

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-081  
District Docket Nos. XIV-2013-0439E  
and XIV-2013-0584E

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IN THE MATTER OF :  
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DANIEL B. KELLEY :  
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AN ATTORNEY AT LAW :  
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Decision

Decided: September 29, 2015

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The two-count complaint charged respondent with violations of RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly deliver funds to a client or third person), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 8.1(b) (failure to cooperate with disciplinary authorities - mistakenly cited in the complaint as RPC 8.4(b)), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985). For the

reasons expressed below, we recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1998. At the relevant time, he maintained a law office in Cherry Hill, New Jersey. Although he has no history of discipline, he was temporarily suspended, effective May 19, 2014, for failing to cooperate with the OAE's investigation. In re Kelley, 217 N.J. 364 (2014).

Service of process was proper in this matter. On January 29, 2015, the OAE sent a copy of the ethics complaint, by regular and certified mail, to respondent's last known home address listed in the attorney registration system. On March 12, 2015, the certified mail was returned as unclaimed. The regular mail was not returned.

On March 2, 2015, the OAE sent a letter, by regular and certified mail, to the same address. The letter notified respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail was delivered on March 6, 2015. The signature of

the recipient appears to be respondent's. The regular mail was not returned.

As of the date of the certification of the record, March 16, 2015, respondent had not filed an answer.

Respondent maintained trust, business, and operating accounts at PNC Bank (PNC). By letter dated August 2, 2013, PNC notified the OAE of a \$1,468.66 overdraft in respondent's trust account.

On August 4, 2013, the OAE requested that respondent provide an explanation and documentation for the overdraft. Although respondent provided a written explanation to the OAE, he failed to submit the requested supporting documentation. The OAE, therefore, subpoenaed respondent's business, trust, and operating account bank records, which included signature cards, statements, canceled checks, deposit slips, and wire information for the period from January 1, 2010 through November 2013. The OAE's review of the records revealed that respondent failed to maintain client funds intact in at least two client matters.

In the first matter, respondent, as the settlement agent, had represented Verona Estates (Verona) in the sale of property in Trenton, New Jersey. On August 7, 2012, respondent received and deposited into his trust account a \$22,000 check for the purchase of the property. The closing took place on August 9,

2012. According to the HUD-1 settlement statement, respondent was to hold \$4,776.51 in escrow. Almost one year later, on July 22, 2013, respondent issued a \$4,717.14 check to Verona, in partial satisfaction of the escrow obligation. Because respondent had not made any payments relating to the escrow, Verona was entitled to a full refund.

On August 1, 2013, the date that the check to Verona cleared, respondent's trust account balance was -\$1,468.66. Respondent failed to maintain the Verona escrow funds intact, from September 10, 2012, to January 23, 2013. The complaint further alleged that respondent failed to maintain the funds from January 30, 2013, through July 24, 2013.

From September 10, 2012, to January 23, 2013, the shortage in respondent's trust account ranged from \$167.43 to \$4,843.34. On January 16, 2013, the balance was -\$66.83. From September 10, 2012, to December 10, 2012, respondent made six cash withdrawals from his trust account in amounts ranging from \$100 to \$2,100. None of the cash withdrawals were related to any client matters and respondent was not authorized by any clients or third parties to use the funds for personal purposes.

On September 10, 2012, respondent twice withdrew funds from his trust account, for a total of \$750, and then deposited the funds into his operating account. Prior to the deposit, the

operating account had a balance of only \$32.71. Respondent's operating account also had negative balances on two dates: - \$445.27 on October 18, 2012 and -\$511.93 on December 10, 2012.

In the second matter, respondent failed to keep intact funds of another client, Raymond Ngiau, whom he represented in the release of escrow funds that he was purportedly holding for a judgment.

Respondent received a \$25,000 check payable to Ngiau, dated January 29, 2013. According to the complaint, respondent immediately should have turned over the check to Ngiau. Instead, on January 30, 2013, he deposited it into his trust account. Five and one-half months later, on July 11, 2013, respondent issued a trust account check to Ngiau for \$25,000. In the interim, respondent should have been holding \$29,776.51 in his trust account for both Ngiau and Verona. However, on January 31, 2013, the day after respondent deposited the Ngiau proceeds, he invaded them by making a \$2,000 cash withdrawal from his trust account, reducing the trust account balance to \$23,008.17. He further invaded the funds by making three additional cash withdrawals: \$1,000 on February 7, 2013, \$1,000 on March 7, 2013, and \$500 on April 4, 2013. The withdrawals increased the shortage in respondent's trust account to \$9,768.47. On July 11, 2013, his trust account balance fell to \$958.04.

Respondent did not have permission from any client or third party to use the escrow funds. He, therefore, knowingly invaded and misappropriated funds belonging to his clients Verona and Ngiau.

The complaint charged respondent with knowing misappropriation of client funds and failure to safeguard funds (RPC 1.15(a), RPC 8.4(c), In re Wilson, supra, and In re Hollendonner, supra) and failure to promptly deliver funds to a client or third person (RPC 1.15(b)).

On August 14, 2013, after receiving the PNC notice of respondent's \$1,468.66 trust account overdraft, the OAE requested a written, documented explanation for the overdraft.

By letter dated August 29, 2013, respondent blamed the overdraft on his poor health during another client's short sale real estate closing. He claimed that he "inadvertently" used a trust account check rather than an operating account check in connection with the closing. Respondent attributed the "oversight," in part, to a chronic condition with which he had been diagnosed that could result in periods of "flare-ups," causing bouts of pain, nausea, and vomiting.

Thereafter, on September 9, 2013, the OAE requested that respondent submit copies of his business account bank statements for July and August 2013, as well as client ledger cards for all

transactions in July 2013. On September 16, 2013, respondent submitted his "response," which appeared to be bank statements for his operating account. Thereafter, by letter dated October 24, 2013, the OAE directed respondent to appear for a demand audit on November 13, 2013 and to bring specific documents and records relating to his trust and business accounts. In the interim, PNC Bank notified the OAE of another \$66.63 overdraft in respondent's trust account. Although the overdraft predated the August 2, 2013 overdraft, PNC did not send notice of the January 16, 2013, overdraft until October 23, 2013. Respondent failed to appear for the OAE demand audit, which was then rescheduled for November 19, 2013.

At the November 19, 2013, demand audit, respondent submitted his trust and operating account bank statements for January 2013 through October 2013 and admitted that he had failed to maintain attorney trust account reconciliations, client ledger cards, and receipts and disbursements journals for his trust and operating accounts. The OAE then requested respondent to provide "certain files."

By letter dated November 21, 2013, the OAE directed respondent to recreate and submit, within forty-five days, various attorney trust account and operating account documents for the period from January 1, 2011, to date.

Also on November 21, 2013, the OAE attempted to contact respondent several times to schedule a meeting to pick up his client files. However, respondent's voice mailbox was full. Therefore, on that same date, the OAE faxed a letter, requesting that respondent contact the OAE as soon as possible. By letter dated November 27, 2013, the OAE scheduled a meeting on December 6, 2013. At that meeting, the OAE picked up respondent's files.

On January 6, 2014, respondent "requested an extension to the OAE's November 21, 2013 letter," presumably scheduling an audit, which was granted and rescheduled to January 13, 2014. By letter dated January 10, 2014, respondent requested another extension.

Respondent's January 6, 2014, letter set forth in greater detail his compelling, continuing health problems, which resulted in repeated hospitalizations and emergency room treatments for attacks of severe stomach pain, nausea, and vomiting. In the letter, he claimed that, at the time, he was under the care of his regular doctor, as well as allergy and gastroenterologist specialists at the University of Pennsylvania.

By letter dated February 6, 2014, the OAE granted respondent a final extension to February 21, 2014. The OAE informed respondent that he was not required to appear, but that



the requested documentation must be delivered by that date. The OAE's letter also stated:

Further, please be advised that your recent correspondence does call into question your capacity to practice law. Pursuant to Rule 1:20-12, your physical illness may be best addressed by your transfer to Disability Inactive Status. Notwithstanding, you would still be required to provide the requested documents.

[Ex.28.]

As of the date of the complaint, respondent had failed to provide to the OAE the requested trust, business, and operating account records.

The complaint, thus, charged respondent with having violated the recordkeeping rules (RPC 1.15(d) and R. 1:21-6) and with failing to cooperate with the disciplinary investigation (RPC 8.1(b), mistakenly cited as RPC 8.4(b)).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The facts alleged in count one of the complaint establish that respondent misappropriated client trust and escrow funds. After the closing in the Verona matter, he should have been holding in escrow \$4,777.51. Yet, when the check in that matter

cleared, respondent had a negative \$1,468.66 balance in his trust account. Moreover, when he issued a check to the client, almost one year later, it was short by approximately \$60. Respondent, thus, failed to keep the escrow funds intact from, at least, September 10, 2012, to July 2013. He had several shortages in his trust account during that period, ranging from approximately \$167 to \$4,843. In 2012, respondent also made six cash withdrawals from his trust account, two of which, totaling \$750, he deposited into his operating account on the very same day.

Respondent's cash withdrawals from his trust account invaded Ngiau's funds as well as the Verona funds. Even though respondent eventually returned the full amount owed to Ngiau, it took five-and-one-half months for him to do so, funds which he should have turned over immediately when received. Respondent violated RPC 1.15(b) by his failure to promptly deliver to Ngiau funds that he was entitled to receive.

Respondent was not authorized by any client or third party to use trust account funds. The complaint, therefore, clearly established that respondent is guilty of knowing misappropriation of client trust and escrow funds, thereby violating RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c).

As to count two, despite having been given several opportunities to comply with the OAE's requests for information, respondent failed to do so. His failure to turn over the requested information led the OAE to file a motion for his temporary suspension. As mentioned above, the Court temporarily suspended him, effective May 19, 2014. Almost one year later, he still had not cooperated with the OAE and remains suspended to date. Notwithstanding respondent's claimed medical problems, he failed to avail himself of the opportunity to put forth a defense against charges of knowing misappropriation. He not only failed to cooperate with the OAE, but also permitted this matter to proceed as a default. Therefore, respondent is also guilty of having violated RPC 8.1(b).


The facts alleged in the complaint also clearly and convincingly establish that respondent is guilty of recordkeeping improprieties (RPC 1.15(d) and R. 1:21-6). Respondent admitted that he had failed to maintain attorney trust account reconciliations, client ledger cards, and receipts and disbursements journals for his trust and operating accounts, prompting the OAE to require respondent to reconstruct those records.

Under the principles of In re Wilson and In re Hollendonner, for respondent's knowing misappropriation of client trust and

escrow funds alone, he must be disbarred. We so recommend to the Court.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Daniel B. Kelley  
Docket No. DRB 15-081


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Decided: September 29, 2015

Disposition: Disbar

<i>Members</i>	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