

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-323
District Docket No. XIV-01-032E

IN THE MATTER OF
ANTHONY C. NWAKA
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20-4(f)]

Decided: December 13, 2004

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline following respondent's failure to
file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1992. At
the relevant times, he maintained a law office in East Orange,
New Jersey.

In 2003, the Court suspended respondent for a three-month
period for gross neglect, failure to communicate with a client,

and failure to cooperate with ethics authorities. Respondent twice defaulted in the matter. In re Nwaka, 176 N.J. 516 (2003).

The following year, on a motion for reciprocal discipline, the Court imposed another three-month suspension after respondent's disbarment in New York for abandoning a client in a personal injury matter, and for failing to cooperate with New York disciplinary authorities. In re Nwaka, 178 N.J. 483 (2004).

On July 15, 2004, the OAE mailed a copy of the complaint to respondent, by certified mail, return receipt requested, at his home address listed with the New Jersey Lawyers' Fund for Client Protection. According to the certification of the record, respondent received the certified mail on July 20, 2004. The signature of the recipient, however, is illegible. A supplemental letter from the OAE, dated October 20, 2004, indicates that the OAE also served the complaint by regular mail, which was not returned. As of the date of the certification of the record, September 2, 2004, respondent had not filed an answer to the complaint.

The two-count complaint charged respondent with knowing misappropriation of trust funds, a violation of RPC 1.15, RPC 8.4(c), and In re Wilson, 81 N.J. 451 (1979).

At the relevant times, respondent maintained two trust accounts at the First Union Bank, which are referred to as Trust Account No. 1 and Trust Account No. 2.

Respondent represented Gwendolyn Zellars for injuries sustained from a slip-and-fall accident on October 25, 1996. Respondent settled the case in October 1997 for \$14,170. Zellars executed a release in favor of the defendants.

On November 4, 1997, respondent received and deposited the settlement draft into Trust Account No. 1. However, Zellars, who was a payee on the draft, had not endorsed it before respondent deposited it into the account. Zellar's endorsement had been forged, by whom is not known. On May 23, 2003, the OAE obtained an affidavit from Zellars confirming that her signature had been forged.

According to the complaint, respondent knowingly misappropriated the funds and used them for his own personal expenses.

In addition, respondent represented Robert Thompson in a third-party workers' compensation claim that arose from a September 22, 1994 accident.

In May 1997, respondent settled the Thompson case for \$78,000. At that time, there was a \$50,000 workers' compensation lien against the settlement. By letter dated June 4, 1997, the

third party carrier forwarded the settlement check to respondent and instructed: "all liens will be satisfied out of these proceeds."

According to respondent's client trust account ledger for the Thompson matter, on June 5, 1997, respondent deposited the \$78,000 settlement draft into Trust Account No. 1. Thereafter, he issued checks to Thompson (\$27,260.84), to himself (\$10,000 and \$15,640.41) and to the lienholder, Greater NY Insurance Co. ("Greater NY") (\$24,000 - instead of the \$50,000 amount of the lien).

Greater NY confirmed that it never received respondent's check in the amount of \$24,000, and never agreed to compromise the lien in that amount. According to the complaint, the check to Greater NY never cleared the bank.

The complaint further charged that, according to the OAE's analysis of Trust Account No. 1, respondent "systematically withdrew funds due to third parties in the Zellars and Thompson cases from Trust Account No. 1 and improperly used those funds for his own personal expenses without his clients' knowledge or consent."

On March 20, 1998, the Internal Revenue Service ("IRS") levied on respondent's Trust Account No. 1, because of his failure to pay his taxes. The IRS took the entire balance in the

account on that date, \$15,179.48, to satisfy its lien. Respondent did not have the charge reversed and did not replenish the account.

Given the IRS levy and respondent's own action, the complaint charged that respondent knowingly misappropriated approximately \$35,586.83 from Trust Account No. 1 and that he used the money for personal, non-client related expenses. The funds that were invaded included Zellars' and Thompson's funds, as well as trust funds on deposit for approximately thirty-three other clients.

As the result of the IRS levy, Trust Account No. 1 was closed on March 20, 1998. At that time, the account was overdrawn by \$30. In addition, as of that date, several financial obligations from the Zellars matter were still unpaid.

Respondent ultimately paid the obligations from the Zellars case from funds on deposit in Trust Account 2. None of Zellars' funds were on deposit in that account. Because respondent used unrelated client trust funds to pay the Zellars expenses, the complaint charged that respondent knowingly misappropriated trust funds.

In another matter, respondent represented Sandy Cherubin for injuries sustained in a June 13, 1998 automobile accident. In December 2000, Cherubin endorsed a settlement draft for

\$3,500. Respondent informed Cherubin that the draft would be deposited into his attorney trust account until it cleared, and then the proceeds would be turned over to her. According to the complaint, the OAE discovered a release form, purportedly signed by Cherubin.

Shortly after Cherubin endorsed the check, respondent's office telephoned her and falsely informed her that "the insurance company had recalled the draft and there would be no proceeds due her from the claim."

On December 12, 2000, respondent deposited Cherubin's settlement proceeds into a joint personal bank account maintained with his wife. The account was unrelated to respondent's law practice. Thereafter, respondent used the funds for personal expenses, thereby misappropriating Cherubin's trust funds.

Cherubin's October 16, 2003 affidavit stated that she did not sign a release in her matter, did not receive any proceeds from her claim, and did not authorize respondent to use her money.

The OAE auditor's report established that, after a demand audit, she determined that respondent's books and records were incomplete, inaccurate, not in compliance with R. 1:21-6, and with the same deficiencies that were present in a 1995 audit.

After the OAE's audit visit in February 2001, respondent engaged the services of certified public accountants, who attempted to reconcile respondent's Trust Account No. 1.

According to the audit report,

they established a beginning check book balance of \$39,592.65 which could not be identified to any client matter(s) as of January 1, 1997 The accountants credited the \$39,592.65 to a ledger for respondent which the accountants entitled, Anthony Nwaka "Unknown Ledger" No. 515 Even if respondent could provide records for transactions prior to January 1, 1997 that would establish that those unidentified funds were undisbursed fees, the ledger shows that respondent, subsequent to January 1, 1997, withdrew a total of \$40,000 by two checks drawn to his own order for \$15,000 and \$25,000 . . . effectively withdrawing every penny of the opening balance on that ledger.

. . . .

[B]y September 5, 1997 the January 1, 1997 opening funds balance credited to respondent was <\$407.35> overdrawn; therefore, all unidentified funds at the start of 1997 had been disbursed by respondent for his own benefit and the funds on deposit for respondent was <\$407.35>.

On January 9, 1998, respondent drew [two checks] These checks misappropriated other clients' monies in the trust account since respondent had no fee monies on deposit from which to charge these checks.

. . . .

The balance of all client trust funds that were on deposit in Trust No. 1 were completely and totally invaded, when, on March 20, 1998, the trust account was charged for an IRS levy due to respondent's failure to pay his taxes [T]he government took every penny on deposit in an effort to satisfy its lien. Respondent . . . did not have the charge reversed from an account that was established to safeguard his clients' funds and, therefore, paid his past due taxes with clients' trust funds. Thus, respondent invaded a total of \$35,586.83

Respondent then closed Trust Account No. 1 and on March 19, 1998 opened Trust No. 2. Respondent opened Trust No. 2 by depositing new clients' insurance settlement drafts into that new account.

[AR12-AR14.]¹

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent used trust moneys for personal, non-client related expenses. In the Zellars matter, Zellars' endorsement was forged on her settlement check. Respondent dissipated the trust funds in Trust Account No. 1 without satisfying Zellars' third party obligations and without depositing any moneys to replace funds that were improperly used. The IRS levied on this

¹ AR refers to the February 19, 2004 audit report.

account for respondent's back taxes. Respondent did not replenish the account, thereby using the trust funds for his own personal tax obligations. Later respondent utilized the funds in Trust Account No. 2 to satisfy Zellars' obligations. However, none of her funds were on deposit in that account.

As to the Thompson matter, respondent's trust account ledger showed that he deposited Thompson's \$78,000 settlement draft into his trust account, then issued checks to himself, to Thompson, and a compromised amount to a lienholder, Greater NY. However, Greater NY never compromised its lien, never received a check from respondent, and the check respondent purportedly sent to it never cleared the bank.

In the Cherubin matter, the release executed in her behalf was forged. After Cherubin endorsed the settlement check, respondent told her that the insurance company had "recalled the draft and that she would not receive any proceeds from her claim." Respondent lied to his client, then deposited her money into his personal account for his own expenses. Respondent's conduct in this regard violated RPC 1.15 and RPC 8.4(c).

As stated in the complaint, respondent misappropriated Zellars', Thompson's, Cherubin's and approximately thirty-two other clients' trust funds.

For respondent's misrepresentations and knowing misappropriation of client trust funds, he must be disbarred under In re Wilson, 81 N.J. 451 (1979) and its progeny. We so recommend to the Court. Chair Mary J. Maudsley did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy
Vice-Chair

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

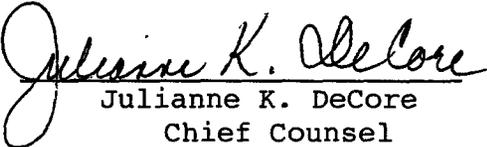
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley						X
O'Shaughnessy	X					
Boylan	X					
Holmes	X					
Lolla	X					
Pashman	X					
Schwartz	X					
Stanton	X					
Wissinger	X					
Total:	8					1


Julianne K. DeCore
Chief Counsel