SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-147
District Docket Nos. XIV-99-043E and XIV-01-170E

IN THE MATTER OF

E. NKEM ODINKEMERE

AN ATTORNEY AT LAW

Decision

Argued: September 23, 2004

Decided: November 4, 2004

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Saul J. Steinberg 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 Master Paul B. Thompson. The ten-count amended complaint charged respondent with violations of RPC 5.4(a) (sharing legal fees with a nonlawyer) (count one);

RPC 1.15(a) (failing to safeguard client funds), RPC 5.3(c) (failing to supervise nonlawyer staff), RPC 5.5(a) (assisting in the unauthorized practice of law), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); RPC 1.15(a), RPC 5.3(c), and RPC 8.4(c) (count three); RPC 1.15(a), RPC 5.3(c), and RPC 8.4(c) (count four); RPC 1.15 (knowingly misappropriating client funds) and RPC 8.4(c) (count five); RPC 8.4(c) (count six); RPC 1.15 and RPC 8.4(c) (count seven); RPC 1.15(d) and Rule 1:21-6 (failing to comply with recordkeeping rules) (count eight); RPC 4.1(a) (making a false statement of material fact or law to a third person), RPC 8.4(b) (committing a criminal act), and RPC 8.4(c) (count nine); and RPC 1.15 (count ten).

Respondent was admitted to the New Jersey bar in 1993. On November 14, 2000, he was temporarily suspended in connection with the charges in this matter. Respondent remains suspended to date. He has no other disciplinary history.

On January 28, 1999, the Office of Attorney Ethics ("OAE") asked respondent for information about two trust account checks that had been returned for insufficient funds to First Union National Bank ("FUNB"). Following receipt of respondent's explanation, the OAE scheduled an audit of his records.

On April 14, 1999, OAE compliance auditors Karen Hagerman and Joseph J. Strieffler, Jr. conducted an audit at respondent's law office in Irvington, New Jersey. Hagerman reconciled respondent's trust account as of February 26, 1999, the most recent bank statement available at that time. She determined that, giving respondent the benefit of all inferences, the trust account contained a minimum shortage of $8,663.88. After conducting subsequent audits on November 9, 1999, December 8, 1999, and September 7, 2000, the OAE filed a complaint, alleging numerous RPC violations.

The ethics hearings encompassed eight days. Although the evidence pertaining to the first several counts demonstrated that respondent, an inexperienced attorney, appeared to have been duped by his office staff, subsequent evidence revealed that respondent's misconduct was deliberate. In particular, the evidence related to counts five, six and ten overwhelmingly established that respondent forged his clients' signatures on documents and knowingly misappropriated client funds.

Count One

This count charges that respondent shared legal fees with a nonlawyer. Respondent maintained his primary law office at 1338

Springfield Avenue, Irvington. In June 1997, he opened a second office at 110 South Munn Avenue, East Orange. The East Orange office originally belonged to Errol Philp, an attorney who retired and turned over his practice to respondent. Respondent was the only attorney in both the Irvington and East Orange offices.

Respondent retained Philp's staff — a paralegal named Lincoln Crosley and three other employees — when he assumed operation of the office. The staff was not employed by respondent, but by Marabou Adjustment Bureau, Inc. ("Marabou"), an entity owned and operated by Joseph Adisson ("Adisson"). Rather than paying his staff a regular, periodic salary, respondent gave Marabou approximately sixty-five percent of his net receipts. Between June 19, 1997 and April 14, 1998, respondent issued to Marabou thirty-four checks, totaling $118,692.34.

Robert Prihoda, Chief, OAE Random Audit Program, testified that the amount of the payments made to Marabou varied, not following any pattern. Respondent could not provide an analysis of, or an explanation for, these payments. According to Prihoda, during the April 14, 1999 audit, respondent was not able to provide basic information, such as the number of employees in

the East Orange office or their names, the manner in which expenses were calculated, or the identity of those who negotiated clients' medical bills. During the investigation, respondent told Prihoda that his payment of sixty-five percent of his net receipts to Marabou was a continuation of Philp's arrangement with that entity.

Many, if not all, of the personal injury clients of the East Orange office had been treated at chiropractic clinics owned and operated by Adisson's brother, Dr. LeClerc Adisson ("LeClerc"). LeClerc's medical office was next door to respondent's East Orange office. According to Adisson, Marabou performed many of the services typically provided by attorneys, such as meeting with clients, obtaining clients' signatures on retainer agreements, negotiating with insurance companies to settle cases, and preparing correspondence. Marabou needed an attorney only to run the settlement checks through a trust account. The paralegal, Lincoln Crosley, handled most of the paperwork. Adisson told the OAE that Marabou always received a flat fee of between sixty and sixty-nine percent of the attorney's fee.

When Philp was about to retire, he introduced Adisson to respondent, who agreed to adhere to Philp's arrangement with

Marabou. Adisson told the OAE that, as long as he had control of the personal injury files, "Marabou could dictate what happened to them," and that Marabou completely ceased operations when, against Adisson's wishes, respondent closed the East Orange office and transferred the files to his Irvington office.

Although respondent closed the East Orange office in January 1998, he continued to pay Marabou through April 1998.

For his part, respondent stated that, after serving with the Judge Advocate General from 1991 to 1994, he opened his own law office in 1995. When Philp told respondent that he was moving to Jamaica, he asked respondent to take over his files, which numbered between 100 and 200. Although respondent was hesitant because he did not have the skills to manage such a large office and to be responsible for rent, payroll and other expenses, he agreed to Philp's proposal because Philp explained that he simply had to pay Marabou sixty to sixty-six percent of his legal fees. Respondent asserted that he did not see anything wrong with continuing Philp's arrangement. Respondent planned to move the files to his Irvington office as soon as feasible.

Respondent testified that Adisson had an office within respondent's East Orange office. Periodically, respondent totaled the settlement checks that he had deposited in his trust

account, deducted his expenses, and issued a business account check to Marabou for sixty-five percent of the proceeds. Respondent claimed that the percentage that he paid Marabou was a fair estimation of overhead expenses based on the limited experience he had operating his Irvington office. Respondent acknowledged that, if his revenues decreased, his payment to Marabou also decreased, despite the fact that expenses remained constant. He also acknowledged that his payments to Marabou were never the same and were dependent on the amount of settlement funds that he received.

Although respondent admitted that he engaged in unethical fee-splitting with a nonlawyer, he contended that he did not believe that the arrangement was unlawful and that he did not act with an illegal intent or purpose.

Count Two

This count alleges that respondent failed to supervise nonattorney staff, failed to safeguard client funds, assisted in the unlawful practice of law, knowingly misappropriated client funds, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent and the OAE entered into the following stipulation:

Between June 13, 1997 and June 30, 1999, seventy-five Odinkemere attorney trust account checks totaling $160,381.90, payable to Odinkemere clients, were cashed at Fritz Barjon, Inc., Lottery Account No. 2030006229303 located at Sweeney's Liquors, 1139 South Orange Avenue, Newark, New Jersey, referencing Exhibits 8 and Exhibit 51, Attachment 18.

Eighty-seven Odinkemere attorney trust account checks made payable to medical clinics operated by Dr. LeClerc Adisson were endorsed by Joseph Adisson and cashed through Fritz Barjon. It's Exhibit 10.

Three Odinkemere attorney business account checks were also cashed through Fritz Barjon, referencing Exhibit 12.

In addition, five insurance company drafts dated in March and April of 1998 were not deposited into Mr. Odinkemere's trust account, but rather were also endorsed and cashed at Fritz Barjon, Inc, Exhibits 13, 14, 15, 16, and 17. The individuals named on the checks included Jacotte Jean Louis, Roody Duchantier, Eddy Roche, Guy Pompilus, and Amizial Salnave. Mr. Odinkemere has no client files related to these five individuals or insurance company drafts, nor does he recall representing these clients. That's Exhibit 1, 18, 22A and 22B.

Documents on Mr. Odinkemere's stationery, pleading paper, and checks, and obtained from Attorney Robert Auerbach contained references to these five individuals, some correspondence directed to Odinkemere's Irvington, New Jersey, address. That's Exhibits 19A through 19W and Exhibit 20.

Fritz Barjon charged two percent of the amount of the check, although not licensed to operate a check-cashing service.

The OAE charged that the numerous checks listed in the stipulation that were cashed at Fritz Barjon were knowingly misappropriated by respondent's staff due to respondent's failure to supervise his staff, or, in the alternative, that respondent had participated in the misappropriation or in an insurance fraud scheme.

With respect to the five insurance drafts issued jointly to respondent and each of five clients and cashed at Fritz Barjon, the OAE contended that respondent knew or should have known about these client matters. One of the settlement drafts, dated March 25, 1998, for $5,000, was issued to Jacotte Jean Louis. Although respondent had represented others involved in the same accident, he denied ever representing Jacotte Jean Louis.

The OAE introduced a series of documents relating to the Louis settlement. Among those documents was a copy of an October 19, 1998 "fax" transmittal from respondent's Irvington office sent by Keith Pererra[1] to defense counsel enclosing a release and

---

[1] The records also refers to Pererra as "Pereison."

a stipulation of dismissal. Pererra, respondent's stepson, worked part-time at his Irvington office.

According to Prihoda, some of the documents relating to Louis' settlement contained an actual signature, not a signature stamp. On October 23, 1998, defense counsel sent a letter to respondent's Irvington office, acknowledging receipt of the October 19, 1998 "fax" and requesting that respondent submit another release with specific language set forth in her letter, or arrange for his client to sign the letter and return it to her. The letter returned to defense counsel bore the signatures of both Louis and respondent.

Respondent acknowledged that Lincoln Crosley, his paralegal, notarized a release signed by Louis. He denied signing any of the documents himself, claiming that all of the signatures were either affixed with a stamp or signed by someone else.

Respondent admitted that he signed the October 23, 1998 letter from defense counsel adding certain language to the Louis release. According to respondent, he signed the letter out of frustration, after the attorney threatened to sue him or report him to the OAE. Respondent testified that, although he told the attorney that he never represented Louis, defense counsel claimed that, because she had a release prepared by respondent's

office, he was responsible for completing the matter. By respondent's own admission, when he returned the letter, he did not document in writing his position that he had never represented Jacotte Jean Louis and that he was submitting the letter only to avoid litigation or the filing of an ethics grievance. Respondent could not explain how Pererra knew about the Louis matter or why Pererra had "faxed" documents to the attorney in connection with that matter.

As to the insurance drafts issued to Roody Duchantier, Eddy Roche, Guy Pompilus, and Amizial Salnave, Prihoda testified that each check was dated April 1, 1998; was in the amount of $1,250; was issued jointly to respondent and the particular client; bore the purported signature of the client and a signature stamp with respondent's name; was not deposited in respondent's trust account; and was cashed at Fritz Barjon. The OAE introduced correspondence on respondent's letterhead to Prudential Insurance Company – in which respondent affirmed that he represented the four clients – as well as correspondence from Prudential to respondent about the four cases. All of respondent's signatures on these documents were applied with a signature stamp. The OAE was not able to locate any of these clients and respondent denied any knowledge of them.

Respondent denied representing or meeting any of the above four clients, all of whom were issued settlement drafts jointly with respondent. He contended that, although the checks were endorsed with his signature stamp, he never used his stamp to endorse checks, only for correspondence.

Respondent conceded that substitutions of attorney had been filed in many of the cases that he took over from Philp, that he had not signed these documents, and that they had been signed and filed without his knowledge or consent.

Respondent and the OAE also stipulated as follows:

> When a client contacted Mr. Odinkemere about non-receipt of a settlement check, Mr. Odinkemere would verify the correctness of the endorsement signature on the check with the signature on file. After being convinced that the endorsement signature was different from the one in the file, he would then write a business check to cover the amount due to the client.

Respondent testified that, after several clients complained that they had not received checks from him, he investigated the claim, paid the client from his business account, and obtained reimbursement from Marabou. Once he learned of these incidents, respondent did not contact other clients to determine if they, too, had not received funds. After writing checks disbursing settlement funds to clients, respondent usually gave the checks

to his paralegal, Lincoln Crosley. Respondent did not change this practice after learning that some clients had not received their checks.

Respondent alleged that his signature stamp was entrusted to Crosley because he prepared many of the letters sent by respondent. He acknowledged that his signature stamp frequently was used without his knowledge. Respondent contended that, when he asked Crosley to return the signature stamp, Crosley claimed that he could not find it. Respondent never located his signature stamp.

Respondent had not taken any measures to keep letters from being mailed from his office without his knowledge. He admitted that his supervision of his office staff "was not as good as it should have been," and that he had placed a lot of trust in Philp's office staff, none of whom he had previously met. Respondent acknowledged that he gave Crosley clients' trust account checks, that Crosley obtained clients' signatures on those checks and on settlement statements, and that he never reviewed the files as they were being closed.

Respondent denied any knowledge that his clients cashed their checks at Fritz Barjon.

Count Three

This count charges respondent with failure to safeguard client's funds, failure to supervise nonattorney staff, and the knowing misappropriation of client trust funds. Respondent and the OAE entered into the following stipulation:

> In many of his personal injury files, upon settlement, Mr. Odinkemere would issue an initial attorney trust account check to his client for their settlement amount, less an amount retained in escrow pending any medical bills. If no medical bills were received, Mr. Odinkemere would issue a second check to the client for these escrowed funds.
>
> Mr. Odinkemere's client disbursement ledgers reflect that attorney trust account checks for such escrow [refunds] were issued to four of Mr. Odinkemere's clients, namely, Mistral Blaise, Natil Pierre, Maxi Dorsanvil, and Wadson Pierre.
>
> However, each of the respective refund checks were [sic] not received by the client but were [sic] endorsed and cashed at Fritz Barjon. Mr. Odinkemere said it was imperative to rely on the office workers to identify the correct persons and deliver the proceeds check to that person. When these clients contacted Mr. Odinkemere about their escrow funds, Mr. Odinkemere issued them an attorney business account check to cover the amount due.

On July 15, 1997, respondent settled Mistral Blaise's personal injury claim for $5,000. On July 24, 1997, respondent

disbursed $1,566.67 to Blaise, $1,533.33 to himself for his legal fee, and $400 for a medical report. Six days later, on July 30, 1997, respondent issued trust account check number 1214 to Blaise for $1,500, releasing the funds that he had held in escrow for medical bills.

After Blaise informed respondent that he had not received the escrow funds, respondent issued a business account check to him. Although the date of the replacement check was unknown, the check was cashed on September 5, 1997. Check number 1214 was cashed at Fritz Barjon. Respondent told the OAE that he did not know why Blaise had not received check number 1214; that, when Blaise reported this matter to him, he did not examine canceled check number 1214 or conduct any further investigation; and that issuing replacement checks was a cost of doing business.

Three other cases followed a similar pattern. On June 19, 1997, respondent settled a personal injury claim for Natil Pierre, receiving $7,500. He disbursed $3,233.33 to his client on June 22, 1997, and, only two days later, on July 24, 1997, issued a $1,500 check to his client from the medical escrow. On November 7, 1997, after Pierre informed respondent that he had not received the escrow check, respondent issued a replacement check to Pierre from his business account.

Similarly, on June 5 and June 19, 1997, respondent settled personal injury claims for Wadson Pierre and Maxi Dorsanvil, respectively. After being informed that his clients had not received the escrow checks, both dated June 24, 1997, respondent issued replacement checks in October 1997. All of the initial escrow checks had been cashed at Fritz Barjon.

Prihoda testified that these checks caught his attention because he thought it odd that the clients would incur a check cashing fee for the escrow checks, after they had cashed the settlement checks at banks. Prihoda was surprised that respondent simply accepted his clients' representations that they had not received the checks, without at least reviewing the canceled checks. Prihoda stated that, although the OAE does not know who cashed the checks at Fritz Barjon, he suspected that Adisson had done so, because each check contained the initials "JA" on the reverse side. Prihoda conceded that there was no proof that respondent had received all or part of the proceeds of these checks. In reviewing respondent's files, Prihoda never saw invoices from medical care providers to document the escrow amounts left in respondent's trust account.

Respondent testified that, when personal injury cases were settled, he deposited the settlement checks in his trust account

and followed Philp's practice of escrowing $1,000, $1,200 or $1,500 for medical bills, depending on the size of the bill. He stated that, when Blaise came to his office complaining that he had not received his escrow check, he had a meeting with Crosley, Adisson, and, possibly, a secretary. Respondent asserted that he was inclined to believe Blaise because he did not think that Blaise would confront all of his staff, if he actually had received the check. After issuing a replacement check to Blaise, respondent received reimbursement from Marabou because it was Marabou's staff that was responsible for giving checks to clients.

Respondent denied assisting in the cashing of the four escrow checks, receiving any of the proceeds, or knowing that the checks had been taken and cashed at Fritz Barjon. He admitted that he failed to compare signatures on canceled checks with signatures on file and that, when the OAE audited his records, many of his bank statements remained in unopened envelopes.

According to respondent, in September 1997, when he realized that there were serious problems in his East Orange office, particularly with the identification of clients, he decided to move all of the files to his Irvington office.

Respondent stated that, because he often did not know his clients by sight, he preferred to have his office staff hand checks to clients. Respondent testified that, after these incidents, he instructed his staff to ensure the identify of clients before giving out checks and to lock checks in desk drawers. When asked why he did not change his practice to hand out the checks himself, respondent answered that "it's difficult to [sic] me, sit down and drop all that; otherwise I won't be able to do anything else in the office; and I don't need anybody else to sit in there. I might as well run the whole office myself".

Count Four

Like count three, this count charges respondent with failure to safeguard client's funds, failure to supervise nonattorney staff, and the knowing misappropriation of client trust funds. The complaint alleged that, during the audit, the OAE learned that other clients, Lynette Lowe, Edline Litus, Bernadette Litus, and Jean D'Haiti, had not received trust account checks issued by respondent. These clients told Prihoda that, although they had received an initial settlement check from respondent, they had failed to receive a subsequent escrow

refund or additional settlement check. Of concern to the OAE was the fact that, despite respondent's awareness that other clients had not received their funds, and despite the OAE's direction to respondent to review his records, respondent took no action in this regard and it was the OAE that discovered, through its continuing audit, that these clients had not received their checks. Moreover, the OAE suspected that other clients had similar experiences, but could not be located by the OAE.

Respondent and the OAE stipulated as follows:

> Four clients of Mr. Odinkemere did not receive his attorney trust account checks made payable to them; namely Lynette Lowe, Edline Litus, Bernadette Litus, and Jean D'Haiti. Letters were written to these individuals by the OAE inquiring whether or not they each had received the checks Mr. Odinkemere's client disbursement ledgers indicated had been made payable to them (C-30, C-36, C-39 and C-42).

The four clients named in the stipulation signed affidavits indicating that, although they had received an initial settlement check, they had never received the subsequent escrow refund. On September 14, 2000, the OAE directed respondent to review the checks that the clients had denied receiving and to reimburse those clients if his investigation revealed that they were still entitled to the funds. At the ethics hearing,

respondent insisted that, contrary to the stipulation, he did not believe that these clients had not received their checks, because they had not contacted him and because the signatures appeared acceptable to him.

On November 20, 2000, respondent indicated that he would send a check to Lowe, but did not. Instead, Lowe received compensation from the New Jersey Lawyers' Fund for Client Protection.

Respondent denied having received any of his clients' funds or having any knowledge, until contacted by the OAE, that his clients had not received their checks.

Counts Five And Six

These counts allege that respondent knowingly misappropriated client funds, was guilty of forgery, and improperly notarized documents. Following the death of Nnodi Nwafor, an attorney, respondent undertook the representation of some of Nwafor's former personal injury clients, including Amy Nealy and Kindra Douglas.[2] During the audit of respondent's

---

[2] Although respondent's representation of both Nealy, the driver, and Douglas, a passenger, constituted a conflict of

records, the OAE auditor, Hagerman, noticed that, although respondent had deposited settlement funds for these clients, he had not made any disbursements to them. During the investigation, Prihoda sent the following letter to respondent, dated August 21, 2000:

> In response to my inquiry, you have stated that you settled a personal injury matter for a client named "Kindra Douglas" in the amount of $7,500.00 in February of 1997. However, you also stated that you had never met nor were you ever able to locate this client. A signed release dated February 7, 1997, notarized by you was found in this clients [sic] case file. In addition, a check, (#117667015J) made payable to "Kindra Douglas and E. Nkem Odinkemere As Her Attorney" was also found in the clients [sic] file. Therefore, it is clear that you settled the legal matter without the clients [sic] knowledge, signed her name to both the release and the settlement check, and notarized the release certifying that she personally came before you and signed the document. You stated that you handled the case in this manner because this was the only way in which you could receive your legal fee. A second personal injury matter filed for "Amy Nealy" followed the same pattern as the "Douglas" matter described above.

Prihoda testified that, during the investigation, respondent told him that (1) while searching for Nealy, he

---

interest, because he was not charged with a violation of RPC 1.7, we do not make any finding in this regard.

telephoned the number in his client file; (2) he spoke to Nealy's grandparents in New Jersey, who told him that she was attending the College of New Jersey (formerly Trenton State College) in the Trenton area and gave him her telephone number; (3) he contacted Nealy, who approved a settlement and authorized him to sign documents for her because she did not have time to pick up her settlement check until the end of the semester; and, thereafter, he was not able to contact Nealy.

The OAE's investigation uncovered numerous inconsistencies with respondent's version of the events. Prihoda telephoned the same number in respondent's file and reached Nealy's mother, who told him that Nealy's grandparents lived in Michigan, not New Jersey, and that Nealy would never be too busy to pick up a check. Prihoda thought it strange that respondent did not simply mail the check to Nealy after he contacted her by telephone.

Respondent's client file contained a copy of a letter sent to Nealy that had been returned with a forwarding address, which was the address at which Nealy's mother continued to reside when the OAE contacted her. Prihoda also received a letter from the College of New Jersey indicating that Nealy had never been enrolled there. The OAE met with Nealy, who stated that she was not aware that her case had been settled, that her telephone

calls to respondent inquiring about the status of her case had not been answered, and that she was anxious to receive her funds.

On October 3, 2000, the OAE instructed respondent to disburse the settlement funds to Nealy. On October 6, 2000, respondent sent a check for $2,224.66 to the OAE, who transmitted it to Nealy.

Nealy testified that, after the accident, she and Douglas were treated by a chiropractor at Glenwood Medical Group, where Douglas was employed. The chiropractor was in the same building as her first attorney, Nwafor. Nealy recalled signing some documents for Nwafor and receiving a letter advising her that he had passed away and that another attorney would be taking over her case. After approximately ten unsuccessful calls to respondent, Nealy assumed that her case had been forgotten and that she would never receive money from it. Nealy asserted that she had never talked to respondent. According to Nealy, if respondent had informed her that he had a settlement check for her, she would have hurried to pick it up.

Nealy stated that her parents had provided a forwarding address when they moved to their current address in 1997, that, although she had moved often, she always provided a forwarding

address, and that her parents always knew her address. She also asserted that she had never attended college anywhere, that she had never lived or worked in the Trenton area, that her grandparents had never lived in New Jersey, and that, by 1997, when respondent claimed that he had called her grandmother, her grandparents were deceased.

Although Nealy testified that, while represented by Nwafor, she may have signed a retainer agreement and a medical authorization, she denied signing a release, dated February 7, 1997, on which her purported signature appeared.

In contrast to Nealy's testimony, respondent testified that, after he took over Nwafor's cases, he met with Nealy, who authorized him to settle the case for any amount; Nealy had given him verbal authorization to sign a release, which he did, and then notarized the signature. Respondent admitted that he had not documented Nealy's authorization to sign the release. Although respondent acknowledged that he took his legal fee after receiving the settlement proceeds, he denied telling the OAE that he had signed the release to obtain his fee.

Respondent could not recall trying to contact Nealy after he received the settlement check, believing that she would contact him because she had his name and telephone number.

After respondent testified that he had not attempted to contact Nealy at Trenton State College, he was reminded that, in his opposition to the OAE's motion for his temporary suspension, he certified that he had telephoned Nealy while she was a student at Trenton State College. Respondent replied that, at the time he submitted the certification, he believed he had contacted Nealy at Trenton State College. He also testified that, when he first met with Nealy following Nwafor's death, she authorized him to endorse and deposit a settlement check. In his opposition to the motion for temporary suspension, however, respondent stated that Nealy had given that authorization much later, while she was attending college. Respondent conceded that he had not documented Nealy's authorization to sign the check.

With respect to Kindra Douglas, the OAE introduced several letters that respondent sent to her during a one-year period from March 8, 1996 to March 7, 1997. In many of the letters, respondent asked Douglas to call, stating that it was important for his office to establish contact with her. All of the letters were returned to respondent. In another letter, dated May 3, 1996, respondent sought postponement of Douglas' depositions because he needed time to locate his client.

One of the letters that respondent sent in an effort to locate Douglas was dated February 18, 1997. By this time, respondent had notarized her signature on a release dated February 7, 1997 and had received a February 12, 1997 check for $7,500 in settlement of Douglas' claim. As seen below, respondent admitted that he signed Douglas' name on the release, and notarized the signature.

Prihoda testified that, during the audit, respondent stated that he never located or met with Douglas. Despite this statement and the above documentary evidence showing that respondent had failed to locate Douglas, in his answer to the amended complaint, he stated that Douglas had verbally authorized him to settle her case within a certain range.

For his part, respondent testified that he had met with Douglas once or twice shortly after taking over the case from Nwafor and reiterated that Douglas had authorized him to settle her case within a certain range. He contended that he had received Douglas' permission to sign a release, had deposited the $7,500 settlement check in his trust account, had disbursed his $2,500 fee, and, thereafter, he had been unable to find Douglas. He conceded that, when he settled her case in 1997, he had not had any contact with Douglas since at least March 1996.

Respondent stated that, at that time, he was not familiar with the court rule requiring attorneys to deposit funds with the Superior Court if they could not locate a client.

After the ethics hearing had begun, the OAE located Douglas. She testified that she met with Nwafor, who told her that she would receive an insurance settlement for an unspecified amount. After she received a letter informing her that Nwafor had passed away, she never heard anything further about her case. The following exchange took place between Douglas and the presenter:

> Q. Did you ever get a letter advising you that there was another attorney who had taken over your file?
> A. No.
> Q. Did you ever meet with any other lawyer regarding your file?
> A. No.
> Q. Now I'm going to show you Mr. Odinkemere, who's sitting across the table next to Mr. Steinberg. Have you ever met this gentleman before?
> A. No, I haven't.
> Q. Have you ever spoken to him on the telephone?
> A. No.
> Q. Did you ever sit in his office and tell him that there was a certain range of settlement that you would take?
> A. No. Never sat with him.
> Q. Did you ever sign any document saying that he could be your lawyer?
> A. No.
> Q. Did you know that he was acting as your lawyer?
> A. No.
> Q. Did you know that your case had been settled?

A. No.

Q. Did you ever authorize Mr. Odinkemere to take a certain amount of money in settlement of your case?

A. No. Never spoke with him.

Q. Did you ever authorize Mr. Odinkemere to sign your name to any document?

A. No.

Q. [A]fter you established that Mr. Nwafor had died, what was the next time you heard about your personal injury litigation?

A. Up until when your office sent me a letter, which was a couple months [sic] ago. That's it.

Q. Have you ever received any money as a result of your personal injury litigation?

A. No.

Q. Do you recall receiving any correspondence from Mr. Odinkemere?

A. No.

Q. Did you make any attempt to find out what was happening with your personal injury case?

A. No.

(7T6-17 to 7T8-11.)[3]

Douglas asserted that, although she had moved four times after receiving the letter about Nwafor's passing, she always left a forwarding address, her brother continued to reside in the same apartment in which she had lived at the time of the accident, and, because the OAE was able to locate her, respondent, too, should have been able to establish contact with her.

---

[3] 7T refers to the transcript of the July 31, 2003 hearing before the special master.

Joseph Strieffler, an OAE auditor, conducted an audit of respondent's records in the Nealy and Douglas matters. In December 1997, respondent deposited in his trust account $3,500 for Nealy and $7,500 for Douglas. Based on a one-third contingent fee, respondent was entitled to a fee of $2,500 from the Douglas settlement. On December 10, 1997, however, respondent issued two $2,500 checks to himself. Respondent explained to Strieffler that he had written check number 1583 in the morning, returned to the office in the afternoon, noticed that the first check had been lined out in his disbursements journal, erroneously believed that check number 1583 had been voided, and issued check number 1585 in error.

Strieffler's investigation revealed that: (1) because the disbursements journal was created after the OAE instructed respondent to reconstruct his records, it did not exist at the time that respondent removed his fee in the Douglas matter; (2) the entry was not lined out in the disbursements journal, but was covered by correction fluid; and (3) although respondent stated that check number 1583 had been voided, the disbursements journal indicated that check number 1585 may have been voided. According to respondent's December 31, 1997 bank statement,

however, both checks cleared the account on December 10, 1997. Both checks refer to the Douglas matter.

Strieffler determined that of the $7,500 received on behalf of Douglas respondent removed all but $348 from his trust account. Strieffler based his finding on the following events. On February 7, 1997, respondent deposited a settlement check on behalf of another client, Donatus Ijoma. Although respondent was entitled to a legal fee of $5,167, he removed only $2,319 on March 12, 1997. On October 2, 1998, he withdrew a $5,000 legal fee, noting on his trust disbursements journal that the fee was for the Douglas and Ijoma matters. Because respondent was owed a balance of $2,848 in the Ijoma matter ($5,167 less $2,319), the remaining $2,152 was attributed to the Douglas matter. Of the $7,500 settlement, respondent, thus, disbursed two $2,500 fees and a $2,152 fee, leaving a balance of only $348 for Douglas. Yet, he should have been holding $5,000 on her behalf.

On October 18, 2000, as directed by the OAE, respondent deposited $5,000 to his trust account from his business account, on behalf of Douglas. Those funds were never disbursed to Douglas, who testified that she never received them.

Respondent testified that, because the OAE had taken many of his files and records, he had prepared his answer as best he

could, based on memory and the available records. He did not attempt to obtain any records from the bank where he maintained his trust account.

Count Seven

This count, too, alleges that respondent knowingly misappropriated escrow funds. The OAE and respondent entered into the following stipulation:

> Mr. Odinkemere represented the seller, Adelia Lazarre, in a real estate transaction. The contract of sale, Exhibit 68, provided that "all deposit monies will be held in trust by E. Nkem Odinkemere, Esquire, and that the initial deposit was to be $30,000. The purchasers of the property were Jeanise Merilan, Saintilus Merilan, and Abraham Merilan.
>
> On August 18, 2000, Mr. Odinkemere received a $30,000 personal check from the buyers, which he deposited into his attorney trust subaccount for Ms. Lazarre, Client No. 01139, Exhibit 64. The check failed to clear and was redeposited by Mr. Odinkemere on August 24, 2000, Exhibit 64. The check again did not clear.
>
> Mr. Odinkemere then requested a cashier's check from the buyers. He was given Union County Bank Check No. 4593401269, dated August 29, 2000, in the amount of $25,000. That's Exhibit 65A. Along with the bank check, Mr. Odinkemere received a personal check, No. 0099, signed by Saintilus Merilan in the amount of $5,000. That's Exhibit 65B.

> The bank check was deposited into Mr. Odinkemere's attorney trust account. . . . The $5,000 personal check from Merilan was deposited into Mr. Odinkemere's attorney business account. Exhibit 74.
>
> At the time the $5,000 check was deposited into the business account, the Summit Bank statement shows that there was a negative $29.46 balance in the account. Exhibit 67H. . . . The September 29, 2000 Summit statement shows deposits and withdrawals throughout the month with a balance of $1,433.06 at the end of the month, on September [29, 2000]. None of the withdrawals were made for the Lazarre transaction. On October 12, 2000, Mr. Odinkemere wrote to the Golden Mortgage Corporation and advised [it] that he was "holding in escrow the sum of $30,000 representing the deposit from Mr. Saintilus Merilan," Exhibit 69. On October 12, 2000, the Summit Bank statement shows a balance of $1,680.57 in Mr. Odinkemere's attorney business account.
>
> . . . .
>
> The real estate matter was eventually transferred to another attorney to complete.

Strieffler testified that, when respondent was questioned about this transaction, he claimed that he had placed the $5,000 check in his business account, intending to transfer it to his trust account after it had cleared. Respondent deposited the $5,000 check in his business account on September 1, 2000, and, at the time he was suspended on November 14, 2000, he had not

transferred the funds to his trust account. As mentioned above, when respondent deposited the check in his business account, the account balance was a negative $29.46. Respondent made withdrawals against the $5,000, depleting these funds to a low of $17.44 on October 25, 2000, and ending the month with a balance of $3,602.47. One of these withdrawals was a transfer of $5,000 to the Kindra Douglas subaccount, although Douglas never received those funds. After respondent's suspension, he sent a $5,000 check to his attorney, who transmitted the check to another attorney so that the Lazarre transaction could be completed.

Respondent testified that, in August 2000, during the time that the checks from the buyers were returned for insufficient funds, he received an August 21, 2000 letter from the OAE accusing him of misappropriation, improper fee-splitting, insurance fraud, and assistance to others in the unauthorized practice of law. Respondent asserted that, because the letter caused him to panic and have difficulty working, he gave priority to gathering the information requested by the OAE and preparing for the September 7, 2000 audit. Respondent reiterated that he had deposited the $5,000 in his business account, intending to transfer it to his trust account after the check

had cleared. He denied any knowledge that, at the time he placed the funds in his business account, the account had a negative balance.[4]

Respondent stated that, because he believed that the $5,000 had already been placed in his trust account for Lazarre, he never transferred the funds from his business to his trust account. He denied any intent to use the $5,000 real estate deposit for his own use or for the benefit of Kindra Douglas. Respondent testified that, because the OAE threatened to file for his immediate suspension if he did not deposit funds for Douglas, he panicked and tried to comply with the OAE's demand. He estimated that, during this timeframe, he spent about ninety percent of his time on OAE matters and meetings with his accountant, neglecting his office work.

Although respondent claimed that he had panicked when the OAE mentioned the possibility of his license being suspended, he conceded that the OAE had contacted him more than one and one-half years earlier, in January 1999, about potential improprieties. He also acknowledged that, on October 18, 1999,

---

[4] The overdrawn status of an attorney's account is significant to the issue of motive for an alleged misappropriation.

ten months after the OAE first contacted him, and almost one year before the Lazarre transaction, the OAE sent him a letter cautioning him that the trust account shortage was "extremely important" and that, if requested information was not provided, the OAE would move for his suspension. Respondent testified that, despite this prior contact from the OAE, he was shocked to receive the OAE's August 21, 2000 letter mentioning the possibility of his suspension, which caused him to panic.

Respondent asserted that he was concerned about the buyers' $5,000 check being returned because it was his understanding that all returned checks in the trust account are reported to the OAE. He stated that, because he did not know if, in finding impropriety with the return of a check, the OAE distinguished between checks issued by him from his trust account and checks deposited by him into his trust account, he had placed the funds in his business account. According to respondent, on October 12, 2000, when he indicated to the buyers' mortgage company that he was holding $30,000 in escrow, he believed his statement to be accurate, because he did not realize that the $5,000 was not intact in his bank account. Respondent admitted that he often did not know the balance in his business account unless he contacted the bank. He conceded that, in September 2000, he

issued fourteen checks from his business account that were used for his operating expenses and that the $5,000 real estate deposit was used to pay his business expenses. Respondent further admitted that, other than his intent, he had no basis for his belief that the $5,000 real estate deposit had been transferred to his trust account.

Count Eight

This count details respondent's recordkeeping deficiencies. Respondent maintained trust and business accounts at First Union National Bank until October 1999, when he closed those accounts. In July 1999, he opened a trust account at Summit Bank. The Summit account permitted him to maintain sub-accounts for each client, while his former trust account pooled all of the clients' funds into one account. The OAE's audit disclosed the following deficiencies:

- a trust accounts receipts journal was not maintained;
- client trust ledger sheets were not fully descriptive;
- client ledger cards had debit balances;
- inactive trust ledger balances remained in the trust account for an extended period of time;
- a running cash balance was not kept in the trust account checkbook;

- quarterly reconciliations were not prepared;

- after he closed his First Union trust account, respondent never produced a final accounting showing that outstanding checks and client escrows had been resolved;

- respondent did not cure the shortage in his trust account.

In his brief filed with the special master, respondent conceded that he "failed to safeguard the property of the client[s] and failed to maintain adequate books and records and trust account reconciliations."

Count Nine

This count alleges that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The OAE relied on the following documentary evidence to establish that respondent, or his office, settled a personal injury claim and received a legal fee without the client's knowledge. Respondent's predecessor, Errol Philp, entered into an undated fee agreement with Daniel Ferere, who was injured in an automobile accident on June 19, 1996. On August 9 and September 13, 1996, Crosley, respondent's paralegal, notarized affidavits signed by Ferere. Philp's letter, sent on March 26, 1997, to Ferere at an address in East Orange was returned by the post

office, with a forwarding address at 50 Tiffany Place, Irvington. Philp's subsequent letter, sent on April 2, 1997, to the Irvington address, was returned marked "attempted, not known."

On June 10, 1997, respondent sent a letter to Prudential Insurance Company indicating that he represented Ferere, and making a settlement demand of $10,000. Respondent's letters sent to Ferere's Irvington address on May 29, June 18, July 2, July 17, and July 18, 1997 were returned by the post office. A "call contact" sheet dated June 30, 1997, maintained in respondent's file, stated: "Daniel Ferere: we have no phone and returned mail, contact Joe".

Although respondent's letters to Ferere were returned, respondent's file contained a transcript of a July 25, 1997 statement that Ferere provided to a Prudential investigator at respondent's office. In the statement, Ferere gave his address as "Tiffany Place in Irvington". On October 3, 1997, respondent's letter to Ferere asking him to visit the office to sign documents was returned by the post office.

Despite respondent's apparent inability to locate Ferere, Ferere's case was settled in October 1997. On October 7, 1997, respondent sent to Prudential a release bearing Ferere's

signature, notarized by Crosley. The release was dated October 3, 1997, the same date as respondent's letter asking Ferere to visit his office to sign documents. Prudential issued a $4,000 check, dated October 15, 1997, payable jointly to respondent and Ferere. The reverse side of the check contained a signature for Ferere.

Although the above documents establish that the Ferere claim was settled for $4,000, respondent's file also contained documents showing that the case was settled for $7,000. A settlement statement, dated November 9, 1997, indicated a settlement amount of $7,000; respondent's trust account ledger contained an entry for Ferere indicating receipt of $7,000; respondent issued trust account check number 1538 to Ferere for $4,666.67; respondent issued trust account check number 1539 for $2,333.33 for his fee; and respondent's trust account receipts journal contained an entry of $7,000 for Ferere. The check issued to Ferere was cashed at Fritz Barjon. Respondent speculated that, because his journal entry referred to Sentry Insurance Company, there were companion settlements totaling $7,000 from both Prudential and Sentry insurance companies.

Respondent testified that he had no recollection of representing Ferere and that all of the letters bearing his

signature were signed by means of a signature stamp. Simply stated, respondent could not recall any involvement in the Ferere case. He denied ever settling a case without the client's authorization. He acknowledged that his practice of receiving verbal agreements from his clients to settle cases was a mistake.

Count Ten

This count also alleges that respondent knowingly misappropriated client funds. During the April 14, 1999 audit, the OAE asked respondent various questions about his recordkeeping practices. At that time, respondent stated that he did not keep his own funds in his trust account, that only he signed his trust account checks, and that his signature stamp was never used to endorse trust account checks. Although respondent used a "one-write" system, he often neglected to insert the client's ledger card between the check and the disbursements journal, thus rendering his records unreliable. Moreover, respondent maintained his checkbook balance on a "Quicken" computer program, but Hagerman determined that those records were also inaccurate. Although Hagerman requested that

respondent provide a copy of his Quicken check register, he never produced it.

As noted above, at the April 14, 1999 audit, Hagerman reconciled respondent's trust account as of February 26, 1999, determining that the account was short by a minimum of $8,663.88. This shortage did not include the funds due to Nealy and Douglas, because those files had not yet been discovered. According to Hagerman, the initial shortage was $20,701.57, but, after giving respondent every benefit of the doubt, she reduced the minimum shortage to $8,663.88. Hagerman stated that she reviewed her reconciliation with respondent, explained it to him several times, gave him a copy of the recordkeeping deficiency checklist that she completed at the audit, and directed him to review the records of eleven particular clients for whom he should have been holding trust funds as of that time.

The OAE sent a July 2, 1999 letter to respondent summarizing the recordkeeping deficiencies and directing him to retain an accountant by August 20, 1999, at which time Hagerman and Strieffler would return to his office. The OAE was particularly concerned that respondent was unable to identify the amount of client funds in his trust account. Respondent's accountant, Kayode Agunbiade, received an extension to November

9, 1999 to complete the accounting. Respondent, thus, was given seven months, from April to November 1999, to determine if the OAE's reconciliation was correct and to deposit funds to cure the shortage.

At the November 9, 1999 audit, the OAE learned that, although Agunbiade had entered all of respondent's trust and business account records into a computer program, Agunbiade still had not reconciled respondent's trust account. The OAE took respondent's original trust and business records for the audit period of 1997 to September 1999, as well as certain closed personal injury files, all of which were returned to respondent the next month in December 1999.

On November 8, 1999, the day before the audit, respondent deposited $8,000 in his new Summit trust account to partially cover the $8,663.88 shortage. Later, the OAE learned that, in August 2000, respondent withdrew $4,000 of the $8,000, because he did not believe that his account was short by $8,000. Respondent used the $4,000 for business expenses.

At a December 8, 1999 meeting, Agunbiade gave the OAE a December 7, 1999 letter indicating that respondent's First Union trust account had a shortage of $18,677.78, a figure similar to Hagerman's initial determination. The OAE conducted another

audit on September 7, 2000, at which respondent failed to produce the required trust account reconciliations. At that point, the OAE determined that the trust account shortage was at least $15,000 (the original $8,663.88 deficit plus at least $7,000 due to Nealy and Douglas).

Hagerman then reviewed respondent's records to determine the cause of the shortage that occurred in early 1999, when the bank notified the OAE of overdrafts in respondent's trust account. Because respondent's records were incomplete, the OAE obtained copies of trust account checks from his bank. The OAE concluded that respondent misappropriated $17,500 by issuing the following checks for legal fees, without any related client matter:

CHECK NUMBER	AMOUNT	DATE
Check 1051	$2,500	January 21, 1997
Check 1101	$2,500	June 7, 1997
Check 1877	$5,000	August 12, 1998
Check 1890	$5,000	August 15, 1998
Check 1901	$2,500	October 6, 1998

According to Hagerman, the records that respondent reconstructed, as directed by the OAE, did not contain any reference to these five checks; the checks themselves did not refer to a client matter or, in one instance, referred to a non-existent client; and the checks were issued in even dollar

amounts, while most of respondent's checks were written in odd amounts because his fees were one-third of the settlement amounts. Respondent had no explanation for these disbursements.

Hagerman concluded that respondent's removal of the above funds caused the shortage in his trust account. She further concluded that, whenever respondent needed funds, he removed them in even dollar amounts from his trust account without entering any information, in his disbursements book, that would draw attention to the checks. As noted above, because respondent had represented to the OAE that he did not keep his own funds in his trust account, Hagerman concluded that he knew that he did not have extra money in the account and that he, therefore, knowingly misappropriated client funds. In reaching this conclusion, Hagerman also considered respondent's failure to produce the Quicken check register, his failure to explain the trust account shortage, his failure to relate the above five checks to client matters, his failure to correct the problems associated with his clients' non-receipt of their checks, and his failure to investigate the reason that so many of his clients' checks were cashed at Fritz Barjon.

Hagerman asserted that, because respondent's First Union trust account did not contain sub-accounts, it is not possible to identify which particular clients' funds were misappropriated.

In his defense, respondent maintained in his brief that he had no bookkeeping experience, that he was "in over his head" after making the "monumentally poor decision to assume Mr. Philp's practice," that he was "essentially used as a pawn by Marabou," and that no evidence showed that he intended to steal from or deceive his clients. He also testified that, contrary to his statement to the OAE during the April 14, 1999 audit, he retained fees in his trust account in order to have extra funds as a cushion.

Although, at the hearing, respondent tried to explain the shortage in his trust account by pointing to various errors he had made, his explanations were proven to be implausible, at best. For example, respondent claimed that, in a particular real estate transaction, he had credited the buyer with $2,000, but had neglected to deduct $2,000 from the amount due to the seller, thus creating a $2,000 shortage. The closing papers, however, showed that respondent had deducted $2,000 from the amount due to the seller, resulting in no shortage.

Respondent also claimed that his records contained errors because he had two entries in his disbursements journal with the same check number. Hagerman, however, obtained respondent's bank records and discovered that, on thirty-seven occasions, two checks bearing the same number had cleared his trust account. She explained that respondent might have obtained a set of checks with duplicate numbers, if he had forgotten the number of the last set of checks used, when ordering new checks. Respondent's explanation, thus, that he had erred by entering duplicate check numbers was incorrect because he actually had duplicate check numbers.

Respondent also contended that trust account check number 1629, dated December 19, 1997 for $2,100, issued to Wilson Giles, had been forged. According to respondent, after he learned, in January 1999, that a trust account check had been returned for insufficient funds, he reviewed his records and noticed that the signature on check number 1629 was not his and that he did not have a client named Wilson Giles. Although respondent claimed that he reported the forgery to the bank, he did not report it to the police. He also did not try to locate Giles by visiting the address listed on the check. Respondent asserted that the bank failed to take any action to replace the

forged check because he had not reported the alleged theft until more than one year after the issuance of the check.

In addition, respondent again complained that the OAE had taken his records and either had not returned them, or returned them after long delays, thus preventing him from reviewing his records to investigate the reason for the shortage. Respondent disputed Agunbiade's statement to the OAE that he had entered all of respondent's records into his computer. Yet, in his November 6, 2000 letter to the Court in opposition to the OAE's motion for temporary suspension, respondent represented that his "trust account was reconstructed and reconciled to the extent of identifying each and every client fund in my trust account."

Respondent also claimed that Agunbiade had assured him that, before submitting his report to the OAE, respondent would have the opportunity to review it and make corrections. According to respondent, however, after Agunbiade was given an extension to submit his report, he completed it very late in the evening on the Friday before the Monday deadline, thus depriving respondent of the opportunity to correct errors in it.

The special master issued a report recommending respondent's disbarment, making the following findings:

- respondent's arrangement with Marabou constituted improper fee-splitting and violated RPC 5.4;

- client funds were misappropriated as a result of respondent's failure to safeguard funds and to supervise his staff, a violation of RPC 1.15(a);

- respondent violated RPC 8.4(c) by submitting false jurats to insurance companies, thus committing insurance fraud;

- respondent violated RPC 1.15(a) and RPC 5.3(c) by permitting his staff unsupervised access to his signature stamp, trust account checks, and client files;

- by failing to investigate the cause of clients' non-receipt of funds and by failing to take any corrective action, respondent further violated RPC 1.15(a);

- respondent violated RPC 8.4(c) by ignoring his staff's misappropriation of client funds;

- respondent knowingly misappropriated Nealy's funds, forged her signature on a release, notarized the release, submitted it to an insurance company, and removed his fee without the knowledge or consent of his client;

- respondent knowingly misappropriated Douglas' funds;

- respondent knowingly misappropriated funds from the Lazarre real estate transaction by intentionally placing the deposit in his business account;

- respondent's recordkeeping violated Rule 1:21-6;

- Ferere's personal injury matter was settled without the client's consent or knowledge, his signature was forged and fraudulently notarized and, by accepting a fee from the settlement draft, respondent violated RPC 8.4(b) and (c);

- respondent knowingly misappropriated client funds by disbursing five checks to himself unrelated to any client matter.

Following a de novo review, we are satisfied that the special master's findings that respondent's conduct was unethical are supported by clear and convincing evidence.

As to count one of the complaint, the evidence demonstrates that respondent stumbled into an insurance fraud scheme when he assumed Philp's practice. It appears that most, if not all, of the personal injury cases in the East Orange office originated from the chiropractor in the office next door, who was Adisson's brother. As seen below, Crosley, the paralegal, settled cases and engaged in the unauthorized practice of law. Although respondent did not initiate these improper practices, he permitted them to continue.

Respondent admittedly engaged in an improper fee-sharing arrangement with Marabou, that apparently began with Philp. Respondent claimed that he believed that sixty-five percent of his fees represented a reasonable estimate of his overhead, yet, he acknowledged that, whether his revenues were high or low, he always paid the same percentage. This admission belies any good-faith intent on respondent's part to pay Marabou a fee reasonably commensurate with his overhead expenses. Respondent testified that, even though expenses remained constant, his

payments to Marabou were dependent on the amount of settlement funds he had received. Respondent had to know that his overhead could not fluctuate to that degree.

Respondent's arrangement with Marabou, thus, violated RPC 5.4(a).

Respondent stipulated in connection with count two of the complaint that many of his trust and business account checks issued to clients and medical providers were cashed at Fritz Barjon, an illegal check-cashing business located in a liquor store. It is likely that these checks were diverted and misappropriated by respondent's staff. In addition, five insurance drafts issued jointly to respondent and his clients were not deposited in respondent's trust account, but instead were cashed at Fritz Barjon. Despite respondent's testimony that he did not recall representing these clients, the record contains letters between respondent's office and the insurance company's attorney, particularly with respect to the Jacotte Jean Louis matter. Respondent's signature was affixed on these documents with his signature stamp, which, admittedly, respondent had permitted Crosley to use when sending correspondence.

Respondent's failure to impose restrictions on his staff and to monitor their activities created an environment in which

they were able to control respondent's cases. They apparently handled cases and settled claims without respondent's or the client's knowledge or consent. Respondent completely abdicated his practice to Marabou staff. His trust in them not only was misplaced, but also was unjustified, in light of the fact that they were unknown to him before he took over Philp's practice.

Furthermore, respondent could not explain the circumstances under which his stepson "faxed" documents to the insurance company's attorney in the Jacotte Jean Louis matter. Respondent's stepson, Pererra, worked in his Irvington office and, presumably, was not infected with the deception practiced in the East Orange office. Yet, Pererra sent releases and other documents in that case to insurance counsel. In addition, although respondent claimed that he had signed the letter amending Louis' release, he failed to document his purported basis for doing so, that is, that his adversary had threatened to file an ethics grievance because respondent's office had prepared the original release. If respondent truly was unaware of this case, he should have documented his position, or, at the very least, investigated the circumstances under which a release was prepared by his office in a case in which he did not represent the claimant. Instead, respondent did nothing.

Although the evidence does not clearly and convincingly demonstrate that respondent actively participated in the misappropriation of client funds, his failure to look into these allegations, his failure to investigate his clients' claims of non-receipt of checks, and his failure to supervise his staff created the conditions under which clients' funds were stolen.

Respondent, thus, failed to safeguard client funds, failed to supervise his staff, and assisted in the unauthorized practice of law, violations of RPC 1.15(a), RPC 5.3(c), and RPC 5.5(a).

The improprieties alleged in counts three and four were similar to those in count two. Respondent stipulated that four of his clients did not receive medical escrow refunds that had been issued to them from his trust account. The checks were cashed at Fritz Barjon, most likely by Joseph Adisson, as evidenced by the initials "JA" on the reverse side of the checks. Upon learning of the clients' claims that they had not received their checks, respondent failed to take the logical step of examining his canceled checks to review the signatures and the circumstances under which the checks were negotiated. He testified that he had not even opened many of his bank

statements. Instead, respondent simply issued replacement checks to his clients and obtained reimbursement from Marabou.

Moreover, because the medical escrow checks were often issued only days after the settlement checks, when respondent began receiving these complaints he should have changed his procedure in order to eliminate issuing separate checks. He could have determined whether medical bills remained outstanding before issuing settlement checks to clients, so that only one check need be issued. By eliminating the issuance of separate escrow checks, respondent could have, and should have, safeguarded his clients' funds. He did not do so, however.

In four other matters, respondent stipulated that, although the clients received their initial settlement checks, they failed to receive subsequent checks. The OAE detected these cases upon reviewing respondent's records. Although the OAE had directed respondent to review his records, he did not do so.

Respondent testified that he did not believe that Edline Litus, Bernadette Litus, and Marie Metelus had not received their checks. Respondent's testimony contradicted the stipulation, as well as other evidence. Both Lituses signed affidavits certifying that they had never received their medical escrow refunds. Respondent did not rebut these affidavits.

Respondent's testimony in the Metelus matter was even more suspect. The settlement statement in that case was signed "Marie Siceron." Respondent testified that one claimant signed the wrong name, when picking up her own check. Prihoda, however, testified that, although the other claimants were named "Siceron," none of them were named "Marie." Moreover, the signature had to have been made at respondent's office, or by someone on his staff, since no one else would have known that Metelus and Siceron were co-claimants in the same case.

Respondent's violations of RPC 1.15(a) and RPC 5.3(c) led to the misappropriation of client funds, presumably by his staff.

As to counts five and six of the complaint, the evidence clearly and convincingly establishes that respondent settled Nealy's and Douglas' cases without their knowledge or consent. Nealy testified that, after receiving notice that respondent had taken over her case from Nwafor, she tried unsuccessfully to contact him. She disputed respondent's version of events in every detail. Respondent had informed the OAE that he had talked to Nealy's grandparents after telephoning them in New Jersey, that they had put him in touch with Nealy, who was attending Trenton State College, and that Nealy approved a settlement and authorized him to sign documents for her. According to Nealy,

however, her grandparents had never lived in New Jersey, they were deceased at the time that respondent claimed to have contacted them, she never attended college, she never lived or worked in Trenton, she never approved a settlement, and she never authorized respondent to sign documents on her behalf. Nealy had no motive to lie.

In turn, respondent's testimony in this regard is devoid of credibility. Although he admitted that he had so many clients that he could not remember them individually, he was able to remember conversations with Nealy that had allegedly occurred six years before the ethics hearing. In addition, respondent's testimony contradicted his own certification. For example, he testified that he had not tried to contact Nealy at Trenton State College. Yet, he certified to the Court that he had done so. He testified that Nealy had given him authority to endorse and deposit a settlement check when he had first met her, but he certified to the Court that such authorization was given much later.

The special master accepted Nealy's clear testimony, finding that respondent knowingly misappropriated her funds, forged her signature on a release, notarized the signature, submitted the release to an insurance company, and received his

fee without Nealy's knowledge or consent. We agree with the special master's findings and observe that, not only did respondent contradict Nealy's version of events, but also his own.

Moreover, even under respondent's version of events, he failed to contact Nealy after receiving her settlement proceeds, reasoning that she should contact him. RPC 1.15(b) requires attorneys to promptly notify clients upon receipt of property to which they are entitled. Contrary to respondent's position, it is the attorney's obligation to contact the client. Furthermore, attorneys are prohibited from obtaining clients' consent to endorse settlement checks, except under very limited circumstances. See In re Advisory Committee on Professional Ethics Opinion 635, 125 N.J. 181 (1991).

Without the client's knowledge or consent, thus, respondent entered into a settlement; signed his client's name on settlement documents, including a check and a release; submitted those documents to an insurance company; and removed his fee from the proceeds, all violations of RPC 8.4(c).

Respondent's misconduct in the Douglas matter was even more egregious. The letters that he sent to Douglas make it clear that he had never located her. Those letters recited the

importance of establishing contact with Douglas and were sent over a one-year period. Respondent produced no evidence that he ever located Douglas. Indeed, according to Prihoda, respondent stated that, although he had never located or met Douglas, he settled her case so that he could obtain his fee.

In February 1997, respondent received an insurance draft of $7,500 for Douglas. He notarized her "signature" on a February 7, 1997 release on which he had signed Douglas' name. Yet, on February 18, 1997, respondent sent a letter to Douglas in an effort to locate her. Douglas testified that she had never met respondent, had never spoken with him, had never been to his office, had not known that he was acting as her lawyer, had not received any correspondence from him, had not known that her case was settled, had not approved a settlement, and had never authorized him to settle her case or sign her name to a document. She also never received her settlement funds.

Although Douglas never received the funds to which she was entitled, respondent received his – twice. On December 10, 1997, he removed his one-third contingent fee of $2,500. On the same day, he issued another $2,500 check for his legal fee. Respondent's explanations for this alleged mistake were proven to be unfounded. We reject his claim that he believed that the

first check had been voided as indicated on his disbursements journal because, according to Strieffler's uncontradicted testimony, that journal did not exist at that time. Not only did both checks clear respondent's account, but respondent invaded all but $348 of Douglas' share of the settlement proceeds. Although he transferred $5,000 from his business account to his trust account to reimburse Douglas, he never sent her the funds.

Respondent forged Douglas' name and notarized her "signature," a violation of RPC 8.4(c). He also knowingly misappropriated her funds, a violation of RPC 1.15 and RPC 8.4(c).

We also determine that respondent knowingly misappropriated funds in the Lazarre matter. In that case, he was required to maintain in escrow the buyers' $30,000 deposit. After the buyers' deposit check had been returned for insufficient funds, respondent, quite reasonably, insisted on certified funds. Although the buyers submitted a certified check for $25,000, they also gave respondent a $5,000 personal check. Respondent claimed that he placed this check in his business account, intending to transfer it to his trust account after it cleared. At the time that he deposited the check, his business account had a negative balance. His motive for the deposit was the

account's need for an infusion of funds. Indeed, during the next several months, respondent made many disbursements from his business account, none in connection with the Lazarre transaction.

Moreover, there was no reason for him to refrain from depositing the $5,000 in his trust account. His explanation — that he was concerned that the bank would report it to the OAE — is disingenuous. He had to know that banks are required to report to the OAE only trust account checks that are returned for insufficient funds. An attorney is not responsible for checks issued to him, only those issued by him.

Respondent could provide no basis for his belief that he had transferred the funds to his trust account. Not only did he fail to provide a credible explanation, he attempted to lay blame at the OAE's doorstep. Respondent claimed that, in August 2000, he received a threatening letter from the OAE that caused him to panic and to devote the majority of his time to responding to the OAE's requests for information, thus causing him to neglect his office and the Lazarre transaction. Respondent could not explain why the August 2000 contact from the OAE came as a shock to him, when he had been dealing with that office since January 1999, more than one and one-half

years. Although respondent claimed that the OAE's threat of temporary suspension caused him to panic, he had received other communications from the OAE mentioning that possibility.

The only logical inference to be drawn, thus, is that respondent intentionally deposited the $5,000 real estate deposit in his business account to cure the deficit in that account. Respondent's subsequent use of those funds for his business expenses constituted knowing misappropriation of escrow funds. The funds should have been held intact, pending the completion of the real estate transaction.

As to the recordkeeping violations, not only did respondent admit that he failed to maintain required books and records, he asserted this failure as a defense to the knowing misappropriation charges. By failing to comply with the recordkeeping rules, respondent violated RPC 1.15(d) and Rule 1:21-6.

In the Ferere matter, count nine of the complaint, the record establishes that, after respondent assumed the client's representation from Philp, his office could not locate the client. Nevertheless, the case was settled, Ferere's name was signed on a release that Crosley notarized, the insurance draft was signed with Ferere's name, and a trust account check issued

to Ferere was cashed at Fritz Barjon. Respondent was not able to locate his client, as evidenced by the return of his letters to Ferere. One of the letters sent to Ferere was dated October 3, 1997, the same date as the release purportedly bearing Ferere's signature. That letter requested Ferere to sign documents at respondent's office. It is clear that respondent's office settled the case without Ferere's knowledge or consent, forged his name on documents, and misappropriated the settlement proceeds. It is also clear that respondent received a fee from the Ferere matter. Respondent could not recall any details about the Ferere matter and could not explain why two different settlement amounts, $4,000 and $7,000, appeared in the documents.

The record does not establish whether respondent actively participated in this fraud, or whether he permitted his staff to do so because of his lax supervision. At a minimum, respondent allowed his staff unrestricted access to his files and his trust account, and permitted them to settle cases by forging documents. Respondent's failure to supervise his staff, to investigate clients' claims of non-receipt of funds, to change procedures after receiving numerous complaints that clients had not received their checks, and to open his bank statements add

up to willful blindness, at best. At worst, respondent actively participated in the fraud.

As to count ten, the record shows that respondent removed five checks totaling $17,500 from his trust account to which he was not entitled. Although at the April 14, 1999 audit, respondent told Hagerman that he did not leave fees in his trust account, when he was confronted with these five withdrawals he contended that he sometimes removed less than his entire fee. Respondent's own accountant issued a report indicating that his trust account was short by more than $18,000. Respondent was given numerous opportunities, over more than three years, to explain the shortages in his trust account. He did not do so. Instead, he blamed the OAE for holding his records hostage, blamed his accountant for not giving him an opportunity to review his report before submitting it to the OAE, and blamed his staff for numerous improprieties, while disclaiming any responsibility of his own. His attempts to explain the shortages, however, were disproven point by point by the OAE.

We find, thus, that by removing five checks from his trust account that were not related to any client matters, respondent knowingly misappropriated client funds.

In sum, respondent knowingly misappropriated funds in the Nealy, Douglas, and Lazarre matters, as well as on those occasions when he issued checks to himself unrelated to client matters and to which he was not entitled. He abdicated his office to his staff, who handled matters independently. He assisted others in the unauthorized practice of law, failed to safeguard client funds, failed to supervise his staff, and engaged in improper fee-sharing with nonattorneys.

Respondent's office procedures were so deficient as to evidence an extreme disregard for his responsibilities to his clients. His casual attitude toward his professional responsibilities was illustrated by his willingness to transfer his obligations to his staff. Moreover, respondent refused to accept responsibility for his actions. He blamed the OAE, his accountant, and his staff for his own improper conduct.

Respondent cannot be absolved of liability for the actions of his staff under these circumstances. He was on notice that his clients were not receiving checks issued by his office; yet, he continued to permit his staff access to client checks. Respondent's misconduct in this regard is similar to that of the attorney in In re Dean, 169 N.J. 571 (2001). In that case, the attorney permitted her office manager, a convicted felon, to run

her office. He misappropriated client funds, for which she was held responsible. Dean was also guilty of directly misappropriating clients' funds, independently of her office manager.

Similarly, in In re Pomerantz, 155 N.J. 122 (1998), the Court disbarred an attorney who claimed that she was not aware that she was out-of-trust and blamed her staff for those shortages. The Court ruled that, even if the attorney's contention of ignorance of the state of her trust account were to be accepted, her willful blindness was sufficient to constitute knowing misappropriation of client funds. In response to the attorney's argument that her bookkeeper and accountant were to blame for the shortages in her trust account, the Court remarked as follows:

> The fact that respondent may have permitted her bookkeeper to sign checks drawn on the trust account does not mitigate the seriousness of her breach of professional responsibility. 'Lawyers may not absolve themselves of the misappropriation of client funds by delegating to employees the authority to complete signed checks and then failing to supervise these employees.' *Irizarry, supra,* 141 *N.J.* [189] at 193, 661 *A.*2d 275. Respondent's duty to protect her client's funds was nondelegable. *Ibid.*
>
> [In re Pomerantz, supra, 155 N.J. at 136]

Here, respondent further contended that he did not intend to steal from his clients. Intent to steal, however, is not required for a finding of knowing misappropriation. Twenty-five years ago, the Court announced the bright-line rule that knowing misappropriation of client funds will, almost invariably, result in disbarment. In re Wilson, 81 N.J. 451 (1979). Wilson placed the highest priority on the maintenance of public confidence in the Court and in the bar, ruling that "mitigating factors will rarely override the requirement of disbarment." Id. at 461. Although the use of such terms as "almost invariable" and "rarely override" might raise the possibility of a departure from the automatic disbarment rule, since 1979 the Wilson rule has been applied without exception. Every attorney who has been found to have knowingly misappropriated client funds has been disbarred. In In re Noonan, 102 N.J. 157 (1986), the Court detailed the requirements for a finding of knowing misappropriation:

> The misappropriation that will trigger automatic disbarment under *In re Wilson*, 81 *N.J.* 451 (1979), disbarment that is 'almost invariable,' *id.* at 453, 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. While this Court indicated that disbarment for knowing misappropriation shall be 'almost invariable,' the fact is that since *Wilson*, it has been invariable. [Footnote omitted].
>
> [In re Noonan, supra, 102 N.J. at 159-60.]

Under Noonan, thus, intent to steal or defraud and dishonesty are not required for a finding of knowing misappropriation of client funds. So long as the lawyer knows that the funds are not his or hers and knows that the client has not consented to the taking, the absence of evil motives, the lack of intent to permanently keep the monies, the good use to which the funds may be put, the lawyer's prior unblemished character and, moreover, the circumstances or pressures impelling the lawyer are all irrelevant. All that is needed to mandate disbarment is proof that the lawyer took the funds

knowing that they were not his or hers and knowing that the taking was unauthorized. No amount of mitigation will be sufficient to excuse misappropriation that was knowing and volitional. Thus, it is of no consequence that respondent did not intend to permanently deprive his clients of their funds. It is enough that respondent used their money, without their consent, knowing that he had no authority to do so.

Moreover, In re Cavuto, 160 N.J. 185, 196 (1999), the Court observed:

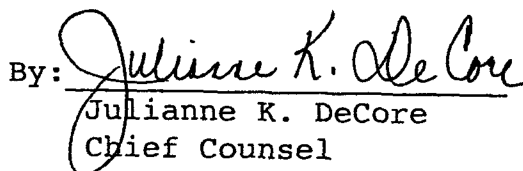
> The line between knowing misappropriation and negligent misappropriation is a thin one. "Proving a state of mind -- here, knowledge -- poses difficulties in the absence of an outright admission." In re Johnson, 105 N.J. 249, 258, 520 A.2d 3 (1987). However, this Court has noted that "an inculpatory statement is not an indispensable ingredient of proof of knowledge, and that circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." Ibid. In this case, that circumstantial evidence includes repeated invasions of client funds that were required to be held inviolate. The testimony adduced convincingly suggests that respondent "knew," or "had to know" that he was invading client funds.

Four members determined that, in accordance with In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), disbarment is required for this respondent. Three members found respondent guilty of all charges, including knowing misappropriation, but dissented as to the measure of

discipline, believing that this is the type of case for which the new form of discipline — indeterminate suspension — was created. Vice-Chair William J. O'Shaughnessy and Member Matthew P. Boylan, Esqs., voted to impose an indeterminate suspension retroactively to November 14, 2000, the date of respondent's temporary suspension. Chair Mary J. Maudsley, Esq., voted to impose a prospective indeterminate suspension. Members Barbara F. Schwartz and Spencer V. Wissinger, III did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of E. Nkem Odinkemere
Docket No. DRB 04-147

Argued: September 23, 2004

Decided: November 4, 2004

Disposition: Disbar

Members	Disbar	Prospective Indeterminate Suspension	Retroactive Indeterminate Suspension	Did not participate
Maudsley		X		
O'Shaughnessy			X	
Boylan			X	
Holmes	X			
Lolla	X			
Pashman	X			
Schwartz				X
Stanton	X			
Wissinger				X
Total:	4	1	2	2

By [signature] 11/1/04
Julianne K. DeCore
Chief Counsel