SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-075
District Docket No. XIV-2013-0632E

IN THE MATTER OF RAYMOND ARMOUR AN ATTORNEY AT LAW	Decision

Argued: June 18, 2015

Decided: October 28, 2015

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

Respondent appeared pro se.

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

This matter was before us on a recommendation for a three-month suspension, filed by a special ethics master, based on respondent's negligent misappropriation of client funds (RPC 1.15(a)) in sixteen client matters and for his failure to promptly deliver funds to which

his clients were entitled (RPC 1.15(b)) in fourteen client matters. Although the Office of Attorney Ethics (OAE) alleged in the formal ethics complaint that respondent had knowingly misappropriated client funds, in violation of RPC 1.15(a) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and sought his disbarment under In re Wilson, 81 N.J. 451 (1979), the special master found that the record lacked clear and convincing evidence to support those charges.

We cannot agree with the special master's finding that the record lacks clear and convincing evidence of knowing misappropriation on respondent's part. Instead, we find that respondent's willful blindness to the invasion of client funds by his nephew, whom respondent had permitted to assume control of the attorney trust and business accounts, should result in his disbarment. We so recommend.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times, he maintained an office for the practice of law in Newark.

In 2012, respondent received a "strong admonition" for failing to keep three personal injury clients informed about the status of their cases and for ignoring their attempts to communicate with him, in violation of RPC 1.4(b), and for settling their cases without explaining to them that a certain amount of the settlement proceeds

would be withheld for the purpose of paying outstanding medical expenses, in violation of RPC 1.4(c). In the Matter of Raymond Armour, DRB 11-451, 11-452, 11-453 (March 19, 2012). Respondent also failed to promptly notify the clients of his receipt of the settlement funds and did not promptly disburse their portion of the proceeds to them, in violation of RPC 1.15(b).

In this case, the first fifteen counts of the sixteen-count formal ethics complaint charged respondent with knowing misappropriation of client funds in sixteen individual personal injury client matters, most of which took place between 2008 and 2010, and some of which were the product of lapping.[1] The sixteenth count charged respondent with knowing misappropriation of client funds to pay personal and business expenses.

In respondent's answer to the formal ethics complaint, he admitted the factual allegations of each count, but denied that he had knowingly misappropriated client funds or that he had violated

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[1] Lapping is the taking of one client's funds to pay trust obligations owed to another client. In a nutshell, lapping involves "robbing Peter to pay Paul," but always making sure that "Peter's funds" have been replenished by the time "Peter" is to be paid. In re Brown, 102 N.J. 512, 515 (1986).

any of the charged RPCs. Further, with respect to each count, respondent asserted the same six mitigating factors:

> 1. Respondent has [sic] successfully managed his responsibilities as an attorney for more than 12 years, prior to the mishandling of client funds by his staff.
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> 2. Respondent's stress related illnesses during the years 2007 through 2009, including three heart surgeries, diabetic diagnosis, enlarged prostrate [sic] with high PSA score, and growth in chest both triggering a cancer scare resulting in removal of cancerous chest tumor this year; kidney stone operation and gall stone operation resulted in a depressive state which compelled respondent to turn over responsibility of day to day operations to his operating officer, Raymond L. Armour, involving office procedures and control and management of the Attorney trust account, without the adequate supervision of Respondent.
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> 3. Respondent had no actual knowledge of the extent of the mismanagement because his staff deliberately failed to fully disclose the problems and otherwise sought to "protect" Respondent from any financial problems or disputes.
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> 4. Respondent fully cooperated with [sic] District Ethics Committee.
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> 5. There was no detriment to the client.
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> 6. Any Delay in distribution of funds inured to the benefit of the client.

[A1-A16.][2]

Respondent is a solo practitioner with three employees: Fatima Ferreira, his legal assistant and office manager; Raymond L. Armour, respondent's nephew known as "Junior," his legal assistant and operations manager; and Marina Velosum, his receptionist and paralegal. Except for a brief layoff in 2007, Ferreira had worked for respondent for nineteen years as a legal secretary. Junior had been his employee for fourteen years.[3]

In 2006, respondent named Junior the firm's operations manager. In 2011, respondent assigned to Ferreira the additional role of office manager.

Ferreira's duties, among others, included paying bills, recording the receipt of settlement checks, and preparing deposit slips and settlement statements. She also negotiated medical bills with providers and prepared and wrote checks for respondent's signature.

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[2] "A" refers to respondent's November 4, 2013 verified answer to the formal ethics complaint.

[3] Junior was a member of respondent's household from 2005 until 2010.

Ferreira testified that respondent told her which bills to pay and when. She emphasized that she paid firm bills, not respondent's personal bills.

According to respondent, during Ferreira's 2007 layoff, which was the year after Junior had been made operations manager, Junior "became more resourceful by handling the office while [respondent] attended to litigation matters, calendar calls and court related matters while coping with health issues." Respondent described Junior's duties as follows:

> My nephew's responsibilities as office manager, operations manager included client intakes, inside and outside of the office, claims adjusting and negotiating client settlements, making business decisions in Respondent's absence for the rest of the staff. He also negotiated medical bills for personal injury settlement cases.
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> [3T15-5 to 11.][4]

Ferreira testified that, in addition to Junior's general duties, between 2007 and 2010, he approved and authorized disbursements from the trust and business accounts. She did not have access to respondent's attorney trust or business accounts, or even the bank

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[4] "3T" refers to the transcript of the September 12, 2014 hearing before the special master.

account statements, and, therefore, she was required to "confer[] with" Junior, prior to drafting a check, to determine whether sufficient funds were available for disbursement.

Ferreira recalled that respondent "was sick quite a bit" and, therefore, Junior had taken over the responsibility of directing her to make payments. Respondent agreed, ascribing Junior's control of the trust and business accounts to respondent's poor health and Junior's concern for his well-being.

There is no evidence in the record that respondent trained Junior in the proper handling of the trust and business accounts. Indeed, respondent admitted that he failed to train Junior in that regard. Ultimately, Junior's handling of the trust account led to multiple invasions of client funds, which were used to pay monies due to other clients, as well as to pay respondent's personal expenses.

Respondent testified that he did not know of Junior's wrongdoing until approximately 2010, after grievances were filed by his clients, Alecia Kibunja, Pauline Haskin, and Sid Africa.[5] According to respondent, in those disciplinary matters, the clients testified that most of their communications were with Junior, not respondent. Their

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[5] These grievances led to respondent's 2012 admonition.

testimony, coupled with the OAE's audit, alerted respondent to "the problem."

Despite Junior's inappropriate use of respondent's trust account, respondent did not fire Junior when he learned of his misconduct. He did not relieve Junior of his financial duties until 2011, when respondent finally took control of the firm's finances. To this day, Junior remains respondent's employee.

OAE disciplinary investigator Greg Kulinich testified that he conducted a demand audit of respondent's attorney records, including client ledger cards. The date of the audit is not identified in the record. Based on Kulinich's review of respondent's client ledger cards and bank records, he concluded that respondent had used trust account funds belonging to certain clients to cover expenses for other clients.

Kulinich observed many irregularities with the client ledger cards. First, some of them appeared to have been prepared contemporaneously with the OAE's request for their production rather than on the date the actual transactions were recorded on the cards. For example, the entries appeared to have been written in the same handwriting with the same pen; some dates were out of sequence; and other "basic errors" were made.

Respondent testified that, although his goal was for the entries to be contemporaneous to the event, that goal was not always met

because "there weren't enough hands to do it." Respondent explained that, between 2005 and 2007, he had to downsize the firm because business had slowed. Although, at the time, respondent had been aware of the firm's precarious financial condition, he "kind of depended on [Junior] because [respondent] was preoccupied with court appearances, litigation and [his] illnesses." As it turned out, the firm's financial difficulty was "more serious" than respondent had known because his staff had "misrepresented a lot of what was going on with the business."

When Ferreira became office manager, in 2011, she was assigned the task of updating and handling client ledgers, which had not been maintained since 2007, when the former office manager, Millary Serrano, left respondent's employ. Ferreira testified that, on occasion, she was required to re-write an entire ledger card, due to damage, for example. Thus, she reasoned, those cards with entries that appeared to have been entered all at the same time could have been cards that she had redone.

The second irregularity with the client ledger cards that Kulinich observed was that "many" trust account disbursements in various client matters were made prior to the firm's receipt of settlement checks in those cases. This was problematic, according to Kulinich, because the use of trust account funds to pay expenses in

one client matter, prior to the deposit of settlement monies in that case, results in the invasion of other client or trust funds.

Ferreira explained the order of the payments and disbursements on the cards. She testified that, on each client ledger card, space would be left at the top for the recording of the settlement, when one was reached and the check was received and deposited. In the meantime, underneath that space, the costs would be recorded as they were paid.

Although Kulinich did not address the issue, we note that, in many cases, the check number recorded next to the disbursement does not correspond to the general sequence of trust account checks paid during a given month. For example, the Alecia Kibunja ledger reflects an October 28, 2008 disbursement (check number 1529) to the Hudson County Sheriff in the amount of $24.64. The trust account statements for October and November 2008 do not reflect the payment of $24.64 via check number 1529 or any other check number. Although the Sheriff's Office may not have deposited the check within those two months, the trust account checks that were paid by the bank in October 2008 ranged in number from 2035 to 2100. In November 2008, the range was from 2013 to 2150. It is highly unlikely, therefore, that check number 1529 was a trust account check.

In addition, in the Rivers matter, $24.73 was disbursed on February 18, 2010 by way of check number 2063. The trust account

bank statement for the month of February 2010 does not reflect the payment of this check. Instead, the trust account checks paid that month ranged in number from 2712 to 2993.

Kulinich further observed that respondent's ledger cards were not typical trust account ledgers. They did not contain a running balance; there was no ending balance, reflecting either that the matter had been zeroed out or that some funds remained in the trust account; and the disbursements preceded the receipt of the corresponding funds, whereas, the usual trust account ledger is opened for the client when the funds are received by the firm, after which, disbursements are made and recorded on the ledger.

Third, Kulinich uncovered trust account disbursements for respondent's personal and business expenses. For example, respondent's August 2010 trust account bank statement reflected electronic transfers from that account for the payment of a PSE&G bill and an insurance premium, which Kulinich considered to be either personal or business expenses. Kulinich explained that personal expenses cannot be paid directly from the trust account, which should hold only client funds, with the exception of $250 to cover bank charges.

On this point, respondent agreed that funds were removed from the trust account to pay personal and business expenses, including car payments, but believed that there was nothing wrong with that

because the funds represented attorney fees that had not yet been transferred to the business account. Respondent testified that he "never knew that attorney fees could not stay in [the trust] account."

According to respondent, prior to the disbursement of funds from the trust account, he confirmed with Junior that the account held attorney fees against which he could issue a check. Respondent authorized disbursements from the trust account only after receiving such confirmation.

Fourth, Kulinich testified that some clients' settlements were disbursed to them "well beyond the date that the settlement check was received" by respondent's firm. In most cases, Kulinich claimed, months would pass between the firm's deposit of the settlement monies into the trust account and the disbursement of the client's share of the proceeds. As shown below, respondent claimed that the delayed payments actually benefited the clients.

We turn now to the individual counts of the complaint.

Count One - Jeffrey Cacho

Respondent's records did not include either a client ledger card or a settlement statement for the Jeffrey Cacho matter. Moreover, the file itself "was not available." Thus, Kulinich relied on some notes regarding the Cacho case that respondent had provided to the

OAE. According to those notes, on December 11, 2006, respondent received a $40,000 settlement check in the Cacho matter. The record does not reflect the date that the check was deposited into respondent's trust account.

Respondent's notes showed that Cacho was entitled to $27,373 of the settlement monies. Yet, it was not until March 6, 2009, more than two years after respondent had received the $40,000 settlement check, that trust account check number 2292, in the amount of $34,800, was issued to Cacho, who collected it on that date.

Eight months later, on November 24, 2009, Cacho picked up trust account check number 2633, in the amount of $2,700, issued on that date. The check contained the notation "balance of settlement." Thus, Cacho received $10,127 more than the $27,373 to which he was entitled.

Respondent testified that the payment of Cacho's share of the settlement proceeds was delayed because, when the settlement check was received, in December 2006, the firm could not locate him. The firm did not learn of Cacho's whereabouts until early 2009, when Cacho contacted the firm, from prison, and inquired about the status of his settlement.

As it turned out, Cacho's monies were spent prior to his contact with the firm from prison. Between December 2006 and March 6, 2009, $27,373 of the Cacho settlement monies should have remained intact in

respondent's trust account. They did not. For example, on February 4, 2009, the trust account balance was -$1,015.45. The next day, the balance was -$1,550.45.

Respondent admitted that Cacho's funds were used for purposes unrelated to him or his case, without his consent. Indeed, we note that respondent agreed with the factual accuracy of Kulinich's testimony regarding all clients' funds and their depletion. However, he denied that he had knowingly misappropriated the monies.

Rather, respondent testified that, at the time Cacho inquired about the status of his settlement, Junior was in control of the trust and business accounts. When respondent asked Junior about Cacho's monies, Junior replied that "there was a problem because the funds weren't available," which respondent confirmed after his own review of the trust account. Thus, contrary to respondent's claim that he did not know of Junior's wrongdoing until he heard his clients testify at the 2010 ethics hearing, respondent had direct knowledge of Junior's misuse of more than $27,000 in client funds in early 2009. The record is silent as to what happened to those monies.

Respondent, who "wanted to know what happened," discussed the matter with Junior. The details of their conversation were not disclosed at the hearing. Respondent testified only that Junior had assured him that it would "never happen again." When asked what

steps he took to determine what had happened to the Cacho funds, respondent answered: "I spoke to [Junior]. And I spoke to [Ferreira]. And this can't happen. You can't do this." When asked if that was all he did, respondent answered "[t]hat's all that I could recall."

At some point, however, respondent visited Cacho in prison and told him that the funds had been taken, without respondent's knowledge or consent, and that he did not know what had happened to them. Cacho then asked respondent to hold his monies until he was released from prison.

At oral argument before us, respondent initially shed little additional light on the event. When pressed for specifics about his discussion with Junior, he maintained his position that he could not recall exactly what was said. Respondent was able to inform us, however, that the conversation involved little more than that he let Junior know "the seriousness and level of the problem," that he thought Junior understood the problem, that Junior promised "it would not happen again," that Junior seemed sincere, and that respondent believed Junior.

Eventually, respondent informed us that, during that conversation with Junior, he explained to Junior the difference between the trust and business accounts. He instructed Junior that the monies in the trust account were "just for the clients" and that

they were "entrusted for the clients." As a result of this conversation, respondent believed that he and Junior had an understanding "that that shouldn't happen."

When confronted with the fact that, if, after this conversation, respondent had reviewed the accounts, he would have detected that Junior continued to use clients' funds for disbursements unrelated to those particular client matters, respondent stated that he did not realize there "continued to be a problem" because Junior would always show him how well the firm was doing financially.

Based on the above, we are left with a record showing that, after the discovery of the missing Cacho funds, in February 2009, respondent did not conduct an investigation into what had happened to Cacho's monies; he did not take control of the trust account from Junior; he did not alter Junior's authority within the firm; he did not change Junior's duties; he did not train Junior in the proper handling of the trust and business accounts; he did not supervise Junior; and he did not review the firm's records, going forward, to confirm that Junior was no longer invading client funds. Everything remained the same.

Junior's promise to respondent that the unauthorized use of client funds for purposes unrelated to that client matter would "never happen again" was empty because, as time went on, he continued to invade other client funds, up through 2011.

We are troubled that, despite respondent's claim that Junior was responsible for the invasion of funds, during the OAE's investigation, he mentioned nothing of Junior's role in the misuse of client monies. Rather, at his OAE interview, respondent described the Cacho shortage as "shocking" and characterized the missing funds as a product of "[p]oor recordkeeping." He said nothing of Junior and his role in the invasion of the funds. Indeed, respondent admitted to the special master that he did not reveal "the whole truth" when he failed to tell the OAE that Junior was paying bills and personal expenses out of the trust account.

At the disciplinary hearing, respondent testified that, due to several illnesses in the 2000s, he had been unable to adequately supervise his staff. He detailed his health history, beginning with a heart attack in 2000, which required the insertion of a stent or two. Concurrently, he was being treated for hypertension and ulcers.

The years 2005 and 2006 were particularly difficult for respondent. In 2005, he was diagnosed with diabetes, after he had gone into diabetic shock. He was catheterized for six months. In that same year, respondent had four surgeries, two of which involved the removal of gallstones and kidney stones. He was taking medication to treat the diabetes and hypertension, to prevent atherosclerosis, to reduce the size of his prostate, to increase his urination, and to prevent cancer, as he had a high PSA score.

In 2006, respondent was admitted to the hospital on at least two occasions due to "out of control" blood pressure. He received another stent. Respondent believed that he may have been admitted to the hospital again in 2007.

From 2008 until 2010, respondent had no serious medical incidents that required hospitalization, although he continued to struggle with high blood pressure. He was actively working at that time and maintaining a regular schedule at the office. Junior continued to run the firm and handle the financial aspects of its operation. Respondent trusted him.

Respondent testified that, although Junior conferred with him about financial matters, Junior "wasn't always truthful in terms of what was going on" and made misrepresentations to respondent. Respondent acknowledged, however, that, ultimately, he was responsible for the decisions that were made. He explained: "Whatever [Junior] did, he was my agent and I would admit it's my responsibility."

Respondent received two more stents, in 2010 and 2013. As of his July 10, 2014 testimony, respondent was taking eleven medications a day.

With respect to Cacho's funds, respondent testified that the delay in the client's receipt of his share of the settlement proceeds had inured to his benefit, even in the face of their earlier

invasion. Respondent explained that, after he had learned of the invasion of Cacho's funds, he agreed to waive his attorney fee and turn those monies over to the client, in addition to the client's share of the settlement. This resulted in Cacho's receipt of an additional $10,127 in settlement proceeds to which he was otherwise not entitled.

Count Two – Alecia Kibunja

The Kibunja case settled for $12,500. The February 16, 2009 settlement check, payable to respondent and Kibunja, was deposited into the trust account three days later. Kibunja's share of the settlement, $2,668, was not disbursed to her until September 15, 2009, when trust account check number 2545 was issued to her, with the notation "sett proceeds." The check was paid on September 16, 2009.

Kulinich testified that, between February 19, 2009 and September 16, 2009, the trust account should have held $2,668 for the benefit of Kibunja. Yet, on August 12, 2009, the trust account balance fell to -$32.40.

According to Kulinich, the client ledger card for Kibunja reflected "a few disbursements" that were made before the firm's receipt of the $12,500 settlement check in February 2009. For example, on November 5, 2003, $45 was advanced for the payment of a

title search. As previously noted, nearly five years later, on October 28, 2008, a $24.64 check was issued to the Hudson County Sheriff. In an undated entry, $3,997 was disbursed to respondent, in payment of attorney fees.

As with Cacho, respondent initially told the OAE that the shortage was due to "an error" on his part. At the hearing, however, he placed blame on Junior for the Kibunja shortage, stating

> Respondent recalls that [Junior] had access to all the accounts and relied upon settlement deposit balances to authorize payments. He took money from any account that had sufficient funds to pay office expenses so that Respondent would not be alerted about shortages and to avoid stress because he was concerned about Respondent's health.
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> [3T22-21 to 3T23-3.]

Respondent explained that the disbursement of Kibunja's share of the settlement proceeds was delayed because (1) respondent had recently down-sized his office staff, resulting in the misplacement of her file for a time, and (2) she had no health insurance, which required that her medical expenses be "negotiated and reduced." He claimed that the delay had inured to Kibunja's benefit because the time spent compromising her medical expenses resulted in her receipt of an additional $1,500, despite the $4,000 in loans that the firm had granted to her during the pendency of the claim. Respondent also acknowledged, however, that, if Kibunja had demanded payment of her

share of the proceeds on August 12, 2009, for example, he would have been unable to pay her any funds at that time. He conceded that the delay also benefited his firm, which had the use of the client's money.

With respect to the $4,000 in loans extended to Kibunja, respondent adopted, as his testimony below, the contents of two affidavits, submitted by him and by Ferreira, detailing the loans, which had been extended to Kibunja during the pendency of her personal injury action, thus reducing to $2,668 the amount she would have been otherwise entitled to receive from the settlement proceeds. According to Kulinich, loans to clients, made prior to the receipt of their settlement monies, are problematic because lending funds from the trust account also may invade other client or trust funds.

We questioned respondent about the $4,000 advanced to Kibunja as "loans." Although respondent claimed that Junior had made the decision to lend Kibunja the funds, respondent approved the advances and signed the checks.

Count Three – Cornelius Davis

Cornelius Davis' case settled for $15,000. The April 7, 2010 settlement check, payable to respondent and Davis, was deposited into respondent's trust account on April 14, 2010. Davis' share of the settlement was $2,132, which was not disbursed to him until September

9, 2010. On that date, trust account check number 3068, in the amount of $2,132, was issued to Kenneth Harris,[6] with the notation "Cornelius Davis."[7] The check was cashed on September 10, 2010.

Kulinich testified that, between the deposit of the $15,000 settlement check into respondent's trust account, on April 14, 2010, and the payment of the trust account check issued to Harris, on September 10, 2010, the trust account should have held $2,132 inviolate for Davis. Yet, on April 21, 2010, only one week after the deposit, the trust account balance was only $263.29.

Kulinich also testified that the Davis client ledger card reflected "some disbursements" for expenses that were made prior to respondent's receipt of the April 2010 settlement check. For example, on July 20, 2008, $32.51 was disbursed for the acquisition of copies of emergency room records. The next entry, which is undated, is $200, presumably representing the fee for the filing of a

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[6] Kenneth Harris was a non-payroll employee of respondent. When a client did not have a bank account or a proper form of identification, his or her settlement proceeds would be paid in the form of a trust account check issued to Harris, who would cash the check and give the funds directly to the client. Respondent testified that Harris never turned the funds over to respondent and that Harris did not cash checks on respondent's behalf.

[7] The client ledger card showed the disbursement having been made directly to Davis on September 8, 2010.

complaint. On April 29, 2009, a $5 disbursement was made to the New Jersey Department of State "for a search." Further, the card reflects an undated disbursement of $4,816 in attorney fees with no corresponding trust account check number.

With respect to the trust account shortage, respondent told the OAE, during his interview, that he did not have "an excuse or reason to explain it away, other than not keeping a log of what the balances in the trust account [sic], either daily or a monthly or weekly." At the hearing, he testified:

> Respondent did not knowingly misappropriate Mr. Davis' funds. If funds were used without Respondent's knowledge or consent, it was because [Junior] had access to all the accounts and relied upon settlement deposit balances to authorize payments. Again, . . . [Junior] approved payments from any account that had sufficient funds to pay office expenses so that the Respondent would not be alerted about shortages and to avoid stress because he was concerned about Respondent's health [sic] for identification in Exhibits R-9. Again, Respondent refers also to the medical records from the medical providers as previously stated as mitigating circumstances.
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> [3T25-6 to 17.]

As with the Kibunja matter, respondent attributed the delay in the disbursement of Davis' settlement proceeds to the "additional time required to negotiate his medical expenses."

Count Four – Eliyphaz Rivers

Rivers' case settled for $9,000. Liberty Mutual's August 2, 2010 check, payable to respondent and Rivers, was deposited into respondent's trust account on August 6, 2010. Rivers' share of the settlement was $4,784.

On September 10, 2010, trust account check number 3064, in the amount of $4,784, was issued to Rivers with the notation "sett proceeds." The check was paid on the date it was issued.

Kulinich testified that, between the deposit of the $9,000 settlement check into respondent's trust account, on August 6, 2010, and the payment of the trust account check issued to Rivers, on September 10, 2010, the trust account should have held $4,784 inviolate for Rivers. Yet, on September 3, 2010, the trust account balance was only $40.69, meaning that the funds held for Rivers had not remained intact.

Moreover, Kulinich stated, just before the $4,784 trust account check was issued to Rivers, five "[r]ather large" deposits were made into the trust account. These five deposits totaled $96,500 and consisted of eleven settlement checks, none of which was issued in the Rivers matter. The deposits were made on the following dates in the following total amounts: $8,000 on September 7, 2010 (two clients); $19,500 on September 8, 2010 (two clients); $10,500 on

September 8, 2010 (two clients); $15,000 on September 9, 2010 (one client); and $43,500 on September 10, 2010 (four clients).

Without the $96,500 in deposits, Kulinich testified, respondent would have been unable to issue the $4,784 settlement check to Rivers. For example, as of August 30, 2010, the trust account balance was only $545.65.

In addition to the trust account shortage, Kulinich testified that the Rivers client ledger card reflected disbursements that were made prior to the receipt of the settlement check. For example, on February 18, 2010, $24.73 was disbursed for the acquisition of copies of medical records. Further, the card reflects an undated disbursement of $2,992 in attorney fees with no corresponding trust account check number.

Respondent addressed only the knowing misappropriation aspect of the Rivers charges, stating

> Respondent did not knowingly misappropriate Ms. River's [sic] funds. If funds were used without Respondent's knowledge or consent, it was because [Junior] had access to all of the accounts and relied upon settlement deposit balances to authorize payments. [Junior] approved payments from any account that had sufficient funds to pay office expenses so that Respondent would not be alerted about shortages and to avoid stress because he was concerned about Respondent's health. For identification see Exhibits 9, R-9. He relied - okay. [Junior] relied on his memory concerning incoming settlement checks without taking into account funds requested by [Ferreira], that too were

> being deducted from the [trust] account . . . as she too prepared checks for Respondent's signature. This problem occurred before Respondent engaged a Certified Public Accountant to assist the office with bookkeeping. Again, Respondent refers also to the medical records from the medical providers as previously stated as mitigating circumstances. And the other mitigating factors mentioned in the previous counts.
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> [3T26-9 to 3T27-6.]

Count Five – Pauline Haskin

Kulinich testified that the client ledger card for Pauline Haskin reflected a $12,000 settlement. Haskin's share was $5,500.

On August 14, 2008, Risk Management, Inc. issued a $12,000 check, payable to respondent and Haskin, which was deposited into respondent's trust account on August 19, 2008, along with another check in the amount of $13,000.

On December 4, 2009, trust account check number 2655, in the amount of $4,000, was issued to Haskin with the notation "sett proceeds" and paid on that date. Nearly a year later, on November 1, 2010, two more trust account checks were issued in the Haskin matter. The first, trust account check number 3132, in the amount of $1,500, was issued to Haskin with the notation "partial settlement." The check was paid on that same date. The second, trust account check number 3133, in the amount of $2,500, was issued to Branford

Chiropractor, with the notation "Pauline Haskins." That check was paid by the bank on December 10, 2010. Both payments were reflected on respondent's client ledger card for Haskin.

According to Kulinich, between August 19, 2008 and December 4, 2009, respondent's trust account should have held, at a minimum, $4,000 for the benefit of Haskin. Yet, on October 31, 2008, the trust account balance was $193.86. In addition, as of September 3, 2010, which was two months before the checks were issued to Haskin and the chiropractor in November of that year, the trust account balance was only $40.69.

Respondent attributed the delay in the disbursement of Haskin's share of the settlement proceeds to (1) a lawsuit between her and her health insurer regarding the payment of her medical bills and (2) the negotiation of a reduction in the amount owed to her chiropractor. In this regard, Ferreira testified that the process could take a day or weeks, although the average timeframe was three to four weeks. On the rare occasion, negotiations could span years. According to Ferreira, the client would always be told that the firm was in the process of compromising the bills.

Respondent denied knowingly misappropriating Haskin's funds. During his OAE interview, he claimed that the trust account shortage resulted from "not keeping a ledger and not being aware of what the balance was in the account, and just writing checks," while, at the

same time, not reviewing the trust account bank statements. Thus, he simply attributed the low balance to a lack of awareness of the trust account balance and "not keeping a ledger."

At the disciplinary hearing, respondent conceded that he did not tell the OAE that Junior was handling the firm's cases and writing the checks that caused the low balances in the trust account. He acknowledged the use of Haskin's funds, but stated that it was without his knowledge or consent. In this regard, respondent offered the same explanation that he had given in the Rivers matter, to-wit, Junior was in charge of the firm accounts; Junior relied only on his memory of settlement deposits in determining what funds were available, without taking into account disbursements against the trust account; Junior approved payments from any account that contained enough funds to pay office expenses; and Junior did this to avoid calling shortages to respondent's attention and creating stress for respondent while he was unwell.

Count Six – Jacqueline Kelsey/Obley

Kulinich testified that respondent's client ledger card for Jacqueline Kelsey reflected a $13,000 settlement. Kelsey's share of the proceeds totaled $5,620.

On August 13, 2008, Progressive Freedom Insurance Company issued a $13,000 check, payable to respondent and to Kelsey and her husband,

Dell Obley. On September 2, 2008, the check was deposited into respondent's trust account.

On November 18, 2008, trust account check number 2108, in the amount of $3,620, was issued to Kelsey and paid that same day. The check contained the notation "settlement proceeds."

Kulinich testified that, between September 2 and November 18, 2008, the $3,620 did not remain intact in respondent's trust account. Specifically, on November 4, 2008, the trust account balance was -$11.14. By November 7, the negative balance had increased to -$510.14.

On November 10, 2008, respondent deposited $9,000 into the trust account, followed by a $7,500 deposit three days later. Both deposits were made in connection with other client matters. Prior to the first deposit, the trust account did not have enough funds to cover the payment of $3,620 to Kelsey.

At the OAE interview, respondent explained the shortage as the result of "[j]ust careless recordkeeping." In addition, he stated that he was experiencing a cash flow problem at the time, due to the change in the verbal threshold law and the real estate market crash. He was forced to downsize his office staff, and "just meeting payroll [was] a problem." Respondent offered: "I borrowed money and did everything I could to stay aboard."

As with the other clients' monies, respondent denied knowingly misappropriating Kelsey's funds and repeated his defense from the preceding matters about Junior's role in the invasion of the monies. Respondent added that he relied on Junior's representations "regarding business bank accounts." Finally, respondent contended that any delay in the distribution of Kelsey's funds had inured to her benefit.

Count Seven – Debra Gardner

According to the Debra Gardner client ledger, her case settled for $17,500. The settlement check, payable to respondent and Gardner, was issued on December 24, 2009, and deposited in respondent's trust account on January 8, 2010. Of this amount, Gardner was entitled to receive $9,907.

Kulinich testified that, on September 16, 2010, trust account check number 3077, in the amount of $9,907, was issued to Gardner, bearing the notation "settlement proceeds." Gardner negotiated the check on September 20, 2010.

Between January 8, 2010 and September 20, 2010, the $9,907 did not remain intact in the trust account. For example, on February 5, 2010, the trust account balance was -$681.28.

In addition to the shortage, Kulinich testified that Gardner's client ledger reflected disbursements made prior to the deposit of

the settlement check. Kulinich did not identify any particular disbursement. In addition, he stated that the ledger reflected a $5,553 disbursement to respondent for attorney fees, on an unidentified date and without reference to a corresponding trust account check number.

During respondent's OAE interview, he stated that he did not always sign the trust account checks. On occasion, either Junior or the "secretaries" signed them, a practice that the bank eventually stopped. With respect to the $9,907 trust account check issued to Gardner, respondent told the OAE that, when he signed it, he "assumed" the trust account held the funds, although he was not certain.

At the disciplinary hearing, respondent denied the knowing misappropriation of Gardner's funds. He repeated the explanation from the preceding counts and asserted that any delay in the disbursement of Gardner's share of the settlement proceeds had inured to her benefit.

Count Eight – Rosa Guzman

On July 22, 2010, State Farm Indemnity Company issued a $25,000 check, payable to respondent and his client, Rosa Guzman. The check was deposited into the trust account on July 26, 2010 and recorded on

the client ledger card. Guzman's share of the settlement proceeds was $12,845.79.

Guzman was paid her portion of the settlement in two payments. The first payment was made via trust account check number 3117, dated October 14, 2010, in the amount of $6,445.79. That check was paid on October 19, 2010. The second payment was made via trust account check number 3116, dated October 15, 2010, in the amount of $6,400. That check was paid on October 15, 2010.

Between July 26, 2010 and October 15, 2010, the $12,845.79 did not remain intact in respondent's trust account. For example, as of September 3, 2010, the balance in that account was a mere $40.69.

Respondent testified that, as with the other clients, "additional time was needed to negotiate and reduce Ms. Guzman's medical bills arising out of this accident." Respondent denied that he had knowingly misappropriated Guzman's funds. He repeated the same explanation and defenses, in addition to claiming that Guzman had actually benefited from the delayed distribution of her share of the settlement monies.

Count Nine – Alfreda Stith

Alfreda Stith's client ledger card reflected a $12,500 settlement received from Peerless Insurance. The June 24, 2009 settlement check, issued by Peerless to respondent and Stith, was

deposited into respondent's trust account on June 30, 2009. Although the client ledger card showed that Stith was entitled to $4,384 of the settlement proceeds, she was paid only $3,884. A trust account check was issued to Stith, on September 16, 2009, and paid by the bank the following day.

In addition to the $3,884 check to Stith, a $2,750 trust account check was issued to Oasis Legal Finance on September 12, 2011, with the notation "Alfreda Stith." According to Kulinich, Oasis Legal Finance held a lien that was satisfied "possibly [as] a pre-settlement arrangement." The check was paid on September 26, 2011.

Kulinich testified that, between June 30, 2009 and September 17, 2009, respondent's trust account should have held $3,884 inviolate, for the benefit of Stith, and $2,750 inviolate for the benefit of Oasis Legal Finance. Yet, as of August 12, 2009, the trust account balance was -$32.40. Thus, if Stith had requested payment of her portion of the settlement proceeds at that time, respondent would not have been able to pay those funds from the trust account.

Respondent denied the knowing misappropriation of Stith's monies. He offered the same explanation as he had in all preceding charges, that is, Junior was responsible for the shortage, of which respondent was unaware. Moreover, respondent claimed that the delay in the disbursements of Stith's monies had inured to her benefit.

Count Ten – Raymond Dandridge

Kulinich testified that Raymond Dandridge's client ledger card reflected the firm's receipt of a $13,000 settlement from New Jersey Manufacturers. The July 1, 2009 settlement check was issued to respondent and Dandridge and deposited into the trust account on July 13, 2009. According to the ledger, Dandridge was entitled to $7,467 of the $13,000 settlement.

On September 16, 2009, trust account check number 3383, in the amount of $7,467, was issued to Dandridge, with the notation "settlement." The check was paid two days later.

Kulinich testified that, between July 13 and September 18, 2009, the $7,467 did not remain intact in respondent's trust account. For example, on August 12, 2009, the trust account balance was -$32.40.

Respondent testified that, when the Dandridge settlement check arrived, in July 2009, the client was out of the country and asked that the funds be held until he returned. Presumably, this testimony was offered to explain the delay in the disbursement of Dandridge's portion of the settlement proceeds.

Respondent also denied that he had knowingly misappropriated Dandridge's funds, incorporating his explanation and defenses from the preceding counts.

Count Eleven – Torrence Devaughn

Respondent's ledger card for Gwendolyn Devaughn reflected the firm's receipt of a $17,500 settlement. Although the July 10, 2009 settlement check, payable to respondent and Torrence Devaughn,[8] was deposited into the trust account on July 21, 2009, trust account disbursements had already been made in that client matter. For example, on June 1, 2007, $200 was disbursed, which, presumably represented the filing fee for the civil action complaint. In 2008, two payments, totaling $1,750, were made to Rick Sayeh, MD, for "report." In addition, there is an undated disbursement, with no corresponding trust account check number, to respondent for $5,403 in attorney fees.

On September 14, 2010, trust account check number 3070, in the amount of $8,506, was issued to Torrence Devaughn, marked with the notation "sett proceeds." The check was paid the following day.

According to Kulinich, between July 21, 2009 and September 15, 2010, respondent's trust account should have held inviolate $8,506 for the benefit of Devaughn. Yet, on August 12, 2009, the trust account balance was -$32.40.

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[8] The reason the check was payable to Torrence, rather than Gwendolyn, is not evident in the record.

Kulinich testified that, just before the July 21, 2009 deposit of the $17,500 Devaughn settlement into respondent's trust account, respondent had executed a consent to enter judgment in favor of his landlord, Premier Properties, LLC, which leased respondent's office space to him. The judgment required respondent to pay $12,000 to Premier Properties "on or before Friday, July 31, 2009," in addition to $3,257.18 by August 17, 2009, and another $3,257.18 by October 15, 2009. Respondent's payments to Premier Properties will be discussed in further detail below.

As stated previously, the $17,500 settlement check in the Devaughn matter was deposited into the trust account on July 21, 2009. On July 29, 2009, respondent issued trust account check number 2524, in the amount of $12,000, to Premier Properties, in satisfaction of the $12,000 due under the consent judgment no later than July 31, 2009.

On July 9, 2009, the date the consent judgment was entered, the trust account balance was less than $10,000. On July 20, 2009, the day before the $17,500 deposit of the Devaughn settlement check, the trust account balance was $1,438.61. By July 29, 2009, the trust account balance had increased to more than $28,000.

At the hearing, respondent repeated the rote explanation and defenses asserted in all previous matters.

Count Twelve – Rosia Darling

Rosia Darling's client ledger card reflected an $8,500 gross settlement. On July 25, 2009, the Insurance Company of the State of Pennsylvania issued a check to respondent and Darling. The check was deposited into respondent's trust account on July 28, 2009.

On September 18, 2009, trust account check number 3387, in the amount of $2,202, was issued to Darling, who cashed it that same day. The check contained the notation "settlement." Between the date that the settlement check was deposited into the trust account and the date the check was issued to Darling, the $2,202 did not remain intact. For example, on August 12, 2009, the trust account balance was -$32.40.

It bears noting that the $8,500 check was deposited into the trust account just before the $12,000 payment to Premier Properties, respondent's landlord, under the July 2009 consent judgment was due. That payment, of course, bore no relation to any particular client matter.

Respondent repeated his explanation and defenses to the special master, adding that Darling's delayed disbursement had benefited her.

Count Thirteen – Marlon Waite

The client ledger card for the Marlon Waite matter reflected a $7,500 gross settlement, of which $4,700 represented Waite's portion.

On November 24, 2010, Allstate issued a $7,500 check, payable to respondent and Waite. That check was deposited into respondent's trust account on December 3, 2010. One week later, respondent took a $2,500 fee in the matter.

On February 25, 2011, trust account check number 3285, in the amount of $4,700, was issued to Waite, with the notation "sett proceeds." The check was paid on that same date.

Between the deposit of the $7,500 settlement check, on December 3, 2010, and the payment of the $4,700 trust account check issued to Waite, on February 25, 2011, the $4,700 was not held inviolate in the trust account. For example, on December 24, 2010, the trust account balance was -$755.16.

Once again, respondent blamed Junior and declared that Waite had benefited from the delayed payment of his settlement monies.

Count Fourteen – Troy Adams

The Troy Adams client ledger card reflected a $15,000 gross settlement. On July 21, 2009, Allstate issued a check, payable to respondent and Adams. The check was deposited into the trust account on July 27, 2009.

Kulinich testified that, prior to the receipt of the $15,000 settlement check, several disbursements were made in the Adams matter. Four of those disbursements were advances to Adams, totaling

slightly more than $2,000. Other disbursements included an undated payment of $1,843.03 on a lien, an undated payment of a $4,773 attorney fee to respondent, with no corresponding trust account check number, and an undated payment of more than $3,000, representing the payment of child support.

Kulinich testified that, for the period encompassing July 29 to September 2009, he never found any trust account checks to support the above disbursements.[9] Moreover, Adams' share of the settlement funds was not held inviolate in the trust account during that time. For example, as with so many other matters, the trust account balance on August 12, 2009 was -$32.40, when, at a minimum, the account should have contained the amount of the child support and the lien.

Respondent mirrored his testimony from the previous matters with respect to Junior's role in the shortage, respondent's medical condition, and the benefit that had inured to Adams as the result of the late payment.

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[9] As will be shown below, the reason Kulinich did not find any corresponding trust account checks for these disbursements is likely that the expenses were not paid from the trust account, but, rather, from another account.

Count Fifteen – Annie Witcher and Bernardo Maldonado

On September 1, 2009, Colony Insurance Company issued a $50,000 settlement check to respondent and Annie Witcher, which was deposited into respondent's trust account on September 10, 2009. On March 25, 2011, trust account check number 3342, in the amount of $5,521, was issued to André Witcher, Executor, with the notation "Annie Witcher." The disbursement was recorded on the ledger card. The check was paid by the bank on March 28, 2011.

On September 15, 2009, Gallagher Bassett Services, Inc., for American Home Assurance, issued a $32,000 settlement check to respondent and Bernardo Maldonado, which was deposited into the trust account on September 18, 2009. On May 24, 2011, trust account check number 3454, in the amount of $16,241, was issued to Maldonado, with the notation "sett proceeds." The check was negotiated on that same date.

Kulinich testified that, between the deposit of the settlement checks in both the Witcher and Maldonado matters and the disbursement of their share of the proceeds, the trust account did not hold their portions intact. On January 7, 2010, for example, the trust account balance was -$44.99.

With respect to Witcher, respondent testified that she had taken out loans against her future settlement and that the loan amount accrued interest amounting to more than her actual settlement. After

Witcher signed the releases, she fell into a coma and died. Her son was administrator of her estate and did not "initially okay the release of her settlement proceeds until an agreement was reached lowering the debt amount."

As with all preceding counts, respondent offered the same defenses and explanations in support of his defense that Witcher's funds had not been knowingly misappropriated.

With respect to Maldonado, respondent testified that the client had requested that his funds not be released to him until he asked for them.

Count Sixteen – Payment of Personal Expenses With Client Funds

Kulinich testified that, during the month of September 2009, the following trust account checks were issued: September 11, 2009, number 2552, to Kenneth Harris, with no notation, for $2,600, which was cashed on that date; September 14, 2009, number 3379, to Premier Properties, LLC, for $8,657.18; and September 14, 2009, number 3400, to respondent, with no notation, for $2,000. The drafts totaled $13,257.18.

In addition, several electronic transfers, totaling $3,122.42, were made from the trust account in September 2009. On September 15, 2009, $307.02 was paid to AT&T; September 16, 2009, $1,493.81 was paid to Volvo Finance, together with a $7 fee;[10] on September 17, 2009, $810.20 was paid to Litton Mortgage; on September 18, 2009, $471.49 was paid to Prem Drive NJ Insurance; and on September 22, 2009, $32.90 was paid to AOL.

Also, in September 2009, two trust account checks, totaling $6,822.65, were issued in the following client matters: check number 3389, September 18, 2009, to Marvin Outlaw, for $3,245.65, with notation "3rd prty. settlement," cashed on September 21, 2009; and check number 3391, dated September 21, 2009, to Emmanuel Antive, for $3,577, with notation "settlement proceeds," cashed on September 23, 2009.

Kulinich testified that, between July and September 2009, respondent should have been holding the following amounts for the following clients:

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[10] According to Kulinich, the Volvo payment was for respondent's personal vehicle.

CLIENT	PROCEEDS
Cacho	$2,700
Kibunja	$2,668
Haskin	$8,000
Stith	$3,884
Dandridge	$7,467
Devaughn	$8,506
Darling	$2,202
Adams	$6,904
TOTAL	$42,331

[1T106;Ex.P142.][11]

According to Kulinich, the above chart did not reflect "all the names and we don't have everything in there." Nevertheless, the above funds were monies that the clients "should have received in their settlement" and represented the minimum amount that the trust account should have held during that time.

Between July 31 and September 9, 2009, the trust account balance, at a minimum, should have been $42,331. Instead, the trust account was short in the following amounts, on the following dates, during that time, because respondent used client monies to pay multiple personal expenses:

DATE	BANK BALANCE	MINIMAL
7/31/2009	$8,179.42	($34,151.58)
8/07/2009	$3,574.42	($38,756.58)

[11] "1T" refers to the transcript of the June 25, 2014 hearing before the special master.

8/12/2009	($32.40)	($42,363.40)
8/18/2009	$7,661.11	($34,669.89)
8/21/2009	$1,719.69	($40,611.31)
8/28/2009	$957.11	($41,373.89)
9/01/2009	$927.11	($41,403.89)
9/09/2009	$1,080.37	($41,250.63)

[1T107-1T108;1T113;Ex.P143.]

Between July 3 and September 5, 2009, thirty-eight trust account checks, totaling $39,110.01, were issued, in payment of expenses unrelated to client matters. They include thirteen checks to non-payroll employee Kenneth Harris, in even dollar amounts, ranging from $200 to $2,000, and totaling $13,600; six checks to Capital One, in even dollar amounts, ranging from $300 to $500, and totaling $3,300; three checks to United Healthcare and Horizon Blue Cross/Blue Shield of New Jersey, totaling $1,452.22; two checks to Premier Properties, totaling $15,257.18; two checks to Verizon, totaling $1,209.09; a $439.02 check to Lexis-Nexis; a $924.04 check to Orange Water Services; a $720 check to LA Parking; and a $240 check to the New Jersey Lawyers' Fund for Client Protection.

According to Kulinich, the trust account shortages during this period were caused by these checks. Moreover, none of the above payments could be traced to a client matter. Further, the payments to Capital One, plus the rent to the landlord, utility payments, and health insurance premium payments, "would be odd coming out of a

trust account" because such expenses should be paid out of either the attorney business account or another account.

With respect to the electronic transfer of trust account funds, Kulinich highlighted all debits for the payment of respondent's individual obligations for the year 2009. For example, in January 2009, $14,093.81 was paid to Volvo; $111 to Verizon; $3.50 to "bill matrix;" a $536.20 payment for what appears to be car insurance; another $500 payment to Verizon; a $1,447.21 payment to Linton Management; "and some minimal payments." He highlighted other debits that had occurred throughout the year, noting that they, too, represented multiple personal payments.

Kulinich concluded his testimony by stating that the $42,000 in client funds that should have been held inviolate were not available because those monies were used, at least in part, to make multiple personal payments on respondent's behalf.

We asked respondent about the electronic transfers from the trust account to respondent's personal creditors. He claimed that, at the time, that is, September 2009, Junior had the authority to make such transfers. Moreover, at the time, Junior also took care of paying respondent's personal expenses and controlled respondent's personal checkbook. Unlike Junior's practice of reviewing with respondent the firm's bills that had to be paid, when it came to respondent's personal expenses, Junior acted without consulting him.

Based on this record, the first evidence of misappropriation of client funds occurred in November 2008, when the trust account balance was -$11.14. Respondent's testimony was inconsistent with respect to whether he even saw his attorney bank statements during the years 2008 and 2009. It is clear, however, that he did not review them, "[m]ost times," because the incoming mail went to either Ferreira or Junior first, and "there were things that they kept away from me." Thus, respondent claimed, during the 2008-2009 period, he never realized that the trust account had had a negative balance.

With respect to the Premier Properties payments from the trust account, respondent testified that, at some point, he owed $25,000 in arrears, leading to the entry of a consent judgment on July 9, 2009. Junior participated in the making of the agreement.

When the payments, pursuant to the judgment, were scheduled to be made, respondent confirmed with Junior that funds were available in the business account. He claimed that, in general, when he asked, Junior would say that a case had just settled but that the funds (presumably, the attorney fees) had not yet been transferred and, thus, the payment could be taken "out of this account or . . . that account."

With respect to trust account check number 2524, dated July 29, 2009, payable to Premier Properties, in the amount of $12,000, respondent asked Junior whether there were sufficient funds to cover

that payment; Junior replied affirmatively, asserting that the funds were available in either the trust account or the business account. Respondent could not identify which fees were in the trust account at the time, claiming that he would "[j]ust ask my nephew if funds were available." He did not confirm the availability independently, and he had no idea which clients had received settlements from which he had received an attorney fee.

Given the volume of respondent's business, "it's just not conceivable that you could keep track of all those things in your mind." Junior, on the other hand, "had a better handle on . . . what cases got settled because he was settling most of the cases." Thus, Junior "had a better handle on where funds were, as far as the accounts were concerned."

Respondent claimed that his knowledge of which funds in the trust account belonged to him and which belonged to his clients was based on the settlement statements, not a review of the bank account statements. Although respondent reviewed the settlement statements, he explained:

> I said most of the time there was a time when I did all of them. However, there also became a time when [Junior] took over a lot of the things going on [sic] the office, things going on with the operations of the office. There were times when it was just he and I. And I was, you know, writing briefs and going to court. And dealing with clients. And so he

> became more resourceful and I kind of depended and relied, you know, on him.
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> [2T80-23 to 2T81-6.][12]

Respondent's medical issues also caused him to rely on Junior. When the back-rent checks were issued, in 2009, respondent suffered from hypertension and diabetes.

Respondent's attention was drawn to the July 2009 trust account statement. He denied having any knowledge of the more than $70,000 in deposits that month, all of which were made prior to the issuance of the $12,000 trust account check to Premier Properties on July 29. He was not aware of what funds the firm received at the time because "I have staff and that's what their jobs were," in addition to an accountant. He insisted that, in 2009, he had no idea how much money he was making on either a weekly or monthly basis.

The next payment to Premier Properties was made via an August 18, 2009 trust account check in the amount of $3,257.18, which was issued one day late. Respondent prepared and signed the check.

Respondent conceded that, five days before the check was issued, the trust account balance was only $1,432.60. Moreover, on the day

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[12] "2T" refers to the transcript of the July 10, 2014 hearing before the special master.

before the check was issued, that is, August 17, 2009, $8,000 was deposited into the trust account. Yet, he claimed that, when he wrote the check to Premier Properties, he did not know the balance in the trust account and he had no idea that $8,000 had just been deposited the day before. Said respondent: "More likely than not I went to my nephew, were the funds available." Moreover, Junior "probably" brought the need for the payment to respondent's attention more so than respondent bringing it to Junior's attention because either Junior or Ferreira were paying the bills. Respondent continued: "He paid the bills. That was his job as operation [sic] manager to pay the bills and let us know approve [sic] payments."

When respondent was asked whether he had given Junior "complete authority to handle all these matters," he answered "yes." Respondent stopped short of admitting that he had relinquished all responsibility for the trust account to Junior, acknowledging that he "still had the ultimate responsibility."

Respondent testified that, although he relied on Junior to take care of the Premier Properties payments, "there were instances where [respondent] did check the account." He offered, as an example, the Cacho matter. We note, however, that respondent reviewed that ledger only to confirm that the client's monies were gone.

Respondent also issued and signed the September 14, 2009 check to Premier Properties in the amount of $8,657.18. Respondent

acknowledged that, on September 10, 2009, $50,000 was deposited into the trust account. He did not know which client that deposit represented.

The $8,657.18 was paid to Premier Properties a day early, but the amount owed was only $3,257.18. Respondent could not explain why the extra $5,400 was included in the payment. He surmised that he had either asked Junior "what should we do" or Junior approached respondent and said "you ought to do this." Regardless, respondent would have authorized the $8,000+ payment based on Junior's representations and recommendation, specifically that $8,000 was owed and that "funds were available to pay that amount." Respondent did nothing to confirm Junior's representations. He had no idea how much in client funds or attorney fees were in the trust account. He explained:

> [I]t's my nephew's responsibility. I delegated that responsibility to him. Okay. He comes to me and says got to pay the rent check. Da, da, da da. I pay the rent check.
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> [2T97-10 to 13.][13]

[13] We note that an attorney's recordkeeping responsibilities are non-delegable. In re Barker, 115 N.J. 30, 36 (1989) ("An attorney cannot avoid his responsibility by claiming reliance on his or her staff").

Respondent also stated that, when Junior was in charge of paying the bills, Junior did not distinguish between the trust and business accounts but, rather, would check the bank statements and pay the bills from whichever account held enough funds to cover the payments. When respondent was to authorize the preparation of a large trust account check, he would rely on his staff to tell him how much was in the account.

Instead of calling Junior to testify about his involvement with the firm's finances, respondent chose to speak for Junior, stating:

> [Junior] had access to back [sic] statements and balances and all accounts, trust business and personal from 2006 until 2011, when he was told of the serious breaches in handling the finances and that he could no longer have anything to do with the checking accounts.[14] He did not have access to client ledgers and relied upon settlement deposits, balances to authorize payments. He would take deposits to the bank and take all checks to Respondent for signature at this [sic] office and hospital or at home. He took money from any account that had a sufficient balance to pay office expenses and personal bills so that Respondent would not be alerted about any possible shortages in his personal or business accounts and was not aware of the ethical consequences of his conduct.

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[14] Despite respondent's knowledge, in early 2009, that Junior's handling of the trust and business accounts had resulted in the invasion of client funds, respondent continued to permit Junior to handle those accounts until 2011.

> He was concerned about Respondent's health and attempted to avoid any stress for fear of another heart attack. As operations manager, [Junior] had paid the office rent, made [sic] medical bills, mortgage at the residence where business was conducted also at times, car insurance [sic] which vehicle was used to [sic] in the business and any other bill that became due involving the business.
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> [Junior] also advised Ms. Ferreira that sufficient funds were available on hand to disburse funds. [Junior] no longer has any financial responsibilities in the office. He did not realize that his conduct in deception amounted to unsurmountable ethics problems for Respondent. He believed everything was okay as long as clients got the money. He was wrong and regrets his conduct.
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> [3T15-5 to 3T16-16.]

To be clear, respondent affirmed the content of his answer to the formal ethics complaint, specifically, that client funds were not held intact in the trust account. He agreed that neither he nor anyone in his firm had received permission from any of the clients to use their monies to fund payments unrelated to their matters.

In our effort to better respondent's actions and inaction, he was asked several questions throughout oral argument before us. Based on his answers, we have discerned the following.

First, Junior, who was fifty-one years old and had completed two years of college, had no training in accounting, except for the training that respondent had given him. Based on Junior's

activities, prior to February 2009, as detailed in the record, respondent's training was minimal, at best.

Second, despite respondent's claim that he did not know that Junior was misusing trust account funds -- that is, using those monies to pay expenses in non-client matters -- respondent admitted that, when Junior asked him to sign checks, he knew whether he was signing a trust account or a business account check because the checks were identified as such and they were two different colors.

Finally, respondent explained that he did not call Junior to testify because he feared that Junior's personality and countenance did not make him a good witness. Thus, in respondent's view, Junior's testimony could have made his situation "worse."

On March 3, 2015, the special master issued a seventy-one page report, in which he stated that the clear and convincing evidence established only that respondent had failed to safeguard, and negligently misappropriated, client funds in all sixteen counts. The clear and convincing evidence also sustained a finding that respondent had failed to disburse promptly, to fourteen of his

clients,[15] their portion of the proceeds from the settlement of their personal injury cases.

The special master rejected the OAE's claim that respondent had knowingly misappropriated client funds, either directly or through willful blindness. He could not find that respondent either "had to know" that Junior was mismanaging the trust account or that respondent had "intentionally 'designed' the [firm's accounting] system to insulate himself from knowledge" of Junior's mismanagement of the account. According to the special master, however unreasonable, respondent relied on Junior and Ferreira, neither of whom understood the differences between a trust and business account.

In short, although the evidence established "the deplorable conditions of Respondent's office management and accounting practices," absent was any proof that respondent had "designed such a system in order to hide misappropriations." Rather, his "flawed system was the product of wholly inept office management due to a general lack of knowledge of the correct procedures coupled with both

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[15] Excluded from the affected clients were Cacho (count one) and Dandridge (count ten), both of whom had requested that respondent retain their funds until they requested the monies to be paid over to them.

professional and personal distractions." The special master concluded:

> It appears Respondent's office management and recordkeeping were already flawed and were then compounded by staff layoffs, a greater volume of cases in extended litigation, and Respondent's absence from the office due to his medical conditions. Respondent's shortcomings in account management were further aggravated by Respondent's inexplicable continued trust in Junior.
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> [SMR65.][16]

Finally, the special master believed that respondent's blindness was not willful. In this regard, the special master noted that respondent himself never replenished the trust account, which, in his view, would have demonstrated knowledge on respondent's part.

In aggravation, the special master noted "the multitude of violations and clients involved in this matter." In mitigation, he considered respondent's acknowledgment of "the derelictions and his ultimate responsibility for the actions of his staff," the remedial measures he had taken in altering office procedures to assure these transgressions do not recur, his "extensive medical history," which resulted in "recurrent absences from his office and his failure to

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[16] "SMR" refers to the special master's March 3, 2015 report.

adequately supervise his employees," and, finally, respondent's "professional demeanor" throughout the disciplinary hearing. Consequently, the special master recommended the imposition of a three-month suspension and respondent's participation in continuing legal education classes, "including accounting training."

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. However, we cannot agree with the special master's conclusion that respondent negligently, rather than knowingly, misappropriated client funds. An attorney's willful blindness to his employee's misuse of client funds may lead to the attorney's disbarment for knowing misappropriation. Here, we find that respondent did exhibit willful blindness and, therefore, we recommend his disbarment.

The clients whose funds were allegedly knowingly misappropriated can be placed into four groups. The first group consists of clients whose funds were simply depleted, well before July 2009: Haskin, Kelsey, and Cacho. The $12,000 Haskin settlement was deposited on August 19, 2008; her share of $5,500 had become almost completely depleted by October 2008, when the trust account balance dipped to $193.86. Haskin's share was not disbursed until December 2009 ($4,000 to Haskin) and November 2010 ($1,500 to Haskin and $2,500 to her chiropractor).

The $13,000 Kelsey settlement was deposited into the trust account on September 2, 2008; her share of $5,620 had become fully depleted by November 4, 2008, when the balance dipped to -$11.14. Kelsey's share was not disbursed until later that month and then only after the deposit of $16,500 in other clients' monies.

The $40,000 Cacho settlement was deposited in the trust account in December 2006, and became fully depleted by February 4, 2009, when the balance in that account dipped to -$1,015.45. The client's share was not disbursed to him until March 2009 ($34,800) and November 2009 ($2,700).

The second group consists of clients whose funds were used to pay respondent's personal and business expenses of $39,110.01, between July 3 and September 5, 2009: Kibunja, Stith, Dandridge, Devaughn, Darling, and Adams. These clients' funds were depleted as of August 2, 2009, when the trust account balance had fallen to -$32.40, at a time when it should have held $31,631 for their benefit.

Although, the OAE included Cacho and Haskin in this group, their funds, $2,700 and $8,000, respectively, had been depleted long before July 3, 2009 and, thus, could not have been used to pay any expenses between July and September 2009. Therefore, we have removed those clients from this group.

The third group consists of those clients whose funds were used to make payments owed to Kibunja, Stith, Dandridge, Devaughn, and

Darling. They are Witcher and Maldonado, whose funds, totaling $82,000, were deposited into the trust account on September 10 and 18, 2009, respectively, thus, allowing respondent to pay the settlements in Kibunja ($2,668 on September 15, 2009); Stith ($3,884 on September 16, 2009); Dandridge ($7,467 on September 15, 2009); Devaughn ($8,506 on September 14, 2010); Darling ($2,202 on September 18, 2009); and Adams ($6,904 in liens and fees, payment date unknown).

The final group consists of those clients whose cases were settled in 2010 and whose funds were simply depleted: Gardner, Davis, Guzman, Waite, and Rivers.

The $17,500 Gardner settlement was deposited into the trust account on January 8, 2010; her share was $9,907 and was fully depleted by February 5, 2010, when the balance dipped to -$681.28. Gardner's share was not disbursed to her until September 15, 2010.

The $15,000 Davis settlement was deposited into the trust account on April 14, 2010; his share was $2,132 and, within a week, was almost completely expended, when the balance dipped to $263.29, on April 21, 2010. Davis' share was not disbursed until September 9, 2010.

The $25,000 Guzman settlement was deposited into respondent's trust account on July 26, 2010; her share was $12,845.79 and was mostly depleted by September 3, 2010, when the account balance was a

mere $40.69. Guzman's share was disbursed in two payments in October 2010.

Rivers' $9,000 settlement was deposited into respondent's trust account on August 6, 2010; his share was $4,784 and was mostly depleted on September 3, 2010, when the account balance was only $40.69. Rivers' share was disbursed to him on September 10, 2010, after the deposit of five checks totaling $96,500 within the previous three days. Such was likely the case with the disbursements to Gardner, Davis, and Guzman as well.

The $7,500 Waite settlement was deposited into respondent's trust account on December 3, 2010; his share was $4,700. By December 24, 2010, Waite's share was completely dissipated when the trust account balance dipped to -$755.16. Waite's share was not disbursed to him until February 25, 2011.

In In re Wilson, supra, 81 N.J. at 455 n.1, the Court described knowing misappropriation as follows:

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is "almost invariable,"

> id. at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since Wilson, it has been invariable.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Here, of the various methods by which client funds were misused, we part company with the OAE's conclusion that some clients' funds were used to advance costs in other clients' matters. As shown above, respondent's unorthodox client ledger cards were not traditional ledgers but, rather, served to track all monies regarding

individual clients' cases. They tracked the payment of costs and fees, attorney fees, and third-party liens, in addition to the settlement figure and the amount due to the client. Thus, it cannot be assumed that the advancement of costs came from the trust account, based on these cards alone.

Kulinich testified that the OAE did not obtain client expense ledgers from respondent and it did not produce closing statements. Finally, the check numbers next to the entries recording the payment of expenses do not seem to correspond to the trust account check numbers reflected on the trust account bank statements. Thus, the record lacks clear and convincing evidence that the monies used to pay these expenses came from the trust account, let alone from other clients' funds sitting in the trust account.

The evidence does, however, clearly and convincingly establish that the funds belonging to Kibunja, Stith, Dandridge, Devaughn, Darling, and Adams were used to pay respondent's personal and business expenses from July through September 2009. Respondent's trust account should have held $31,631 for these individuals during that time. Yet, on multiple occasions, between July 31 and September 9, 2009, the balance barely reached $9,000, and on one occasion (August 12, 2009), it was -$32.40. Meanwhile, $39,110.01 in business and personal expenses unrelated to any of these clients' matters were paid from the trust account during that time.

Moreover, the evidence clearly and convincingly establishes that Witcher's and Maldonado's funds were used to pay Kibunja, Stith, Dandridge, Devaughn, Darling, and Adams, all of whom were paid after the deposit of the Witcher and Maldonado settlement checks.

The OAE demonstrated only a shortage in the Haskin, Kelsey, Cacho, Garner, Davis, Guzman, Rivers, and Waite matters. The OAE presented no evidence to support a finding that respondent had used these clients' funds, knowing that the monies belonged to them and that they had not authorized the use of their monies. We remain mindful that knowing misappropriation requires clear and convincing evidence that the attorney deliberately took client funds and used them, knowing that the individual clients had not authorized the attorney to do so. Wilson, supra, 81 N.J. 455 n.1. Thus, the unauthorized use element of knowing misappropriation cannot be established on a simple showing of a shortage in the attorney's trust account. As the Court stated, in In re Konopka, 126 N.J. 225 (1991),

> [w]e insist, in every Wilson case, on clear and convincing proof that the attorney knew he or she was misappropriating. . . . If all we have is proof from the records or elsewhere that trust funds were invaded without proof that the lawyer intended it, knew it, and did it, there will be no disbarment, no matter how strong the suspicions are that flow from that proof.
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> [Id. at 234.]

Again, here, the evidence consisted merely of shortages.

Respondent did admit, however, that, in all cases, client funds were misappropriated without the clients' knowledge or authorization and used for purposes unrelated to the clients or their matters. This admission would be sufficient to establish knowing misappropriation, except that respondent has asserted a defense, which must be examined before respondent's admissions can form the basis for his disbarment.

Respondent testified that his health problems caused him to turn over the business aspect of the law practice to Junior. Junior, in turn, maintained and controlled the trust and business accounts, without supervision on respondent's part. According to respondent, Junior's method of recordkeeping caused the invasions and, further, Junior's desire to protect respondent kept Junior from reporting the problem to him. Thus, respondent was unaware of the shortages in the trust account.

There are several problems with respondent's defense. First, "[t]he burden of going forward regarding defenses to charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C). In this case, respondent, who, throughout the OAE's investigation, mentioned nothing of Junior's role in the missing funds, suddenly pointed the finger at Junior at the disciplinary hearing. Yet, Junior, who was still employed by respondent at the time of the hearing, did not testify. At oral argument before us, respondent

stated that he did not call Junior to testify because Junior would not have been a good witness.

Because respondent did not corroborate his testimony with any evidence that Junior, acting alone, had improperly used trust account funds, we find that he has failed to sustain his defense. In re Toner, ___ N.J. ___ (2010) (attorney intentionally deposited $5,000 in client funds into his business account, instead of the trust account; we rejected the attorney's defense that his secretary had depleted the business account without his knowledge, because he did not corroborate his claim with evidence that she had improperly used business account funds; he was disbarred).

Second, respondent admitted that, in early 2009, he learned that Junior had invaded Cacho's $27,000+. Although respondent claims to have discussed the matter with Junior, he did not relate the specifics of that conversation at the hearing. Moreover, respondent made no mention of anything other than that he told Junior that "this can't happen." He did not take from Junior the duties regarding the trust account. More importantly, he made no effort to teach Junior how to handle the trust account properly and within the bounds of R. 1:21-6 beyond his claim, asserted for the first time at oral argument before us, that he had specifically explained to Junior the difference between the trust and business accounts, that is, the trust funds were only for the clients, and that Junior "couldn't use

them." Despite this instruction, the record reflects that Junior continued to use trust account checks to make payments for non-clients, specifically for respondent's bills, and that respondent continued to sign the checks evidencing those payments.

What troubles us greatly in this regard is that respondent must have been aware of Junior's continued misuse of trust account funds because respondent signed the checks, and respondent knew whether any given check was a trust account check or a business account check because the checks were marked as such and were of different colors. Moreover, despite respondent's knowledge that Junior's way of doing things had caused the invasion of at least one client's funds, he conducted no investigation into what had happened to those monies and whether other clients' funds had been invaded as well. Moreover, going forward, he never checked Junior's work, the bank statements, the ledgers – anything – to ensure that things had actually changed and that client funds were now safe. Instead, he continued to rely on Junior and to sign any check that was presented to him.

Respondent's failure to implement any meaningful changes to his firm's accounting practices, particularly with respect to the trust account, after learning of the invasion of Cacho's funds, constitutes willful blindness. In re Skevin, 104 N.J. 476, 486 (1986), cert. denied, 481 U.S. 1028 (1987). In Skevin, the Court defined willful blindness as "a situation where the party is aware of the highly

probable existence of a material fact but does not satisfy himself that it does not in fact exist." Ibid. Willful blindness satisfies the knowing requirement in knowing misappropriation cases. Ibid.

Although abominable recordkeeping practices may remove a case from the realm of knowing misappropriation, the Court has rejected the notion that an attorney "who just walks away from his fiduciary obligation as safekeeper of client funds can expect . . . an indulgent view of any misappropriation." In re Johnson, 105 N.J. 249, 260 (1987). In other words, the Court "will view 'defensive ignorance' with a jaundiced eye." Ibid. Consequently, "[t]he intentional and purposeful avoidance of knowing what is going on in one's trust account will not be deemed a shield against proof of what would otherwise be a 'knowing misappropriation'." Ibid. In so ruling, the Court was confident that, "within our ethics system, there is sufficient sophistication to detect the difference between intentional ignorance and legitimate lack of knowledge." Ibid.

Although willful blindness generally applies to attorneys who intentionally design recordkeeping systems and procedures that will insulate them from knowledge of mismanagement, In re Fleischer, In re Schultz, and In re Schwimmer, 102 N.J. 440, 447 (1986), respondent cannot escape responsibility simply because he did not pre-ordain Junior's activities. Rather, the context of respondent's misuse of

client funds and his failure to stop it once he learned of it must be considered.

Respondent permitted Junior to take over the operation of the firm, while he devoted himself to the practice of law. Although, initially, that appears to have happened due to respondent's health problems, the facts are that Junior remained in charge, even after respondent was able to work on a regular basis, and Junior continued to invade client funds.

Respondent failed to train Junior in the proper method of accounting that must be employed with trust accounts. He failed to supervise Junior's activities and, during a critical period, rarely, if ever, examined the trust account statements. Even after respondent learned that $27,373 belonging to Cacho had disappeared from the trust account, he undertook no investigation into what had happened to the funds or whether other funds had been compromised; he did not fire Junior or even relieve him of his financial duties; he did not train Junior in the proper procedures to employ; he did not replenish the account; and, going forward, he did not review the records to ensure that client funds were being protected. Instead, respondent merely scolded Junior and returned to business as usual.

Similar conduct has resulted in disbarment. In In re Dean, 169 N.J. 571 (2001), for example, an attorney who, like respondent, had turned over the business operation of her firm to an unsupervised

employee, was placed on notice of the employee's theft of trust account funds. Yet, she did not fire him or begin to supervise him. She took no precautions to ensure that client funds would be safe. She was disbarred.[17]

Like Dean, respondent "voluntarily and intentionally placed [him]self in a position in which [he] had no control over [his] office and over [his] clients' matters." He permitted Junior to "usurp" his functions and responsibilities under R. 1:21-6. Thus, like Dean, respondent "may not now protest that [he] should not be held accountable for [Junior's] actions, of which [he] was allegedly oblivious."

Moreover, even if respondent had been unaware of the misuse of client funds, he, like Dean, created the circumstances that permitted that to happen. Most importantly, respondent was aware that client funds had disappeared but did nothing, choosing instead to allow Junior continued access to the trust account and, thus, the opportunity to continue misusing client funds.

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[17] Although the attorney was found to have committed an act of knowing misappropriation on her own, we made it clear that her willful blindness would have been enough to justify disbarment for the acts of her employee.

Had respondent never learned of the missing Cacho funds, his fate might be different. There was no evidence that he had set up an accounting system that would keep him blind to the state of his attorney accounts. Having learned of Junior's misuse of Cacho's monies, however, and choosing to do nothing about it, respondent did, in fact, turn a blind eye to his trust account activity and, for two years after he learned of the missing Cacho funds, effectively ratified Junior's way of doing things, including the misuse of client funds. Suffice it to say that, at a time when the downturn in respondent's business had forced him to downsize and he was experiencing difficulty even making payroll, respondent chose to look the other way and to never question how the bills were being paid under such circumstances.

We recommend respondent's disbarment for the knowing misappropriation of client funds. Wilson, supra, 81 N.J. 451. In light of this determination, we need not address the issue of discipline for respondent's delays in turning over his clients' settlement proceeds to them.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond Armour
Docket No. DRB 15-075

Argued: June 18, 2015

Decided: October 28, 2015

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera						X
Singer	X					
Zmirich	X					
Total:	7					1

Ellen A. Brodsky
Chief Counsel