SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-042
District Docket No. XIV-2014-0399E

IN THE MATTER OF	
RICHARD J. KWASNY	
AN ATTORNEY AT LAW	

Decision

Argued: May 21, 2015

Decided: September 18, 2015

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's five-year suspension

in Pennsylvania for a combination of ethics infractions, most notably, the misappropriation and conversion of client funds.

The OAE recommended disbarment. For the reasons set forth below, we agree that disbarment is warranted in this case.

Respondent was admitted to the New Jersey bar in 1989 and the Pennsylvania bar in 1988. He has no history of discipline in New Jersey. He currently maintains a law office in Princeton.

The Pennsylvania Office of Disciplinary Counsel (ODC) filed a Petition for Discipline on November 30, 2012. Respondent filed an Answer to the Petition on February 26, 2013. At a prehearing conference on April 19, 2013, the ODC and respondent settled several evidentiary issues and respondent agreed to provide certain documents previously subpoenaed by the ODC on March 25, 2013. The hearing was set for May 21, 2013.

For medical reasons, respondent requested a continuance of the scheduled hearing and did not appear. In granting a one-week continuance, the panel chair noted that, although proper documentation was not provided, the continuance was granted "out of an abundance of caution." Another panel member also stated on the record that, "we will not be inclined to grant any further continuance[s] without documented medical testimony or records." The panel directed that medical documentation be submitted by May

24, 2013, and confirmed that the May 28, 2013 hearing was a "date certain."

On May 28, 2013, respondent sent another request for a continuance. The panel chair indicated that, on the morning of the hearing, he had spoken by telephone to respondent, who was at his office. The chair told respondent that the panel would be willing to wait for him to arrive before starting the hearing that day. Respondent indicated that, because he could not arrange for someone to drive him, he would not be attending the hearing. Instead, he renewed his request for a continuance. Due to respondent's failure to provide sufficient medical proof, the panel denied his request for a second continuance.

The hearing was held on May 28, 2013, without respondent, who failed to appear. The Hearing Committee issued a report on September 18, 2013. The facts established during the course of the one-day hearing are set forth below.

The Bouffard Matter

In early September 2010, respondent issued a check in the amount of $18,978.49 payable to Patricia Bouffard. The presentation of the check caused an $11,962.02 overdraft in

respondent's escrow account ending in 3497.[1] Sovereign Bank notified the Pennsylvania Lawyers Fund for Client Security (Client Security) of the overdraft.

On September 30, 2010, Kathryn Peifer, Executive Director of Client Security, requested from respondent a written explanation for the overdraft and copies of the following documents: client ledger sheets on each affected client matter, bank statements for the prior three months, and proof, if any, that he had rectified the shortage.

By letter dated October 11, 2010, respondent explained that a group of clients had settled a matter for $77,000 and each client was required to make individual contributions toward the settlement. As part of those contributions, one client provided a $16,000 check, which he had intended to deposit into the escrow account, but which was mistakenly deposited into the operating account ending in account number 8492. Thereafter, respondent issued $77,000 "to counsel in compliance with the terms of the settlement" and another check was written to Patricia Bouffard in the amount of $18,978.49. Because one of the checks had been

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[1] All references to respondent's escrow account are to the escrow account ending in the numbers 3497.

"misdeposited" to the operating account, there were insufficient funds to pay both checks.

In his reply to Client Security, respondent also included a copy of a cashier's check in the amount of $18,978.49 payable to Bouffard, which, he asserted, replaced the returned check.

On October 13, 2010, Peifer again requested bank statements for July-September 2010, which respondent had not provided. She also requested client ledger cards for Bouffard and for the clients related to the $77,000 settlement, along with the deposit slip and debit/credit memoranda that corrected the mistaken deposit. These documents were due no later than October 26, 2010.

By letter dated October 28, 2010, respondent provided copies of the client ledger cards for Bouffard and another client, Anthony Martino; the July, August, and September 2010 bank statements; and a copy of the deposit slip indicating the deposit was made into the firm operating account. The deposit slip made clear that the $16,000 had been deposited into an account ending in 4828, on June 30, 2010. However, in his October 11, 2010 letter, respondent had stated that the deposit had been made into the operating account ending in 8492. Operating account 8492 had not previously been identified to Client Security. In fact, it was determined that operating account 8492 did not exist.

Because respondent's October 28, 2010 reply was not timely, Peifer, consistent with office protocol, referred the matter to the ODC.

The ODC investigator confirmed that the deposit slip that respondent provided, which reflected a $16,000 deposit on June 30, 2010, related to his operating account ending in 4828. The amount in the operating account prior to the $16,000 deposit was $187.23. By July 6, 2010, the balance fell to ($235.94). Between June 30, 2010 and July 6, 2010, no checks were issued to or on behalf of Bouffard.

The source of the $16,000 deposit related to the Martino case and an individual named "Mike Mormando." The testimony made clear, however, that no part of the $16,000 was disbursed from the business account to or on behalf of Mormando, even though the funds were depleted from the business account within days of the deposit. Instead, payments were made to Fulton Bank, American Express, and Aetna Insurance, and as well as for bank fees.

The ODC investigator confirmed that Bouffard was ultimately paid by a cashier's check, dated October 6, 2010, in the amount of $18,978.49. On October 6, 2010, respondent issued a $7,000 check to himself from the escrow account, noting "Bouffard Certified Check" on the memo line. The investigator was unable to

identify the source of the remaining funds used to purchase the cashier's check, as respondent's operating account had only $1.36, on October 6, 2010.

Although respondent failed to appear at the disciplinary hearing, in his February 2013 answer, he claimed that "the $16,000 represented partial payment of fees owed to [r]espondent firm in the Bouffard matter."[2]

The Disciplinary Board of Pennsylvania (Disciplinary Board) found that:

(1) Respondent failed to properly identify and safeguard Mormando's money.

(2) Respondent failed to properly identify and safeguard Bouffard's funds.

(3) Respondent improperly used the $16,000 relating to his representation of Mormando to fund his law office expenses and to keep his operating account 4828 liquid.

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[2] Respondent also explained that he had earned, from the Bouffard transaction, $20,000 in fees and had incurred $10,139.91 in unreimbursed disbursements. The total payment to Kwasny, Reilly, Haft and Sacco, according to Bouffard's ledger card, was $15,000 on September 17, 2010, and $15,139.91 on September 20, 2010, for a total of $30,139.91, which is consistent with the statement in his answer. However, there is no record on the ledger card of any $16,000 payment of fees, costs, or expenses.

(4) Respondent failed to identify and safeguard Mormando's money a second time.[3]

The Haig Matter

On November 3, 2010, respondent deposited in his operating account a $26,500 check that he received from State Farm Insurance on behalf of his clients, Brian and Tina Haig. At the time of the deposit, the operating account had a balance of negative $1,313.04. By November 30, 2010, the balance in respondent's operating account had fallen to $110.67. Between November 3 and November 30, 2010, no disbursements were made to or on behalf of the Haigs from the deposited funds. During that same time period, sixteen checks in unrelated matters cleared respondent's escrow account. Of those sixteen checks, respondent issued and signed five checks directly to himself for a total of $16,493.75.[4]

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[3] According to the Disciplinary Board's Report and Recommendation, respondent's failure to properly identify and safeguard Mormando's money occurred initially when he "misdeposited" the $16,000 in his operating account and then a second time when he improperly used those funds for his firm's operating expenses, resulting in a ($235.94) balance in the operating account.

[4] Specifically, respondent issued himself check no. 5643 in the amount of $5,000.00; check no. 5646 in the amount of $1,243.75; check no. 5649 in the amount of $2,500.00; check no. 5653 in the amount of $6,000.00; and check no. 5656 in the amount of $1,750.00.

Respondent attempted to explain the improper deposit of Haig's funds in his operating account. In an August 9, 2012, letter to the ODC, respondent asserted that he had deposited the check directly into his operating account so "that the check could get deposited and funds disbursed in a more expeditious manner at the request of the client."

Further, in his answer to the petition, respondent explained his failure to maintain the Haigs' funds intact, claiming that a check was written to the Haigs in the amount of $10,620 in early December 2010 for their portion of the settlement funds. He asserted that he retained $4,380 for the purpose of a medical lien.[5] The medical lien was negotiated and ultimately reduced to $3,600, which was paid in February 2012. The ODC repeatedly requested respondent to produce a copy of the $10,620 check to the Haigs and the $3,600 check for the medical lien. The ODC, on March 25, 2013, issued a subpoena to respondent for those documents. Respondent failed to provide the subpoenaed documents.

The investigation also revealed check number 2876 in the amount of $5,000, dated September 23, 2010, issued to the Kwasny

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[5] It is not clear from the record whether respondent withheld the $4,380 from the $10,620 or the $4,380 was in addition to the $10,620.

Reilly operating account from the escrow account. The check contained the notation "Haig," although it pre-dated the Haig deposit by several weeks. The general bank ledger, however, indicated that the $5,000 check was an "advance fee" from the account of "Cost, Ray & [sic]." The Disciplinary Board noted that, contrary to the general bank ledger, the Martino ledger card contained a disbursement on September 23, 2010 in the amount of $5,000 with the notation "Haig."

The Disciplinary Board found that respondent "improperly converted and placed into his operating account 4828, the Haigs' money in order to keep his operating account liquid" and that respondent failed to "properly identify and safeguard the Haigs' money."

The petition also charged respondent with commingling, in connection with a previous settlement deposit he had received on behalf of the Haigs. The trust journal indicated that respondent received $25,000 on behalf of the Haigs on March 10, 2009. Although this deposit pre-dated the instant deposit, the Disciplinary Board considered it for its analysis. The trust journal indicated that these funds were distributed on March 10, 2009, whereby the Haigs received $16,666.67 and respondent received $8,333.33. Because no evidence revealed that respondent transferred the $8,333.33, the

Disciplinary Board found "respondent commingled his funds with funds received from a client by failing to transfer funds out of the escrow account."

The Epstein Matter

Respondent deposited $133,000, presumably settlement funds, on behalf of Gene Epstein, into his escrow account on December 2, 2009. On December 7, 2009, respondent transferred $20,000 from his escrow account to his operating account. At the time of the transfer, respondent's operating account had a negative $10,460 balance. Respondent had only $6,322.69 in his escrow account at the time Epstein's funds were deposited into that account. Thus, any funds greater than the existing $6,322.69 that were transferred to respondent's operating account belonged to Epstein.

On December 10, 2009, there was an additional "miscellaneous debit" in the amount of $114,050 from the escrow account and a corresponding credit in the same amount on the same date in the operating account. The next day, respondent sent a $133,000 check from his operating account to Epstein. It was returned for insufficient funds because he had a balance of only $126,215.39 on the day he issued the check. This check overdrew the account by $6,784.61.

Respondent issued a second check to Epstein, dated December 22, 2009, that eventually cleared. At the time the second check was issued, respondent had sufficient funds in his operating account because of a $19,295.50 deposit labeled "Sovereign Bank Loan."

In his answer to the petition, respondent explained the withdrawal of funds from the escrow account as follows. He claimed that $20,000 was transferred in error based on a misunderstanding of how the fee was to be paid to his firm from Epstein's settlement.[6] He further explained that "once this was discovered the funds were immediately placed back into the account for disbursement to Mr. Epstein." Contrary to respondent's claim, however, there was no $20,000 (or $113,000) deposit back to the escrow account in December 2009, January 2010, or February 2010.

The Disciplinary Board concluded that respondent improperly used and transferred Epstein's $20,000 to "keep his law office operating account 4828 liquid" and that respondent "failed to properly identify and safeguard Mr. Epstein's money."

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[6] Although respondent claims that the firm was entitled to a fee, Epstein ultimately was paid the full amount of the deposit.

Misrepresentations

On August 9, 2010, respondent issued check number 2871 to his daughter, Sara Kwasny (Sara), in the amount of $5,000 from his escrow account. After Sara cashed the check, the cash was deposited into respondent's operating account 4828. Although no notation was on the check, the trust bank journal indicated that the withdrawal came from an account named "Cost, Ray and Judy."

In his written explanation to the ODC, respondent stated that Sara was not a client. Because respondent needed funds in his operating account, he issued a check for Sara to cash, so he could then deposit the money into his operating account. In this way, the funds would be available immediately; otherwise his bank would place a hold on the funds.[7] Respondent claimed that the $5,000 was part of the fee owed to his firm on the Bouffard matter.

On August 12, 2010, respondent wrote check number 2872 to Kwasny Reilly in the amount of $5,000 from his escrow account and deposited it into his firm's operating account. The cancelled check that respondent sent to Peifer of Client Security indicated

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[7] Respondent alleged in his brief to us and in communications with the ODC that he was forced to engage in certain practices because of the unreasonable policies of the bank on placing holds on funds and delaying their availability. According to the most recent New Jersey attorney registration, respondent continues to conduct his banking with the same financial institution.

that the money came from the "Martino" account. The actual check subpoenaed from Sovereign Bank contained the reference "Bouffard." The debit appeared on the Martino client ledger card and in the trust bank journal from Martino's funds. The disbursement did not appear on the Bouffard client ledger card. The Disciplinary Board concluded that respondent had altered the notation as to the source of the funds on the check that he sent to Client Security.

Further, during the investigation, the ODC subpoenaed records, including respondent's client ledger cards. The cards received as a result of the subpoena were different from the documents that respondent had provided to Client Security, both for Martino and Bouffard, in connection with the $5,000 withdrawals. The first Martino ledger card that respondent provided to Client Security did not include a disbursement to Sara, but the second card that the ODC received via subpoena reflected a disbursement to her on August 9, 2010.

The second Martino ledger card also contained the $5,000 disbursement on August 12, 2010, which, consistent with the subpoenaed check, was attributable to Bouffard. The Martino client ledger that respondent provided to Client Security, however, showed a disbursement to respondent's firm on August 12, 2010, with the notation "Martino."

The Disciplinary Board concluded that both the Martino and Bouffard client ledgers that respondent provided to Client Security were altered before their submission.

Practicing Law While Suspended

Respondent was also found to have violated Pennsylvania RPC 5.5(a) for continuing to practice law while administratively suspended. The annual registration deadline for attorneys in Pennsylvania is July 1. Respondent was given e-mail notice of the registration deadline. The annual registration forms were sent to his office. On September 20, 2010,[8] respondent was sent a final notice of nonpayment, which required him to notify all clients, lawyers, and appropriate judges under Pa. Rule of Disciplinary Procedure 217 in the event of his suspension.

On November 18, 2010, the Pennsylvania Supreme Court issued an order that respondent would be administratively suspended, effective December 18, 2010, for failing to file his annual registration and failing to make payment. Respondent was given notice of the suspension, as well as instructions for avoiding the

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[8] The Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania mistakenly indicates the date was September 20, 2011.

suspension, by letter dated November 18, 2010. Respondent failed to file his annual registration and, on December 18, 2010, he was administratively suspended.

Respondent admitted that he continued to engage in the practice of law in Pennsylvania after December 18, 2010. On February 11, 2011, respondent filed his annual registration form, which included a signed "Statement of Compliance" with the Disciplinary Board of the Supreme Court, and payment.[9] The statement indicated he had complied with the provisions of the court order, including the notification requirements of Pa. Rule of Disciplinary Procedure 217. Respondent, however, had failed to notify his clients, opposing counsel, or the courts of his suspension.

In his answer to the petition, respondent claimed that he did not intentionally make a misrepresentation, but that his statement was based on his lack of knowledge of his obligations under the order. He alleged that his bookkeeper had completed the reinstatement paperwork, that he merely "signed in the space indicated," and that he was not aware of the notification requirements.

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[9] The check that respondent issued for payment of his attorney annual registration was returned for insufficient funds.

As to the underlying failure to file the annual registration, respondent, in his answer to the ODC, claimed that his bookkeeper had failed to pay his attorney registration in accordance with his office procedure. He further explained that, when he asked her about the registration, she admitted that she had received the "letter" but that "it was just on a pile."

The Disciplinary Board found that respondent signed the "Statement of Compliance when he knew or should have known that he had not complied with the notification requirements of Rule 217" and that respondent "continued to practice law while his license was administratively suspended."

On March 24, 2014, the Disciplinary Board issued its Report and Recommendation finding that respondent had violated the following Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement: RPC 1.15(b) (a lawyer shall hold funds and property separate from the lawyer's own property); RPC 1.15(h) (a lawyer shall not deposit the lawyer's own funds in a trust account except to pay service charges on that account); RPC 1.15(i) (a lawyer shall deposit legal fees and expenses paid in advance in a trust account only to be withdrawn as earned or incurred); RPC 1.15(m) (all qualified funds that are not fiduciary funds shall be placed in an IOLTA account); RPC 5.5(a) (a lawyer shall

not practice law in a jurisdiction in violation of the regulations of the legal profession in that jurisdiction); RPC 8.4(c) (it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); Pa. R.D.E. 217(a) (notification of represented clients upon disbarment, suspension or inactive status); Pa. R.D.E. 217(b) (notification of clients and adverse parties in litigation of disbarment, suspension or inactive status); and Pa. R.D.E. 217(c) (notification of all other persons who may expect to have professional contacts of disbarment, suspension or inactive status).

The Disciplinary Board further held that respondent was given multiple opportunities to present evidence and call witnesses, that he failed to appear for the hearing, and that he had not demonstrated remorse or acceptance of responsibility for his acts of misconduct. The Disciplinary Board recommended a three-year suspension.

The Supreme Court of Pennsylvania issued an order, dated June 26, 2014, suspending respondent for five years, based on the Report and Recommendation of the Disciplinary Board. No oral argument was held before the Disciplinary Board or the Supreme Court of Pennsylvania. Respondent did not file any subsequent motions with the Pennsylvania disciplinary authorities.

Respondent did not notify the OAE of his suspension in Pennsylvania.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. Therefore, we adopt the findings of the Supreme Court of Pennsylvania.

In determining the equivalent New Jersey Rules of Professional Conduct,[10] the OAE argues that respondent's unethical Pennsylvania conduct equated to violations of the following New Jersey Rules of Professional Conduct: RPC 1.15(a) (knowing misappropriation, lapping, and commingling); RPC 1.15(d) (recordkeeping violations); RPC 5.5(a)(1) (practicing in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).[11] The OAE has also

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[10] The Pennsylvania Supreme Court also found that respondent violated Pa. R.D.E. 217(a); Pa. R.D.E. 217(b); and Pa. R.D.E. 217(c). These violations are equivalent to infractions under R. 1:20-20(b). The OAE, however, did not allege any RPC violations stemming from respondent's failure to comply with R. 1:20-20(b).

[11] In its brief, the OAE indicated that the 8.4(c) equivalent was 8.4(d) but, based on context, that appears to be a typographical error. Further, the violation of Pa. RPC 1.15(i) is akin to a recordkeeping violation under RPC 1.15(d) and R. 1:21-6(a), rather than RPC 1.15(c), as cited by the OAE.

urged that, based on the findings of the Disciplinary Board, respondent violated RPC 8.1(a) by providing false documents to the ODC in knowingly submitting an altered check and false client ledger cards for Martino and Bouffard.

In determining the quantum of discipline, we are guided by R. 1:20-14(a)(4), which states:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

As an initial matter, respondent alleges in his brief to this Board, under R. 1:20-14(a)(4)(D), the procedure in Pennsylvania was so lacking in notice to be heard that he was deprived of due

process. Specifically, he claims that, based on his diagnosis of severe stress and anxiety, he could not participate in the hearing. Although the original hearing date was adjourned, respondent requested that the matter "be adjourned for a period of time [to] find equilibrium" to allow him to participate in the hearing. Respondent stated that, because the hearing was not adjourned, he believed that he would not receive a fair hearing and purposely chose not to attend. Instead, he decided to wait for the matter to be heard before the Court and to present his arguments at that time. Respondent claims he was never given notice by the Court.

Respondent's allegation that he did not receive notice of the Supreme Court proceeding is not supported by the record. Although he alleges, without proof, that the certified mail was unclaimed, the record suggests that regular mail was delivered. Respondent's only explanation for not receiving notice is that the mail could have been sent to his former address. He cannot now benefit from a due process argument for his failure to update his address with the Pennsylvania disciplinary authorities. Admittedly, respondent chose not to attend the hearing and was aware that disciplinary proceedings had been initiated. Respondent was given multiple opportunities to present evidence and to call witnesses. He took

advantage of none. Therefore, any argument relating to service must fail.

More importantly, respondent now appears to be attempting to use R. 1:20-14(a)(4)(D) as a sword, rather than the shield for which it was intended. Respondent did not request oral argument before the Pennsylvania Disciplinary Board or the Supreme Court of Pennsylvania in spite of the fact that he admittedly received the Supreme Court suspension order. Moreover, he did not file a motion in Pennsylvania relating to a deprivation of due process. Even at the time of oral argument before us, respondent had declined to pursue any review of his matter in Pennsylvania.

Only after oral argument did respondent indicate, by letter dated May 22, 2015, that he intended to file a motion for reconsideration with the Pennsylvania Supreme Court within the next fifteen days and requested that we stay further consideration of this matter pending the Pennsylvania Supreme Court's action on the intended motion. To date, respondent has submitted no proof of such application on his part. It is disingenuous for respondent to appear in New Jersey now and allege a violation of his due process rights when he failed to raise that issue in the appropriate jurisdiction, despite every opportunity to do so. Indeed, we view respondent's after-the-fact request for a stay as

an attempt to further delay the imposition of discipline against him, similar to his attempts to delay the adjudicative proceedings before the ODC Hearing Committee in Pennsylvania.

For the reasons detailed below, subsection (E) applies in this case and the record supports a finding that respondent knowingly misappropriated client funds.

Knowing misappropriation is any "unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." In re Wilson, 81 N.J. 451, 455 n.1 (1979). Here, without the authority to do so, respondent used the funds of several clients. In so doing, he knowingly misappropriated client funds.

In the Haig matter, respondent knowingly misappropriated client funds. Respondent received $26,500 from State Farm Insurance on behalf of the Haigs. When he deposited these funds into his operating account, on November 3, 2010, that account had a negative balance. As a result, the Haigs' funds were immediately impacted upon deposit.

Moreover, by the end of the month, the balance in respondent's operating account was only $110.67. Thus, most, if not all, of the

funds composing the Haigs' deposit had been depleted. More than half of those funds were disbursed directly to respondent. No disbursements were made to the Haigs.

Although respondent attempted to explain the "mistaken" deposit of the Haigs' funds into his operating account, he failed to provide any plausible explanation to the Pennsylvania disciplinary authorities or in his brief to us in respect of his depletion of those funds. Respondent claimed that a $10,620 check was issued to the Haigs in early December 2010 for their portion of the settlement funds and that he retained $4,380 to satisfy a medical lien. The medical lien was negotiated and paid in February 2012. Respondent, however, never provided any proof that he actually paid the Haigs.

Further, regardless of when the Haigs ultimately were paid or when their check cleared, respondent should have been holding, at least, $4,380 to satisfy the medical lien, funds he admittedly withheld until February 2012. Clearly, these funds were not held intact because respondent had a $110.67 balance at the end of November 2010. Indeed, the record establishes that the funds were depleted by checks respondent wrote directly to himself for more than $16,000.

Likewise, respondent misappropriated Epstein's funds. Respondent deposited $133,000 on behalf of Epstein into his escrow account on December 2, 2009. On December 7, 2009, respondent transferred $20,000 from his escrow account to his operating account. At the time of the transfer, respondent's operating account had a negative $10,460 balance. As a result, not only was the actual transfer improper, but also at the time of the deposit, Epstein's funds immediately were impacted.

On December 10, 2009, there was an additional "miscellaneous debit" in the amount of $114,050 from the escrow account and a corresponding credit in the same amount on the same date to the operating account. As a result of the two transfers, virtually all of Epstein's funds were improperly deposited in respondent's operating account.

Respondent sent a $133,000 check to Epstein, on December 11, 2009, from his operating account. It was returned for insufficient funds because the balance in that account was only $126,215.39 on the day he issued the check. This deficiency further established that respondent had failed to keep Epstein's funds intact.

Respondent issued to Epstein a second check, dated December 22, 2009, which eventually cleared. By the time the second check was issued, respondent had sufficient funds in his operating

account only because of the $19,295.50 Sovereign bank loan. This loan further bolsters the conclusion that Epstein's funds were not in the account; if respondent had kept Epstein's funds intact, there would be no reason to borrow funds to make payment.

Respondent's explanation regarding the actual transfers also lacks credibility. He claimed that $20,000 was transferred in error, based on a misunderstanding of how the fee was to be paid to his firm from Epstein's deposit. He further explained that "once this was discovered the funds were immediately placed back into the [escrow] account for disbursement to Mr. Epstein." There is no record of those funds being returned to the escrow account, however. Moreover, respondent paid Epstein from his operating account. If the funds had been "placed back into the account," payment should have been made from the escrow account. Finally, once respondent issued payment to Epstein, there was no reduction in the distribution for payment of a fee, as respondent initially claimed was due his firm.

Respondent also claimed that the "transfer to the operating account occurred so that the funds could be paid to Epstein immediately." The original deposit was made into the escrow account on December 2, 2009. Respondent then transferred Epstein's funds to the operating account on December 7 and on December 10, 2009.

Epstein was not paid in full until December 22, 2009, twenty days after the funds were deposited. Despite respondent's alleged concern that there not be a "delay" in the availability of the funds to Epstein, respondent took twenty days to pay his client.

In his brief to us, respondent disclaims all responsibility for the improper handling of client funds and attributes blame to his full-time bookkeeper. Respondent, however, failed to provide any specific instances of how the bookkeeper was involved in his misappropriation of client funds. In fact, this version is completely contrary to the explanation that he had previously provided in his written responses to the ODC and in his answer to the petition. Further, as detailed above, many of the checks were written by respondent himself and were made payable to him. He also altered documents that he submitted to Client Security to "cover up" his unauthorized use of client funds.

Likewise, the testimony clearly established that respondent made various misrepresentations in the completion of his annual registration and during the investigation into his handling of client funds, including the alteration of checks and client ledger cards. Specifically, respondent altered the "Martino/Bouffard" check that was submitted to Client Security, misrepresented to the Disciplinary Board that he had complied with a suspension order,

and altered the Martino client ledger card that he submitted to Client Security.

In our view, the proof of knowing misappropriation in the Bouffard matter was not as strong as in the Haig and Epstein matters. Because the level of discipline will not be affected by our resolution of the Bouffard matter, we do not make a finding, either way, in that regard.

The remaining matter for us to consider is whether respondent practiced law while administratively suspended. The record is clear that he violated RPC 5.5(a). He failed to complete and file a timely annual registration and, as a result, was administratively suspended. Respondent admittedly never ceased practicing law and executed the Statement of Compliance when he had never provided written notice to the appropriate parties. Although respondent attempts to place blame on the bookkeeper for failing to pay the annual registration, he was solely responsible for this oversight. Likewise, he signed the Statement of Compliance and actively misrepresented his compliance with the rule.

In sum, respondent was guilty of the unauthorized practice of law by virtue of his continued practice during a period of ineligibility; of making a false statement of material fact in connection with a disciplinary matter, based on his alteration of

documents submitted to the ODC; and of knowing misappropriation, based on his unauthorized use of client funds in, at a minimum, the Haig and Epstein matters.

The only issue remaining is the appropriate quantum of discipline. Based on respondent's knowing misappropriation of client funds in at least two client matters, we recommend his disbarment. In re Wilson, supra, 81 N.J. 451. Because disbarment is required, we do not address the appropriate measure of discipline for respondent's other violations in this matter.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard J. Kwasny
Docket No. DRB 15-042

Argued: May 21, 2015

Decided: September 18, 2015

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8					

Ellen A. Brodsky
Chief Counsel