVID G. CHRISTOFFERSEN	
AN ATTORNEY AT LAW	

Decision

Argued: March 20, 2014

Decided: June 5, 2014

Melissa Ann Czartoryski appeared on behalf of the Office of Attorney Ethics.

Joseph P. Depa, 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 discipline (disbarment) filed by Special Master Edwin H. Stern, P.J.A.D.(ret.). A three-count complaint charged respondent with two counts of knowing misappropriation (RPC 1.15(a), RPC 8.4(c) and In re Wilson, 81 N.J. 450 (1979)), recordkeeping violations

(RPC 1.15(d) and R. 1:21-6(c)), and failure to segregate funds in dispute (RPC 1.15(c)). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1984. He has no prior discipline.

I. The Howard Matter

Count one charged respondent with knowing misappropriation of clients' funds arising out of his representation of Evelyn Stafford Howard, in connection with injuries sustained in a slip-and-fall accident.

Specifically, on August 9, 2010, respondent received a $35,000 check in settlement of Howard's claim. After Howard and respondent endorsed the check, respondent deposited it into his attorney business account.[1] On the back of the settlement check, respondent handwrote the word "deposit," along with the account number for the business account. On the deposit ticket, respondent handwrote the account number for the business account, checked off boxes indicating that the deposit was for

[1] In his answer to the formal ethics complaint, at count one, paragraph one, respondent admitted the following paragraphs of the complaint: 2,3,5,6,7,8,9,11,12,18,19,20 and 21.

the "business checking" account, and then wrote "(BUS)" next to his name, "Christoffersen."

Howard's settlement funds posted to the business account on August 9, 2010, which had a balance of $1,117.89 at the time. Respondent made no further deposits to the business account until August 27, 2010, when he deposited $13,552 in it. Between August 9 and 27, 2010, respondent wrote eighteen checks from the business account, totaling $9,534.80.

Respondent's distribution statement for the Howard matter called for the following disbursements: proceeds to Howard for her share ($11,494.80); a workers' compensation lien ($11,343.89); respondent's attorney fee and costs ($11,787.59), and advance costs paid by Howard ($373.82). The only disbursement that respondent made against the settlement fund, at the time of the settlement, was for Howard's share of $11,494.80, which he did on August 14, 2010. Because the settlement funds were not in the trust account at that time, respondent's disbursement was made against other funds in the account. The record is silent on whose monies funded that disbursement.

At the ethics hearing, respondent conceded that, by March 22, 2011, he had used all of the funds in his business account,

for business and personal expenses. Respondent did not have the consent of either Howard or the New Jersey Division of Risk Management to use the lien portion of the Howard proceeds for his own purposes.[2]

In August 2011, respondent received a notice from the Office of Attorney Ethics (OAE) that he had been selected for a random audit of his attorney records. On August 26, 2011, respondent borrowed $20,000 from his father and deposited it into his business account to cover his disbursements against the workers' compensation lien.

On August 30, 2011, respondent transferred $11,494.80 from his business account to the trust account to reimburse the trust account for the payment of Howard's share of the settlement proceeds, made from the trust account on August 14, 2010.

Respondent did not satisfy the outstanding workers' compensation lien until February 29, 2012, when he wrote business account check #6596 to Treasurer, State of New Jersey, for $6,820.62. Because the lienholder agreed to accept less than

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[2] The disbursements against respondent's $11,787 fee were, of course, proper.

the original lien of $11,343.89, the $4,523.27 balance was remitted to Howard (check #6597).

Mary Waldman, Assistant Chief, OAE Random Audit Program, testified, at the ethics hearing, that respondent's alleged misconduct in this matter had been discovered during a random audit covering the period from September 1, 2009 through August 31, 2011.

Waldman testified that respondent's deposit of the $35,000 settlement check into his business account was improper, as settlement checks are required to be deposited in the attorney's trust account. According to Waldman, respondent's deposit was not the result of inadvertence or mistake but, instead, was intentional, for several reasons.

First, as of July 31, 2010, nine days prior to the $35,000 deposit, respondent's business account held only $1,117.89. Waldman testified that, without an infusion of funds, there would have been "insufficient funds in the account" to cover the eighteen checks that respondent wrote from the business account from August 9 to 27, 2010, totaling $9,534.80.

Second, Waldman testified about respondent's handwritten notations on the deposit items:

Q. During the random audit process did you ever discuss with Mr. Christofferson [sic] the issue of this $35,000 deposit into the business account?

A. Yes, we did.

Q. How did that subject come up?

A. The subject came up because I had, in my process reviewing the bank statements, I had noticed the $35,000 deposit to the business account, which appeared to be a little bit unusual. Then working my way back, I found the rest of the transaction, meaning the client being paid.

Q. What was his explanation for that?

A. That it was a mistake.

Q. Did you consider the possibility that it was a mistake?

A. Yes, I did.

Q. Did you take any steps to either verify that or discount that explanation?

A. Well, what I did when I saw the deposit going into the business account, there are a number of things that I looked for to verify either that it was a mistake or done intentionally. I look for some type of corrective action, you know, putting it back. I, you know, looked into the trust account. Well, I saw his -- the money going into the business account but then I didn't see the client being paid until I looked in the trust account. I saw the client being paid from the trust account. If it was a mistake I would have assumed that when he paid the client from the trust account he

> would have also paid himself from the trust account, which he didn't. Which kind of led me to believe that he knew the money was already in the business account. I also looked at the deposit slip. It looked like -- it did not look like it appeared to be a mistake. It looked like the funds were intentionally deposited into the business account. Also -- I'm sorry.
>
> Q. Okay.
>
> A. Also I had noticed, although he was entitled to a portion of his fee out of the $35,000, on his computer reports he was showing negative balances. Which led me to believe that there were cash flow problems with the firm.
>
> [1T35-20 to 1T37-16.] [3]

Waldman emphasized that, when an attorney disburses funds at settlement, the attorney's fee and costs are taken, "usually in one -- you know, in one sitting" (1T40). Respondent, however, had not done so (1T40).

Waldman conceded that she did not have her "report" with her, at the ethics hearing. Although she claimed that respondent's payment to Howard invaded other client funds held

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[3] "1T" refers to the transcript of the July 8, 2013 special master's hearing.
"2T" refers to the transcript of the July 10, 2013 special master's hearing.

in the trust account, she did not identify those clients or the amounts that should have been held for them (1T72).[4]

Respondent, too, testified about the Howard matter. With regard to the notations on the deposit slip, he stated as follows, in a colloquy with the presenter:

> Q. Take a look at Exhibit 2 in the book, which is the deposit ticket you filled out.
>
> [SPECIAL MASTER]: He said he went to the bank. Let me, for the record, clarify. You acknowledge on OAE 2, that is your handwriting on the deposit ticket.
>
> THE WITNESS: On Exhibit 2?
>
> [SPECIAL MASTER]: Yes.
>
> THE WITNESS: All of the writing on Exhibit 2 is my writing.
>
> [SPECIAL MASTER]: There [sic] would include the paren, b-u-s, end paren?
>
> THE WITNESS: Yes, sir.
>
> Q. When you write paren, b-u-s, would you agree that you do that as a notation that that deposit is intended to go into the

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[4] The record does not include an accounting from the OAE that would shed light on any specific clients whose trust account funds may have been negatively impacted by respondent's trust account payment to Howard.

business account rather than the trust account?

A. Yes.

Q. That's your normal practice?

A. Yes.

Q. It is also your normal practice when you fill out a deposit ticket, that if you intend for the money to go into the trust account, you put in parenthesis "trust"?

. . . .

A. Yes. I would also note whether I'm making a trust deposit or business deposit. I check the boxes "checking" and "business." An issue of that was made on Monday.

Q. You also handwrite the account number on the bottom of the deposit ticket; correct, or in the deposit ticket?

A. Yes.

[2T103-1 to 2T105-5.]

Respondent testified that he must have relied on "something" to place the account number in the box provided on the deposit slip, as he did not have those numbers memorized. He explained that he had just opened the PNC attorney trust and business accounts, in July or August 2010. They were quite new at the time. Respondent was unsure how he knew to fill in the account number on August 9, 2010, but explained that now he has

a rolodex card for PNC Bank, which contains the trust and business account numbers.

A review of respondent's August 9, 2010 deposit slip shows that, while the bank routing and account numbers appear to be pre-printed on the bottom of the deposit slip, the slip was not customized for respondent, that is, it did not yet have pre-printed information about respondent and the type of account involved.

Respondent denied that he had intentionally deposited the $35,000 settlement check in the business account in order to use the funds for operating and personal expenses. He testified that, when he filled out the deposit slip, he was distracted:

> As far as the deposit slip and what I wrote on the back of the check, that's clearly — I clearly filled out those out [sic]. My only explanation would be that when I was filling those out, something was distracting me. It was probably Mrs. Howard sitting at the tabling [sic] having a conversation with me. Because she had shown up to sign the check. I would have wanted to fill out that deposit slip right away and run to the bank with it and deposit the check. Clearly, something was distracting me. It was probably having a conversation with her, but it was just a mistake.
>
> [2T110-10 to 22.]

In his answer, respondent denied the allegation that he needed the Howard funds to cover the eighteen August 2010 checks, totaling $9,534.80. Rather, he stated that he "was entitled to a fee for reimbursement of [attorney fees and] costs of $11,787.59" and, that, therefore, "he would have had more than sufficient funds in the Business Account when that amount was added to the balance of $1,117.89, [which] gave him a total of $12,905.48 and after deducting checks therein against that account, he had a balance of $3,370.68." He insisted that, "[t]o have intentionally put this money in my business account and then write [Howard] a trust account check, then leave the money in there knowingly, would have been insanity."

Respondent's counsel asked him when he had first learned that he had deposited the Howard funds into the wrong account:

> [A.] According to the documentation in this case, the [Howard] money remained untouched in my business account until January.
>
> Q. Of what year?
>
> A. 2011. I wrote her the check in August of 2010. I believe I'm correct in saying that it remained in my business account unmolested until January. By March it had been depleted. So it was after March that it was depleted that I became aware of it. If I had ever been aware of it I would not have spent it. And I would have transferred however much, all of it or whatever was

left, from my business account to my trust account.

[2T31-19 to 2T32-6.]

Respondent then discussed the events of Saturday, August 14, 2010, when he met Howard at his office to turn over her share of the settlement proceeds. Respondent's counsel asked why he had paid Howard with a trust account check, to which he replied, "because I thought the money was in the trust account." Counsel also asked respondent if he had made the remaining Howard disbursements on that day:

> [A.] I did not. I went to a seminar later that day on criminal record expungement. Then from there I went to our cabin in the Adirondacks where my family was vacationing.
>
> Q. You were on vacation for approximately how long, do you recall?
>
> A. I don't recall that year. We go anywhere from a week to two weeks. But sometimes I stay the whole time. Sometimes I go back and forth between the Adirondacks and my office, depending on what my demands are.
>
> Q. Was going into your office that Saturday for the sole purpose of giving [Howard] her check?
>
> A. Yes.
>
> Q. You would have been going on vacation earlier, except you wanted to accommodate her?

A. Will [sic], I also went to a seminar, which I was going to go to anyway.

Q. That's right, excuse me.

A. Her coming in didn't affect when I went to vacation. I went from the office to the seminar and from the seminar to vacation.

Q. But if not for the seminar you would have been on vacation? You would not have normally gone into the office?

A. Right.

[2T30-2 to 2T32-3.]

Respondent explained, that, thereafter, he simply forgot about the Howard matter and, therefore, also forgot to satisfy the $11,384.49 workers' compensation lien. He explained that a shoulder injury had worsened, after his August 2010 vacation, and that, until the beginning of April 2011, he had been "very preoccupied" with his rotator cuff:

It affected my sleep. It affected — if I were to roll on my shoulder at night it would wake me up in terrible pain. So I didn't sleep well. During the day I would get that sledge hammer feeling any number of times, if I reached for my computer to put a disc in or out or if I did anything extending my arm. You know, I was also, fair to say, depressed. I was working part-time. I was leaving early to go home to put ice on my shoulder, et cetera.

Q. You said you had the surgery in April of 2011.

A. Yes.

Q. What happened in the aftermath of the surgery?

A. Well, I was back to the office pretty quick. Because even two days after the surgery I felt a thousand times better than I did the day before the surgery. It took about a month to get over the nauseating effects of the general anesthesia. But I was working -- I was back to the office pretty quick, but working part-time.

[2T33-6 to 2T34-4.]

Respondent also testified that his continuing use of business account funds, including the lien funds, was a "crazy mistake," presumably because he thought that the funds were his own. Although respondent was not directly asked about the basis for his belief that the funds in the business account were his own, to use as he saw fit, he stated as follows:

> It was all a mistake. Then I went on vacation. And then I came back and I was most concerned about the pain that I was in and having surgery. But at no time did I realize I made this mistake or I would have done something about it.
>
> On the day that I wrote her the trust account check, the easiest thing for me to have done, if I had known that I accidentally put the money in business, would have been to write her a business check. Or to tell her no, I've got to wait a couple of days to write you a check, then write a business check for $35,000 and put

> it in the trust account where it should have been.
>
> Those would have been the smart things to do and the easiest things to do. What I did, if I did it knowingly, would have been the stupidest most insane thing I could have done. It didn't benefit me at all. It put me at risk.
>
> It has me sitting here. But the money that I put in my business account, it stayed there unmolested for five months, not benefitting me. I didn't go on a spending spree. It was just a crazy mistake, which given a combination of things, leaving for vacation after writing her a check and then coming back and not having thought about the transaction for seven or ten days [sic]. And then being in pain and gearing up for surgery, slipped my attention.
>
> [2T109-7 to 2T110-9.]

The closest explanation for respondent's mistaken belief that he could use the funds in the business account appears in respondent's "Attachment to Answer to Complaint" (AAC), wherein his counsel stated as follows:

> Furthermore, it should be noted that between August 9, 2010 and August 31, 2010, new deposits (not including the Stafford check) to the [] Business Account were made totaling $16,152.00. This explains why [respondent] did not immediately notice an artificially large Business Account balance.
>
> Then on November 23, 2010, [respondent] deposited $10,000 in the Business Account which represented a Testamentary/Planning Gift Check from his father. This deposit further obscured the fact that the Business

> Account was maintaining an artificially large balance and thus failed to put [respondent] on notice of an irregularity.
>
> [AAC,3.]

Moreover, the attachment to the answer explained that respondent never maintained disbursement sheets to keep a running balance in the business account. When he wanted a balance, he called the bank. Respondent also had overdraft protection on the business account and, therefore, "had no reason to risk a charge of misappropriation of client's funds in order to avoid . . . a small [bank overdraft] fee."

When respondent was questioned by his counsel about the state of the business account, respondent recalled that he did not have sufficient funds of his own to replenish the trust account or pay the workers' compensation lien, after depleting the business account funds:

> [Q.] You say at some point you realized you had made a mistake. What steps at that point did you take to correct the mistake?
>
> A. Well, as of the time that I learned of the mistake there was not a lot I could do at that moment, because I didn't have the money to make good on it. My intention was I had four or five personal injury cases that were -- that in the near future were going to settle.
>
> Q. In the pipeline, so to speak?

A. In the pipeline, far in the pipeline. I was going to make good on the mistake as those settled.

Q. Were you able to accomplish that?
A. That's not how it was resolved. It was resolved by my borrowing money from my father.

Q. At some point I figured I can't waiting [sic] for stuff to come in, so you borrowed money from your dad?

A. Right.

Q. With the money that you borrowed from your dad, you put it in what account?

A. I put it -- I believe I ran it through my business account. I wrote -- I believe I wrote a check from the business account to the trust account to make good on the shortfall in the [Howard] money that I had caused when I wrote her a trust check. And the other, the rest of it I paid out of the business account.

Q. You say "the rest of it", there was a lien that had to be satisfied; correct?

A. She had a Worker's Compensation lien.

Q. You made good on that r [sic] you made payment on that lien?

A. Yes. I believe I wrote a business account check for that.

[2T35-14 to 2T36-23.]

Respondent testified about his receipt of the OAE notification of the random audit:

> [PRESENTER.] Isn't it true that as of August 30, year 2011, you had received a letter from the Office of Attorney Ethics indicating that your account would be audited?
>
> A. Yeah. Let me explain. Yeah, that forced my hand to borrow money from my father. But my intention was that at whatever time after March of 2011, when I realized that a mistake had been made, my intention was to solve the problem myself as personal injury cases settled and replenish the money myself that way. But yes, once I knew that there is going to be an ethics investigation, I realized I couldn't wait for however long that was going to take and I borrowed money from my father; correct.
>
> [2T114-18 to 2T115-7.]

Even though by then, respondent was well aware that the workers' compensation lien was still outstanding, he did not pay it until February 29, 2012, with checks from his business account.

II. The Miskolczi Matter

Count two charged respondent with knowing misappropriation and failure to segregate client funds until the resolution of a fee dispute.

On December 8, 2003, Kalman and Eva Miskolczi officially retained respondent to represent them in matters involving attorneys Stephen Benisch and Kevin Shannon, both of whom had represented the Miskolczis in a prior matter. Paragraph one of their fee agreement stated that the legal services included the investigation of and prosecution of all meritorious causes of action against Benisch and Shannon. Paragraph three provided that work would begin upon receipt of $20,000, with $10,000 permitted to be deposited into the firm's business account immediately. Respondent did not dispute that, according to the agreement, the remaining $10,000 would be held in his trust account.

The Miskolczis gave respondent a check for $20,000, dated December 4, 2003, which he deposited into his trust account. On December 15, 2003, respondent transferred $10,000 from the trust account to the business account, leaving a balance of $10,000 in the trust account.

As of March 2005, some two years later, respondent had not yet provided the Miskolczis with an itemized bill for legal services, nor had he filed suit on their behalf.

In his answer, respondent explained that, when the Miskolczis retained him for this matter, he had already accrued huge fees for representing them as defendants in a prior matter filed against

them by Benisch, who sought legal fees in a prior estate matter:

> Attached hereto please find a copy of an itemization of services rendered to the Miskolczis (see Exhibit D) which indicates how much attorney time was invested [in the prior matter]. Based on the hourly rate in the retainer agreement, the fair fee for services rendered by Mr. Christoffersen would be over $42,000. The ledger sheet attached (see Exhibit E) shows that Mr. Christoffersen was paid a few thousand dollars during the pendency of the Benisch matter but in no event anywhere near that which was actually owed.
>
> [AAC,4.]

Only after the suit filed by Benisch was dismissed as to the Miskolczis did they seek to sue Benisch. Respondent agreed to represent them, in December 2003.

In the new matter, respondent utilized two paralegals to "exhaustively research whether any viable causes of action could be lodged against Benisch." Respondent claimed that, because Benisch had been a formidable adversary, he "left no stone unturned" in his analysis.

In January 2005, respondent concluded that there was no basis on which to proceed against Benisch. By that time, his paralegals had expended in excess of $12,000 in billable time. Respondent, too, had accumulated billable time, during that

period, but he elected not to charge the Miskolczis for his time.

Respondent sent the Miskolczis two lengthy letters, dated November 24, 2004 and January 6, 2005, describing, in great detail, the problems that faced them, in the event that they sought to sue Benisch or Shannon. Respondent testified that, in January 2005, the Miskolczis "came to the office for me to actually have a sit-down with them and tell them myself." Respondent recalled that the relationship immediately soured, during that meeting, once he gave them his opinion that they had little to pursue.

On March 2, 2005, respondent sent a final letter to the Miskolczis. He included in it his trust account check for $10,000, representing the funds remaining on account of the representation. Respondent testified that the letter

> reiterated that we had performed extensive research. We concluded that Mr. Benisch may not be sued. Also reiterating, we believe, that if there is a potential suit it is against Mr. Shannon. But the real purpose of this letter was to point out for them what our agreement was. That is to say, the agreement between Kalman, Eva and myself. Because I was hearing from Kalman, Eva and Louis over and over by now -- by now, March 2nd, that you promised you would sue Mr. Benisch. I kept saying no, I didn't promise I would sue Mr. Benisch.

> What I promised was in the fee agreement. Here I am quoting it or paraphrasing it. This cover letter also enclosed the $10,000 that was in the trust account.
>
> I say in the last paragraph, "I am sure you know that substantial monies are owed the firm for my having represented you in Benisch versus Miskolczi. I hope, therefore, you appreciate what an act of faith it is on my part to release this $10,000 to you".
>
> They had -- by now they were off the leash and getting pretty hostile, saying you give us back that $20,000. We gave that to you because you promised to sue Mr. Benisch. Now, give us that $20,000 so we can take that to another lawyer to sue Mr. Benisch.
>
> [2T53-22 to 2T54-24.]

Respondent, Eva, and Kalman all testified that the Miskolczis had immigrated to this country in the early 1980s and that they had become friends through respondent's father, who had hired them for various odd jobs. According to Kalman, these legal representations marked the first time that they had used respondent as their lawyer. The couple and respondent had been friends for years before that.

On April 21, 2005, respondent sent the Miskolczis an accounting of paralegal Preeto Mehrotra's time in the matter, which amounted to $10,565. The next day, he sent them a similar accounting for paralegal Megan Maxwell, for $2,571.

The Miskolczis and respondent all testified that the Miskolczis never negotiated respondent's $10,000 trust account check. Eva recalled having tried to cash it, about ten months after it had been issued, but being told by the bank that the check was too old. They did nothing with the check for five years. Kalman testified that he did not do so because he wanted the entire $20,000, as respondent had never filed suit against Benisch.

Both respondent and Kalman testified that, at their final meeting, five years after respondent had given his trust account check to them, Kalman came to see respondent about the return of the entire $20,000 fee. He brought respondent's five-year old check with him. At the end of that meeting, upset that respondent did not acquiesce to his demands, Kalman left the old check with respondent and told him to "keep the money. I'm going to get the money anyway somehow, because you are wrong. I need my money back. That's my feeling."

Respondent recalled the meeting somewhat differently:

> We talked about the fact that, you know, I had never gotten paid for the Benisch versus Miskolczi matter. I was pretty ticked about that. I don't remember how the conversation ended and how we transitioned standing up and going toward the front door.

> But at the front door he turned to me-- he never asked for a replacement check, by the way. He never asked for a replacement check. He never said I'm here to get a check. He showed up saying my wife tried to cash this and it was no good.
>
> On his way out he left the check with me on my counter and he said you do what you think is right with the money and he left. That was the last time that I saw him or heard his voice until Monday.
>
> [2T63-5 to 21.]

At the ethics hearing, respondent clarified that he had, in fact, taken his fee prior to Kalman's last meeting with him:

> Q. You then reissued a check for $10,000 and deposited it into your business account, did you not, at some point after your last meeting with Kalman?
>
> A. No. I did that about a year before Kalman showed up.
>
> Q. Okay, I'm sorry. That was for what purpose?
>
> A. Well, it had been sitting in my trust asked [sic] for five years. I knew they weren't going to deposit it.
>
> Q. You knew they couldn't?

A. I knew they couldn't at that point. I knew the Miskolczis very well at that point. The Miskolczis have their view of the world. When they think they are right they don't compromise. I knew their thinking. I knew what they were thinking. They were thinking they want the whole $20,000 and we're not going to accept anything less.

. . . .

I thought of three things I could do with [the money]. Unfortunately not the thing that I should have done with it, which I regret. And I also could kick myself for not calling the Ethics hot line and asking about it. But it never occurred to me that this was really a fee dispute situation. Because their argument, frankly, was BS, that I had forgiven their debt, I didn't take it seriously as a fee dispute.

Anyway, I thought that I could either send them another check for the $10,000, which they are also not going to cash for the same, or something sticks in my mind that if you have monies held in trust for a long period of time or whatever, you are supposed to turn the money over to the Supreme Court. Which I thought, well, I don't really want to do that.

I thought the other alternative is, I know they owe me a boat load of money. I have - it makes no common sense to turnover money to somebody when they owe me money. So I wrote myself a check.

[2T64-4 to 2T65-23.]

III. The Commingling and Recordkeeping Violations

Count three charged respondent with commingling (RPC 1.15(a)(2)), and recordkeeping violations (RPC 1.15(d) and R. 1:21-6)).

As a result of the OAE audit, several deficiencies were found in the maintenance of respondent's attorney books and records. Respondent admitted, both in his answer and through counsel, at the hearing before the special master, that the following recordkeeping deficiencies were detected for the period September 1, 2009 through August 31, 2011:

> A. A schedule of clients' ledger accounts is not prepared and reconciled monthly to the trust account bank statement [R. 1:21-6(c)(1)(H)];
>
> B. No client ledger cards with debit balances [R. 1:21-6(d)];
>
> C. Inactive balances remain in the attorney trust account for an extended period of time [R. 1:21-6(d)];
>
> D. Old outstanding checks are to be resolved [R. 1:21-6(d)];
>
> E. Attorney funds for bank charges exceed $250 [RPC 1.15(a)];
>
> F. Funds unrelated to the practice of law are commingled in the trust account [RPC 1.15(a)];

G. Overhead costs are deducted in contingency fee matters [R. 1:21-7(d)];

H. Electronic trust account transfers are made without proper authorization [R. 1:21-6(c)(1)(A)];

I. Improper image processed trust account checks [R. 1:21-6(b)]; and

J. Improper image processed business account checks [R. 1:21-6(b)].

Respondent had been the subject of a prior random audit, in 1995, and had been found to have had ledger cards with debit balances and inactive balances remaining in the trust account for long periods of time.

Waldman testified briefly about the deficiencies, including that respondent "had a number of" inactive balances in his trust account, had left his own funds in the trust account, in excess of the $250 allowed for bank-related expenses, and had "used the trust account for matters that are unrelated to his law practice. [Respondent] I believe, was periodically holding money in there for his money [sic] that was to be put in trust for his children."

The OAE did not provide a reconstruction of the trust account to show the amounts and owners of funds commingled or left for long periods in respondent's trust account.

Respondent was neither asked, nor did he volunteer, to testify about the recordkeeping deficiencies.

As to the recordkeeping count, the special master noted that there was no dispute that respondent had failed to properly maintain his attorney books and records. The special master dismissed the charges in the Miskolczi matter (count two), concluding that respondent's immediate deposit of $10,000 of the retainer into the business account was proper, under the terms of the fee agreement. With regard to the remaining $10,000 that remained in the trust account, the special master concluded as follows.

> In light of Respondent's assertion that he was entitled to the entire retainer, although the record contains no statement or account justifying same, the OAE has not demonstrated that Respondent improperly declined to return $10,000 of the $20,000 paid, and improperly voided the $10,000 check once that check was not cashed or deposited for almost five years.
>
> The clients appear credible, but despite the strength of their convictions, they never filed any grievance, fee arbitration or complaint against Respondent, perhaps because of their prior out-of-pocket payments to other attorneys for prior unsuccessful and expensive services and inability or lack of desire to spend more in pursuing claims against Respondent. Under the circumstances, I find that the charge as

> alleged in count two fails for lack of proof.
>
> [SMR3.][5]

In the Howard matter (count one), the special master concluded that respondent's deposit into the business account was "knowing and purposeful." The special master noted that the deposit slip bore the business account number placed by respondent, after the account name, that respondent checked off boxes to both "business" and "checking," and that he wrote "(bus)" on the deposit slip. The special master remarked that, without this deposit, the business account would have contained insufficient funds to cover the eighteen checks written by respondent between August 9 and 27, 2010.

In concluding that respondent knowingly misappropriated trust funds, the special master found, consistent with Waldman's testimony, that respondent paid Howard with trust account funds belonging to other clients. Compounding that offense, once respondent learned that he was out of trust, he took no immediate action, waiting until he received a notice of the

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[5] "SMR" refers to the October 21, 2013 special master's report.

OAE's random audit, before borrowing funds from his father. Thereafter, he waited five months, before satisfying the workers' compensation lien.

In mitigation, the special master considered respondent's personal achievements in the Boy Scouts and his good reputation in the community and church, but concluded that, under Wilson, he had to be disbarred.

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. For the reasons detailed below, however, we are unable to agree with the special master's conclusion that respondent was guilty of knowing misappropriation. In our view, the proofs were insufficient to prove that offense.

We will start with recordkeeping issues, which are straightforward. During the audit, the OAE turned up several recordkeeping improprieties in respondent's attorney records. Notable among them was respondent's proclivity, according to the OAE auditor, to leave his own funds and those of others, including his children, in the trust account. Respondent admitted the specified recordkeeping deficiencies and the

commingling of personal and trust funds in his trust account, violations of RPC 1.15(a) and RPC 1.15(d).

As to the Miskolczi matter, the special master was correct in concluding that respondent did not knowingly misappropriate the Miskolczis' funds. As indicated above, respondent documented considerable legal services ($42,000) that he performed for the Miskolczis, when defending them in the Benisch lawsuit.

So, too, under the December 3, 2010 fee agreement for the second Miskolczi matter, in which respondent was to investigate possible claims against Benisch and Shannon, respondent was entitled to immediately place $10,000 of the Miskolczis' $20,000 retainer into his business account. General retainers may be deposited in the business account, unless the client requires that it be separately maintained. In re Stern, 92 N.J. 611, 619 (1983). Respondent left the remaining $10,000 in his trust account for the better part of five years, after forwarding his check to the Miskolczis for $10,000. Respondent finally decided to take the remaining funds, believing that he was entitled to the $10,000 for legal fees.

Because respondent had a colorable claim to those funds as fees generated in the two matters, it cannot be found that he

knowingly misappropriated them. Like the special master, thus, we dismiss the knowing misappropriation charge.

Nevertheless, respondent failed to keep intact the $10,000 portion of the fee that remained in his trust account until the fee issue was resolved. He resorted to self-help, recognizing that taking the funds for fees earned in the Benisch matter was the most expedient way to resolve his dilemma. In so doing, he violated RPC 1.15(c), which required him to keep those funds segregated, until a resolution of the fee dispute.

In the Howard matter, respondent admittedly deposited a $35,000 settlement check in his business account, when it should have been placed in his trust account, and disbursed Howard's share of the settlement from the trust account. Respondent claimed that his client distracted him on August 9, 2010, when he prepared the settlement check and deposit ticket, because Howard had shown up to sign the settlement check. Respondent asserted that, because of that distraction, he accidently prepared a business account slip for the deposit, when he truly intended to prepare a trust account slip.

A major hurdle for the special master was respondent's methodical preparation of that deposit slip, on which respondent manually placed the business account number in a box on the slip

and wrote in "(Bus)," after his name. On the back of the check, too, respondent placed the business account number. Because respondent testified that it was his custom to place the word "(Trust)" after his name for a trust account deposit and "(Bus)" next to his name for a business account transaction, a more detailed review of the PNC deposit slips for the two accounts is in order.

As mentioned previously, respondent had just recently opened the PNC trust and business accounts, in July or August 2010. The deposit slips in the record appear to be those that are furnished to the customer, when an account is first opened. Those slips contain the pre-printed bank routing and account numbers on the bottom, in the same fashion as on a check. They do not contain pre-printed information about the account-holder at the top, such as the type of account, "Attorney Trust Account," or "Attorney Business Account," or the depositor's name and address, as would be customary on made-to-order slips. Likewise, they could not have been "counter" deposit slips, because the account numbers were already pre-printed on them.

Although the detailed analysis of the slip was not conducted below and respondent did not recall how he knew the account number to handwrite it on the deposit slip, it is

possible that he copied it directly from the bottom of the deposit slip itself, in each instance. That may explain an issue that puzzled the special master and for which respondent was greatly scrutinized, at the hearing below.

The record shows that, once the funds were deposited in the business account, respondent wrote Howard a check out of the trust account to cover it – a proper act, had he made a proper deposit in the trust account. The OAE auditor testified that, in doing so, respondent invaded other clients' funds. She also stated (and respondent admitted) that, at the time, respondent had no funds of his own in the trust account. But whose funds were impacted? How much money was in the trust account? We do not know. It could be that Waldman's report, which was not produced below, contained a reconstruction of respondent's trust account at the time, but the record is silent on whose funds were in the account at the time. No evidence in this regard was adduced at the hearing. If, as Waldman noted, respondent had a penchant for leaving his own funds and funds earmarked for his children in that account, could he have been mistaken that he had no personal funds in the account at the time? Because the OAE failed to establish what and whose client or escrow funds were invaded by the check to Howard, or even the amount in the

trust account at the time, it cannot be found that respondent knowingly misappropriated trust funds.

Waldman also testified about her belief that respondent purposely deposited the Howard funds in the business account, in order to utilize those funds for his own purposes. Respondent needed the funds, she said, to cover eighteen checks totaling $9,534.80, at a time when that account held only $1,117.89.

Respondent countered, perhaps inartfully, that, because he was entitled to an $11,000 fee in the Howard matter, there were more than sufficient funds on hand to cover those checks. Here, too, a detailed analysis is appropriate.

As noted earlier, respondent waited until August 14, 2010 to write a trust account check for Howard's share of the settlement proceeds, claiming that he wanted the settlement check to clear the banking process, before issuing checks against it. On August 9, 2010, business account check number 6176 for $392.34 cleared the business account, leaving a balance of $725.55 ($1,117.89 - $392.34 = $725.55). The next business account check, number 6178, for $1,124.01, did not clear the bank until two days after respondent wrote Howard's check — August 16, 2010.

Respondent's argument appears to be that, because he believed that he had deposited the $35,000 settlement check in his trust account on August 9, 2010, by August 14, 2010, when the check would have cleared, his $11,000 fee would have covered any business account checks presented on that day, which was two full days before business account check #6178 ($1,124.01) would have caused a shortage, on August 16, 2010.

If true, respondent had scant motive, on August 9, 2010, to knowingly deposit the Howard settlement funds in the business account, for his own use. His position is that he simply did not need them at the time, believing that his $11,000 fee would fund the eighteen business account checks, as they were presented to the bank.

Respondent urged us to consider that he used the settlement funds without ever realizing that they were trust funds. He testified that, on August 14, 2010, after the partial distribution to Howard alone, he immediately left for a seminar and a family vacation. Upon his return, a chronic shoulder injury caused him to lose sight of the Howard matter. For the next five months, the lien funds remained untouched in the business account. From January through March 2011, he depleted the funds in his business account, including the $11,343.89 that

he was still required to hold for the workers' compensation lien. Respondent claimed to have forgotten about the matter, due to the seminar, vacation, shoulder injury, and surgery that followed. He was unaware, until sometime after March 2011, that he had used the workers' compensation funds or made an improper deposit of the Howard settlement funds in his business account.

Respondent went on to say that, from roughly March 2011, when he discovered his "crazy mistake," until late August 2011, he thought that he could replenish the account by using legal fees, as they came in. However, he said, the OAE's audit notice had "forced his hand," in late August 2011. He then immediately borrowed funds from his father and replaced the amount of the check issued to Howard ($11,494.80) in the trust account. Even with that loan, however, respondent failed to satisfy the workers' compensation lien for another six months, accomplishing that task in late February 2012. He did not do so sooner, he claimed, because he did not have sufficient funds at the time.

This case presented us with a difficult scenario. On the one hand, respondent seemed forthright, but careless and forgetful. He claimed to have had little reason to use the settlement funds as he did. One may also wonder why, if respondent was so desperate for funds that he was willing to

risk his law license, he would not have asked his father for a loan, much sooner than he did. Could it be because he was unaware of his mistake? It should be noted, too, that respondent presented character witnesses and has a stainless disciplinary record of thirty years.

On the other hand, respondent acted in a way that both Waldman and the special master found to be consistent with the actions of other attorneys who have knowingly misappropriated trust funds. In particular, respondent's actions regarding the handwritten notations on the deposit slip present serious problems.

If we were to conclude that respondent was guilty of knowing misappropriation, it would be for his use of the $11,343.89 that he was required to hold in escrow for the workers' compensation lien. In that event, he must be disbarred, under In re Hollendonner, 102 N.J. 21 (1985). Yet, the alleged invasion of clients' funds by the issuance of the check to Howard for her share of the settlement has not been proven by clear and convincing evidence. As indicated previously, the record does not identify the owner of the funds that were allegedly invaded or the extent of the invasion. It does not show how much respondent should have been holding in trust at

the time, to whom those funds in the trust account belonged, how much remained after the alleged invasion, and the amount of the alleged invasion.

We, therefore, dismiss the charge that respondent knowingly misappropriated client funds, when he issued the check for Howard's portion of the settlement proceeds. We also dismiss the charge that respondent's invasion of the worker's compensation funds was intentional in nature. The record does not allow a finding, by clear and convincing evidence, that respondent's use of the $11,000 lien was anything more than inadvertent, a "crazy mistake," as respondent put it.

In the absence of a finding that respondent's misappropriation was knowing, we conclude that he is guilty only of negligent misappropriation of the funds destined for the satisfaction of the lien. His other violations include failure to keep the funds in the Miskolczi matter segregated, commingling of personal and trust account funds, and recordkeeping violations.

Altogether, respondent violated RPC 1.15(a), RPC 1.15(c), and RPC 1.15(d).

A reprimand is generally imposed for recordkeeping deficiencies and negligent misappropriation of client funds.

See, e.g., In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and ran afoul of the recordkeeping rules by writing trust account checks to himself and making cash withdrawals from his trust account, practices prohibited by R. 1:21-6; although the baseline discipline for negligent misappropriation is a reprimand and, in a default matter, the otherwise appropriate level of discipline is enhanced, a reprimand was viewed as adequate in this case because of the attorney's unblemished professional record of thirty-six years and his cardiac and serious cognitive problems (mild dementia)); In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee); In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of $43.55 occurred in attorney trust account, as the result of a bank charge for trust account replacement

checks; the attorney was also guilty of recordkeeping irregularities); and In re Clemens, 202 N.J. 139 (2010) (as a result of poor recordkeeping practices, attorney overdisbursed trust funds in three instances, causing a $17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies; the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years).

Failure to keep separately funds in which the attorney and another person claim an interest, without more, has resulted in admonitions. See, e.g., In the Matter of Ronald S. Kaplan, DRB 01-031 (May 22, 2001) (attorney who came into possession of settlement funds in which he and a prior attorney had an interest did not keep the funds separately until there was an accounting and severance of their interests, a violation of RPC 1.15(c)) and In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (attorney took his legal fee from funds that the husband gave him to pay the wife's legal fees and failed to transmit to the wife funds that the husband, the attorney's client, had given him for that purpose; violations of RPC 1.15(c) and RPC 1.15(b), respectively).

We determine that a reprimand for the combined misconduct is the appropriate sanction for respondent's misconduct, given respondent's unblemished record of thirty years at the New Jersey bar, and, as attested to by character witnesses who testified on respondent's behalf, respondent's reputation for honesty and his considerable contributions to the community, especially to his church and the Boy Scouts organization.

We also require respondent to provide the OAE with monthly reconciliations of his trust account, on a quarterly basis, for a period of two years.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David G. Christoffersen
Docket No. DRB 13-384

Argued: March 20, 2014

Decided: June 5, 2014

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			

Ellen A. Brodsky
Chief Counsel