

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-098  
District Docket No. XIV-2012-0649E

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IN THE MATTER OF  
ROBERT C. DIORIO  
AN ATTORNEY AT LAW

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Decision

Decided: October 28, 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 having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.5(a) (charging an unreasonable fee), RPC 1.15(a) (failure to safeguard funds) and RPC 1.15(b) (failure to promptly disburse funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles set forth in In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102

N.J. 21 (1986). For the reasons expressed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1975. At the relevant time, he maintained a law practice in Roselle, New Jersey.

In 2010, respondent was censured for failing to promptly turn over personal injury protection (PIP) payments to third-party medical providers in nineteen matters, a violation of RPC 1.15(b). We found that he "held the medical providers' money hostage, demanding discounted fees for their release," and that his conduct was dishonest, as his motivation was to deprive the medical providers of funds they were entitled to receive under the PIP statute, a violation of RPC 8.4(c).

In aggravation, respondent improperly had deposited into his trust account checks payable to medical providers, who neither endorsed the checks made out to them nor authorized respondent to deposit them on their behalf. Moreover, respondent withheld \$200,000 in nineteen cases for an extended period of time, sometimes in excess of six years<sup>1</sup> and, as of oral argument before us, he had still not released funds in three matters. We concluded that respondent's conduct in depriving the medical providers of,

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<sup>1</sup> Testimony elicited at the ethics hearing established that, if a dispute over the funds was not resolved within six years (the statute of limitations on contract claims), the money would revert back to the insured (client).

"at least," a portion of their funds was deliberate and deceitful. In re Dorio, 201 N.J. 121 (2010).

Respondent was temporarily suspended, effective September 4, 2014, for failing to cooperate with the OAE's investigation in this matter. In re Diorio, 219 N.J. 125 (2014).

Service of process was proper in this matter. On January 30, 2015, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's last known home address listed in the attorney registration records. The United States Postal Service (USPS) tracking information printout showed that, on February 2, 2015, a certified mail notice was left at that residence because no authorized recipient was available to sign for the mail. 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 to the ethics complaint 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 USPS tracking information printout showed that, on March 4, 2015, a certified mail notice was left at respondent's residence

because there was no authorized recipient available to sign for the mail. 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 to the ethics complaint.

Respondent maintained attorney trust and business accounts at Wells Fargo, N.A. During the course of the OAE's investigation in this matter, it subpoenaed respondent's bank records.

#### **COUNT ONE**

##### **A. Knowing Misappropriation – Checks Payable to Clients**

Respondent represented numerous clients in connection with personal injury matters. He received and deposited the clients' settlement funds into his trust account. According to the complaint, although respondent made initial disbursements to his clients and his firm for costs and fees, he retained a portion of the clients' settlement funds for years, in his trust account, for "various reasons," until he subsequently disbursed the funds to himself, "purportedly" as a fee, and to his clients.

The complaint alleged that respondent knowingly misappropriated \$27,832 of client funds by issuing twenty-four checks payable to twenty-three clients, but that he endorsed and cashed the checks. The checks purportedly first were endorsed by

the client, with respondent's signature appearing as the second endorsement.

In a September 24, 2013 letter to the OAE, respondent claimed that his endorsement on the checks "has been a Bank Policy and office policy for over 20 years and the funds were received by the clients."<sup>2</sup>

According to a Wells Fargo branch manager, the second endorsement was required to document that the funds were going to a person other than the named payee, "specifically to the second endorser the Respondent." Subpoenaed bank documents confirmed that "the primary identification for cashing the check was the bank account's 'business owner' or attorney at law.'"

### **1. Knowing Misappropriation – Clients Contacted**

During the course of its investigation, the OAE was able to contact only eight of twenty-three personal injury clients. A review of subpoenaed bank records and respondent's records,

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<sup>2</sup> Respondent's September 2013 letter to the OAE claimed that he had a medical condition called "John Ritter's disease," for which he had undergone aortic dissection surgery, that he underwent extensive rehabilitation, and that he was under heavy medication and the care of multiple doctors. Respondent also stated that he no longer practiced law, had no office staff, and was winding up his affairs, but continued to comply with the random audit which had, at that time, gone on for nearly two-and-one-half years.

including client ledger cards, established that each of the eight clients obtained initial, but not full, distributions of their settlement proceeds. When, years later, respondent subsequently issued trust account checks, ostensibly to disburse the balance of the clients' remaining funds, the back of each check contained the payees' first initial and last name followed by respondent's endorsement (hereinafter referred to as "the standard improper endorsements"). All of the eight clients named below confirmed with the OAE, verbally and in writing, that they never received either a check or cash from respondent for the balance of their settlement proceeds. The checks were all cashed at a Wells Fargo branch.

In seven of the eight matters (excluding the Spector matter), the OAE concluded that respondent's initial distribution to himself constituted his one-third fee and costs. Respondent's client ledger cards, bank statements, and the ethics complaint establish the following:

1. Merzila Alexandre - On April 25, 2005, respondent deposited Alexandre's \$13,500 settlement funds into his trust account. The following day, he disbursed \$12,900 from his trust account: \$8,373 to Alexandre and \$4,527 to himself. More than six years later, on October 7, 2011, respondent disbursed the remaining Alexandre funds from his trust account: a \$400 check payable to Alexandre, and a \$200 check to himself. On October

18, 2011, the \$400 check was cashed at Wells Fargo. Alexandre never received the additional \$400 from respondent.

2. Laura Chacon - On April 12, 2006, respondent deposited Chacon's \$12,000 settlement proceeds into his trust account. On that same day, he disbursed \$1,050 to himself and \$3,650 to a law firm. On April 28, 2006, he disbursed \$6,700 to Chacon. Almost seven years later, on March 11, 2013, respondent disbursed the remaining \$600 from his trust account: a \$400 check payable to Chacon and a \$200 check to himself. On April 10, 2013, the \$400 check was cashed at Wells Fargo. Chacon never received the additional \$400.

3. Anthony Champagne - On May 20, 2008, respondent deposited Champagne's \$7,500 settlement funds into his trust account. On May 23, 2008, he disbursed \$3,843.14 to Champagne and \$2,656.86 to himself. On March 18, 2013, almost five years later, he disbursed the remaining funds from his trust account: a \$700 check payable to Champagne and a \$300 check payable to himself. Champagne never received the funds. Although Champagne contacted respondent about his remaining settlement funds, respondent did not reply.

4. Nieves Cue - On March 27, 2009, respondent deposited Cue's \$55,000 settlement funds into his trust account. On April 1, 2009, he issued \$18,995.17 to himself, and \$11,967.08 to

"Local 1478-21LA Welfare Fund." On April 15, 2009, he issued \$19,037.75 to Cue. On March 18, 2013, almost four years later, he disbursed the remaining \$5,000 from his trust account: a \$3,335 check payable to Cue and a \$1,665 check to himself. An attorney from respondent's law firm informed Cue that the firm was holding \$5,000 for a Union Hospital bill but that, if the hospital's bill was less, the difference would be returned to her. On "a later date," respondent informed Cue that the hospital's bill exceeded \$5,000. Cue did not receive any additional funds.

5. Jesus Fernandez - On May 15, 2006, respondent deposited Fernandez' \$15,000 settlement funds into his trust account. On May 16, 2006, he issued \$5,250 to himself. On June 26, 2006, he issued \$7,500 to Cambridge Management Group LLC, and \$1,050 to Fernandez. On October 7, 2011, more than five years later, he disbursed the remaining \$1,200: an \$800 trust account check payable to Fernandez; and a \$400 check to himself. Fernandez did not receive the additional funds.

6. Holgen Antony-Pierre - On July 31, 2006, respondent deposited Antony-Pierre's \$12,500 settlement into his trust account. On August 3, 2005, he disbursed \$7,512 to Antony-Pierre and \$4,388 to himself. Respondent's June 30, 2006 settlement letter to Antony-Pierre indicated that the attorney's fees and



costs totaled \$4,388 and, with no explanation, that the firm was retaining an additional \$600. On March 18, 2013, more than six years later, respondent disbursed the remaining \$600: a \$400 trust account check payable to Holgen and a \$200 check payable to himself.

By letter dated September 10, 2014, Antony-Pierre informed the OAE that she did not receive the additional funds.

7. David Wingo - On December 19, 2005, respondent deposited Wingo's \$4,000 settlement proceeds into his trust account. The following day, he disbursed \$2,076 to Wingo and \$1,524 to himself. On March 11, 2013, more than seven years later, respondent disbursed the remaining funds from his trust account: a \$275 trust account check payable to Wingo and a \$125 check payable to himself. The check payable to Wingo was cashed on April 18, 2013 at Wells Fargo. Wingo did not receive any additional funds and, in fact, informed the OAE that he was not in New Jersey at all in 2013 when the check was cashed.

8. Vladimir Spector - Respondent's client ledger card shows that as of April 25, 2005, \$366 remained in his trust account for this client and that on May 6, 2005 a trust account check was written payable to Diagnostic Medical Consultants, which was subsequently voided. On February 5, 2013, more than seven years later, respondent issued a \$365 trust account check payable to

Spector. On March 4, 2013, the check was cashed at Wells Fargo. Spector informed the OAE verbally and in writing that he never received \$365 from respondent. Although respondent had telephoned Spector a "few times" about the funds, he never delivered the cash to him. Finally, Spector indicated that he personally paid the Diagnostic Medical Consultants' debt relating to his personal injury case because the outstanding bill was damaging his credit and the company demanded payment from him.

The complaint alleged:

one may reasonably conclude Respondent knowingly misappropriated the aforementioned clients' funds by cashing checks made payable to his clients and not giving the clients their funds. [The clients confirmed that] they never received their remaining settlement funds . . . from Respondent, nor did they endorse the checks or authorize Respondent to do so on their behalf.

[C189.]<sup>3</sup>

## **2. Knowing Misappropriation – Clients' Checks Cashed by Respondent**

The complaint alleged that respondent cashed nine checks, payable to his clients, at an Elizabeth, New Jersey Wells Fargo drive-through only branch. The OAE subpoenaed bank "data screens" in connection with these allegations.

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<sup>3</sup> C refers to the January 29, 2015 ethics complaint.

Checks cashed on February 13, 2013

Three checks payable to personal injury clients were cashed at Wells Fargo on February 13, 2013, in one bank transaction: \$162.77 payable to Maria Diaz, \$426 payable to Carmen Javier, and \$2,182.77 payable to Michael Belshaw. Presumably, the bank teller cashing the checks verified respondent's identification as the individual cashing the checks with the notation "Attorney at Law."

As to the Diaz matter, respondent's ledger card shows that, on May 13, 2002, he deposited her \$22,500 settlement proceeds into his trust account. On May 15 and 23, 2002, he disbursed \$7,680 to himself, which the OAE concluded was his fees and costs, and \$14,220 to Diaz, respectively. Disbursements made in 2004 and 2007 to medical providers brought the client balance to zero. An April 27, 2007 check for \$162.77, payable to Union Hospital, was not negotiated.

Almost six years later, respondent replaced the stale check with a check dated February 5, 2013, payable to Diaz. The back of the check bore the standard improper endorsements. Respondent did not provide any contact information for Diaz and the OAE's attempts to locate her were unavailing.

As to Javier, a minor, respondent's ledger card shows that, on November 26, 2002 and January 10, 2003, respondent deposited into his trust account a total of \$15,000. On December 2, 2002

and February 14, 2003, he disbursed to himself \$2,794 and \$1,000, respectively, which the OAE concluded were his fees and costs. On February 13 and 21, 2003, respondent disbursed to Javier \$8,848 and \$1,500, respectively. In 2004, respondent made disbursements to Diagnostic Medical Consultants (\$220); and to himself (\$212); and, in 2007, \$426 each to Manuel Javier and Elvin Javier, which resulted in a zero balance in the Javier account. The check to Elvin Javier was not negotiated. Approximately five years later, respondent replaced the "stale check" with a check dated February 5, 2013, payable to Elvin Javier. The endorsements on the back of the check were the standard improper endorsements.

By letter dated September 24, 2013, respondent provided the OAE with Javier's address and telephone number. The OAE sent two letters to Javier, each returned as "unclaimed unable to forward." The OAE's efforts to reach Javier by telephone were also unsuccessful.

In the Belshaw matter, respondent's ledger card shows that, on May 23, 2007, respondent deposited \$95,000 into his trust account. On May 30, and June 6, 2007, respondent disbursed \$55,474.70 to Belshaw and \$28,751.15 to himself, respectively. In 2013, respondent issued three additional checks to disburse the remaining \$10,774.15: on February 5, 2013, two checks to

Belshaw, one for \$2,187.77 and the other for \$5,000, and one check to himself for \$3,591.38. The endorsements on the \$2,182.77 check were the standard improper endorsements. Respondent's treatment of the \$5,000 check to Belshaw is described fully below.

Checks cashed on March 4, 2013

On March 4, 2013, respondent cashed two additional checks payable to personal injury clients in one transaction at an Elizabeth drive-through only bank branch: one to Vladimir Spector for \$365 and another to Zeneyda Rodriguez for \$2,102. The bank teller's verification for respondent's identification was "Business Ow," presumably business owner.

The OAE confirmed with Spector orally and in writing that he never received the additional \$365 that respondent purportedly disbursed to him.

As to the Rodriguez matter, on July 15, 2005, respondent deposited Rodriguez' \$21,000 personal injury settlement funds into his trust account. Thereafter, in July 2005, he made disbursements to Rodriguez and to himself and, in 2006, to medical providers. On April 27, 2007 he made additional disbursements to Rodriguez and to himself. Almost six years later, on February 5, 2013, he issued trust account checks to

Rodriguez for \$2,102 and to himself for \$1,000. The \$2,102 check to Rodriguez, however, contained the endorsement of one of respondent's other clients, "Y" Berestetskaya, followed by respondent's endorsement.

On December 12, 2013, respondent provided to the OAE, contact information for various clients, including Rodriguez. Correspondence mailed to Rodriguez at that address, however, was returned to the OAE as "Not deliverable as addressed unable to forward," and "Vacant unable to forward." Further, there was no answer at the telephone number respondent had provided.

The complaint alleged that neither Spector nor Rodriguez had been in respondent's vehicle when the checks were cashed and that respondent, therefore, provided them with their remaining settlement funds.

Check cashed on March 7, 2013

On March 7, 2013, respondent cashed a check payable to client M. Michael Belshaw for \$5,000 at the Wells Fargo Elizabeth drive-through only bank branch. The check contained the standard improper endorsements. The OAE was unable to locate Belshaw. The complaint alleged that Belshaw was not in respondent's vehicle when respondent cashed his check and that Belshaw never received his additional settlement funds.

Checks cashed on April 18, 2013

On April 18, 2013, in one transaction, respondent cashed three checks payable to personal injury clients at an Elizabeth drive-through only bank branch: one to David Wingo for \$275, one to Wilfredo Tineo for \$225, and one to Julien Fils (actual name Fils Julien) for \$2,908.46. The bank teller's verification for respondent's identification was "Business Lawyer."

As earlier noted, Wingo denied having been in New Jersey in 2013 and denied having received the \$275.

As to Wilfredo Tineo, on June 9 and June 24, 2005, respondent deposited Tineo's settlement proceeds totaling \$15,000 into his trust account. Respondent's client ledger shows that, on July 7, 2005, he disbursed \$9,775 to Tineo and, on March 11, 2013, he issued a check for the remaining funds, \$225, payable to Tineo. The check payable to Tineo was cashed with the Wingo and Julien checks. Tineo, however, would not cooperate with the OAE's investigation.<sup>4</sup>

As to Julien, on June 29, 2009, respondent deposited Julien's \$12,500 settlement proceeds into his trust account and, on July 9, 2009, disbursed \$4,000 to himself and \$4,137.54 to Julien. On March 18, 2013, almost four years after the last

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<sup>4</sup> The check to Tineo was not included in the OAE's calculation that respondent misappropriated \$27,832.

disbursement, respondent disbursed the remaining funds by trust account checks payable to himself for \$1,454 and to "Julien Fils" for \$2,908.46. The endorsements on the back of the check to Julien were the initial "F" and the last name "Julien," followed by respondent's endorsement.

The OAE was unsuccessful in its attempts to contact Julien based on the information respondent provided or through its own resources.

The OAE concluded, and the complaint charged, that Wingo, Tineo, and Julien (Fils) were not in respondent's vehicle when their checks were cashed and that neither Wingo nor Fils received their remaining settlement funds.

### **3. Knowing Misappropriation – Additional Clients' Checks Cashed**

In eight additional personal injury matters, respondent obtained settlement funds and made initial disbursements to the clients. Years later, he issued additional trust account checks payable to those clients. The endorsements on the back of the checks were the standard improper endorsements. All of the checks were cashed at a Wells Fargo branch. The deposits and disbursements were recorded on respondent's client ledger cards. The OAE calculated that respondent's initial disbursements to himself were equivalent to one-third of the gross settlements



and concluded that, therefore, the disbursements were his fees and costs in the matters.

1. Jose Alvarez - On January 25, 2008, respondent deposited Alvarez' \$15,000 settlement proceeds into his trust account. On January 31, 2008, he disbursed \$5,183.33 to himself, \$2,000 to Alvarez, and \$6,816.67 to "NJFSPC."<sup>5</sup> More than five years later, on March 18, 2013, respondent disbursed the remaining funds from his trust account: \$665 payable to Alvarez, and \$335 to himself. On July 10, 2013, both checks were cashed at a Wells Fargo branch. Respondent did not provide the OAE with Alvarez' contact information and the OAE's attempts to locate Alvarez were unsuccessful.

2. Pedro Alfaro - On October 12, 2005, respondent deposited Alfaro's \$22,000 settlement funds into his trust account. On October 12 and 19, 2005, respondent disbursed to himself \$2,000 and \$5,867, respectively (fees and costs). On October 19, 2005, respondent disbursed \$12,933 to Alfaro. On October 7, 2011, almost six years later, respondent disbursed the remaining funds by issuing trust account checks payable to Alfaro (\$800) and to himself (\$400). Respondent's bank statement shows that, on October 18, 2011, both checks were cashed at Wells Fargo.

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<sup>5</sup> "NJFSPC" is the New Jersey Family Support Payment Center, which is a website for processing child support payments.

The OAE was unsuccessful in its attempts to contact Alfaro with the contact information respondent provided. The certified mail letters sent to two different addresses were returned to the OAE as unclaimed, "unable to forward" and Alfaro's telephone was no longer in service.

3. Edwin Bazan - On February 2, 2007, respondent deposited Bazan's \$15,000 settlement funds into his trust account. On February 7, 2007, he disbursed \$8,442 to Bazan and \$5,358 to himself. On October 7, 2011, more than four years later, respondent disbursed the remaining funds by issuing an \$800 trust account check payable to Bazan and \$400 to himself. The endorsements on the Bazan check were the standard improper endorsements. Although Bazan's check was cashed on November 7, 2011, the respondent's bank records indicate that the check to respondent was not cashed until November 14, 2011.

The OAE's efforts to contact Bazan, using the information respondent provided, were fruitless. The certified mail was returned as not deliverable, unable to forward, and the telephone number was not in service.

4. Yelena Berestetskaya - On July 17, 2003, respondent deposited Berestetskaya's \$17,500 settlement proceeds into his trust account. On July 21, 2003 and March 19, 2004, he issued trust account checks to himself (\$6,045) and to Berestetskaya

(\$8,500), respectively. On February 5 and March 19, 2013, more than nine years later, respondent disbursed the remaining funds by issuing trust account checks to himself (\$955) and to Berestetskaya (\$2,000). The check to Berestetskaya contained the standard improper endorsements and was cashed on March 19, 2013 at a drive-through Wells Fargo branch. The OAE was unable to contact Berestetskaya with the information that respondent provided.

5. S. Fernando Coelho - On January 3, 2006, respondent deposited Coelho's \$40,000 settlement proceeds into his trust account. On January 4, 2006, he disbursed \$25,267 to Coelho and \$13,533 to himself. On November 8, 2011, almost five years later, he disbursed the remaining amounts by issuing trust account checks to himself for \$400 and to Coelho for \$800. Respondent's bank statement shows that both checks were cashed on November 14, 2011 at Wells Fargo. The OAE's attempts to contact Coelho with the information respondent provided were unsuccessful.

6. Patrick Daly - On January 23, 2001, respondent deposited Daly's \$30,000 settlement proceeds into his trust account. On January 25, 2001, he disbursed \$19,113 to Daly and \$10,037 to himself. On March 11, 2013, more than twelve years later, respondent disbursed the remaining funds by issuing trust

account checks payable to Daly for \$575 and to himself for \$275. The check to Daly was cashed on April 15, 2013 at Wells Fargo. Respondent did not provide the OAE with any contact information for Daly and its attempts to locate him were unsuccessful.

7. Uri Gorbatov - On October 18, 2001, respondent deposited Gorbatov's \$50,200 settlement proceeds into his trust account. On November 15 and 16, 2001, he disbursed \$7,500 to himself and \$5,000 to Gorbatov, respectively; on November 19, 2001, he issued five additional checks to Gorbatov totaling \$35,200 and one to himself for \$2,000, leaving a balance of \$500 for Gorbatov. On March 11, 2013, more than eleven years later, respondent disbursed the remaining funds by issuing a \$335 trust account check payable to Gorbatov and a \$165 check to himself. On April 15, 2013, the check payable to Gorbatov was cashed at Wells Fargo.<sup>6</sup> Respondent did not provide any contact information for Gorbatov and the OAE's efforts to locate him were unsuccessful.

8. Rogello Melgar - On July 13, 2006, respondent deposited Medgar's \$25,000 settlement proceeds into his trust account. On July 18, 2006, he disbursed \$15,379 to Melgar and \$8,421 to

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<sup>6</sup> The endorsement on this check appears to be different from the others in that both names were fully written, rather than just the initial of the first name.

himself. On November 5, 2011, more than five years later, he issued an \$800 trust account check payable to Melgar,<sup>7</sup> leaving a \$400 balance in the trust account. On December 12, 2011, the \$800 check was cashed at Wells Fargo. Respondent did not provide the OAE with any contact information for this client and its attempts to locate Melgar were unsuccessful.

9. W. Fidel Montas - On March 4, 2008, respondent deposited Montas' settlement funds totaling \$22,500 into his trust account. On March 14, 2008, he disbursed \$13,800 to Montas, \$2,500 to Edwin Montas, and \$5,000 to himself. On March 18, 2013, five years later, he disbursed the remaining funds by issuing an \$800 trust account check to Montas and one for \$400 to himself. Respondent's bank records show that both checks were cashed at Wells Fargo on June 12, 2013. Respondent did not provide the OAE with contact information for this client. The OAE's efforts to locate Montas were unavailing.

10. Maria Urbina - On March 23, 2006, respondent deposited Urbina's \$9,000 settlement proceeds into his trust account. The following day, he disbursed \$3,280 to himself and \$4,520 to Urbina. On March 11, 2013, more than six years later, he disbursed the remaining proceeds: an \$800 trust account check

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<sup>7</sup> The check appears to have the same standard improper endorsements, even though it is not mentioned in the complaint.

payable to Urbina and \$400 to himself.<sup>8</sup> Respondent's bank records show that both checks were cashed on April 10.

Respondent did not provide the OAE with contact information for this client and the OAE's attempts to locate "Daly" were unsuccessful (presumably, the complaint should have named Urbina, rather than Daly).

According to the complaint:

277. Based upon the information and documentation provided above, one may reasonably conclude Respondent knowingly misappropriated a minimum of \$27,832.00 of client settlement funds from the twenty-three (23) clients identified.

278. Respondent should have been able to provide accurate client contact information for those clients where he issued checks and negotiated them in February, March, and April of 2013 had he himself contacted the clients.

#### **B. Knowing Misappropriation – Checks Payable to Respondent**

After respondent initially disbursed settlement funds to nineteen clients, as well as his one-third contingent fees in those matters, client settlement funds remained in his trust account. According to the complaint, respondent, thereafter, "disbursed an

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<sup>8</sup> The endorsement on the reverse side of the check is not the standard endorsement. The endorsement of the payee, although illegible, appears to be a name other than Urbina's.

additional one-third to himself," after he already had taken his full fee in those matters several years earlier. The OAE calculated that, by doing so, respondent knowingly misappropriated \$8,744.41 in those nineteen client matters by disbursing a portion of the clients' remaining funds to himself.

The complaint provided that respondent disbursed to himself (1) amounts equal to one-third of the remaining trust account funds in the following matters: Alexandre - \$200, Chacon - \$200, Fernandez - \$400, Holgen Antony-Pierre - \$200, Alfaro - \$400, Bazan - \$400, Coelho - \$400, Urbina - \$400, and Martinez - \$400; (2) amounts equal to almost one-third of the remaining funds in the following matters: Champagne - \$300, Cue - \$1,666.66, Wingo - \$125, Diaz - \$110, Javier - \$212, Julien Fils - \$1,091.54, Berestetskaya - \$955, and Daly - \$275; and (3) amounts greater than one-third of the remaining funds in the following matters: Belshaw \$675.87, and Alvarez - \$335.

The complaint alleged that "one may reasonably conclude" that respondent knowingly misappropriated a minimum of \$8,744.41 "by removing an additional third of client's [sic] settlement funds retained in his [trust account] after receiving his total fee and costs in accordance with the contingent fee agreement R. 1:21-7."

**C. Negligent Misappropriation – Negative Trust Account Balances**

In a July 13, 2012 letter, respondent identified two matters in which there had been shortages in his trust account. His client ledger cards revealed that, over a nineteen-month period, there was a negative balance, on several dates, in the trust account for Proximo Properties. On December 9, 2011, the final disbursement for that client resulted in a negative balance of \$22,660.01. The shortage was the result of a September 15, 2011 mis-deposit into the business account rather than the trust account. On March 21, 2013, respondent corrected the error by depositing \$22,810.05 into the trust account.

Respondent's ledger cards also revealed a \$1,030 negative balance for client "Becker" for a twenty-two-month period. On November 10, 2011, approximately two months after the Becker closing, respondent issued a trust account check to himself for \$1,030 when the client ledger card balance was only \$100. Respondent claimed that he had incorrectly calculated the amount remaining in his trust account on behalf of the client. On September 24, 2013, he deposited a business account check for \$1,030 to correct the client's negative trust account balance.



#### **D. Failure to Safeguard and Promptly Disburse Client Funds**

Respondent retained a portion of client settlement funds in his trust account for "various reasons." During the course of the OAE's investigation, and as previously mentioned, respondent asserted that his practice of endorsing client trust account checks was a bank policy and his office policy for more than twenty years and that his clients had received their funds. He maintained that he occasionally gave his clients cash, but his office did not keep receipts for those payments.

As to the client funds that remained in his trust account, respondent believed that he was entitled to an additional one-third of those funds for additional work provided to resolve the clients' outstanding debts. Neither respondent's retainer agreement nor the contingent fee rule (R. 1:21-7) permitted respondent to take additional fees.

Respondent did not promptly disburse client funds, which remained in his trust account for a period of between three and twelve years after the initial disbursements. He provided no explanation for keeping the funds in his trust account. The complaint alleged that respondent failed to safeguard or promptly disburse client funds.

### E. Recordkeeping Violations

The OAE's audit uncovered the following recordkeeping deficiencies: (1) inactive trust ledger balances remained in the trust account for extended periods (R. 1:21-6(d)); (2) old outstanding trust account checks were not resolved (R. 1:21-6(d)); (3) client ledger cards contained debit balances (R. 1:21-6(d)); (4) fees for professional services were not deposited into the business account (R. 1:21-6(a)(2)); (5) schedules of client ledger account balances were not prepared and reconciled monthly with trust account bank statements (R. 1:21-6(c)(1)(H)); (6) contingent fees were not calculated on the net sum recovered after the deduction of disbursements (R. 1:21-7(d)); and (7) checkbooks, check stubs, bank statements, pre-numbered canceled checks and duplicate deposit slips for all trust and business accounts were not maintained for seven years (R. 1:21-6(c)).

For all of the foregoing misconduct, the complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.5(a) (charging an unreasonable fee), RPC 1.15(a) and (b) (failure to safeguard funds and to promptly deliver funds), RPC 1.15(d) and R. 1:20-6 (recordkeeping violations), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles of In re Wilson and In re Hollendonner.

**COUNT TWO**

**Failure to Cooperate with an Ethics Investigation**

On May 11, 2011, the OAE requested copies of respondent's trust and business account records within thirty days. After receiving an extension, on February 13, 2012, respondent forwarded incomplete information to the OAE. Following respondent's submission of additional information, the OAE scheduled an August 23, 2012 audit at his office, at which respondent failed to appear.

Thereafter, at a scheduled January 31, 2012 audit, respondent provided the OAE with the same documents he had previously submitted. The OAE then requested specific itemized documentation by February 28, 2013. On July 24, 2013 and September 3, 2013, the OAE again requested that respondent submit the specific outstanding documentation. After respondent requested another extension, the OAE scheduled a September 11, 2013 interview at its offices. Without notice or explanation, respondent failed to appear.

On September 16, 2013, the OAE filed a petition with the Court seeking respondent's immediate temporary suspension. Thereafter, respondent informed the OAE that he had been out of the country at the time of the scheduled interview. Based on that information and respondent's limited compliance, on February 4, 2014, the OAE withdrew its petition for respondent's temporary suspension. Prior thereto, on September 24, 2013, respondent had submitted incomplete

documentation. He subsequently appeared at a December 2, 2013 OAE interview, and, later, on December 12, 2013, submitted additional information.

By letter dated April 17, 2014, the OAE requested current contact information for respondent's clients. On May 6, 2014, respondent submitted some information and replied that he was unable to provide contact information for fourteen clients and was unable to provide "any better client contact information" for ten clients.

By certified letter dated July 2, 2014, which was delivered on July 7, 2014, the OAE scheduled a July 24, 2014 interview to discuss respondent's recordkeeping and alleged knowing misappropriation. Respondent neither appeared at the July 24, 2014 interview nor notified the OAE that he would not appear and failed to reply to the OAE's subsequent telephone calls.

On August 15, 2014 the OAE filed another petition with the Court seeking respondent's temporary suspension. The Court temporarily suspended respondent, effective September 4, 2014.

The complaint, thus, charged that respondent was guilty of violating RPC 8.1(b) for continuously failing to comply with the OAE's requested instructions, for failing to appear before the OAE to address the knowing misappropriation charges, and for failing to provide all of the records requested, despite having been granted several extensions to do so.

The facts recited in the complaint support the majority of 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 complaint did not allege any facts to establish that respondent engaged in gross neglect or lacked diligence in his representation of clients. We, therefore, dismiss the charges of RPC 1.1(a) and RPC 1.3.

As to the remaining charges, in the midst of the OAE's investigation and prosecution, and after the decision in his prior case, respondent persisted in a pattern of improper behavior by continuing to improperly withhold funds -- this time from clients rather than from third-party medical providers -- for periods ranging from three to twelve years. Without a doubt he is guilty of violating RPC 1.15(b), by failing to promptly deliver the funds to his clients.

More seriously, however, respondent schemed to knowingly misappropriate \$27,832 from twenty-three clients. One part of the scheme involved his violation of R. 1:21-7 (contingent fees) and his own retainer agreement by keeping an additional one-third of undisbursed trust funds in nineteen matters (totaling \$8,744.41) in which he had already disbursed a full fee to himself. Although

respondent asserted a belief that he was entitled to an additional one-third of the remaining funds for work provided to resolve the clients' outstanding debts, his actions proved his purported belief to be a mere fiction, a subterfuge, to disguise his true motives -- to take his clients' funds, while pretending that they were additional fees. Respondent disingenuousness is further emphasized by the fact that he also took the remaining two-thirds, which he pretended to give to his clients.

Respondent clearly engaged in a practice that attempted to make his conduct appear legitimate. He routinely waited a significant period of time after making initial disbursements to his clients (three to twelve years), before purporting to disburse the remaining trust account funds. Because of the lengthy delay, the clients clearly either forgot that they were owed the money or their whereabouts were no longer known or ascertainable -- a circumstance respondent, no doubt, banked on. At the end of the day, none of respondent's clients received any portion of the remaining funds. His ruse allowed him to take all of the funds for himself. Eight clients confirmed to the OAE that they had not endorsed the trust account checks, that they had not authorized respondent to endorse the checks on their behalf, and that they had not received any additional funds after receiving their initial settlement proceeds.

The OAE was unable to locate the remaining clients even using independent resources and the information provided by respondent. The inescapable conclusion is that respondent, too, would have been unable to locate the clients to obtain their endorsements. The totality of the circumstances leads to only one logical conclusion -- respondent never tried to contact any of the clients because his intent from the outset was to misappropriate the remaining trust account funds.

Had respondent tried to locate his former clients to disburse their funds, but could not do so, the Court Rules required him to deposit the funds with the Superior Court Trust Fund, pursuant to R. 4:57 -- not to appropriate the funds for himself.

The clear and convincing standard was described in In re James, 112 N.J 580 (1988), as

[t]hat which "produces[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." [Citations omitted].

[Id. at 585.]

The allegations in the complaint meet that standard on the issue of respondent's knowing misappropriation of client funds.


In sum, respondent is guilty of failing to promptly turn over client funds, negligently misappropriating client trust funds,

knowingly misappropriating \$27,832 in client funds, engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, charging unreasonable fees (by virtue of his taking of an additional one-third fee subsumed in the knowing misappropriation charge), recordkeeping violations, and failing to cooperate with an ethics investigation. Under the principles of In re Wilson, we recommend that respondent be disbarred.

Member Rivera did not participate.

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 Robert C. Diorio  
Docket No. DRB 15-098

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Argued: June 18, 2015

Decided: October 28, 2015

Disposition: Disbar

<b>Members</b>	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:	7					1

  
Ellen A. Brodsky  
Chief Counsel