SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-072

IN THE MATTER OF

DALWYN T. DEAN

AN ATTORNEY AT LAW

Decision

Argued: June 15, 2000

Decided: November 28, 2000

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Thomas R. Ashley appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by Special Master Kenneth J. Cesta. The eleven-count amended complaint charged respondent with eleven instances of knowing misappropriation of client funds, in violation of *RPC* 1.15(a),

dishonesty, fraud, deceit or misrepresentation, in violation of *RPC* 8.4(c), failure to safeguard funds, in violation of *RPC* 1.15(c), and three instances of gross neglect and pattern of neglect, in violation of *RPC* 1.1(a) and (b), respectively.

Respondent was admitted to the New Jersey bar in 1987. She was temporarily suspended from the practice of law on May 5, 1998. *In re Dean*, 153 *N.J.* 355 (1998). Until her suspension, respondent maintained a law office in Newark, Essex County, New Jersey.

* * *

The Office of Attorney Ethics ("OAE") alleged, and respondent admitted, that respondent's employee misappropriated client funds. The OAE further alleged that, in one instance, respondent herself misappropriated client funds. Respondent, asserting that she suffered from major depressive disorder with psychotic features, denied any responsibility for either her own or her employee's actions.

On an unknown date, respondent opened a law office at 24 Commerce Street, Newark, New Jersey. She concentrated on criminal law. At some point respondent formed a partnership with another attorney, Sabine Millien, who handled personal injury matters. In June 1995, Millien relocated to Haiti. Respondent became a sole practitioner, having responsibility for all the partnership's files and clients.

At about the same time, June 1995, respondent met Gonzalo Camprubi-Soms, who also worked at 24 Commerce Street. Soms was the director of an organization known as the Solon Legal Foundation, which provided assistance to individuals being released from prison. Soms himself had pleaded guilty to real estate fraud and had been incarcerated. He also worked for a prisoners' legal clinic.

Despite the knowledge that Soms was a convicted felon, respondent gradually allowed him to assume responsibility for her office and ultimately became dependent on him, both personally and professionally. At first, Soms allowed respondent to use his "fax" machine, when hers stopped working. Later, Soms agreed to answer respondent's telephone when no one was at the office. He performed interpreting services and paralegal duties for respondent. Eventually, respondent virtually turned her law office over to Soms. Respondent trusted Soms and relied on him for personal advice. Although respondent wished to have a romantic relationship with him, Soms did not reciprocate her feelings.

At one point, Soms told respondent that he wanted to purchase an old warehouse building at 236 Martin Luther King Boulevard, Newark and suggested that she rent space from him. In December 1995, respondent and Soms moved their respective offices to the second floor of the Martin Luther King Boulevard building. Respondent's office suite consisted of her office, a reception area, office space used by a prisoners' legal clinic and a conference room used by Soms and herself. Although respondent and Soms moved their

offices in December 1995, Soms did not buy the building until March 1997. Because respondent often was unable to pay her office rent, Soms provided financial assistance to her.

After respondent's secretary/office assistant left her employment in April 1996, Soms became more heavily involved in respondent's office. He met with her clients, answered telephones, drafted correspondence for her signature, picked up and sorted her mail, filled out deposit slips, made bank deposits and mailed or hand-delivered checks issued from respondent's trust account. Respondent, who usually was in court until late afternoon, did not supervise Soms. She had no procedures for keeping track of his activities or the extent of his involvement in her office.

The Gonçalves Matter

In April 1996 Josie Gonçalves, the owner of a beauty salon frequented by respondent, retained respondent to represent her in a dispute over a loan that she had received from Isabel Rocco. On December 6, 1995, some four and one half months before, Gonçalves had executed a $5,000 promissory note in favor of Rocco, payable ten weeks thereafter. Gonçalves had received an April 16, 1996 letter from Janice M. Newman, Rocco's attorney, demanding payment of the note.

By letter dated April 27, 1996, respondent informed Newman that Gonçalves was making the necessary arrangements to pay the loan.

Gonçalves agreed to pay Rocco $500 per month toward the loan. On June 14, 1996 Gonçalves gave respondent a $500 money order, which respondent deposited in her trust account. On June 20, 1996 respondent issued trust account check number 4057 for $500, payable to Rocco. She sent a June 20, 1996 cover letter to Newman enclosing the check. Newman never received the $500, and the record is silent as to what happened to the check. Although at one point respondent was told by the bank that the check had not been negotiated, she did not investigate the whereabouts of the check.

Not having received the money, Rocco periodically went to the beauty salon to ask Gonçalves for payment. Whenever Gonçalves questioned respondent about the payment, respondent repeatedly assured Gonçalves that she had sent the funds to Newman. Soms brought Gonçalves a copy of the June 20, 1996 cover letter and check, as proof of payment.

On July 20, 1996 Gonçalves gave respondent the second $500 installment, this time by check. Respondent did not issue a trust account check for the second installment.

Having received neither installment, Rocco kept demanding payment from Gonçalves. When Gonçalves asked respondent about the payment, respondent and Soms told her several times that $1,000 had been sent to Newman and suggested that there was a misunderstanding with Rocco about the payments. Finally, Rocco filed a *pro se* complaint against Gonçalves, who gave a copy to respondent. After receiving the complaint, Gonçalves made no further payments to respondent. Although respondent told Gonçalves that she would take care of the complaint and would file suit against Rocco for extortion, she did not do so. Instead, a

judgment was entered against Gonçalves and, on December 8, 1997, a levy was issued against her bank accounts. After Gonçalves gave respondent a copy of the December notice of levy, respondent assured her that she had paid the $1,000 to Rocco and that she would file the necessary court papers.

On December 22, 1997 respondent filed a notice of motion to vacate the judgment and levy. Despite the fact that Gonçalves had been served with the complaint and notice of levy and had supplied copies of those documents to respondent, respondent stated in a certification to the court that "neither defendant nor myself have actually received a copy of the actual complaint or notices regarding scheduled Court dates." The record does not contain any additional information regarding the motion to vacate the judgment and levy.

Respondent told Gonçalves that they would appear in court in January 1998 and asked Gonçalves what she wanted done with the $1,000. Gonçalves replied that she wanted to go to court. After Gonçalves retained another attorney and filed a grievance against respondent, she received a $1,000 money order from respondent. Gonçalves denied having allowed respondent or Soms to use her money.

Gonçalves' $1,000 did not remain intact in respondent's trust account. Instead, as a result of a series of checks issued by respondent, bank charges and a bank transfer of funds from respondent's trust account to her business account, her trust account was depleted. By December 10, 1996 respondent's trust account balance for all her clients was $911.92, when she should have been holding $1,000 for Gonçalves alone. There is no evidence that

respondent was aware of her trust account shortage until sometime after October 1996. Respondent's trust account records show that the following checks were issued between July and September 1996:

Date	Amount	Payee
07/22/96	$1,500.00	Soms
07/26/96	1,200.00	Soms
07/30/96	500.00	Respondent
07/30/96	800.00	Respondent
08/06/96	1,000.00	Soms
09/04/96	1,166.66	Respondent
09/04/96	2,553.00	Respondent

For her part, respondent was adamant that she had sent to Newman a $500 check payable to Rocco. According to respondent, she believed that Newman had received the check because her trust account balance appeared to be decreasing. As to the second $500 installment, respondent contended that she had not sent it to Newman because she understood that Gonçalves had instructed her not to do anything for a period of time. Respondent denied having misrepresented facts in her certification in support of her motion to vacate the judgment and levy. She claimed that, at the time of the certification, she had not seen either the complaint or the notice of levy, and that it was her understanding that Gonçalves had not seen those documents either.

As to the checks payable to Soms, respondent denied having issued or authorized Soms to issue them. This testimony, however, contradicted respondent's answer to the complaint, in which she admitted that she had written those checks. Respondent stated that the above checks issued to her represented earned fees.

On October 18, 1996 First Union Bank, where respondent maintained her bank accounts, transferred $414.14 from her trust account to her business account. At that time, respondent's business account balance was overdrawn. When respondent contacted the bank, she did not receive a satisfactory explanation for that transaction. According to respondent, although she realized then that client funds had been taken out of her trust account and placed in her business account, it did not occur to her that she should replace those funds. Instead, she determined to discontinue using that trust account because of her inability to figure out the reason for its shortage and then opened a second trust account.

Although respondent claimed that she stopped using the first trust account, she did not close the account and sporadically issued checks from it. Respondent explained that, before writing checks against the first trust account, she would call the bank to find out the amount of its balance to ensure that sufficient funds were on hand.

As of April 10, 1997 the trust account balance was $601.70. By July 11, 1997, it had decreased to $370.02.

The complaint alleges that respondent knowingly misused Gonçalves' funds and that her failure to replenish her trust account shortage, once she was aware of the problem that

developed through the bank's transfer of funds, also constituted knowing misappropriation of Gonçalves' funds.

The Brunson Matter

Respondent represented several prisoners, including Walter Brunson, in a civil rights action that had been consolidated with other similar claims. The prisoners alleged that they had been physically abused by the prison guards in the Sussex County Correctional Facility.

On January 3, 1997 respondent received a settlement check in the amount of $16,166.66 on Brunson's behalf. After depositing the settlement check in her trust account, respondent issued the following checks, totaling $15,694.33 : (1) $3,488.53 to herself for legal fees; (2) $5,232.80 to Audrey Bromse, her co-counsel, as legal fees; and (3) $6,973 to the Passaic County Probation Department to satisfy a child support lien in that approximate amount. The check to the probation department bore the following language in the memo portion: "Walter Brunson Case No. CS20203105A." The probation department never received the check, however. Instead, it was deposited in a Solon Foundation bank account controlled by Soms.

Respondent's trust account records show that the canceled check had been altered by hand after the bank returned it to respondent. Specifically, the account number in which the check was deposited was changed in an attempt to conceal that the check had been deposited in the Solon Foundation bank account.

Respondent denied having any knowledge of the alteration or deposit of the check in the Solon Foundation account. Moreover, she denied noticing any alterations or forgeries when she reviewed her records in preparation for the OAE audit. According to respondent, after Soms knew that the OAE would be conducting an audit, he told her that there had been an error and that Brunson did not have a child support lien. Respondent did not contact the probation department to determine the accuracy of Soms' statement. She indicated that, as far as she was aware, the check had cleared the banking process. Respondent conceded that she did not always compare the checks returned with her monthly statements to determine that all of the checks that she had written had been returned.

After the above disbursements, a balance of $472.33 should have remained in trust for the benefit of Brunson. Respondent, however, did not disburse these funds to Brunson. Instead, she allowed them to be depleted. On April 29, 1997, respondent's trust account balance for all her clients was $347.61. Respondent, thus, failed to hold Brunson's monies inviolate in her trust account. The complaint charges that such failure constituted knowing misappropriation.

The Knox Matter

Respondent's prior law partnership, Dean & Millien, had been retained to represent Maria Knox in a personal injury matter arising from an October 23, 1993 automobile accident. On August 1, 1994, respondent's partner, Sabine Millien, sent a letter of protection

to Bergen Chiropractic Arts, representing that the medical bills for Knox's treatment would be satisfied from the settlement proceeds. On February 9, 1995, Dr. Joann Guadara of Bergen Chiropractic Arts sent Dean & Millien a bill for $1,032.93 for medical treatment provided to Knox.

At some point, presumably in June 1995, when Millien left the firm, respondent assumed responsibility for the file. Thereafter, Guadara made numerous inquiries to respondent's office about the payment of her bill and the status of the case. Although most of these telephone calls were not returned, on several occasions Soms told Guadara that the matter was still pending. That was untrue. In fact, the *Knox* case had settled in January 1997 for $10,000. The settlement statement that respondent prepared indicated that outstanding medical bills totaled $1,479.20, including $1,032 due to Bergen Chiropractic Arts. Although on January 16, 1997 respondent issued trust account check number 1211 to Bergen Chiropractic Arts for $1,032, this check was not sent to the payee, but instead deposited in Soms' Solon Foundation bank account.

Guadara testified at the ethics hearing that she neither signed the check nor authorized payment to Soms or to the Solon Foundation. Knox also testified that she had not authorized payment of the funds to Soms. Guadara's bill remains unpaid.

Again, the complaint alleges that respondent's expenditure of Knox's funds was unauthorized and, therefore, a knowing misappropriation.

The Ryan Matter

Respondent represented Michael Ryan in a civil action stemming from an assault committed by a fellow inmate at the Sussex County Correctional Facility. In January 1997 the case settled for $10,000. According to the closing statement that respondent prepared and that Ryan signed on February 1, 1997, the settlement proceeds were disbursed as follows: (1) $120 to respondent for costs; (2) $2,500 to respondent for attorneys' fees; (3) $2,000 for child support; and (4) $5,380 to Ryan. However, in addition to the above disbursements, an extra check for $2,500 (dated nine days after the first one) was issued to respondent and another check for $2,000 was issued to the Sussex County Probation Department for an alleged child support lien. Because a total of $14,500 was disbursed from a $10,000 settlement, other clients' funds were invaded.

As it turned out, Ryan owed no child support and there was no lien held by the probation department. Moreover, Ryan's $5,380 settlement proceeds and one of the $2,000 checks payable to the probation department were deposited in the Solon Foundation's bank account.

Respondent's bank records show that, once again, the checks were altered. The signature line on one of the checks written to the probation department was torn off. The reverse side of the check contained the handwritten endorsement "For deposit only First Union Bank Sussex Co. Prob." The bank's copy of the back of the check, however, did not contain "Sussex Co. Prob." Obviously, after the canceled check was returned to respondent,

those words were added to give the appearance that the check had been paid to the probation department. Moreover, the account number on the reverse side of the check was altered after it was processed by the bank and was not a valid account number at First Union Bank.

Similarly, the second check issued to the probation department contained an invalid account number that had been altered after processing by the bank. Because of the alterations, the OAE was unable to identify the recipient of these funds.

In a certification received by the OAE on October 31, 1997, respondent acknowledged that she had mistakenly written two checks for $2,500 for her fee and that, when she realized her error, she transferred $2,500 from her business account to her trust account. According to respondent, when she wrote the second check, she did not realize that she had issued the first check, which, as noted earlier, had been written only nine days earlier. Respondent stated that in July 1997 Soms pointed out to her, after reviewing her trust account records, that she had written two checks, instead of one. He also told her that the check to the probation department had been returned for insufficient funds and suggested that she issue a replacement check. Respondent did not contact the probation department to verify Soms' representations before turning over the replacement check to him.

With respect to the child support lien, respondent claimed in the October 1997 certification that the Sussex County Board of Social Services had provided financial assistance to Ryan's child and had agreed to accept $2,000 as full reimbursement. Respondent testified that she subsequently learned that no child support lien existed.

Respondent conceded that, when she prepared the certification to the OAE, she made no effort to verify the accuracy of its contents. As in the other counts, the complaint alleged that respondent's conduct in this matter amounted to knowing misappropriation.

The Mitchell Matter

Respondent represented Davonne Mitchell in a civil rights action filed in federal court against the City of Newark and a Newark police officer. After the matter was settled for $15,000 on March 20, 1997, respondent issued the following checks from the settlement proceeds: (1) $4,000 to her on March 24, 1997 for attorneys' fees; (2) $500 to Mitchell on March 24, 1997; (3) $4,500 to Mitchell on March 27, 1997 (the memo portion stated "Mitchell children"); (4) $1,000 to Dr. Oscar Sandoval on April 2, 1997; and (5) $5,000 to HHL Financial Services on April 3, 1997.

Check number 1234 was deposited into the Solon Foundation bank account, with a forged endorsement of Dr. Sandoval's name. Not only had Dr. Sandoval not endorsed the check, but he had never treated Mitchell and was not entitled to any fees from the settlement proceeds. Dr. Sandoval denied authorizing the Solon Foundation or any individual to cash or deposit the check.

In support of Mitchell's claim for damages, respondent gave her adversaries a medical report dated June 12, 1996, purportedly prepared by Dr. Sandoval. Dr. Sandoval had not prepared the report and had not been aware of its existence until it was "faxed" to him

on October 17 1997 by the attorney for one of the defendants in the *Mitchell* case. By letters dated June 3, 1996 and June 4, 1996, counsel for the defendants reminded respondent that her expert's report had been due on May 31, 1996. In a June 14, 1996 letter to the judge, respondent represented that the expert's report would be provided to her adversaries on that date. Respondent, thus, was under severe time constraints to comply with discovery deadlines.

Upon receipt of the forged report, Dr. Sandoval contacted respondent's office for an explanation. In several conversations with Dr. Sandoval, Soms stated that respondent's office was investigating the creation of the phony report. Dr. Sandoval never received an explanation. More than six months after Dr. Sandoval notified respondent's office that he had no involvement in the *Mitchell* case and was not entitled to any payment, check number 1234, payable to Dr. Sandoval, was issued.

Respondent testified that she had no funds with which to retain an expert in the *Mitchell* matter. According to respondent, Soms told her that he was a friend of Dr. Sandoval, who had agreed to prepare a report. Respondent believed that Soms had made arrangements for Dr. Sandoval to examine Mitchell and her children and that Soms had driven her clients to Dr. Sandoval's office for the examination. She did not independently verify any of Soms' representations. Respondent denied receiving any telephone calls from Dr. Sandoval after he discovered the phony report. She also denied verifying the amount of liens of the various medical providers, before disbursing the settlement funds.

As noted above, respondent issued a $5,000 check (number 1235) to HHL Financial Services ("HHL") in connection with the *Mitchell* matter. HHL is an agent of the New Jersey Department of Human Services, Division of Medical Assistance and Health Services. This check was deposited into the Solon Foundation's bank account. After the canceled check was returned to respondent, it was altered by the addition of the words "HHL Financial" on the reverse side of the check. The alteration gave the appearance that the check had been received and deposited by HHL, rather than by Soms. Respondent's file contained a January 2, 1996 letter purporting to be from HBL Financial Services, Inc. ("HBL"), a fictitious entity created by Soms, in which the Solon Foundation agreed to pay $7,000 and HBL agreed to assign to the Solon Foundation its right to future payments. This letter, too, was fabricated. HBL did not exist and there was no such agreement. Respondent's file also contained seven letters from HHL (and its successor RevGro), inquiring about the status of the *Mitchell* matter and reminding respondent of the agency's $11,014.83 Medicaid lien. One of those letters is dated January 14, 1998, nine months after the *Mitchell* case had been settled and the proceeds disbursed. The Medicaid agency had received no payment toward the $11,014.83 lien. HHL never authorized respondent to settle its lien or accept payment on its behalf.

Respondent testified that she had not been aware of the phony HBL letter until it was pointed out to her by the ethics authorities. She asserted that Soms had told her that HHL had agreed to accept $5,000 in full settlement of its lien.

The complaint charges that respondent's expenditure of Mitchell's funds was a knowing misappropriation.

The Quezada Matter

In March 1997, with respondent's assistance, Walter and Gladys Quezada refinanced their mortgage to pay their creditors. Although respondent did not attend the loan closing, Soms appeared in her behalf. At the closing, the Quezadas received checks totaling $30,000, payable to them and their creditors. After the closing, at Soms' suggestion, the Quezadas endorsed the checks and gave them to him. Soms deposited the funds in the Solon Foundation bank account and used them, in part, to acquire a money order in the amount of $22,472.69. Soms used the money order as the down payment for his purchase of the building on Martin Luther King Boulevard, where he and respondent maintained their offices. Respondent represented Soms at that closing. The Quezadas had not authorized Soms to use their funds for this purpose.

In May 1997, about two months after the loan closing, respondent received an inquiry from the Quezadas' new attorney seeking an explanation for respondent's failure to pay the creditors with the loan proceeds. In a May 22, 1997 letter to the new attorney, respondent asserted that her office was diligently gathering written confirmation that the debts were paid, adding: "I can assure you that within days this entire matter will be concluded and all the

accounts credited and closed out." The Quezadas' debts were paid months later, after their new attorney filed a grievance against respondent.

From June 1997 through January 1998 the OAE advised respondent of the above events and requested a written explanation and supporting documentation, asking specifically what had happened to the Quezadas' funds. Although respondent had submitted several earlier letters to the OAE, denying that the checks had been deposited into her trust account, it was not until August 26, 1997 that she informed the OAE that the Quezadas had given the checks to the Solon Foundation, which, in turn, issued checks to pay the outstanding debts. As a result of receiving information that another entity had been involved in the loan closing, the OAE issued subpoenas to banks and scheduled a demand audit of respondent's records.

At the demand audit, respondent brought only some of the records requested. Notably, she did not produce original checks, but only the photocopies of the front sides of the checks. Due to the incomplete records, the OAE was not able to reconstruct respondent's trust account activity.

During the audit, respondent disclosed that she employed two individuals with criminal records: Soms, who had a conviction for real estate fraud, and Charles Holman, who was on parole for homicide. According to OAE investigator William Ruskowski, he expressed to respondent his concern over her employment of Soms and his involvement in the *Quezada* transaction, in light of his fraud conviction. He also expressed his concern over

respondent's failure to reconcile her trust account, the shortages in her trust account and her lack of knowledge of the state of her attorney bank accounts.

This count of the complaint alleges that respondent's failure to discharge Soms, to report him to the criminal authorities, to exercise proper control and authority over her clients' trust funds and her office personnel resulted in the misappropriation of her clients' funds and the perpetration of frauds on her clients, her adversaries and the courts. The complaint labeled as "abandonment of clients" respondent's failure to exercise appropriate control over the Quezadas' funds. In addition, the complaint charges that respondent's failure to maintain and safeguard her clients' funds constituted "'wilful blindness' as to the numerous misappropriations of her clients' trust funds documented above."

The Altenor Matter

In September 1997, Gabriel Altenor ("Altenor") consulted respondent about the administration of the estate of his daughter, Liliane Altenor. He was accompanied by the decedent's sister, Saintanne Henrilus, and the decedent's niece, Marie Henrilus. The sole asset of the estate was a $35,000 life insurance policy issued by Metropolitan Life Insurance Company ("MetLife"), naming Altenor as the beneficiary. Because Altenor was elderly and resided in Haiti, he requested that respondent prepare a power of attorney permitting his daughter, Saintanne Henrilus, to act in his behalf to collect the insurance proceeds and establish a savings program.

On September 10, 1997 respondent prepared and Altenor executed the power of attorney. On that same date, Altenor signed a MetLife life insurance claim statement necessary for the processing of the claim.

In a January 5, 1998 letter, respondent asked MetLife to forward the insurance check to her office for disbursement to Altenor. Instead, MetLife opened a total control account for Altenor, similar to a money market account, in the amount of $33,413. This sum represented the insurance proceeds less the balance of the funeral home bill that MetLife had previously paid. MetLife sent to respondent's office the checkbook with Altenor's name printed on the checks. The following checks were issued from that account:

Date	Check Number	Amount	Payee
02/28/98	091	$9,000	Soms
03/05/98	092	7,500	Soms
03/11/98	093	7,500	Soms
03/23/98	094	5,000	Soms
03/25/98	095	4,000	Soms
04/06/98	096	450	Soms
Total		$33,450	

All six checks were deposited into bank accounts maintained by Soms, without Altenor's consent or knowledge. According to OAE investigator Janette Garcia, the signatures on the checks differ from Altenor's signatures on the power of attorney and on other documents that he signed in respondent's office on September 10, 1997. Garcia noted

that, although respondent failed to reply to the *Altenor* grievance, in answer to an inquiry made by the New Jersey Lawyers' Fund for Client Protection, respondent claimed that Soms had borrowed money from Altenor. Garcia opined that a promissory note allegedly given by Soms to Altenor was not valid because (1) Marie Henrilus, Altenor's granddaughter, denied the existence of the loan and (2) the note was written in English and Altenor did not speak or read the English language. Garcia further pointed out that, in a list of clients that respondent gave to the OAE, in which respondent specified the type of services, if any, that Soms provided in each case, respondent indicated that Soms had no involvement in the *Altenor* matter.

The insurance proceeds were received in respondent's office toward the end of February 1998, one month after the OAE had filed a petition for respondent's temporary suspension, and after the OAE had advised respondent of other misappropriations from her trust account and warned her that her clients' funds were at risk and should be safeguarded.

Here, too, respondent was charged with knowing misappropriation of clients' funds.

The Cahill Matter

On January 3, 1997, respondent received $16,166.66 on behalf of Gilbert Cahill in settlement of another civil rights action alleging abuse by guards at the Sussex County Correctional Facility (similar to the *Brunson* matter discussed above). Previously, Soms had sent an unsolicited March 27, 1996 letter to Cahill indicating that he was in contact with

several civil rights attorneys who were interested in representing Cahill. Soms asked Cahill to contact him at the Solon Foundation if he wished to pursue a claim.

Cahill testified at the ethics hearing that he and his sister, Dorothy, met with Soms at the Solon Foundation office on Martin Luther King Boulevard. Although respondent had never shown him the settlement agreement that she had signed in his behalf, she had explained to him that his case had settled for $12,500 and that he would receive $7,000, after the payment of costs and attorneys' fees.

On December 5,1996 respondent visited Cahill, who was incarcerated at the Passaic County Jail, and obtained his signature on a release form in connection with the Sussex County Correctional Facility matter.

Cahill and his stepmother, Marilyn Cahill, opened a savings account in Lakeland State Bank to deposit the settlement proceeds. In May 1997 Cahill's father, Gilbert Cahill, Sr., gave Soms a deposit slip for respondent to use in disbursing the settlement funds. On September 30, 1997, Cahill, Sr. sent a letter addressed to Soms at the "Office of Dalwyn T. Dean, Attorney at Law," requesting a full accounting of Cahill's funds and the prompt deposit of the balance to his Lakeland State Bank account. Cahill, Sr. enclosed another deposit slip. Neither respondent nor Soms replied. On October 16, 1997, Cahill sent another letter, addressed to both respondent and Soms, again requesting the deposit of the funds and an accounting. Once more, respondent did not reply.

On January 16, 1997, about two weeks after respondent's receipt of the settlement check, trust account check number 1221 payable to respondent's sister, Dorothy, was issued in the amount of $5,880. The check was endorsed and deposited into the Solon Foundation bank account. Cahill denied that the endorsement on the check was that of his sister. He further denied having authorized respondent to issue the check to his sister or to pay the funds to the Solon Foundation. According to Cahill, he believed that Soms and respondent worked together, noting that, when respondent represented him in court in an unrelated criminal matter, Soms was also present.

Dorothy Cahill testified that she had never seen check number 1221 and denied that she had endorsed the reverse side of that check. She did not know why the check had been made payable to her. Dorothy confirmed that the settlement funds were to be deposited in a bank account co-owned by Cahill and their stepmother. According to Dorothy, until respondent appeared in court, the family believed that Soms was an attorney and that he represented Cahill. Soms had sent the initial letter to Cahill and told the family that he would be representing Cahill.

Cahill never received the settlement funds.

In her reply to the *Cahill* grievance, respondent stated that, to the best of her knowledge, Cahill's funds were deposited into Cahill's account, as he requested. According to OAE investigator Garcia, a deposit slip to Cahill's Lakeland State Bank account had been stapled to the inside front cover of respondent's Cahill file

Respondent testified that, although she never asked Cahill, she understood that he wanted the funds payable to his sister because he was incarcerated. The following exchange took place at the ethics hearing:

> Q. Did you know that the money was supposed to be deposited into a savings account?
>
> A. I didn't learn that until the time I was turning the file over to the Ethics Committee, and I then at that time saw correspondence and I also saw the deposit slips. . . .
>
> Q. Had you ever looked at that file before?
>
> A. With the Sussex County cases there were several files. I had looked at the file before, but, I mean, I was looking at, like, the criminal complaint and things like that. I was unaware of the correspondence. I think that that correspondence appeared around the time I was supposed to be sending the information to the Ethics Committee.
>
> Q. Did you ever respond to any of the correspondence that was sent to you by the Cahills?
>
> A. I didn't see it until I was turning the files over this year.
>
> Q. You were unaware that those letters had been sent?
>
> A. I was unaware that those letters had been sent.
>
> Q. You wrote the check to Dorothy Cahill?
>
> A. I wrote the check to Dorothy Cahill.
>
> Q. And you signed it?
>
> A. And I signed it.

Q. That was on Mr. Soms' say so?

A. Yes, it was. He was communicating with Gilbert.

Q. Did you just do basically whatever Mr. Soms told you to do?

A. I thought he was looking out for my best interests, so yes.

. . .

The Griffin Matter

Lewis J. Griffin retained respondent on May 27, 1997 to file a bankruptcy petition to prevent the foreclosure of his mortgage loan. He gave her a $500 retainer.

On June 18, 1997 respondent filed a Chapter 11 bankruptcy petition that was later dismissed. On October 23, 1997 respondent filed a Chapter 13 petition on Griffin's behalf. That case was likewise dismissed on December 18, 1997. No payments were made to the bankruptcy trustee or to Citicorp Mortgage, Inc., which held the mortgage on Griffin's house. For eight months, from August 1997 through March 1998, Griffin gave Soms cash payments of $700, for a total of $5,600, receiving a receipt for each payment. It was Griffin's understanding that the payments would be remitted to the bankruptcy trustee or to Citicorp Mortgage, Inc. and would prevent the foreclosure of the loan. Because the payments were not remitted to the mortgagee, Griffin's house was sold at a sheriff's sale on April 13, 1999.

Griffin testified that, after respondent had been recommended to him, he went to her office and asked to see a lawyer. Soms met with Griffin, telling Griffin that he would pay his

bills and assuring him that "I can pull you out of this." According to Griffin, Soms had guaranteed that he would take care of the mortgage payment and that Griffin would not lose his house. According to Griffin, whenever he went to respondent's office, he met with Soms, but often saw and spoke to respondent. Griffin's conversations with respondent were limited to exchanges of greetings; he never discussed his case with her. Griffin asserted that, although he left numerous telephone messages for respondent, she never returned his calls.

Griffin denied having authorized Soms to use his money for any purpose other than payment of his bills.

Respondent testified that Griffin missed all of his scheduled appointments and that when he arrived at her office, he met with Soms, developing a rapport with him. Respondent denied any awareness that Griffin brought cash to the office. Respondent added that, although she saw him at various times in the office, she believed he was there on unrelated matters that did not require her attention.

Respondent's Psychiatric Condition

Respondent presented a report and testimony of Cheryl Ann Kennedy, M.D., her treating psychiatrist. At her first appointment, on March 3, 1997, respondent told Dr. Kennedy that she suffered from a dependent-type personality, was unhappy and wanted to change her behavior patterns. Dr. Kennedy's initial diagnosis was dysthymia (long history of depressive symptoms) with dependent personality traits. Although respondent believed

that she suffered from attention deficit disorder, Dr. Kennedy ruled out that diagnosis. On July 16, 1997, respondent's fourth visit, Dr. Kennedy changed respondent's diagnosis to major depression (some level of dysfunction) and prescribed Prozac, an antidepressant. According to Dr. Kennedy, respondent exhibited a pattern of excessive sleep and was apathetic, isolated, guarded and not motivated. As Dr. Kennedy continued to treat respondent, she formed the opinion that, throughout much of her life, respondent had been victimized by others, and had been a victim of a pattern of abusive-type relationships because of her personality traits and major depression.

Dr. Kennedy asserted that respondent had a long history of low self-esteem, lack of confidence and an inability to "fend for herself emotionally." Dr. Kennedy opined that, as a result of these problems, since early childhood respondent had used a defense mechanism known as "dissociation," or disengaging from reality.

On September 16, 1997 Dr. Kennedy doubled respondent's dosage of Prozac from twenty to forty milligrams per day, finding that respondent was in a state of "amotivation" and apathy, in which she was aware of things she should do but was unable to act.

On July 9, 1998 Dr. Kennedy prescribed Risperdol, an anti-psychotic medication, because there had been no improvement in respondent's detached affect and she had engaged in delusional and disordered thinking. According to Dr. Kennedy, respondent was in love with Soms, was very interested in having a romantic relationship with him and refused to believe that he could have done anything to hurt her. Dr. Kennedy characterized respondent

as "cognitively impaired." Dr. Kennedy subsequently increased the Prozac dosage to eighty milligrams per day.

On September 14, 1998, Dr. Kennedy noted some improvement; respondent appeared less detached and delusional and more realistic. She reduced respondent's dosages of Prozac and Risperdol. However, according to Dr. Kennedy's progress notes, after treating respondent from March 3, 1997 to November12, 1998, the only progress achieved was respondent's acknowledgment of her "detached" problem.

On April 8, 1999 Dr. Kennedy noted that, although respondent was aware that Soms had engaged in dishonest activity, she remained steadfast in her delusions and still characterized him as a friend. Dr. Kennedy analogized respondent's condition to battered woman's syndrome, based on respondent's emotional dependence on Soms and her distorted view of reality. She increased respondent's Risperdol dosage. On May 14, 1999 Dr. Kennedy increased the Risperdol dosage to a full milligram, based on respondent's "fixed delusion" about Soms. On June 9, 1999 Dr. Kennedy noted a "huge turnaround" in respondent's attitude, in that she had decided to testify against Soms and finally appeared to be emotionally upset about the situation. At an October 21, 1999 visit, Dr. Kennedy noted that respondent's dysfunction was global and pervaded all matters in respondent's life.

Dr. Kennedy opined that, during respondent's treatment, respondent was substantially mentally impaired, to the point of not being able to adequately supervise her law practice. She described respondent's relationship with Soms as follows:

> It's my thinking that she had no sense whatsoever what was going on. This guy had her completely hoodwinked. Because he was probably – as I said, I have met him. He was sort of a clever, affable guy. I didn't make much of him one way or the other. But it was clear to me that it wouldn't take much if a woman like Ms. Dean had an emotional investment in a person – and people tend to respond to affections and when people are emotionally involved with you, we all tend to have positive responses to those things.
>
> So it seems to me that he played on this significantly. And that she – because her disconnection from reality of this particular aspect – others as well – but this one was so complete that she could not see anything that was happening. She was completely blinded to what was going on.
>
> And that would be related to the fact that her brain simply was not working properly. It couldn't under the situation, under the disorder which she suffered. It was not working properly and it impaired her greatly.

Dr. Kennedy asserted that, as of the date of her testimony at the ethics hearing, respondent still functioned at a level far below normal.

The OAE offered the testimony and report of Daniel Paul Greenfield, M.D., a psychiatrist. On September 22, 1999 Dr. Greenfield performed a psychiatric evaluation of respondent. Although he agreed with Dr. Kennedy's diagnosis of major depressive disorder with psychotic features, Dr. Greenfield opined that respondent was not cognitively impaired:

> With regard to the issue of Ms. Dean's mental state and psychiatric condition in connection with her supervision and management of her law practice during the period of time in question, and while I accept and agree that an underlying depressive disorder when not effectively treated can result in such behaviors and symptoms as inattention to details and

difficulty concentrating, and while I also agree with Dr. Kennedy's concept that Ms. Dean maintains a delusional-like loyalty to Mr. Soms and a strongly-held belief that he would not deliberately hurt her professionally, it is nevertheless my psychiatric opinion – held with a reasonable medical probability – that this situation and this condition did not determine Ms. Dean's mental state, ability to plan and engage in purposeful, sequential, and goal-directed behaviors, or otherwise impair her ability to have engaged in the complex behaviors in which she did in connection with aspects of her law practice which did not generate complaints or problems.

In this regard, I note again that there were no apparent management or related problems with her practice until June of 1997.

* * *

Put more simply and concisely, if Ms. Dean's depressive symptomatology were so overbearing and uncontrollable during the period of time in question, it should not have affected some (but not all) of the cases on which she was working at the time. . . . Ms. Dean's basic cognitive ability to manage her practice and represent her clients was clearly not impaired. Her problem was in her supervision of her staff, specifically Mr. Soms.

In summary, . . . it is my psychiatric opinion – held with a degree of reasonable medical probability – that even though Ms. Dean's judgement was unquestionably impaired in not adequately supervising Mr. Soms on some of the cases which eventually led to the Complaint in this matter, and even though Ms. Dean's psychiatric condition influenced this problem of lack of supervision, her basic psychiatric condition, mental states, and abilities to engage in high-level complex and cognitively driven and determined behaviors was not. She was able to handle at least some of her practice effectively and well enough for problems not to have become apparent until June of 1997.

With respect to the McNaughten test, Dr. Greenfield testified as follows:

> But certainly in terms of her – of the issue of her not knowing the nature and quality of what she was doing at the time or whether it was wrong, it's my opinion that she did know the nature and quality of what she was doing, and she subsequently certainly acknowledged to me that she knew it was wrong both when she talked to me and at the time that she was doing it.
>
> So the answer to the question is yes, it's my opinion that she did know the nature and quality of what she was doing and she did know that it was wrong.
>
> Q. Both at the time you interviewed her and at the time that it was actually occurring?
>
> A. Yes.

Dr. Greenfield opined that respondent had the cognitive ability to understand the OAE's statements, when the OAE pointed out to her that her client funds were being misappropriated, adding that she wrote replies to the OAE specifically addressing the charges. According to Dr. Greenfield, respondent had the volitional ability to remove Soms from her office. Dr. Greenfield added, however, that it would have been difficult for respondent to have the ability to see what Soms was doing, because psychiatrically she did not want to see it. According to Dr. Greenfield, although respondent had the cognitive ability to understand that Soms was diverting money, "she always refused to recognize the bad things that he was doing in her practice."

Other Mitigation

Respondent claimed that she was not aware of the misappropriations because of her depression and her misplaced trust in Soms. Respondent further argued that she did not financially benefit from Soms' actions. Finally, respondent submitted eleven "character letters" written by family, friends and other attorneys, attesting to respondent's integrity, trustworthiness and commitment to the law.

* * *

The Special Master found respondent guilty of all of the violations charged in the complaint. With respect to the *Gonçalves* matter, the Special Master determined that respondent knowingly misappropriated $1,000 from her client and used the funds for her own purpose. The Special Master found that, in all of the other matters, although Soms committed the thefts, respondent's actions constituted wilful blindness that was so egregious and prolonged that it amounted to knowing misappropriation:

> To be clear, I find that there is clear and convincing evidence that Respondent knew or had to know that Soms was misappropriating funds entrusted to her, and that Respondent made a knowing decision not to confront Soms or to stop the misappropriations. I find that Respondent's willful blindness and purposeful avoidance of Soms' activities and of what was occurring in her office during 1996, 1997 and 1998 satisfies the requirement of 'knowledge' under these circumstances.

The Special Master found the knowing misappropriations in the *Altenor* and *Griffin* matters to be particularly egregious, because they occurred after the OAE had warned respondent that funds were being misappropriated from her office.

The Special Master rejected respondent's defenses as well as arguments offered in mitigation of her conduct. Recognizing that knowing misappropriation does not require that the attorney benefit from the misconduct, the Special Master nevertheless determined that respondent had benefitted by misappropriating the funds herself in the *Gonçalves* matter and by accepting financial assistance from Soms. Next, the Special Master found that respondent had not met her burden of establishing a loss of competency to such an extent that she was unable to comprehend the nature of her acts. He concluded that she was able to distinguish between right and wrong during the entire period that the misappropriations took place. Finally, although the special master did not find that respondent affirmatively conspired with Soms, he rejected her contention that she was unaware of Soms' actions. The Special Master determined that respondent placed complete trust in Soms and ignored obvious warning signs that should have caused her to take action to safeguard her clients' funds.

The Special Master recommended disbarment.

* * *

Following a *de novo* review, we are satisfied that the Special Master's finding that respondent committed ethics violations is supported by clear and convincing evidence. Although respondent conceded that the misappropriations took place, she denied any responsibility for those actions, claiming that, because of her depression and dependent type disorder she was not aware of the thefts. As seen below, the record clearly and convincingly establishes that respondent knowingly invaded Gonçalves' funds and that respondent is accountable for Soms' actions.

In *Gonçalves*, respondent received $1,000 from her client to be forwarded to her creditor, Rocco. Respondent sent the first $500 payment to Rocco's attorney and never sent the second $500 installment. Rocco's attorney never received the $500 check. From at least late 1996 to January 1998, respondent was aware that the $500 check had not been negotiated, but repeatedly and falsely assured Gonçalves that the $1,000 had been sent to Rocco's attorney. In reality, respondent failed to insure that Gonçalves' funds were kept intact in her trust account. As seen below, in July 1997 respondent's trust account balance was only $370.02 and Rocco's attorney still had not received the $1,000 given to respondent by Gonçalves. The question is whether respondent knew of the invasion of the $1,000 at the time it occurred. The answer is probably, "no." The record does not show when the invasion occurred and what caused it. It is undisputed, however, that in late 1996 respondent learned both that the $500 check to Rocco's attorney had not been negotiated and that her bank had removed $414 from her trust account and deposited it to her business account, thereby

causing a shortage in her trust account. At this point, respondent had a duty to investigate whether the $500 check and the second $500 payment were still untouched in her trust account. She did not do that. Instead, she claimed, she discontinued using that trust account because of its problems and opened a second trust account. Hence, instead of taking care of the problems with her trust account balance, respondent chose to ignore them, fully aware that her trust account was short by at least $414. Asked at the ethics hearing if she recognized that client funds were missing from her trust account at that point, respondent replied "yes."

Respondent did not take steps to replace the $414 removed by the bank. By December 1996, her trust account balance fell to $911.92, or $88.08 less than she should have been holding for Gonçalves. Respondent knew about this shortage. She testified as follows at the ethics hearing:

> Q. In the ensuing months, December 1996, your balance in the trust account had fallen to $900 and some dollars, right?
>
> A. Yes.
>
> Q. Did you recognize that problem at that point, that you were short in terms of the client funds you should have had on account there?
>
> A. I knew that there was a problem with that. I don't specifically remember at that time what money was in there, but when I looked at it, I think that I realized at one point. Because I thought if Ms. Rocco had not received her check, that there should have been $1,000 in the account. I knew there was a problem. I knew there was something wrong. I didn't know what to do about it, but

I decided that I shouldn't deal with that account and that's why I opened a new trust account.

Q. Did you tell Josie that her money had been dissipated?

A. No, I just told her that there was a problem.

* * *

Q. I don't want to misunderstand what you say. At that point, in December 1996, did you tell Josie that there was a shortage in her trust account?

A. I didn't specifically say it that way. No.

Q. You knew that there had been this bank error at this point?

A. Yes. . . .

Q. You recognized that client funds were missing from your trust account?

A. Yes.

Q. And you did nothing to pay that money back into your trust account?

A. No.

Respondent continued to deplete Gonçalves' funds over the next few months. Indeed, by April 10, 1997, her trust account balance had decreased to $601.70, or $398.30 less than she should have been holding for Gonçalves alone, and respondent knew of this shortage:

Q. Now, skipping ahead a few months, we're at April of 1997, and the balance of your old trust account is down to $600. Did you tell Josie that her funds were continuing to be depleted at that point?

A. No, because I wasn't really using that account.

By July 11, 1997, respondent's trust account balance had fallen to $370.02, or $629.98 less than the $1,000 belonging to Gonçalves. Respondent was aware of this deficiency as well:

Q. And in June you wrote another check, 4086 for $200 to the clerk of the U.S. Bankruptcy Court, correct?

A. I'm just trying to remember what that was for. I would assume that I wrote that, but right now I don't remember that check.

Q. When you were writing these checks, I'm talking in particular about check number 4085 and 4086, did you have any idea what the balance was in that trust account?

A. I knew that when I wrote the checks that there was (sic) sufficient funds to write those checks, but right now I don't really remember. I really don't remember exactly what happened at that time.

Q. How did you know that there was (sic) sufficient funds at that point?

A. I think I would check the balance at that time.

Q. From the bank statements?

A. A lot of times I would call that 1-800 number and check the amount. I could have looked at the bank statements, I really don't remember.

Admittedly, thus, respondent was aware, by at least late 1996 that Gonçalves' funds had been invaded. Yet, she failed to replace them and continued to issue checks against the "old" trust account, knowing that these checks were further invading the remainder of the *Gonçalves*' funds. Clearly, thus, respondent was guilty of knowing misappropriation in this count of the complaint.

In addition, in *Gonçalves*, respondent submitted a false certification to the court. Respondent received a copy of the complaint, and, subsequently, a copy of the notice of levy. Yet, she filed a certification in support of a motion to vacate the judgment and levy in which she represented that neither she nor Gonçalves had received either document. As seen below, this is but one example of respondent's tendency to distort the truth when convenient.

In the remaining matters, the OAE alleged that, although respondent did not directly misappropriate client funds, she should bear responsibility for Soms' thefts. In short, the OAE argued that respondent was guilty of wilful blindness.

In *Brunson*, Soms forged a $6,972 check issued to the Passaic County Probation Division on February 6, 1997 to satisfy a child support lien and deposited the check into his own bank account. After the check was returned by the bank, it was altered to give the appearance that it had been received by the probation division. Respondent did not confirm that the probation division had received the check. She assumed that the check had cleared, conceding that she did not always review her bank statement to ensure that checks written had been returned. Respondent failed to disburse to Brunson the $472.33 balance that

remained after disbursements and failed to hold those funds intact. On April 29, 1997 respondent's trust account balance for all clients was only $347.61.

In the *Knox* matter, a January 16, 1997 check for $1,032.93 was issued to Bergen Chiropractic Arts for medical treatment provided to respondent's client. Dr. Joann Guadara testified that she never received the check and that the endorsement on the reverse side was a forgery. These funds, too, were deposited into Soms' bank account. As of the date of the ethics hearing, Guadara's bill remained unpaid.

In the *Ryan* matter, from January through July 1997, respondent disbursed $14,500 from a $10,000 settlement that she received based on Ryan's claim against the Sussex County Correctional Facility, following an assault by another inmate. Specifically, respondent issued two $2,500 checks to herself for her attorneys' fees, two $2,000 checks to the Sussex County Probation Division for an alleged child support lien, a $5,380 check payable to Ryan and a $120 check for her costs. Ryan's check was deposited into Soms' bank account. In addition, one of the probation division checks was deposited into Soms' bank account and subsequently altered. After the check was returned by the bank, the signature line was torn off, the bank account number on the reverse side was altered, and language was added to the endorsement to give the appearance that the probation division had received the check.

By issuing checks totaling $14,500 from a $10,000 settlement, respondent invaded other clients' funds. Incidentally, respondent's explanation that she wrote a second check for her fees because she did not recall having written the first check just nine days earlier strains credulity.

In *Mitchell*, two checks were misappropriated and deposited into Soms' bank account: a $1,000 check issued to Dr. Oscar Sandoval on April 2, 1997 and a $5,000 check payable to HHL, dated April 3, 1997. Dr. Sandoval testified that he had not signed or received the check. He further stated that he had had no involvement in the case, had not treated Mitchell or her children and had not issued the expert report that bore his name. The record reveals that the June 12, 1996 medical report was phony and that respondent was under severe time constraints to deliver an expert report to her adversaries. Under the discovery deadline, the expert report was due on May 31, 1996. Both attorneys for the defendants had sent letters to respondent reminding her that the report was overdue. Respondent represented to the judge on June 14, 1996 that her report would be sent to her adversaries that day. According to respondent, she did not have the necessary funds to retain an expert and Soms indicated that Dr. Sandoval had agreed to prepare a report. Although she did not confirm his representations, respondent believed that Soms had taken her clients to Dr. Sandoval for examination. Despite numerous telephone calls to respondent's office, Dr. Sandoval never received an explanation about the phony report.

The HHL check was issued to satisfy a Medicaid lien. After it was returned to respondent, the check was altered so as to appear that HHL had received it. Respondent's *Mitchell* file contained a phony letter from HBL Financial Services, Inc., (a fictitious entity) in which HBL agreed to give Solon Foundation the right to receive future payments. The file also contained seven letters from HHL inquiring about the status of the matter and its lien in excess of $11,000. One of those letters was dated nine months after the case had settled. HHL's lien remains unpaid.

As to the *Quezada* matter, the clients retained respondent to represent them in a refinance of their mortgage so that they could obtain funds to pay their creditors. Respondent failed to attend the March 1997 loan closing. Soms appeared in her behalf. After the closing, Soms convinced the Quezadas to turn over to him the checks that had been issued to them and their creditors. Soms deposited the funds in his bank account and used the proceeds to buy the office building where he and respondent maintained their offices. The Quezadas' debts were paid only after they had retained another attorney and had filed a grievance against respondent. Respondent's lack of cooperation with the OAE in this matter was troubling. Although she sent several lengthy letters in reply to the OAE's inquiry about the Quezadas' checks, respondent did not disclose that the funds had been deposited into Soms' account until her third response.

In *Altenor*, MetLife established a total control account on behalf of Altenor and sent the checkbook to respondent's office in late February 1998. During the next five weeks,

Soms issued six checks totaling $33,450 payable to himself and deposited them into his bank accounts. Although respondent failed to reply to this grievance, in a response to the New Jersey Lawyers' Fund for Client Protection, she claimed that Soms had borrowed the money from Altenor. However, Altenor's signature on a purported promissory note was undoubtedly forged and, because he did not speak or read English, he was unable to understand the contents of the note.

In *Cahill*, a $5,880 check was issued to the client's sister, Dorothy. Soms forged her name and deposited the check into his own bank account. Respondent failed to reply to letters sent by Cahill's father, demanding the funds and an accounting. She also was unaware that her file contained a deposit slip for the bank account established by Cahill for the disbursement of those funds. Respondent issued the check to Dorothy at Soms' direction, admitting that she essentially did whatever he told her to do.

In the *Griffin* matter, respondent filed a bankruptcy petition in her client's behalf. From August 1997 through March 1998, Griffin gave Soms cash payments totaling $5,600, under the belief that Soms would use those monies to pay his mortgage and prevent a foreclosure action. Because Soms failed to pay the mortgage, Griffin's house was sold at a sheriff's sale. Although respondent saw Griffin with Soms in her office on numerous occasions, she did not take the time to determine why he was there. Instead, she believed he was there on unrelated matters that did not require her attention. During this same time period, respondent failed to return the numerous telephone messages that Griffin left for her.

* * *

The unfortunate picture that emerges from this record is one in which respondent totally deserted her clients. She turned her law practice over to Soms, a non-attorney and convicted felon. Respondent failed to protect her clients or their funds from Soms' greedy grasp. It is obvious from respondent's testimony that she did not even perform such perfunctory tasks as looking at her clients' files or returning their telephone calls. Her recordkeeping was virtually nonexistent. Respondent was content to allow Soms to run her law office. He answered her telephone, opened and sorted her mail, met with her clients, prepared correspondence, reviewed her trust account records and essentially functioned as her associate/paralegal/office manager. Respondent exercised no supervision over Soms and placed no controls over his activities. She did not establish any procedures to monitor his actions. Although she knew that Soms had pleaded guilty to a felony charge of real estate fraud, she allowed him unrestricted access to her attorney bank accounts, thereby allowing him to steal her clients' funds.

Recently, in *In the Matter of Laurence A. Hecker*, DRB No. 99-379 (2000), we determined to impose a six-month suspension on an attorney who hired a clerical employee who had previously stolen client funds from the attorney's trust account and had robbed a bank. The attorney claimed that he believed the employee was entitled to a second chance.

During his subsequent employment, the employee stole client funds a second time. We discussed as follows an attorney's responsibilities when hiring staff:

> In finding that respondent violated *RPC* 1.15(a) in these circumstances, we do not intend to establish a *per se* rule that every attorney who hires a former prisoner runs afoul of the disciplinary rules. For example an attorney could hire an individual who had been convicted of a crime that did not involve theft or similar offense and who had been rehabilitated. Conceivably that individual could even be trusted, given proper evidence of rehabilitation, to deal with an attorney's trust account.

The Court has not yet acted on that matter.

Here, although respondent was aware that Soms had been incarcerated for committing real estate fraud, a crime involving dishonesty, she hired him and gave him full rein of her office. Respondent then compounded this serious exercise of poor judgment by permitting Soms to continue to steal client funds, even after the OAE had alerted her to the trust account shortages and warned her to closely supervise Soms. In this regard, respondent's misconduct is more serious than Hecker's. Although Hecker had first-hand knowledge about his employee's dishonesty and criminal history, Hecker may have truly believed that the employee had reformed and that no further thefts were likely to occur. Moreover, Hecker took the precaution, albeit inadequate, of keeping checkbooks and other records in a locked drawer. Here, respondent was expressly informed by the OAE that client funds were missing and that there were serious concerns about her employment of Soms. Additionally,

respondent had received notice from the Quezadas' new attorney that Soms had failed to pay their creditors. Yet, she took no action to safeguard her clients' funds.

We find, thus, that respondent exercised woefully poor judgment in allowing Soms the run of her office and that her conduct amounted to wilful blindness. *In re Skevin*, 104 *N.J.* 476 (1986). There, the attorney commingled personal and client funds in his trust account, failed to maintain a running balance of personal funds in the trust account, misused client trust funds and failed to maintain contemporaneous trust account records. Although the attorney conceded that client funds had been used, he denied knowingly misappropriating client funds, pointing out that he had deposited almost $1 million of his own money into the account to cover his personal withdrawals. Some of the shortages resulted from the attorney's practice of withdrawing his fees for personal injury cases from the trust account before settlement proceeds were received. The Court characterized the attorney's conduct as wilful blindness, reasoning that, when an attorney acts without satisfying himself or herself that he or she is not misappropriating funds, such a state of mind goes beyond recklessness and satisfies the requisite of knowledge. In other words, wilful blindness occurs when, although an attorney knows that he or she does not know whether there are sufficient funds to cover the checks issued or withdrawals made, the attorney proceeds anyway. Simply put, wilful blindness is "knowing that you do not know." Here, respondent knew that she was not aware of the balance in her trust account, but she nonetheless proceeded to issue checks from that account.

Similarly, in *In re Pomerantz*, 155 *N.J.* 122 (1998), the Court disbarred an attorney who claimed that she was not aware that she was out-of-trust. The Court ruled that, even if it accepted the attorney's contention of ignorance of the state of her trust account, her wilful blindness was sufficient to constitute knowing misappropriation of client funds. In response to the attorney's argument that her bookkeeper and accountant were to blame for the shortages in her trust account, the Court remarked as follows:

> The fact that respondent may have permitted her bookkeeper to sign checks drawn on the trust account does not mitigate the seriousness of her breach of professional responsibility. 'Lawyers may not absolve themselves of the misappropriation of client funds by delegating to employees the authority to complete signed checks and then failing to supervise these employees.' *Irizarry, supra,* 141 *N.J.* [189] at 193, 661 *A.*2d 275. Respondent's duty to protect her client's funds was nondelegable. *Ibid.* (Emphasis added).
>
> [*In re Pomerantz*, *supra*, 155 *N.J.* at 136]

Here, respondent voluntarily and intentionally placed herself in a position in which she had no control over her office and over her client's matters. She viewed Soms as her "knight in shining armor" and permitted him to usurp her functions. Respondent may not now protest that she should not be held accountable for Soms' actions, of which she was allegedly oblivious. Even if respondent was unaware of Soms' thefts, she created the circumstances that allowed Soms to steal client funds. More importantly, however, she was forewarned by the OAE that Soms might be stealing her clients' funds. Even in the face of this warning,

respondent continued to give Soms access to her trust account, enabling him to proceed with his scheme to pilfer her clients' funds.

In a November 6, 1997 letter to the OAE, respondent stated as follows:

> My work plan for the near future is very specific and is divided into three phases:
>
> * * *
>
> Phase Two is to reduce my work load to a manageable amount of files and regain independence from outside services. I will stop relying heavily on the services of Solon and Mr. Soms. Instead I will closely monitor and supervise all the work done in my office or on behalf of my office.
>
> Phase Three would be to look for a new location for my office, a smaller space, and/or to become affiliated with a larger law firm . . . .
>
> The underlying concept is to regain total independence of my practice as a solo practitioner, without outside influence; to keep tight control of my work and to maintain flawless management of my legal files.

Incredibly, respondent testified that Soms had drafted that letter for her:

> Q. Why were you going to stop relying heavily on Solon and Mr. Soms?
>
> A. Well, Gonzolo (sic) had said that I needed - I was becoming too dependent and I needed to become independent. Actually, this was a letter that I signed, but he basically drafted it for me, and he basically had said that these were the steps that I needed to take.

As noted earlier, during the October 14, 1997 demand audit, OAE investigator Ruskowski specifically put respondent on notice of his concerns about her employment of Soms and how important it was for her to supervise him carefully. Although respondent recognized that she should sever her office from Soms' office and supervise his activities more closely, she failed to do so. When asked at the ethics hearing whether she had taken any action to prevent Soms from having access to her clients' funds, she replied that she did not believe that he had access to her clients' funds and that "I needed him because I didn't know what happened in any of those cases, and I needed him to help me reconstruct so I could answer the questions that the Ethics Committee was asking."

Approximately four months after Ruskowski warned respondent about Soms and her client funds, MetLife sent the *Altenor* checkbook to respondent's office. Respondent testified as follows about that matter:

Q. During 1998 what sort of awareness did you have of the status of that file?

A. That the money had not come in.

Q. And what was the source of that awareness?

A. I never had a check that was deposited into my trust account, so I didn't think any money had come in.

Q. Did you ever look at the file? Did you ever call MetLife?

A. No, I did not.

Q. In fact, the money did come in, didn't it?

A. Yes, the money did come in.

Q. And Mr. Soms stole this money, as well, didn't he?

A. I believe that's what happened, yes.

Q. And this is after the Office of Attorney Ethics had told you that here was a problem in your practice?

A. This took place in, like, March of 1998. I was aware that there was a problem.

Similarly, in the *Griffin* matter, most of the funds were given to Soms after the OAE had warned respondent that she should closely supervise Soms' activities.

In the *Altenor* and *Griffin* matters, thus, respondent's wilful blindness was even more blatant because the thefts occurred after respondent had been notified about problems in her office and she completely failed to take any precautions to protect her clients' funds.

Respondent claimed that, because of her depression, dependent-personality type and delusional loyalty to Soms, she should not be held accountable for her actions. Pursuant to *R.* 1:20-6(c)(2)(C), the burden of going forward with regard to defenses or mitigating factors is on respondent. She failed to meet that burden. Although both Drs. Kennedy and Greenfield agreed that respondent suffered from major depressive disorder with psychotic features, there was no evidence presented that respondent "suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly, knowing, volitional and purposeful," as required by *In re Jacob*, 95 *N.J.* 132 (1984).

The Court affirmed the continued viability of the *Jacob* standard in *In re Greenberg*,155 *N.J.* 138 (1998). Although the attorney in *Greenberg* admitted that he had knowingly misappropriated funds from his law firm, he claimed that his depressive disorder both excused and mitigated his misconduct, thereby sparing him from disbarment. The Court, however, determined that Greenberg had not met the *Jacob* standard:

> In making the determination whether an attorney lacked competency, comprehension or will, we have considered whether he or she was 'out of touch with reality or unable to appreciate the ethical quality of his [or her] acts.' *In re Bock*, 128 *N.J.* 270, 273, 602 *A*.2d 1307 (1992). Respondent relies on the testimony of two experts to support his claim that he was 'out of touch with reality' and had no conscious awareness of his actions when he misappropriated firm funds. . . . Neither expert goes so far as to claim that respondent was out of touch with reality or, alternatively, that he did not know what he was doing when he committed multiple acts of misappropriation ... Neither of respondent's experts testified that during the time he was stealing money from his law firm he was unable to appreciate the difference between right and wrong or the nature and quality of his acts.
>
> [*In re Greenberg*, *supra*, 155 *N.J.* at 156-157]

Even more recently, the Court rejected an attorney's argument that his bipolar disorder justified a sanction less than disbarment. *In re Tonzola*, 162 *N.J.* 296 (2000). In *Tonzola*, the Court concluded that, although the attorney's mental illness was severe, he had failed to meet the *Jacob* standard because he knew that he was taking client funds without the client's authorization.

Here, respondent's psychiatric expert did not testify that she was unable to appreciate the difference between right and wrong or the nature and quality of her acts. Although Dr. Kennedy opined that respondent's cognitive abilities were impaired, an opinion with which Dr. Greenfield disagreed, Dr. Kennedy never maintained that respondent was unable to appreciate the difference between right and wrong or the nature and quality of her acts. To the contrary, Dr. Greenfield testified that respondent admitted to him that she knew it was wrong, both when he examined her and at the time of her conduct. Dr. Greenfield pointed out that, had respondent's depression become so overbearing and uncontrollable, she would not have been able to manage her practice, or even function on a day-to-day level. He concluded that respondent's ability to engage in high-level complex and cognitively driven and determined behaviors was not impaired. According to Dr. Greenfield, respondent's problems stemmed from her failure to supervise Soms. Respondent, thus, failed to establish that her psychiatric condition excused her conduct.

Also, during the ethics hearing, a pattern of dishonesty on respondent's part emerged. As noted above, respondent filed a false certification with the court in the *Gonçalves* matter, in which she misrepresented that she and her client had not been served with any of the pleadings. Gonçalves testified unequivocally that she had given respondent copies of both the complaint and the notice of levy when she had received them.

Also, the OAE scheduled a December 16, 1997 meeting with respondent to continue to review her books and records. Respondent sent to the OAE a December 12, 1997 letter

representing that on the day of the meeting she had (1) a court appearance before Judge Callahan in a child support/property matter and (2) an appointment with her psychiatrist that could not be rescheduled. In fact, respondent stated in her letter "Since my father's death, I was unable to have an appointment with my psychiatrist, due to her busy schedule and to my court schedule. Her only available time was for Tuesday December 16, 1997 at 10:30am." Although the OAE did not agree to reschedule the meeting, respondent was not present at her office when OAE staff appeared. OAE investigator Ruskowski testified that, not only did Judge Callahan deny that respondent had any hearings scheduled before him on December 16, 1997, but he also stated that, to his knowledge, respondent had no pending cases before him at all. Furthermore, Dr. Kennedy's notes do not indicate that she saw respondent on that date. At the ethics hearing, respondent claimed that, when she went to the courthouse on December 16, 1997, she learned from the court clerk that the case had been put on Judge Callahan's list mistakenly. Respondent also claimed that, when she appeared at Dr. Kennedy's office, she learned that her appointment was not scheduled for that day. Respondent's explanations are not credible.

In addition, in her certified answer to the complaint, respondent admitted that she signed three checks payable to Soms in July and August 1996. The issuance of these checks contributed to the depletion of her trust account and the invasion of funds in Gonçalves. At the ethics hearing, however, respondent contradicted her answer by claiming that the checks had been forged.

With respect to the *Mitchell* matter, respondent was under severe time constraints to produce an expert report. Both opposing attorneys had reminded respondent that the report was overdue. Respondent promised the court that her report would be submitted forthwith. Although the record does not contain clear and convincing evidence that respondent knowingly presented a false report to her adversaries, there is a strong inference that that is what occurred.

In sum, respondent permitted Soms unfettered access to her office and to her clients' funds. As a result, Soms stole approximately $66,000 from respondent's clients. Respondent's wilful blindness, particularly in the cases in which the thefts occurred after respondent had been warned about Soms, amounted to knowing misappropriation. In addition, in *Gonçalves,* respondent herself knowingly misappropriated her clients' funds. Accordingly, based on *In re Wilson*, 81 *N.J.* 451 (1979), and *In re Skevin*, 104 *N.J.* 476 (1986), we unanimously vote to recommend disbarment for respondent's actions.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/28/08

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Dalwyn T. Dean
Docket No. DRB 00-072

Argued: June 15, 2000

Decided: November 28, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	X						
Peterson	X						
Boylan	X						
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz	X						
Wissinger	X						
Total:	9						

Robyn M. Hill 3/29/01
Robyn M. Hill
Chief Counsel