

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 08-019  
District Docket No. XIV-06-526E

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IN THE MATTER OF  
ROBERT J. KELLEY, JR.  
AN ATTORNEY AT LAW

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Decision  
Default

Decided: June 25, 2008

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

This matter 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 funds. We recommend his disbarment.

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

On May 5, 2007, the Supreme Court temporarily suspended  
respondent from the practice of law, pending the final

disposition of all ethics grievances against him. In re Kelley, 190 N.J. 332 (2007).

Service of process was proper. On November 27, 2007, the OAE sent a copy of the complaint to respondent's attorney, Mark Kancher, at The Kancher Law Firm, LLC, 100 Grove Street, Haddonfield, New Jersey 08033. A certified mail receipt indicated delivery on November 30, 2007, having been signed by a "Rose Machama."

On January 2, 2008, the OAE sent a "five-day" letter to respondent's counsel by regular mail, advising him that, unless respondent filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f).

Respondent did not file an answer to the complaint.

On March 14, 2008, Office of Board Counsel spoke with respondent's attorney, who acknowledged receipt of the complaint. Counsel stated that he had given respondent a copy of the complaint and had discussed it with respondent, including the requirement of an answer.

This matter arises out of respondent's representation of Diana Bryant for injuries that she sustained in a September 12, 1996 automobile accident.

According to the complaint, in November 2000, Bryant's personal injury matter settled for \$200,000. Respondent deposited the settlement proceeds in his attorney trust account and properly disbursed all but \$6,467.53, which he retained in the trust account to pay a third-party lien to "Rawlings Associates." Later, on July 15, 2002, respondent disbursed the \$6,467.53 directly to Bryant.

Respondent also filed two personal injury protection benefits ("PIP") actions against Ohio Casualty Insurance Company, in order to compel the payment of Bryant's medical expenses. The parties settled, in January 2001, for a total of \$21,000, which represented full settlement of "all outstanding medical bills, as well as payment of attorney fees and costs."

On March 14, 2002, respondent received Ohio Casualty's \$21,000 settlement check and deposited it in his trust account.

From October 3, 2000 to November 19, 2004, respondent's trust account activity on behalf of Bryant's matters was as follows:

Date	Check #	To/For	Deposit	Withdrawal	Balance
10/03/00					\$43.20
11/08/00		Settlement	\$200,000		\$200,043.20
11/09/00	4066	Respondent (Partial Fee)		\$7,500	192,543,20

11/15/00	4067	Grievant Settlement Proceeds		\$126,349.39	\$66,193.81
11/15/00	4068	Respondent (Costs)		\$6,399.62	\$59,794.19
11/15/00	4069	Respondent (Partial Fee)		\$52,033.46	\$7,760.73
03/12/02		Ohio Casualty Settlement	\$21,000		\$28,760.73
07/03/02	4353	S. Jersey Medical, Med. Payment		\$227.00	\$28,533.73
07/03/02	4352	Dr. Gopat, Med. Payment		\$292.39	\$28,241.34
07/15/02	4354	Grievant, Release of Lien		\$6,467.53	\$21,773.81
11/19/04	4735	V.S. Pontell-Settlement		\$915.00	\$20,858.81

[1C19.]<sup>1</sup>

As of November 19, 2004, the balance held in respondent's trust account attributable to the Bryant matter was \$20,858.81. That amount should have remained unchanged thereafter, because respondent made no further disbursements on account of the matter. However, as of January 31, 2006, the trust account held only \$3,194.27.

According to the complaint, between November 2004 and January 2006, respondent invaded Bryant's trust funds

<sup>1</sup> "1C" refers to count one of the ethics complaint.

(\$20,858.81), knowingly misappropriating all but the remaining balance of \$3,194.27. Bryant did not authorize respondent's use of any of the missing \$17,664.54.

On June 11, 2006, after respondent's temporary suspension, the balance in his trust account dropped to \$2,194.27. That amount was forwarded to the Superior Court Trust Fund. The complaint does not allege that respondent knowingly misappropriated the additional \$1,000 missing between January and June 2006.

The complaint also alleged that respondent made a number of disbursements to "clients, an insurance company," and himself between January 1, 2005 and January 31, 2006. The complaint does not, however, relate those additional allegations to the Bryant matter.

The complaint charged respondent with knowing misappropriation, a violation of RPC 1.15(a) (failure to safeguard client funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and In re Wilson, 81 N.J. 451 (1979).

The complaint also alleged that respondent violated RPC 1.15(c) (failure to safeguard property in which both the lawyer and another person claim interests) and RPC 1.2 (failure to abide by a client's decision whether to accept a settlement).

The complaint did not correlate these RPCs with any factual allegations.

The complaint contains sufficient facts to support a finding of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent settled two matters for Bryant and deposited settlement proceeds of \$221,000 in his attorney trust account. He thereafter knowingly misappropriated about \$17,000, a violation of RPC 1.15(a), RPC 8.4(c), and In re Wilson, supra, 81 N.J. 451.

We dismiss the charged violations of RPC 1.2 and RPC 1.15(c), as the complaint does not contain sufficient facts to support those charges.

The theft of client funds constitutes knowing misappropriation. In re Wilson, supra, 81 N.J. at 455, n.1 (misappropriation "means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom"). Knowing misappropriation of client funds requires disbarment Id. at 453. In re Barlow, 140 N.J., 191, 198-99 (1995). We, therefore, recommend that respondent be disbarred

for his knowing misappropriation of Bryant's funds.

Member Doremus did not participate.

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

Disciplinary Review Board  
Louis Pashman, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Robert J. Kelley, Jr.  
Docket No. DRB 08-019

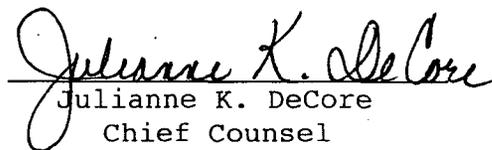
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Decided: June 25, 2008

Disposition: Disbar

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Boylan	X					
Doremus						X
Lolla	X					
Stanton	X					
Wissinger	X					
Total:	7					1

  
Julianne K. DeCore  
Chief Counsel