

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-266
District Docket Nos. XIV-2009-0068E,
XIV-2009-0069E, XIV-2009-0072E, XIV-
2009-0152E, XIV-2009-0153E, XIV-2009-
0154E, and XIV-2009-0155E

IN THE MATTERS OF
DAWN L. JACKSON
AN ATTORNEY AT LAW

Decision

Decided: December 8, 2009

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

These matters came before us on a certification of default
filed by the Office of Attorney Ethics ("OAE"), pursuant to R.
1:20-4(f). The complaint alleged that respondent knowingly
misappropriated client and escrow funds, engaged in fraud and
criminal acts, abandoned clients, and failed to cooperate with
disciplinary authorities.

Because we find that respondent knowingly misappropriated
client and escrow funds, we recommend her disbarment.

Respondent was admitted to the New Jersey bar in 2001. On March 10, 2009, she was temporarily suspended, based on the allegations of the complaint in the matter now before us. In re Jackson, 198 N.J. 476 (2009).

Service of process was proper in this matter. On July 7, 2009, the OAE sent three copies of a complaint, by certified and regular mail, to (1) respondent's office address; (2) her home address in West Paterson, listed in the Central Attorney Management System maintained by the Judiciary; and (3) her home address in Caldwell, listed on her attorney registration. The certified mail sent to the West Paterson home address was forwarded to Hampton, Georgia. Although no return receipt card was received, the United States Postal Service's ("USPS") website indicates that the mail was delivered on July 13, 2009. The complaint sent to that address by regular mail was not returned.

The regular and certified mail sent to respondent's office address was returned marked "unable to forward." The certified mail sent to the home address in West Paterson was delivered on July 13, 2009 in Hampton, Georgia, where it had been forwarded. The regular mail sent to the West Paterson address was not returned. The certified mail sent to the home address in Caldwell was returned marked "not deliverable as addressed - unable to

forward." The regular mail sent to the Caldwell address was not returned.

On August 3, 2009, the OAE sent to respondent, by regular and certified mail, a letter to the same addresses to which the complaint had been sent. The letter informed respondent that, if she did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline.

Respondent signed the certified mail receipts for the two letters sent to her two home addresses. The certified mail receipts indicate that the letters were delivered to respondent in Hampton, Georgia, on August 12, 2009. The certified letter sent to the office address was returned marked "undeliverable as addressed."

Respondent did not file an answer to the complaint.

The Whitehaven Matter – District Docket No. XIV-2009-0154E

In 2007, respondent filed a wrongful termination of employment suit on behalf of Daniel Zaikowski. On July 24, 2008, Zaikowski entered into an agreement with Whitehaven S.F. LLC ("Whitehaven"), whereby Whitehaven would advance \$25,000 to

Zaikowski, in exchange for a lien against any recovery from the lawsuit. Respondent signed a document acknowledging the lien. She agreed to pay certain sums to Whitehaven, at the conclusion of the case, from any recovery or settlement funds received on Zaikowski's behalf. The agreement provided that Whitehaven was to be paid before Zaikowski would receive any funds from the lawsuit.

On July 25, 2008, Whitehaven wired \$25,000 to respondent's "attorney operating account" for the benefit of Zaikowski. Respondent, however, failed to disburse any of these funds to Zaikowski. By October 31, 2008, the balance in her operating account was only \$3,766.65. Her operating account bank statements indicated transactions at gambling casinos, hotels, and restaurants. On November 12, 2008, she closed the operating account, transferring the \$3,766.65 balance to a second operating account ("operating account two").

On November 24 and December 3, 2008, respondent deposited into operating account two \$75,000 from each of two defendants (for a total of \$150,000), in settlement of the Zaikowski litigation. On November 25, 2008, she disbursed \$23,000 to Zaikowski.

Respondent never disbursed funds due and owing to Whitehaven, pursuant to its agreement with Zaikowski. As of January 31, 2009, the balance in operating account two was zero. This account, too, showed debits at gambling casinos in Las Vegas.

The complaint charged that respondent knowingly misappropriated the Whitehaven funds, a violation of RPC 1.15(c), [more properly RPC 1.15(a) (failure to safeguard funds)], RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), and failed to provide Zaikowski with the advanced funds, "as she fraudulently represented she would do," and instead used the funds herself, a violation of RPC 8.4(c).

The Jemison Matter – District Docket No. XIV-2009-0072E

In April 2007, Kim Jemison retained respondent to represent her in an employment discrimination lawsuit. Jemison paid respondent a \$5,000 retainer. On December 30, 2008, respondent told Jemison that the case would be going to trial, that she had applied for a loan to pay the litigation expenses, and that Melanie Greening of Bridge Funds would be contacting her to verify the pending lawsuit and the \$350,000 settlement offer.

Jemison, however, was not aware of a settlement offer and told respondent that she was not interested in obtaining a loan. In turn, respondent assured Jemison that the loan was being obtained by respondent, not Jemison, and that Bridge Funds needed Jemison to verify that the litigation was pending. Upon receiving a telephone call from Greening, Jemison explained that she was not aware of any settlement offers and that she did not want a loan.

On January 26, 2009, Jemison received, via e-mail, a letter in which respondent purported to resign from the New Jersey bar.¹ Upon receipt of this letter, Jemison contacted Greening, who told her that Bridge Funds had sent to respondent a \$25,000 check, payable to Jemison. On January 9, 2009, respondent had deposited in operating account two a \$25,000 check from Bridge Funds, dated December 31, 2008, payable to Jemison. Jemison had neither received nor signed that check.

Attached to the complaint is a "Purchase Agreement," dated December 31, 2008, between Bridge Funds and Jemison, by which

¹ R. 1:20-22(a) provides that an attorney in good standing may resign from the bar only if no disciplinary or criminal proceedings are pending.

Jemison "sold" her interest in the employment discrimination lawsuit to Bridge Funds for \$25,000.

The complaint alleged that respondent forged Jemison's name on the Purchase Agreement and forwarded it to Bridge Funds, misrepresenting that Jemison had signed it, a violation of RPC 8.4(b), RPC 8.4(c), and N.J.S.A. 2C:21-1(2) and (3) (forgery and uttering a forgery); fraudulently obtained \$25,000 from Bridge Funds and used them for her own purposes, a violation of RPC 8.4(b) and RPC 8.4(c); and knowingly misappropriated \$25,000 from Bridge Funds, a violation of RPC 1.15(a), RPC 8.4(b), RPC 8.4(c), and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

The Grotz, Fitzgerald, Jemison, Rolon, Willis, and Oliva Matters
– District Docket Nos. XIV-2009-0068E, XIV-2009-0069E, XIV-2009-
0072E, XIV-2009-0152E, XIV-2009-0153E, and XIV-2009-0155E

The complaint alleged that respondent entered into retainer agreements with six clients, received fees from each of them, and then abandoned them. Specifically, on June 21, 2007, Wilfred Grotz paid respondent a \$6,000 retainer for her to represent him in litigation against the New Jersey Department of Motor Vehicles. On an unknown date, Karla Fitzgerald paid respondent \$9,000 to represent her in a labor matter. As previously

indicated, Kim Jemison retained respondent in April 2007 and paid legal fees of \$9,000. On January 6, 2009, Pedro Rolon retained respondent to represent him in a discrimination complaint, paying her \$5,000. Also on January 6, 2009, Richard D. Willis, an inmate at the Union County Correctional Facility, retained respondent to represent him in a criminal matter and paid her \$4,000. On an unknown date, Mara Oliva and several other employees of Barnert Hospital collectively paid respondent \$15,000, retaining her to recover vacation and sick leave compensation, after the hospital filed a bankruptcy petition.

On January 26, 2009, after closing her law office, respondent attempted to resign from the New Jersey bar. She neither told her clients that she intended to stop practicing law nor returned their files or retainers. Although respondent's clients located and contacted her employees to obtain their files, the record does not reveal whether their efforts were successful. Respondent provided no legal services to those clients; nevertheless, she refused to return their retainers. Some of the clients had no other funds with which to obtain substitute counsel. According to the complaint, when respondent accepted the retainers, she knew that she would not provide legal services to those clients.

The complaint charged that respondent improperly terminated representation of clients, a violation of RPC 1.16(d) (failure to protect clients' interests upon termination of the representation); knowingly misappropriated client funds by keeping client retainers without providing legal services, a violation of RPC 1.15(a), RPC 8.4(b), and RPC 8.4(c); and fraudulently induced clients to pay retainers, promising that she would represent them, knowing that she intended to cease practicing law, a violation of RPC 8.4(b) and RPC 8.4(c).

Failure to Cooperate with Disciplinary Authorities

In a March 12, 2009 letter to the OAE, respondent declined to consent to disbarment, but waived her right to receive notice and service of any other documents, the right to reply to those documents, and the right to appear at a hearing. Respondent also stated in that letter: "I truly hope that this helps in expediting the disbarment process and saves time and resources".

On May 5, 2009, the OAE sent copies of the Oliva, Fitzgerald, Grotz, Rolon, Willis, Whitehaven, and Jemison grievances to respondent, who failed to reply to them.

The complaint charged that respondent failed to cooperate with the OAE and failed to provide information concerning the

grievances, a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In its August 13, 2009 letter transmitting the file to the Office of Board Counsel, the OAE asked us to deem the complaint amended to allege an additional violation of RPC 8.1(b), based on respondent's failure to file an answer to the formal ethics complaint.

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

In the Whitehaven matter, respondent knowingly misappropriated funds from both her client, Zaikowski, and from Whitehaven. Pursuant to an agreement, Whitehaven was to advance \$25,000 to Zaikowski, in exchange for a lien against settlement or litigation proceeds. In a separate document, respondent acknowledged Whitehaven's lien and agreed to reimburse Whitehaven the \$25,000, plus other funds, upon the conclusion of the case. Although Whitehaven wired \$25,000 to respondent's operating account on July 25, 2008, she failed to disburse the

monies to her client. Instead, she depleted the funds, allowing the balance to decrease to \$3,766.65. Her bank statements reflect expenditures at gambling casinos, hotels, and restaurants.

We find that, by receiving funds on Zaikowski's behalf, and using them for her own purposes, respondent knowingly misappropriated client funds.

About four months later, in November and December 2008, respondent received \$150,000 in settlement of Zaikowski's lawsuit, depositing that amount in operating account two. Failing to honor her agreement with Whitehaven, she did not disburse the \$25,000, plus other funds, due and owing to Whitehaven. By January 31, 2009, the balance in operating account two was zero.

We determine that respondent knowingly misappropriated escrow funds by failing to disburse monies to Whitehaven. Respondent also violated RPC 8.4(c) by misrepresenting to Whitehaven that she would disburse to Zaikowski the \$25,000 that Whitehaven had advanced on his behalf.

Although the complaint is silent on this score, respondent may have knowingly misappropriated additional funds from Zaikowski. She received \$150,000, but disbursed only \$23,000 to

him. After legal fees and other expenses (including the Whitehaven lien) are deducted, it is likely that Zaikowski would have been entitled to more than \$23,000. Because, however, the record does not provide enough information on this issue and because the other instances of knowing misappropriation are clear, we did not make any findings in this regard.

In the Jemison matter, too, respondent knowingly misappropriated escrow funds. She obtained \$25,000 from Bridge Funds by forging Jemison's name on the purchase agreement, forwarding the agreement to Bridge Funds, and misrepresenting that Jemison had signed it. Bridge Funds disbursed those monies to respondent with the understanding that she would provide the funds to Jemison, in exchange for Jemison's interest in the litigation. Instead, respondent used the funds for her own purposes.

Respondent also violated RPC 8.4(c) by misrepresenting to Jemison that she was obtaining a loan in her own name, by forging Jemison's name on the purchase agreement with Bridge Funds, and by fraudulently obtaining the monies from Bridge Funds and using them for her own purposes.

The complaint also charged respondent with commission of a criminal act, a violation of RPC 8.4(b), both for the forgery

and the theft of funds. Although a criminal conviction is not required for a finding of a violation of RPC 8.4(b), see, In re McEnroe, 172 N.J. 324 (2002), because respondent's knowing misappropriation mandates disbarment, we need not determine whether she committed a crime.

In addition, respondent abandoned at least six clients. After agreeing to represent Grotz, Fitzgerald, Jemison, Rolon, Willis, and Oliva, and after receiving a minimum of \$48,000 in legal fees from them, respondent closed her law office without notice to her clients, leaving them to fend for themselves in the midst of their various litigation matters. She, thus, violated RPC 1.16(d).

In our view, respondent's conduct in the Rolon and Willis matters was particularly egregious. In those cases, she received legal fees on January 6, 2009, only twenty days before she attempted to resign from the New Jersey bar. When she accepted both the representation and the legal fees in those matters, respondent had to know that she would not be providing legal services to those clients. Respondent's acceptance of these fees, with knowledge that she intended to cease practicing law, violated RPC 8.4(c).

The complaint charged that respondent knowingly misappropriated client funds by keeping retainers without providing legal services. We did not find sufficient allegations in the complaint to support this charge. In In re Stern, 92 N.J. 611,617 (1983), the Court noted "we have never held that the expenditure of a retainer is a conversion of trust funds." Unless the client instructs otherwise, an attorney is permitted to place legal fees in a business or operating account, not a trust account. Id. at 619. Simply put, failing to return an unearned legal fee is not the same as stealing or borrowing client funds. Instead, RPC 1.16(d) (attorney shall take steps to protect a client's interests upon termination of representation, including refunding advance payment of unearned fee) is the applicable rule.

Finally, respondent's failure to cooperate with the OAE violated RPC 8.1(b). Although she waived her right to notice and a hearing, respondent had no authority to waive her obligation to cooperate with the OAE. By failing to reply to the grievances, she impeded the OAE's disciplinary investigation. She again violated RPC 8.1(b) by failing to file an answer to the formal ethics complaint.

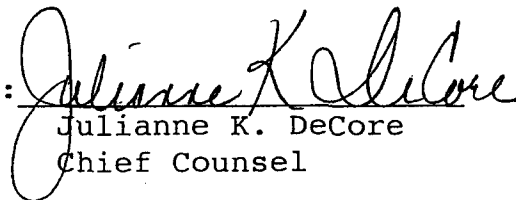
Under the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds), respondent must be disbarred. We, thus, recommend her disbarment.

Member Clark did not participate.

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

Disciplinary Review Board
Louis Pashman, Chair

By:


Julianne K. DeCore
Chief Counsel

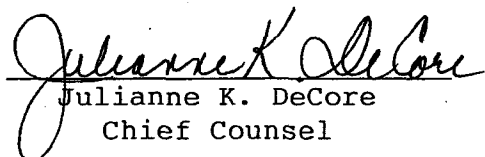
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Dawn L. Jackson
Docket No. DRB 09-266

Decided: December 8, 2009

Disposition: Disbar

Members	Disbar	Suspension	Admonition	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark						X
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1


Julianne K. DeCore
Chief Counsel