SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-356

IN THE MATTER OF

KENNETH P. GLYNN

AN ATTORNEY AT LAW

Decision

Argued: November 20, 2003

Decided: February 18, 2004

Nitza I. Blasini 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 based on a recommendation for discipline (disbarment) filed by the special master, Julius J. Feinson.

Respondent was admitted to the New Jersey Bar in 1977. He has no prior discipline.

The ethics complaint alleged violations of RPC 1.15 (knowing misappropriation), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 1.8(a) (conflict of interest) in a personal injury matter.

I. The Knowing Misappropriation Charges

The Goccia Matter

Count One of the complaint alleged violations of RPC 1.15(a) (knowing misappropriation of client trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In May 1997, Adam Goccia retained respondent to represent him for injuries sustained in a motorcycle accident. In April 1998, respondent settled the matter for $200,000, which respondent deposited to his attorney trust account at Summit Bank, Flemington, New Jersey.[1] Respondent's fee was $66,232.45. The remaining $133,767.55 belonged to Goccia. However, respondent agreed to create a medical escrow to pay outstanding medical bills associated with Goccia's recovery. In an April 15, 1998, letter to Goccia, respondent confirmed the terms of the agreement, including the medical escrow, stating in part, as follows:

> We have also agreed that $20,000 of your proceeds will be kept by me in trust for past medical bills, and at no extra charge, I will attempt to negotiate those creditors down and then pay you the full balance of whatever savings I may achieve. You will be responsible for any and all other medical bills in the future or past other than those listed in the attached list.
>
> [Exhibit 1].

Between April 23 and May 28, 1998, respondent made eleven disbursements for his fee, totaling $66,232.45. On May 28, 1998, respondent disbursed to Goccia

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[1] Respondent also maintained his business account with Summit during the relevant time period.

$112,320 and retained $20,000 from Goccia's share of the settlement proceeds to be escrowed for outstanding medical bills.

On July 6, 1998, respondent settled two medical bills at half their face value. Respondent settled a bill from Oral Surgery Groups PA, in the amount of $3,844, for $1,922, and another bill from ProCare Physical Rehabilitation, Inc., in the amount of $1,270, for $635. Exhibits 4 and 5. After these two disbursements, respondent should have been holding $17,433 in his trust account on behalf of the Goccia matter. However, from June 5 through July 10, 1998, respondent made six disbursements from his trust account, which he charged against Goccia's medical escrow. He issued six checks to himself or his law firm, as follows:

Date	Check No.	Amount	Exhibit
06/05/98	1906	$ 500.00	6
06/25/98	1935	1,000.00	7
07/09/98	1948	2,000.00	8
07/09/98	1949	500.00	9
07/09/98	1950	300.00	10
07/10/98	1952	7,000.00	11
TOTAL		$11,300.00	

On July 10, 1998, after respondent disbursed to himself $7,000, the balance in his trust account dropped to $9,058.40. Exhibit 12. The account should have contained $17,443. At that point in time, respondent had paid out only $2,557 on account of medical bills.

On July 13, 1998, respondent and Goccia entered into a handwritten, undated agreement whereby respondent was allowed to "borrow" $10,000 of the escrowed funds from trust, until July 30, 1998. In its entirety, the agreement stated:

> I agree to permit K.P. Glynn to use up to $10,000 of my trust until July 30, 1998 for a fee of $500.00 paid today.
>
> [Exhibit OAE 3]

Respondent paid Goccia $500 that day, using a trust account check drawn on Goccia's own funds.

According to Goccia, who testified at the hearing before the special master, respondent first asked him about borrowing money from the medical escrow on July 13, 1998, the date they signed the agreement. Respondent needed those funds, Goccia stated, in order to fund a patent that he was working on. Respondent also promised Goccia $500 "for his trouble," but did not disclose to him that those funds, too, would be paid out of escrow. He thought that respondent had used his own funds. Moreover, Goccia was certain that respondent never disclosed to him that he had already cashed numerous checks to himself and his law firm, totalling $11,300 from the escrowed funds, all before the agreement was signed.

Finally, Goccia was asked if he had permitted respondent to use the additional $1,300 beyond the $10,000 maximum loan amount. Goccia stated that he had no idea that respondent had done so, because he never received an accounting. Goccia complained that respondent never accounted for the medical bills in the case, some of which resulted in judgments against him.

Respondent, on the other hand, testified that Goccia lied to the special master. He asserted that he had spoken to Goccia before June 5, 1998, the date of his first "loan" disbursement from the escrowed funds, and that Goccia had authorized him to borrow $10,000.

With regard to the additional $1,300 over the $10,000 loan amount, respondent explained:

> Q. And it's your testimony that the additional moneys [sic] are money that Mr. Goccia owed you?
>
> A. No. It's money that he gave to me. Some of it he owed to me. Some of it was expense. If you want to talk about a specific check, I'll tell you exactly what it was.
>
> Q. What do you mean he gave it to you? That's what I don't understand.
>
> A. He was concerned that he was taking money away, and I had spent time trying to negotiate these deals with the carriers, and I mean the medical providers, and now he didn't want to pay them. And sometimes when he took money he said, 'Take an extra $500 for expenses, for yourself, for your troubles.' He paid me extra money. He told me to take it.
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> [3T159]

Goccia, on the other hand, flatly denied that he gave respondent permission to take the additional $1,300 over the loan amount. He was sure that he never gave respondent "extra" money. In fact, he testified that respondent had agreed to waive unpaid fees from the two prior criminal matters, because of the substantial fee earned in the personal injury case, a claim that respondent denied.

After the April 30, 1998 payment of $112,320, Goccia received four additional checks from the medical escrow totalling $4,500, as follows:

Date	Check No.	Amount	Exhibit
07/09/98	1951	$1,000.00	**19**
07/13/98	1953	1,000.00	**20**
09/15/98	2027	2,000.00	**21**
11/19/98	2072	500.00	**22**

Respondent claimed that Goccia ran out of money and demanded that respondent invade the medical escrow to feed his gambling habit. Indeed, respondent

testified that Goccia was a petty criminal who had gambled away his entire settlement of over $112,000 in a few months, only to beg respondent for more money from the medical escrow. Respondent explained that Goccia was also a frequent visitor in the office, because he dated one of the office secretaries. Respondent claimed that Goccia had bragged about trips taken to Atlantic City to gamble, only to later deny that he had ever visited that city, when testifying before the special master. Respondent was incredulous that Goccia disavowed knowing the purpose of the checks. According to respondent, Goccia knew that the funds did not represent compromises of the medical bills.

The secretary, Angela Fuerstenberger, testified that she had a relationship with Goccia that lasted from 1995 to 1998. She stated that she was aware of at least one trip that Goccia made to Atlantic City. She also asserted that Goccia consumed alcohol occasionally in her presence, even though he was diabetic. However, she denied that she ever saw Goccia inebriated.

For his part, Goccia denied all accusations directed at him. He contested respondent and Fuerstenberger's claims that he ever consumed alcoholic beverages or had ever visited Atlantic City. He flatly denied, too, that he had squandered the settlement proceeds of his personal injury case. He further denied that he ever told respondent to use the medical escrow for any other purpose than to pay medical expenses related to his case. According to Goccia, respondent never explained the extra payments, so he assumed that respondent had successfully negotiated the medical bills. Because, however, respondent never provided him with an accounting

of payments made to his medical providers, Goccia was not certain which of his bills respondent might have negotiated or paid in his behalf.

Gus Pangis, the Office of Attorney Ethics ("OAE") investigator assigned to the matter, testified about his audit of respondent's trust and business accounts regarding the Goccia transactions:

> A. Well, the $20,000 that was set aside was used in a manner other than what the original escrow provided for. There were disbursements made to the respondent and to the respondent's account from funds charged to that escrow.
> In addition, there were payments made to Mr. Goccia that I wanted to determine the purpose, and, of course Mr. Goccia testified as to why he was receiving those payments as well.
> . . . .
>
> Q. Now after the funds were escrowed did Mr. Glynn pay any of the medical bills ...?
>
> A. There were two medical bills that were compromised. The first one was from ProCare Physical Rehabilitation & Fitness Inc., and that's [citation omitted] and apparently Mr. Glynn was able to compromise that bill and have it reduced from $1,270 to $635.
> And the second bill that was compromised was to the Oral Surgery Group, P.A., and that was a bill for $3,844 that was compromised down to $1,922. And both of these reductions occurred in July 1998.
>
> Q. So doing quick math, Mr. Glynn paid a total of $2,557 in medical bills. Would that be correct?
>
> A. That is correct.
>
> Q. In doing some quick math how much money should have remained in his trust account from the $20,000.
> Take a look at the complaint to refresh your memory.
>
> A. The balance that would have remained is $1,700 – I'm sorry, $17,443.
>
> Q. Do you know whether that money, the $17,443, did that remain in fact in Mr. Glynn's trust account?

A. No it did not.

[1T173][2]

Pangis confirmed that, prior to negotiating compromises of the two medical bills, respondent had begun withdrawing funds from the medical escrow. The first withdrawal was by trust account check number 1906, in the amount of $500. That check was deposited into respondent's business account with an annotation in the check reference portion of the check "Goccia expense." Pangis noted that, by that time, all expenses had been paid in the case. His investigation revealed no other expenses that could have accounted for this withdrawal.[3]

Pangis testified that respondent made a second disbursement on June 25, 1998, by check number 1935, in the amount of $1,000. The memo portion of the check indicates its purpose as attorney's fees in Goccia. Exhibit 7. Pangis noted, however, that respondent had already taken his entire fee as of May 28, 1998, the day he set up the medical escrow account.

Pangis testified that the remaining four checks drawn on the trust account bore similar notations in the memo section. The final check, in the amount of $7,000, left a balance of only $9,058.40 in the trust account, instead of the $17,443 that should have remained on account of medical bills.

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[2] 1T refers to the transcript of the District Ethics Committee conducted on January 29, 2003.

[3] Respondent would later explain that members of his staff frequently made mistakes when drafting many of the checks for his signature, including placing erroneous information in the memo portion of the checks.

On July 20, 1998, respondent deposited $28,750 into his trust account on behalf of another client, SKY Polymers, Inc. Exhibit 15. On July 22, 1998, respondent made a book entry transfer of $10,000 from the SKY Polymers account to the Goccia account, in repayment of the Goccia loan. There is no allegation that the SKY transfer was improper.

Barely one week later, on July 29, 1998, respondent withdrew another $9,000 from the Goccia account and deposited it into his attorney business account, which was overdrawn by about the same amount at the time. Exhibit 17. Respondent used the funds to cover payroll, accountant fees, and other business expenses not associated with the Goccia matter. According to Pangis, respondent was then $10,300 out-of-trust ($1,300 plus $9,000). Exhibit 18.

For his own part, respondent denied that his use of the additional $9,000 was improper. He stated that Goccia was aware of and approved the transactions in this regard. Respondent contended that Goccia had demanded money on numerous occasions in 1998 and that he, respondent, had paid $5,000 to Goccia in cash, because he thought that it would be improper to issue checks made out to cash, from his trust account.[4] Respondent stated as follows:

> Q. So, is it your testimony then for convenience sake you actually gave him $5,000 in cash without ever giving him a receipt or ever notating it on the ledger card?
> A. That's correct. At the time I thought he was as honorable person. I've done that for much more than that amount of money for people that I knew.
> Q. And I thought you said that he was an honorable person, but I do recall in your opening statement and also in your answer

[4] Respondent contended that Goccia did not maintain a bank account and requested checks made to cash.

that you referred to him as a gambler, that he had problems in the criminal arena, in fact, you represented him, —

A. Yes.

Q. — and that he was an alcoholic or a heavy drinker. Is that not correct?

. . . .

A. I'm not sure about that, but I know that he is a convicted felon. I know that he had some criminal situations arise, I can't breach an attorney client confidence and tell you my own feelings, but I know that other people have accused him of lying about criminal activities. But I though that because I was representing him and we were working together on this and I was helping his friends on occasion and doing work for free for his girlfriend and all these other things, it was a million miles away from my mind that I needed a receipt with this guy.

[3T164 - 3T165][5]

Respondent then admitted that overdrafts in his business account drove his decision to request Goccia's assent to the $9,000 transfer. Respondent claimed that Goccia agreed to the transfer, but that he had neglected to document that aspect of the arrangement. According to respondent, $5,000 of the total represented the repayment of respondent's alleged cash outlays, while the remaining $4,000 represented Goccia's payment of his legal fees in the criminal matters. Respondent could not explain why he had given thousands of dollars in cash to Goccia from his own funds, with no documentation for those transactions, at a time when he could not meet his law firm expenses.[6]

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[5] 3T refers to the meeting before the special master on April 2, 2003.

[6] Respondent presented a witness, Iskander Aksan, who testified that he once saw respondent give a man a large sum of cash. Aksan stated that respondent told him at the time that the man was the boyfriend of a secretary in the office, who had been in an accident. However, Aksan could not identify the date of the event, Goccia as the recipient of the funds, nor the amount of cash that changed hands.

Respondent introduced two letters in support of his story. The first letter, dated February 3, 1998, was respondent's final bill for $3,850 in one of the criminal cases. Exhibit R-1. The second letter, dated September 23, 1997, was a $750 bill for his fee in the other criminal matter. Exhibit R-2. According to respondent, although his fees in those matters totalled $4,600, he reduced his fees to $4,000, as an accommodation to Goccia. Respondent claimed that Goccia received those bills in the normal course, as evidenced by the copies found in respondent's file by the OAE.

Beyond respondent's word, there is no documentary evidence to support the contention that any portion of the $9,000 was taken with Goccia's approval. Naturally, Goccia denied that he ever requested or received cash payments from respondent. He also denied authorizing respondent's use of the medical escrow for fees in the criminal cases. To the contrary, he testified that respondent had waived those fees because of the large fee received in his personal injury case. Finally, Goccia did not recall receiving respondent's bills in the criminal matters, but was certain that respondent had agreed to waive those fees.

With regard to unpaid medical expenses, Pangis testified that the OAE compiled a list of known medical expenses, from respondent's own records, totalling $20,575.67. According to Pangis, respondent paid only the two smaller bills above, leaving over $13,000 in unpaid medical expenses, including a hospital bill in the amount of $9,000.97. That bill was still outstanding at the time of the hearing. Because, Pangis opined, only $2,076 remained in his trust account, respondent could not pay those bills from the Goccia's medical escrow.

For his part, respondent blamed Goccia for the fact that some medical providers were never paid. According to respondent, it was Goccia who depleted the escrow account, using the funds to pay respondent's legal fees in the criminal matters, requesting $4,500 in checks and $5,000 in cash to feed his gambling addiction. Respondent also asserted, both in his answer and in testimony, that Goccia told him not to pay his outstanding medical bills; that he told respondent that even if his unpaid medical providers found him, they would get nothing, because he had no money left.

II. The Trust Account Shortages

Count two of the complaint alleged further knowing misappropriations, beyond those alleged in Goccia, in violation of RPC 1.15 and RPC 8.4 (c).

Pangis conducted an audit of respondent's trust account for the year 1998. As seen in the OAE's table below, shortages appeared in respondent's trust account as early as March 6, 1998.

Date	T/A Bal.	Cl. Ledger Bal.	Amt. Misapp.	Exhibits
03-06-98	$ 37,929.96	$ 40,400.00	$ 2,370.04	23, 24, 25, 26 **42**
03-10-98	33,201.96	40,300.00	7,098.04	23, 24, 25, 26 **43**
04-03-98	45,906.62	48,513.00	2,206.38	24, 26,27,28, 28a, 28b, 53 **44**
04-12-98	44,506.62	47,113.00	1,606.38	24, 26,27,28, 28a, 28b, 27a, 53 **45**
04-17-98	45,506.62	48,113.00	2,606.38	24, 26, 27,28, 28a, 28b, 30 **46**
06-30-98	21,453.49	33,204.37	11,750.88	1, 12, 26, 29, 30, 31, 32, 33, 34 **47**
07-10-98	9,058.48	25,153.37	16,094.89	1, 12, 26, 29, 30, 30a, 31, 32, 33 **48**
07-31-98	105,678.88	123,666.61	17,987.73	1, 12, 25, 29, 30, 30a, 32, 32a, 32b, 32c, 33, 35, 36 **49**
08-13-98	106,051.53	124,115.55	18,064.08	1, 25, 29, 30, 30a, 33, 35, 36, 37, 38, 38a, 38b, 38c, 38d, 38e, 38f, 38g, 38h, 39 **50**
08-31-98	7,417.47	25,713.90	18,296.43	1, 29, 35, 37, 38, 38c, 39 **51**
9-16-98	7,872.04	24,457.13	16,585.09	1, 33, 33a, 35, 35a, 35b, 39, 40, 41 **52**
9-30-98	2,317.56	18,686.65	16,369.09	1, 33, 33a, 39, 40, 41, 41a **53**
10-02-98	(713.44)	18,686.65	18,686.65	1, 33, 33a, 39, 41, 41a, 44 **54**

0-19-98	1,972.56	18,686.65	16,714.09	1, 33, 33a, 39, 41, 41a, 44	**55**
0-30-98	19,002.56	35,637.65	16,355.09	1, 39, 41, 41a, 42, 43, 43a, 44, 45, 46, 47, 47a, 48, 48a	**56**
11-30-98	4,932.56	21,687.65	16,755.09	1, 39, 41a, 43, 43a, 45, 46, 47a, 47, 49, 50, 50a-50k	**57**
12-22-98	2,447.56	19,202.65	16,755.09	1, 39, 41a, 43, 43a, 45, 46, 51, 52	**58**

[Exhibit SM-4]

According to Pangis' calculations, shortfalls in the trust account ranged from a low of $2,206.38 on April 3, 1998, to $18,686.65, on October 2, 1998. He pointed out that respondent had been the subject of a demand audit in 1994, which uncovered serious deficiencies. Exhibit 53. Specifically, the OAE found that respondent had failed to perform quarterly reconciliations of the trust account for the prior year; cash disbursement journals contained vague entries for transactions; and client ledger cards contained vague explanations of transactions.

Thereafter, in October 1994, respondent certified to the OAE that he had brought the account into compliance with the rules. He further certified that he would personally supervise the reconciliations in the future. Therefore, Pangis stated, from then on, respondent should have had a heightened awareness of his obligations in that regard.

Throughout the hearing before the special master, respondent attempted to distance himself for problems in his trust and business accounts. He variously blamed the frantic pace of his law practice, which experienced rapid growth in the years preceding the within events, and his own staff, for failing to reconcile the trust account. Respondent testified that he constantly admonished staff to properly track every transaction and to reconcile the trust account. He admitted, however, that beyond telling his subordinates to reconcile the accounts, he played no role in

overseeing the trust account. In fact, respondent claimed that he took the bookkeepers at their word, that they had reconciled the accounts when asked to do so.

Contrary to respondent's testimony, his part-time bookkeeper, Susan D. LaFerrara Kuster, testified that respondent was completely aware of the extent to which problems existed in both the trust and business accounts, yet he did nothing to correct them. According to Kuster, respondent approved all checks drawn against both accounts. In fact, she testified, respondent alone was authorized to sign trust account checks. Kuster stated that she had attempted to reconcile respondent's trust account using a "two-way" method of comparing client ledgers against the firm's trust account ledger, but was unable to obtain a "tie." Kuster further testified that respondent never requested "three-way" reconciliations against the trust account's bank statements, a much more thorough reconciliation method. Finally, according to Kuster, respondent told her that he would take care of the discrepancies in the trust account.

For his part, respondent admitted that Kuster had told him that the trust account did not balance. Again, respondent distanced himself from those problems:

> A. She told me that she couldn't get the math to come out right, and she couldn't find the problem. She didn't know what the problem was.
>
> Q. Did you try to find out what the problem was?

A. No. I gave it to someone else to do. I was an attorney. I don't do bookkeeping.

[3T140][7]

Respondent further admitted that "Dawn," another bookkeeper in the office, told him in September 1998 that she, too, could not reconcile the trust account. Shortly thereafter, on October 2, 1998, respondent's trust account check number 2031, in the amount of $3,031, was returned for insufficient funds. The trust account contained only $2,317.56, a shortage of $714.44. Still, respondent took no immediate action to address the trust account imbalance other than to excoriate his staff for the shortage and allow the check to be resubmitted. Exhibits 40 and 44. Respondent's perception about his obligations in this regard is best summed up by respondent himself, as follows:

> The shortage was under $3,000 and Bedard and Krowicki charged me over $6,000 a year just to do the taxes and the payroll. They didn't do payroll, but they did taxes, the reporting for the quarterly taxes on payroll. So that would have been not cost effective. It would have cost me more to have them look into it than to just cover the loss and correct it.
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> [3T174 – 3T175]

Finally, in December 1998, rather than deal with the mystery of his trust account, respondent drew a check in an amount sufficient to zero the balance in the account ($2,447.56), which he then deposited in a newly opened trust account at another bank. At the time, respondent was out-of-trust in the old account in the sum of $16,755.09, with a check still outstanding.

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[7] 3T refers to the transcript of the April 2, 2003, DEC hearing.

III. The Conflict of Interest Charges

Count three of the complaint alleged violations of RPC 1.8 (a) (conflict of interest; prohibited business transaction), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) with regard to loans obtained from clients.

The Goccia Conflict

RPC 1.8 (a) provides that:

> A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that should have reasonably been understood by the client, and (2) the client is advised of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent counsel of the client's choice on the transaction, and (3) the client consents in writing thereto.

Goccia testified that respondent failed to advise him of the terms of the loan in writing and never advised him to consult an independent attorney. Moreover, he claimed that he felt pressured to loan respondent the money because respondent had obtained a significant settlement in his behalf.

Respondent admitted both in his answer and again at the hearing before the special master that, when borrowing funds from Goccia, he failed to set down in writing all of the terms of the transaction and failed to advise Goccia to consult with an independent attorney before giving respondent the loan, in violation of RPC 1.8 (a).

It is unclear from the record why RPC 8.4(c) is implicated. RPC 8.4(c), often charged in knowing misappropriation cases, was included in the knowing misappropriation counts of the within complaint. The special master's report contains only one reference to RPC 8.4 (c), as it related to the knowing misappropriation charges in the first and second counts. The allegation of a violation of RPC 8.4 (c) in the conflict aspect of Goccia was not litigated.

The Faraone Conflict

In or about March 1998, respondent sought investors for his patent development company, Ideal Ideas, Inc. He approached a client, Alexander Faraone, with an investment proposal, but Faraone was uninterested. Therefore, respondent requested of Faraone a short-term loan of $20,000, to be repaid with an annual interest rate of twenty percent. Exhibit 58. Respondent then told Faraone that he expected to receive a substantial fee in an unrelated matter soon, and that he would pay Faraone out of his fee in that matter. Faraone agreed to the loan, and testified about it at the hearing before the special master.

According to Faraone, he was attracted to the loan arrangement because of the twenty percent annual interest rate that respondent was willing to pay. However, Faraone also testified that respondent had just "closed a deal with this other company on a license agreement and in that agreement they agreed to pay for more patents." Faraone had invented a loudspeaker technology and relied heavily on respondent to handle the patent and business aspects of his invention. Faraone acknowledged that

he felt pressured to loan respondent the $20,000, and did not want to cause problems in the representation.

Faraone further testified that respondent did not provide him with a writing regarding the transaction. He was unsure if respondent advised him to consult with an independent attorney about the transaction. Faraone opined that, had respondent done so, he would have lent him the money in any event, partially out of fear that the representation might have been negatively affected if he had not issued the loan.

For his part, respondent contended that he told Faraone about the terms of the transaction and to consult with an attorney prior to giving the loan. Respondent also stated that he repaid the loan in full with interest, albeit after a negotiated extension. Respondent admitted that all of his dealings with Faraone about the note were oral, as opposed to written, as required by the RPCs.

Again, it is unclear from the record why RPC 8.4(c) was charged in Faraone, a conflict of interest case. Moreover, the allegation of a violation of RPC 8.4 (c) was not litigated in Faraone.

The Stokes Conflict

In or about August 1994, respondent became romantically involved with his nurse, Joan Stokes, after a hospital stay. She was independently wealthy, with municipal bond investments that yielded between $240,000 and $400,000 in interest payments per year. Respondent and Stokes enjoyed a lavish, if brief, romance, during which Stokes determined to invest in Ideal Ideas. According to the complaint, respondent "positioned" himself as Stokes' financial advisor and took advantage of

his role as an attorney to gain her trust. However, there is no evidence in the record to substantiate that allegation.

Stokes purchased a three percent share of Ideal (thirty shares) for the sum of $27,000, which represented a $3,000 discount from the par value of $1,000 per share. After the relationship soured in February 1995, for reasons not disclosed in the record, Stokes sued respondent for the return of her initial investment, and a $6,000 personal loan. On or about August 8, 1997, the parties settled the suit by a stipulation of dismissal, which required respondent to pay Stokes $20,000 for the return of the stock. Exhibit OAE 26.

Stokes conceded in testimony before the special master that respondent never represented her, nor did she ever consider respondent her attorney. Further, her decision to invest in Ideal Ideas was not driven by an attorney/client relationship.

Respondent testified that the entire Stokes matter was a personal affair that had no business before the ethics authorities. He denied that he ever had an attorney/client relationship with Stokes and urged the special master to dismiss the conflict of interest allegations against him.

The special master dismissed the Stokes matter, finding that respondent and Stokes' was a purely personal relationship. However, in Goccia, he found that respondent had failed to comply with the disclosure requirements of RPC 1.8 (a). In Faraone, the special master found a "technical violation" of the rule, but recommended its dismissal because Faraone, a sophisticated businessman, could fend for himself.

With regard to the allegations of knowing misappropriation, in violation of RPC 1.15 and RPC 8.4(c), the special master found respondent guilty. Specifically, he determined that respondent had improperly taken Goccia's trust funds prior to obtaining his client's consent for the $10,000 loan. He also found respondent's uncorroborated story about cash disbursements and fees in the criminal matters, which were an attempt to explain $9,000 in additional disbursements to his business account, not credible. Moreover, the special master found the OAE investigator's testimony compelling — that a shortfall existed in respondent's trust account as early as March 1998. The special master found that the shortfall, which existed in fluctuation throughout 1998, must have invaded client funds beyond those belonging to Goccia, and represented further evidence of knowing misappropriation. Finally, the special master determined that respondent had exhibited "willful blindness" with regard to his trust account.

The special master recommended disbarment.

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

The Conflict of Interest Charges

The less serious allegations are easily dispensed with — respondent failed to abide by the disclosure requirements of RPC 1.8 (a) when entering into two business transactions with clients. In Goccia, respondent so much as admitted a violation of the rule in his answer, and again at the hearing before the special master. When

borrowing funds from Goccia, he failed to set down in writing all of the terms of the transaction and failed to advise Goccia to consult with an independent attorney before considering a loan to respondent. We found that, in so doing, respondent violated RPC 1.8 (a).

In Faraone, too, respondent entered into a loan transaction with his client. In this case, the terms of the agreement were set forth in a note. Faraone was unsure if respondent cautioned him to consult an independent attorney about the loan, but he and respondent agreed that respondent did not obtain Faraone's written consent to waive the requirement, as mandated by the rule. The special master determined to dismiss the allegation of a violation of RPC 1.8 (a), because Faraone indicated in his testimony that he would not have consulted another attorney in any event.

We disagreed with the special master's finding in Faraone. Faraone stated that he felt pressured to lend respondent money, and did so in order not to upset respondent during crucial patent negotiations. Not only did respondent fail to adhere to the requirements of disclosure and the use of a writing, but he placed his client in a tenuous position by requesting a loan under those circumstances. It is precisely that type of predicament that the rule attempts to avoid. Therefore, we found a violation of RPC 1.8 (a).

The Board agreed with the special master in regard to Stokes. It became clear, as the testimony unfolded in that matter, that respondent and Stokes had a purely personal relationship. Stokes admitted in her own testimony that respondent was not her attorney. Moreover, Stokes was a well-educated nurse with enormous personal wealth and sophisticated investments. Her investment in Ideal had nothing

to do with respondent's position as an attorney. Rather, it was ancillary to a romantic involvement.

Finally, respondent and Stokes settled their monetary matters through a civil suit and went separate ways. For all of these reasons, we determined to dismiss the allegations related to Stokes.

The Alleged Knowing Misappropriation of Goccia's Funds

In April 1998, respondent and Goccia entered into an agreement by which respondent was to hold $20,000 of respondent's settlement proceeds for a medical escrow. He then negotiated the reduction of two bills, totaling $2,557. Between June 5, 1998 and July 10, 1998, respondent withdrew $11,300 from the medical escrow in order to fund outstanding obligations of his own.

It is uncontroverted that, on July 13, 1998, respondent met with Goccia regarding a $10,000 loan. Respondent drafted a handwritten note that day, which he and Goccia both signed. He claimed that the note simply memorialized Goccia's weeks-earlier oral authorization to the loan. In sharp contrast, Goccia testified that respondent first approached him about a loan on July 13, 1998, and that he scribbled the note on the spot, promising Goccia $500 for his trouble. Moreover, Goccia was certain that respondent did not disclose to him that he had already disbursed the funds to himself, or that he would pay Goccia the $500 out of Goccia's own funds. We did not believe Goccia on the issue of the loan, for the reasons stated below. We found it probable that Goccia approved the loan orally prior to July 13, 1998, as respondent alleged.

Likewise, we disbelieved Goccia's explanation of the $1,300 over the loan amount, which respondent took from the trust account. Goccia may have sought to compensate respondent for negotiating bills with medical providers, only to later change his mind about using the funds for their original purpose. That scenario is consistent with respondent's actions, which included a $10,000, not $11,300, loan request. On this score, respondent admitted that he had been careless not to document every aspect of his dealings with Goccia in the above regard. We concurred with respondent's version of events, to the extent that clear and convincing evidence of knowing misappropriation of these funds was not established.

On July 22, 1998, respondent replaced the $10,000 through the transfer of fees from another matter. A week later, he transferred a total of $9,000 from the trust account to his business account, which was overdrawn by that amount. Again, we could not find, by clear and convincing evidence, that these funds were knowingly misappropriated. Rather, as respondent explained, $4,000 represented his fees for the criminal matters.

In fact, the fees totalled $4,600, but respondent discounted the bill by $600. Goccia denied that he had authorized respondent to take those fees, claiming that respondent had waived his fees in those matters long ago. Particularly troubling, however, was his bare denial that he received bills for those matters. In this regard, Goccia is not believable. Copies of the bills were found in respondent's file by the ethics authorities. Moreover, respondent testified that he had sent them to Goccia. There is no reason to suspect that it was not so. Under the circumstances, we could

not find, by clear and convincing evidence, that respondent had misappropriated the $4,000.

Similarly, we could not find that respondent knowingly misappropriated the remaining $5,000. Respondent explained that he took $5,000 in repayment for several cash payments to Goccia after the April 1998 settlement. Corroboration came from both Fuerstenberger and Aksan. Fuerstenberger testified that Goccia had gone to Atlantic City to gamble on at least one occasion that she knew about. Aksan testified that he was present when respondent gave a man fitting Goccia's description a large sum of cash one day, after which the man announced that he was going immediately to Atlantic City with the cash. We determined that, in addition to respondent's testimony, Fuerstenberger and Aksan's testimony cast insurmountable doubts upon Goccia's general credibility. We also gave weight to the special master's admonition that "Goccia is not a particularly credible witness. He was evasive and probably not altogether truthful." In fact, we found Goccia so unbelievable, as to render his testimony in this matter almost without value. We found it probable that Goccia had pressured respondent for additional funds, once he had depleted his settlement proceeds, goading respondent to invade the medical escrow to do so. We also found that Goccia had abrogated the original purpose of the escrow agreement through those demands.

In sum, we were alarmed at the reckless manner in which respondent made disbursements from Goccia's funds in his trust account. Respondent borrowed money from trust without first documenting his client's assent to its use. He gave Goccia large sums of cash without documenting those transactions, even though he

was removing the funds from the trust account to do so. Moreover, he took fees without properly documenting his actions. Respondent was completely irresponsible in this regard. Nevertheless, we reiterate that we could not make a finding that, on Goccia's questionable testimony, respondent's actions amounted to knowing misappropriation.

The Chronic Trust Account Shortages

Respondent should have had a heightened awareness of the recordkeeping requirements of attorneys practicing law in New Jersey. In 1994, he was found in violation of the recordkeeping requirements for failure to conduct proper reconciliations of his trust account, among other violations. He certified that he had corrected the deficiencies and agreed to oversee all reconciliations of his account. In 1997, respondent abandoned that practice. Instead, he delegated the non-delegable responsibility for the proper maintenance of his trust account to his staff.

The OAE auditor testified at length about the extent to which respondent used his trust account as an overdraft protection device for his business account, as evidenced by shortages in the trust account throughout 1998. In fact, respondent made little excuse for those shortages, other than to contest the amount of the shortages. He conceded that "a few thousand dollars" from the trust account was unaccounted for. So, too, he claimed that he was unaware of the shortages in his trust account before late 1998, because his own staff had lied to him about the condition of the trust account.

Respondent's corrective action came late in 1998. Certainly, respondent should have hired an accountant to reconcile the account. However, respondent found it too expensive to do so. Instead, he drew a final check on the account in a sum sufficient to close the account with a zero balance ($2,447.56), and deposited that check in a new account at another bank. Respondent should have known from his prior experience with the ethics authorities that the recordkeeping rules obligated him to do more — to take an active role in the reconciliations of his trust account.

Here, although respondent did not allow others to sign trust account checks, he failed to reconcile his trust account records. Those shortages had culminated in negative balances on several occasions, with trust account checks being returned by the bank for insufficient funds. Respondent admittedly placed his priorities on other matters, passing along the responsibility for the maintenance of his trust account to others because of a thriving practice. That is no excuse. We found respondent guilty of negligent misappropriation, in violation of RPC 1.15(d) and R.1:20-6. Indeed, we found that his practices were beyond negligent – they were reckless in nature.

In mitigation, respondent provided numerous letters from clients and others, attesting to his good character and skills as an attorney. In addition, he stated that he realized in the aftermath of this case the importance of properly maintaining his trust account. Finally, according to respondent, he has scrupulously maintained his accounts in accordance with the recordkeeping rules ever since late 1998. In all, respondent engaged in conflict of interest situations with two clients, repeated and recklessly negligent misappropriation of client funds and violations of the recordkeeping requirements of R.1:20-6.

It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994). So, too, a reprimand would be sufficient discipline for numerous recordkeeping violations, even when combined with other violations, such as negligent misappropriation. See, e.g., In re Saijwani, 165 N.J. 563 (2000) (reprimand imposed where the attorney committed numerous trust and business account recordkeeping violations by failing to maintain records required by R. 1:21-6 and who, in one matter, exhibited a lack of diligence); In re Butler, 152 N.J. 448 (1998) (reprimand imposed where the attorney, in a series of nine real estate transactions, engaged in a pattern of neglect by failing to record mortgages and mortgage discharges in a timely manner, and who also admitted numerous recordkeeping violations; prior private reprimanded in 1992 for failure to obtain a canceled mortgage document from the county clerk in a real estate matter and for failure to cooperate with disciplinary authorities); In re Gilbert, 144 N.J. 581 (1996) (reprimand imposed where the attorney negligently misappropriated more than $10,000 in client funds, failed to comply with recordkeeping requirements, including commingling personal and trust funds and depositing earned fees in the trust account; the attorney also failed to properly supervise his firm's employees with regard to the business and trust accounts). However, we found that respondent's misconduct here was so severe – in fact reckless – as to warrant more severe discipline. We unanimously determined to impose a six-month suspension. In addition, after reinstatement, and for a period of two years thereafter, respondent must submit quarterly reconciliations of his trust account to the OAE, certified by an

accountant approved by that office. Three members did not participate. One member was recused.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth P. Glynn
Docket No. DRB 03-356

Argued: November 20, 2003

Decided: February 18, 2004

Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Admonition*	*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:		5				1	3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel