SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-142

IN THE MATTER OF	
RONALD IRA KAPLAN	
AN ATTORNEY AT LAW	

Decision

Argued: July 19, 2007

Decided: August 30, 2007

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a). Respondent was suspended in Pennsylvania for one year and one day for knowingly misappropriating clients' and escrow funds.[1] The OAE urges disbarment, under In re Wilson, 81 N.J. 451 (1979) (knowing

[1] Rule 218 of the Pennsylvania Rules of Disciplinary Enforcement provides that attorneys suspended for more than one year must petition the Supreme Court of Pennsylvania for reinstatement.

misappropriation of clients' funds requires disbarment), and In re Hollendonner, 120 N.J. 21 (1985) (so akin are clients' and escrow funds that attorneys who knowingly misuse escrow funds will confront the Wilson disbarment rule). We agree that respondent's conduct requires that he be disbarred in New Jersey.

Respondent was admitted to the New Jersey bar in 1985. He has no prior final discipline in New Jersey.

The Pennsylvania Disciplinary Board summarized its findings and the reasons for the imposition of discipline:

> The matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against respondent. Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory that respondent violated Rules of Professional Conduct 1.15(a), 1.15(b) and 8.4(c). Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa 1981). Many of the facts of this matter have been stipulated to by the parties. Review of the record shows that Petitioner met its burden of proof.
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> From June 11, 2002 through July 22, 2002 and July 24, 2002 through August 30, 2002, respondent's IOLTA account was out of trust in amounts ranging from $149.45 to $17,374.11. On several occasions the end-of-the-day balances in the IOLTA account were negative and on numerous occasions the end-of-the-day balances were minimal in comparison to the amount that respondent was required to hold in trust at that time. During the time that respondent's IOLTA account was out of trust, he made 16 unidentified withdrawals totaling $9,004.76

and also issued checks for his own use. Respondent used fiduciary funds for his own use. Respondent commingled personal funds with those of his clients. He failed to maintain complete records of fiduciary funds, as required by the Rules of Professional Conduct.

In the Darlene Wilson matter, on eight occasions between July 14, 2004 and January 2005, the balance in respondent's IOLTA account fell below the $2,500 that belonged to a third party, Nova Care, and consequently respondent misappropriated funds belonging to Nova Care for his own personal use. In the Laverna Brock matter, respondent failed to promptly distribute $3,814.80 to medical providers, Ms. Brock or SEPTA. In addition, respondent's IOLTA account fell below $3,814.80 on 75 occasions between February 13, 2003 and January 31, 2005. Respondent misappropriated funds belonging to medical providers, Ms. Brock or SEPTA for his own use. In the Salvatore Triolo matter, Mr. Triolo was owed $1,665.50 and One Beacon Insurance Company was owed $832.50, for a total of $2,498. Respondent's IOLTA account fell below $2,498 on 15 occasions between January 27, 2004 and September 1, 2004. Respondent misappropriated to his own use funds belonging to Mr. Triolo and One Beacon Insurance Company, and failed to promptly distribute funds that belonged to One Beacon.

Respondent's certification on his 2003-2004 PA Attorney's annual Fee Form was false in that on July 1, 2003, he endorsed and certified on the Fee Form that he was in compliance with Rule 1.15, when in fact he was not in compliance.

Respondent contends that due to a psychiatric disorder he suffered at the time of the misconduct and which substantially caused the misconduct, he is entitled to mitigation. Office of Disciplinary Counsel

v. Braun, 553 A.2nd 894 (Pa. 1989). Review of the record demonstrates that respondent met his burden of proof under Braun by clear and satisfactory evidence.

Respondent introduced the credible expert testimony of Dr. Gerald Cooke and Dr. Richard Jontry. Dr. Cooke, a forensic psychologist, testified that respondent was in a serious depressive condition that either caused or significantly contributed to respondent's misconduct. Dr. Jontry, respondent's treating psychologist, testified that given the depth of respondent's depression, respondent would have had great difficulty in performing important tasks in his life, such as managing his office accounts and files. These clinical opinions, which were found credible and persuasive, were bolstered by the testimony of respondent's former paralegal and respondent's own testimony as to his depression and its impact on his life. Dr. Jontry opined that respondent's prognosis is excellent if he continues to participate in therapy for at least one more year.

In addition to psychological therapy, respondent has taken steps to change his methods of practicing law. He closed his solo practice and works as an associate for a law firm, where he has supervision and does not have access to client funds. He borrowed money and contributed his own funds to pay obligations to his former clients and third parties, although as of the date of the hearing, respondent had not made restitution of $3,814.80 in the Brock matter. Respondent has accepted responsibility for his wrongdoing and appears genuinely remorseful.

The Hearing Committee recommended a one year stayed suspension and two years of probation based on its conclusion that although respondent engaged in serious, long term

> acts of misappropriation worthy of actual suspension, respondent's Braun mitigation and subsequent voluntary actions to address the underlying basis for his misconduct were persuasive that a stayed suspension and probation was appropriate discipline.
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> While there is no dispute that respondent is entitled to mitigation pursuant to Braun, and that he did suffer from a depressive disorder which substantially caused his misconduct, the Braun mitigation does not serve to wipe away the egregiousness of the misconduct. The case law demonstrates that an actual term of suspension is appropriate despite the Braun showing, in order to meet the primary goals of the disciplinary system to protect the public from unfit attorneys and to maintain the integrity of the legal system. Respondent engaged in misappropriation of client funds over a long period of time, and had not made full restitution at the time of the disciplinary hearing. Surely the integrity of the legal system would be subject to scrutiny if respondent was not suspended for a length of time, requiring him to seek reinstatement and prove his fitness.
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> For these reasons, the Board recommends that respondent be suspended for one year and one day. Probation is not warranted in this matter, as respondent's misconduct involved theft of funds, not mere neglect of his accounts [emphasis supplied].
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> [OAEbEx.J at 15 to 19.][2]

Although neither the Pennsylvania Disciplinary Board nor the Pennsylvania Supreme Court specifically referred to

[2] OAEb refers to the OAE's brief in support of its motion for reciprocal discipline.

respondent's actions as "knowing misappropriation," the Pennsylvania authorities found that the multiple conversions of client funds for personal use constituted misappropriation, that respondent's conduct "was clearly volitional," and not negligent or inadvertent, that he "must have known that it was wrong" to take clients' funds, and that his conduct constituted "theft of funds, not mere neglect of his accounts." As noted in the Office of Disciplinary Counsel's brief to the hearing committee, Dr. Cooke testified that respondent knew what he was doing when he wrote checks to satisfy personal obligations with fiduciary funds. Dr. Cooke testified that respondent was not psychotic or out of touch with reality when he wrote checks for his own purposes.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt Pennsylvania's finding that respondent's conduct constituted theft of client trust funds.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) (4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the

record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subparagraph (E), however, applies. In New Jersey, unlike in Pennsylvania, theft of clients' funds mandates disbarment. In re Wilson, supra, 81 N.J. 451 (1979). Although, in Pennsylvania, the existence of a psychiatric disorder constitutes mitigation in knowing misappropriation cases, Office of Disciplinary Counsel v. Braun, supra, 553 A.2d 894 (Pa. 1989), in New Jersey no amount of mitigation will suffice to overcome the disbarment sanction in such cases:

> The misappropriation that will trigger automatic disbarment that is "almost invariable" . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not

> authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . . The presence of "good character and fitness," the absence of "dishonesty, venality or immorality" – all are irrelevant.
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> [In re Noonan, 102 N.J. 157, 160 (1986).]

The only defense to knowing misappropriation is competent medical proof that the attorney suffered a "loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional, and purposeful." In re Jacob, 95 N.J. 132, 137 (1984). The Jacob standard is essentially the M'Naughten rule, that is, the inability to appreciate the quality and nature of the act or to distinguish right from wrong. In re Greenberg, 155 N.J. 138, 156-57 (1998). So far, no attorney who has misappropriated trust funds has satisfied the Jacob standard.

For purposes of mitigation, respondent presented evidence of psychological problems that affected him during the time that

he misappropriated funds from clients. The Pennsylvania disciplinary authorities considered that mitigating factor, as well as others, when meting out only a one-year-and-one-day suspension. Importantly, however, respondent's own doctor stated that respondent knew what he was doing when he converted client funds for his own use. Under Wilson and Hollendonner, thus, he must be disbarred. We so recommend to the Court.

Vice-Chair Pashman and Member Boylan 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
William J. O'Shaughnessy, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald I. Kaplan
Docket No. DRB 07-142

Argued: July 19, 2007

Decided: August 30, 2007

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman						X
Baugh	X					
Boylan						X
Frost	X					
Lolla	X					
Neuwirth	X					
Stanton	X					
Wissinger	X					
Total:	7					2

Julianne K. DeCore
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Chief Counsel