

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 15-101 and 15-165  
District Docket Nos. XIV-2014-  
0026E, XIV-2014-0376E, and XIV-  
2014-0536E

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IN THE MATTER OF  
JOHN F. HAMILL, JR.  
AN ATTORNEY AT LAW

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Decision

Decided: December 16, 2015

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

These matters were before us on certifications of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f), and were consolidated for review and the imposition of discipline.

The first matter, docketed as DRB 15-101, merged District Docket Nos. XIV-2014-0026E and XIV-2014-0376E into a three-count formal ethics complaint. The first count charged respondent with violations of RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities). The second count

charged respondent with violations of R. 1:20-20(b)(2), (3), and (4) (rules governing suspended attorneys), RPC 8.1(b) and R. 1:20-3(g)(3), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The third count charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In the second matter, docketed as DRB 15-165, the formal ethics complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), RPC 8.1(b) and R. 1:20-3(g)(3), and RPC 8.4(c).

For the reasons detailed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1980. At the relevant times, he maintained an office for the practice of law in Jersey City, New Jersey.

On May 10, 2007, in a default matter, respondent received a reprimand for failure to protect a client's interests on

termination of the representation and for failure to cooperate with disciplinary authorities. In re Hamill, 190 N.J. 333 (2007).

On July 17, 2013, the Court temporarily suspended respondent from the practice of law for failure to cooperate with the OAE's investigation of, among other allegations, knowing misappropriation. The order required respondent to comply with R. 1:20-20 governing suspended attorneys. In re Hamill, 214 N.J. 563 (2013). Respondent remains suspended to date.

On September 18, 2014, we granted respondent's motion to vacate defaults as to Docket Nos. VI-2014-0006E (charging failure to communicate with a client), XIV-2013-0062E (charging knowing misappropriation in an estate matter), and XIV-2013-0117E (charging gross neglect and lack of diligence). Docket No. VI-2014-0006E was subsequently merged into a complaint also encompassing Docket Nos. XIV-2014-0026E and XIV-2014-0376E, which proceeded as DRB 15-101.

**DRB 15-101 (XIV-2014-0026E and XIV-2014-0376E)**

Service of process was proper in this matter. On December 8, 2014, the OAE sent a copy of the complaint to respondent, by UPS and regular mail, at the Monmouth County Correctional Institution (MCCI), where he had been incarcerated since

November 7, 2014. The OAE received electronic confirmation from UPS that the package was delivered, on December 9, 2014, and signed for by "Johnson" (presumably, an employee at the MCCI). The regular mail was not returned. Respondent failed to file an answer to the complaint.

On January 13, 2015, the OAE sent a "five-day" letter to respondent at the MCCI, by certified and regular mail, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to charge a violation of RPC 8.1(b), and the record would be certified to the us for the imposition of discipline. A certified mail receipt was returned, which reflected a delivery date of January 15, 2015 and the signature stamp for "Cheryl Lasky" (presumably, an employee at the MCCI). The regular mail was returned marked "return to sender."

On January 15, 2015, however, the OAE learned that respondent had been released from the MCCI that same date. Service of the "five-day" letter was, thus, deficient. Accordingly, on January 23, 2015, the OAE sent a second "five-day" letter to respondent at his home address on file with the New Jersey Lawyers' Fund for Client Protection (CPF), by certified and regular mail. A certified mail receipt was

returned, showing a delivery date of February 4, 2015, and bearing respondent's signature. The regular mail was not returned.

Respondent did not file a verified answer to the complaint. On April 2, 2015, the OAE certified the record to us, as a default.

Count one of the complaint charged respondent with violations of RPC 8.1(b) and R. 1:20-3(g)(3), based on the following facts.

On November 25, 2013, Julia Shriver-Muse (Muse) filed a grievance against respondent. In 2003, Muse had hired respondent's (then) law firm to pursue a workers' compensation claim. She alleged that, after respondent had assumed primary responsibility for her case, he lacked diligence, failed to communicate with her, and misrepresented the status of the matter to her.

On February 12, 2014, the OAE sent a letter to respondent at his home address, by certified and regular mail, enclosing the Muse grievance and directing him to submit a written response to the allegations by February 28, 2014. The letter also required respondent to produce the client file for the Muse

matter, the client file for a second client matter,<sup>1</sup> copies of client ledgers and supporting documentation for respondent's trust and business accounts, and a three-way reconciliation of his attorney trust account from March 2009 through 2014. On March 11, 2014, respondent signed for the delivery of the certified mailing.<sup>2</sup> Respondent failed to reply by February 28, 2014.

On March 11, 2014, the OAE sent a second letter to respondent at his home address, by certified and regular mail, enclosing the OAE's February 12, 2014 letter and requiring that he submit a written response to the Muse allegations, along with the other previously requested documents, by March 21, 2014. This second letter cautioned respondent that his failure to cooperate would subject him to a charged violation of RPC 8.1(b). On March 15, 2014, respondent signed for the delivery of the certified mailing. He failed to reply by March 21, 2014.

On May 19, 2014, the OAE sent a third letter to respondent at his home address, requiring him to submit a written response

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<sup>1</sup> The rationale for the OAE's demand that respondent produce the second client file is not clear from the record.

<sup>2</sup> The complaint does not address whether the regular mailings of the OAE letters regarding the Muse grievance were returned.

to the Muse grievance by May 26, 2014.<sup>3</sup> Respondent failed to reply to this letter by May 26, 2014.

On June 26, 2014, the OAE sent letters to respondent at his home and office addresses, by certified and regular mail, requiring him to appear at the OAE's offices on July 8, 2014 for a demand interview. The letter additionally directed him to produce the Muse client file and attorney trust and business account documentation demanded by the OAE in prior correspondence. On July 8, 2014, respondent appeared at the offices of the OAE for the demand interview, provided a written response to the Muse grievance, and produced the Muse client file.

Count two of the complaint charged respondent with violations of R. 1:20-20(b)(2), (3), and (4), RPC 8.1(b) and R. 1:20-3(g)(3), and RPC 8.4(d), based on the following facts.

As set forth above, on July 17, 2013, the Court suspended respondent from the practice of law for failure to cooperate with an OAE investigation of, among other charges, an allegation that respondent knowingly misappropriated client funds. Eleven months later, on June 16, 2014, the OAE made an unannounced visit to respondent's office at 61 Sip Avenue, Jersey City, New

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<sup>3</sup> Neither the complaint nor the exhibit set forth the manner of mailing employed for this letter.

Jersey. OAE staff observed respondent's name on the law office signage near the entrance to the building and on the building directory. Respondent was present in his law office and spoke with the OAE employees, admitting that, despite his suspension, he was in his law office on a daily basis.

Consequently, on July 18, 2014, the OAE sent a letter to respondent at his office address (despite his suspension), informing him that the OAE had opened an investigation into whether he had been practicing law while suspended and directing him to explain, in writing, by August 1, 2014, the measures he had employed to comply with the mandates of R. 1:20-20(b)(1)-(4).<sup>4</sup> Respondent failed to reply to this letter by August 1, 2014.

On August 6, 2014, the OAE sent a second letter to respondent at his office address, by certified mail, directing him to respond in writing, by August 15, 2014, to the allegation that he had been practicing law while suspended.<sup>5</sup> This second letter cautioned respondent that his failure to cooperate would subject him to a charged violation of RPC 8.1(b). On August 13, 2014, Joseph Talafous, Jr., Esq., an attorney who maintained an

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<sup>4</sup> Neither the complaint nor the exhibit set forth the manner of mailing employed for this letter.

<sup>5</sup> It is unclear from the complaint and the exhibit whether this letter was also sent by regular mail.



office in the building where respondent's law firm was located, signed for the delivery of the certified mailing. Respondent failed to reply to this letter by August 15, 2014.

Count three of the complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.3(a)(1), and RPC 8.4(c), based on the following facts.

On or about June 23, 2003, James F. Ryan, Jr., Esq., respondent's former law partner, filed a workers' compensation claim on behalf of Muse, against the Jersey City Board of Education (Board of Education). In May or June of 2005, respondent filed a motion in the Muse matter to join the Second Injury Fund and, from that point forward, acted as the primary attorney in the prosecution of Muse's claim. On March 15, 2006, Ryan sent a formal demand letter to the attorney for the Board of Education, seeking compensation for Muse's injuries. On September 27, 2006, in response to Muse's request, respondent sent her a copy of the demand letter.

While Muse's workers' compensation claim was pending, respondent notified her of scheduled court dates, by letter, and indicated whether her appearance was required. On April 1, 2007, Muse sent a letter directly to the judge assigned to her claim, asking about the status of the matter. Thereafter, on December 17, 2007, Muse provided limited testimony about her disability

claim during a hearing before the same workers' compensation judge.

On May 30, 2008, Muse sent a second letter directly to the same judge, enclosing copies of RPCs 1.1, 1.3, and 1.4, and informing him that, although she had attempted to telephone respondent over the past two months, he had not returned her calls.

In June 2008, at respondent's request, Muse executed three blank affidavits that he intended to use in the event she could not attend workers' compensation court proceedings. One of the affidavits referenced a gross award of \$30,000 from the Second Injury Fund to be paid to Muse in six monthly installments of \$5,000 each. The second affidavit referenced a gross award of \$21,984, to be paid to Muse by an insurance carrier. Muse never received a copy of the third affidavit she had signed in June 2008.

On June 13, 2008, counsel for the Board of Education filed, and served on Ryan, a motion to dismiss Muse's claim for lack of prosecution. Subsequently, during a January 28, 2009 proceeding, respondent misrepresented to the workers' compensation court, to counsel for the Board of Education, and to counsel for the Second Injury Fund that Muse was not in attendance due to her medical condition. At the time respondent made this statement,

he knew that the true reason for Muse's absence was his failure to notify her of the court date.

On that same date, the court entered an order approving a settlement whereby Muse would be paid a gross award of \$21,984. In support of the settlement, respondent submitted one of the three affidavits that Muse had executed on June 3, 2008, which referenced the \$21,984 gross award paid by a Board of Education insurance carrier. According to Muse, although she was wary of executing these blank affidavits, respondent had assured her that they would be used only in the event that she could not make it to court. Muse maintained, however, that prior to respondent's use of the affidavit to settle her case, she had directed him to destroy all three of the signed affidavits and he had agreed to do so. As a term of the settlement, the court dismissed Muse's claim against the Second Injury Fund. Muse neither authorized the settlement nor the dismissal of the Second Injury Fund claim as part of any settlement.<sup>6</sup>

On February 6, 2009, respondent sent Muse a letter referencing their telephone conversation that date and informing her that that her workers' compensation case had been settled.

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<sup>6</sup> Respondent was not charged with violating RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation) for settling Muse's case without her authorization.

On March 13, 2009, Muse received a net settlement award in the amount of \$19,925 from the workers' compensation insurance carrier for the Board of Education. According to Muse, respondent never told her that her claim against the Second Injury Fund had been dismissed pursuant to the settlement and, therefore, there would be no additional monies paid to her with respect to her claim. In his response to the grievance, respondent denied this allegation, claiming that Muse had approved the settlement and was aware of the dismissal of the claim against the Second Injury Fund.

Muse's subsequent actions with respect to the claim against the Second Injury Fund support her contention that she was unaware of the settlement and dismissal. Specifically, Muse continued to contact respondent by telephone and letter, requesting a status update about her claim with the Second Injury Fund. Respondent rarely returned her telephone calls. On May 1 and June 25, 2009, Muse sent respondent letters inquiring as to the status of the claim against the Second Injury Fund. Respondent did not reply to these letters. On June 15, 2010, Muse again wrote respondent, specifically asking whether her claim against the Second Injury Fund had been dismissed. Respondent failed to answer this letter.

Finally, Muse obtained a copy of her own file from the Division of Workers' Compensation. She then again wrote to respondent, on July 3, 2010, asking whether her claim against the Second Injury Fund had been dismissed and warning respondent that, if he failed to reply, she would refer him to the OAE. Respondent failed to reply to her letter.

According to Muse, between August 2009 and November 2013, respondent paid her a total of \$29,400, via attorney business account checks, cashier's checks, and cash. Muse asserted that respondent gave her the impression that the payment of these additional funds was connected to her claim against the Second Injury Fund. In his response to the Muse grievance, respondent denied this allegation, claiming that he paid Muse a total of only \$18,050 and made such payments because she was his client who was in need of money. In support of his position, respondent provided the OAE with documents establishing payments from him to Muse, from May 2006 through December 2013. According to the complaint, in total, Muse received \$49,325 in connection with her workers' compensation claim - \$19,925 from the Board of Education's insurance carrier and \$29,400 from respondent.

On May 11, 2015, respondent filed a motion to vacate the default in this matter. To prevail on this motion, respondent must satisfy a two-pronged test: (1) he must offer a reasonable

explanation for the failure to answer the ethics complaint; and (2) he must assert a meritorious defense to the underlying ethics charges.

As to the first prong, respondent asserted that he failed to file an answer to the complaint for the following reasons: (1) he participated in the demand interview with the OAE; (2) he provided the OAE with a four-page response to the Muse grievance, with supporting attachments; (3) because of his suspension, he had to "spend most of [his] time" finding non-legal work in order to pay his bills; (4) because of his suspension, he had no staff to assist him in preparing an answer; (5) he was going through a contentious divorce; and (6) he was indicted on theft charges in connection with unrelated client matters and was incarcerated for a period of ten weeks.

We concluded that respondent's explanation for his failure to file an answer was not reasonable. His excuses were undermined, and even contradicted, by additional assertions set forth in his certification in support of his motion. Specifically, respondent admitted that he spent significant time in his law office, while suspended, in order to transfer active client files, respond to former clients' requests for information, assist former clients with referrals, work on his divorce matter, prepare responses to "several ethics

grievances," work on his defense to pending criminal charges, and "to go through several hundred of [his] old files . . . which no longer have to be kept . . . and to remove more than a room full of paper for shredding." Thus, respondent's own certified explanation for his failure to file an answer to the complaint illustrates that he had the time and the resources to submit a verified answer to the complaint, but simply chose to prioritize other tasks, including the shredding of old files, rather than fulfilling his obligation to answer the ethics complaint.

Also at odds with respondent's motion was respondent's prior success in persuading us to vacate defaults. In September 2014, in connection with matters docketed as DRB 14-179 and DRB 14-199, respondent successfully vacated defaults, citing most of the same explanations for his failure to timely submit a verified answer as asserted in the motion in this matter. In those prior matters, which are now pending hearing, respondent was served with the complaint on April 16, 2014. He personally signed for the certified mailing to his home address. Despite such proper service and the subsequent receipt of a "five-day" letter, respondent failed to submit a verified answer and the record was certified as a default on June 10, 2014. The complaints in those matters included allegations of knowing

misappropriation. Stressing the Court's policy of allowing a respondent to be heard on the merits when the potential penalty is disbarment, and noting that respondent's license was at stake, we granted respondent's motion to vacate those defaults on September 22, 2014.

Here, as set forth in detail above, the OAE served respondent with the underlying complaint on December 8, 2014, approximately six weeks after we granted his motion to vacate the defaults in the knowing misappropriation matter. In his verified motion to vacate the current default, respondent did not dispute proper service of the underlying complaint. He simply asserted that he had a reasonable explanation for his failure, once again, to timely answer a complaint. Based on the allegations of this matter, although respondent faced the imposition of discipline short of disbarment, given his prior experience, he had actual notice that, should he not respond to this complaint, he risked the entry of a default. Respondent's renewed excuses, when viewed in the context of both the prior successful motion to vacate the default and the other information offered by respondent in his certification in support, lead us to the determination that his excuses are neither reasonable nor sufficient to satisfy the first prong of the test. Although his prior motion deserved some latitude, in



light of the nature of those charges and the potential sanction, his failure to answer the pending complaint is inexcusable.

We note that even if respondent had satisfied the first prong of the test, we would still deny his motion to vacate the default. Respondent failed to satisfy the second prong of the test, which required that he assert a meritorious defense to the underlying ethics charges.

In addition to his verified motion to vacate the default, respondent submitted a verified answer to the complaint and requested that we incorporate, by reference, his written response to the Muse grievance. When we pieced those documents together, we concluded that respondent had asserted defenses to some, but not all, of the underlying ethics charges. First, respondent failed to assert any defense to count one, failure to cooperate with disciplinary authorities, which he admitted violating. He requested that we give him credit for his "partial cooperation" in the matters.

Next, respondent admitted that, as to count two, although he was suspended from the practice of law, his name remained on both the sign and the directory for the building where he had maintained his law office and he continued to work there "regularly, albeit not on a daily basis" in order to complete certain tasks. Thus, respondent did not assert any specific

defense to the charged violations of R. 1:20-20(b)(2), (3), and (4). Despite respondent's denial that his conduct under these facts violated RPC 8.4(d), he admitted that his failure to explain to the OAE the measures that he took to comply with R. 1:20-20 constituted an additional violation of RPC 8.1(b).

The third count of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent's reply to the grievance, his motion to vacate the default, and his proposed answer arguably set forth specific defenses to some of these charges. Respondent, however, did not specifically address the allegation that he misrepresented to the workers' compensation court the reason Muse was not present for the court proceeding on the day that her matter was settled. Instead, he simply denied the allegation in his verified answer. Finally, respondent did not specifically address Muse's allegations that he failed to return her phone calls, reply to her letters, and keep her informed as to the status of her matter. Rather, he simply denied those allegations in his verified answer.

Respondent, thus, failed to set forth a meritorious defense to all of the underlying ethics charges and, accordingly, failed to satisfy the second prong of the test. We denied his motion to vacate the default.

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

As set forth in count one of the complaint, on February 12, March 11, and May 19, 2014, the OAE sent letters to respondent, directing him to submit a written reply to the Muse grievance and to produce specific documents, by dates certain. Respondent personally signed for the delivery of two of the three letters. Despite such proper service, he failed to reply to the grievance or produce the required documents in a timely fashion.

Although respondent finally appeared at the OAE offices, on July 8, 2014, for a demand interview, he had ignored the OAE's demands for a response to the grievance and the production of documents for almost five months. Respondent's failure to timely reply to the grievance and to produce the documents demanded by the OAE violated both RPC 8.1(b) and R. 1:20-3(g)(3).

As to count two of the complaint, the Court suspended respondent, effective July 17, 2013, from the practice of law in New Jersey. The suspension was imposed after the OAE filed a motion for respondent's temporary suspension due to his failure to cooperate with an investigation into whether he had knowingly misappropriated client funds.

As part of the investigation, on June 16, 2014, the OAE went to respondent's law office and observed his name on both the law office signage and the building directory. OAE employees spoke with respondent, who admitted that, despite his suspension, he had been in his law office daily.

R. 1:20-20 (b)(1) - (4) provides that an attorney who is suspended . . . :

(1) shall not practice law in any form either as principal, agent, servant, clerk or employee of another, and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public authority or agency;

(2) shall not occupy, share or use office space in which an attorney practices law;

(3) shall not furnish legal services, give an opinion concerning the law or its application or any advice with relation thereto, or suggest in any way to the public an entitlement to practice law, or draw any legal instrument;

(4) shall not use any stationery, sign or advertisement suggesting that the attorney, either alone or with any other person, has,

owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law; . . .

Respondent admitted to OAE personnel that he was in his office on a daily basis after his suspension from the practice of law. The complaint charged violations of R. 1:20-20(b)(2) (occupying law office space), R. 1:20-20(b)(3) (suggesting to the public an entitlement to practice law), and R. 1:20-20(b)(4) (using a sign suggesting that the attorney maintains a law office or that the attorney is entitled to practice law).

By engaging in the above activities after his suspension, respondent violated R. 1:20-20(b)(2), (3), and (4). In addition, by failing to comply with the Court order restricting the activities of suspended attorneys, respondent engaged in conduct prejudicial to the administration of justice, in violation of both RPC 8.1(b) and RPC 8.4(d).

Next, respondent again failed to cooperate with disciplinary authorities. After visiting respondent's office, the OAE sent letters, on July 18 and August 6, 2014, informing him that he was now also under investigation for practicing law while suspended and demanding that he explain, in writing, by August 1 and August 15, 2014, respectively, how he had complied with R. 1:20-20(b)(1)-(4), governing suspended attorneys. The August 6, 2014 letter also cautioned respondent that failure to

cooperate would constitute a willful violation of RPC 8.1(b). Respondent submitted no replies to these letters, thus violating RPC 8.1(b) and R. 1:20-3(g)(3).

With respect to count three of the complaint, in May or June 2005, respondent became the primary attorney in the prosecution of Muse's workers' compensation claim. In June 2008, respondent directed Muse to execute three blank affidavits that he would use in the event she could not attend workers' compensation court proceedings. The operative affidavit referenced a gross award of \$21,984, paid by an insurance carrier for the Board of Education. Respondent subsequently promised Muse, in response to her specific direction, that he would destroy these affidavits, but he never did so.

On May 30, 2008, Muse sent the second of two letters directly to the judge assigned to her claim inquiring about the status of her case, enclosing copies of RPCs 1.1, 1.3, and 1.4, and informing him that respondent had not returned her telephone calls over the past two months. During a January 28, 2009 court proceeding, respondent misrepresented to the workers' compensation judge, to counsel for the Board of Education, and to counsel for the Second Injury Fund that Muse was not in attendance due to her medical condition when, in truth, she was not present because he had never notified her of the court date.

On that same date, without Muse's authorization, respondent settled her claim for \$21,984 and consented to the dismissal of her claim against the Second Injury Fund. To perfect the settlement, respondent used one of the three affidavits Muse had executed six months prior, notwithstanding her express direction and his express promise that he would destroy them. Additionally, despite her numerous inquiries, respondent never informed Muse that her claim against the Second Injury Fund had been dismissed as part of the settlement. Respondent, thus, violated RPC 3.3(a)(1) and RPC 8.4(c) by making misrepresentations to the court, to his client, and to his adversaries. He also violated RPC 1.1(a) and RPC 1.3 by allowing the claim against the Second Injury Fund to be dismissed.

Left in the dark, Muse continued to try to communicate with respondent, by telephone and in writing, about the status of her claim against the Second Injury Fund. Respondent neither returned her telephone calls nor replied to three letters that she sent to him in May and June 2015.

After obtaining a copy of her own file from the Division of Workers' Compensation, Muse once again wrote to respondent, on July 3, 2010, asking whether her claim against the Second Injury Fund had been dismissed and warning respondent that, if he failed to reply, she would refer him to the OAE for ethics

violations. Respondent failed to answer this letter. Respondent's failure to keep Muse informed about the status of the matter and to reply to her reasonable requests for information violated RPC 1.4(b).

An accounting that Muse provided to the OAE revealed that, between August 2009 and November 2013, respondent paid her a total of \$29,400, via attorney business account checks, cashier's checks, and cash. According to Muse, respondent created the impression that these funds were connected to her workers' compensation claim against the Second Injury Fund. Respondent denied this allegation, claiming that the payments were made simply because Muse was his client and was in need of money. Respondent provided the OAE with documents asserting that, between May 2006 and December 2013, he paid Muse only \$18,050. Moreover, according to the complaint, in total, Muse received \$49,325 in connection with her workers' compensation claim - \$19,925 from the Board of Education's insurance carrier and \$29,400 from respondent.

Respondent's misrepresentation to Muse, which led her to believe that the payments from him were funded by the Second Injury Fund, and his misrepresentation to the OAE that he gave Muse these funds because she was a client in need of money, constitute additional violations of RPC 8.4(c).



**DRB 15-165 (XIV-2014-0536E)**

Service of process was proper in this matter. On April 7, 2015, the OAE sent a copy of the complaint, by certified and regular mail, to respondent at his home address on file with the CPF. A certified mail receipt was returned, which reflected a delivery date of April 10, 2015 and the signature of "Gloria M. Hamill." The regular mail was not returned. Respondent failed to file an answer to the complaint.

On April 30, 2015, the OAE sent a "five-day" letter to respondent, by certified and regular mail, at his home address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the complaint would be deemed amended to charge a willful violation of RPC 8.1(b), and the record would be certified to us for the imposition of discipline. A certified mail receipt was returned, which reflected a delivery date of May 4, 2015 and the signature of "Gloria M. Hamill." The regular mail was not returned. Respondent failed to file an answer to the complaint.

Because respondent had not filed a verified answer to the formal ethics complaint as of May 11, 2015, the OAE certified the record to us as a default on that date.

The facts relevant to this matter are as follows. On October 10, 2014, the OAE filed a grievance against respondent as part of an investigation into whether he had knowingly misappropriated settlement funds belonging to his client, Heena Parekh. In 2009, Parekh had retained respondent to pursue a personal injury claim arising out of an incident that had occurred on November 1, 2008, at her apartment complex in Jersey City, New Jersey. Respondent filed a lawsuit on Parekh's behalf, in Superior Court, Hudson County, against parties associated with the ownership and operation of her apartment complex.

According to Parekh, in 2013, a mediation conference took place with the defendants, at respondent's office. As a result of the mediation, Parekh executed a release that provided for a settlement payment to her, in the amount of \$110,000. Respondent informed her that the settlement would be paid by the defendants in four installments.

The OAE's investigation, however, revealed that Parekh's lawsuit was settled, on February 5, 2013, for a lump sum of only \$35,000. The OAE obtained a Release Agreement, purportedly executed by Parekh, indicating a settlement amount of \$35,000 as full payment for her release of her claims. Parekh maintained that she had not seen the Release Agreement until the OAE

provided it to her and that respondent had likely forged her signature on the document.

The OAE subpoenaed respondent's Capital One trust and business account records. Those records showed that, on April 4, 2013, Tower National Insurance Company/Tower Group Insurance Companies issued a check in the amount of \$35,000 payable to "Heena Parekh and John F. Hamill, Jr., Esq., as attorney." The face of the check contained the notation "full and final settlement all claims and liens." Although both respondent and Parekh endorsed the \$35,000 check, Parekh claimed that respondent induced her signature by representing that the \$35,000 payment was the first installment toward the \$110,000 settlement.

On April 9, 2013, respondent deposited the \$35,000 settlement check into his trust account, which then had a balance of \$5,717.39. Respondent subsequently made three disbursements to himself, totaling \$11,500, against Parekh's settlement funds: on April 22, 2013, he issued trust account check #1026 for \$5,000 for "Parekh - partial fee"; on May 7, 2013, he issued trust account check #1027 for \$5,000 for "Parekh - partial fee"; and, on June 4, 2013, he issued trust account check #1030 for \$1,500 for "Parekh - reimburse [doctor]."

Between the date respondent deposited Parekh's settlement funds in his trust account, April 9, 2013, and the date of his temporary suspension, July 17, 2013, he did not disburse any money to Parekh, from either his trust or business accounts. Thus, respondent should have maintained at least \$23,500 of Parekh's funds intact in his trust account at all times. The OAE audit of respondent's trust account disclosed, however, that between April 9, 2013 and May 9, 2013, respondent made no additional deposits. However, during that same period, he disbursed an additional \$13,657.61 from his trust account to unrelated clients or third parties. As previously noted, at the time these disbursements were made, respondent's trust account contained only \$5,717.39 in funds that were not earmarked for Parekh. His disbursement of the \$13,657.61, thus, invaded Parekh's funds.

On July 17, 2013, when respondent was temporarily suspended, he should have been holding, inviolate, \$23,500 of Parekh's settlement funds in his trust account. Instead, his trust account had an available balance of only \$15,842.39. Thus, respondent had used at least \$7,657.61 of Parekh's funds for clients or expenses unrelated to Parekh's matter. Parekh never consented to respondent's use of her funds and was unaware that he had disbursed them for those unrelated purposes.

On October 27, 2014, the OAE sent a letter to respondent at both his office and home addresses, by certified and regular mail, enclosing the Parekh grievance and directing him to submit a written response to the allegations by November 7, 2014. The letter also required that respondent produce the Parekh client file, copies of all settlement checks, copies of the client ledgers, supporting documentation, a three-way reconciliation for respondent's trust account, and the Parekh retainer agreement. On November 3, 2014, "Maria Badashrili" signed for the delivery of the certified mailing to respondent's office. The certified mailing to respondent's home address was returned "unclaimed." Neither of the letters sent by regular mailing was returned.

The OAE subsequently learned that respondent's home address had changed and, accordingly, on February 12, 2015, the OAE sent another letter to respondent at his new home address, by certified and regular mail, again enclosing the Parekh grievance, directing him to submit a written response to the allegations by February 26, 2015, and requiring him to produce the documents demanded in the prior letter. On February 17, 2015, respondent personally signed for the delivery of the certified mailing to his home address. The regular mailing was not returned. Respondent failed to reply to the OAE's demands by

February 26, 2015 and, as of April 6, 2015, had submitted no reply to the grievance.

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

As alleged in the complaint, respondent knowingly misappropriated client trust funds and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. In February 2013, respondent settled Parekh's lawsuit for \$35,000, without her authorization, after respondent led her to believe that he had negotiated a settlement of \$110,000.<sup>7</sup> According to Parekh, he likely forged her signature on the release agreement in the case. The insurance carrier for the defendants issued a \$35,000 check, with the notation "full and final settlement all claims and liens." Respondent then induced Parekh's endorsement of the \$35,000 check by misrepresenting to her that the lesser amount was actually the first installment toward the \$110,000

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<sup>7</sup> The complaint did not charge respondent with a violation of RPC 1.2(a) (a lawyer shall abide by a client's decisions concerning the scope and objective of the representation) for settling Parekh's case without her authorization.

settlement. On April 9, 2013, he deposited the check into his trust account. At the time of this deposit, the balance of his trust account was only \$5,717.39.

Respondent then made three disbursements to himself against Parekh's settlement funds, totaling \$11,500. After those disbursements, \$23,500 of Parekh's funds should have remained intact in respondent's trust account.

Between April 9, 2013, the date of the deposit of Parekh's settlement funds, and May 9, 2013, respondent disbursed no money to Parekh. Between those same dates, however, respondent disbursed an additional \$13,657.61 from his trust account to unrelated clients or third parties. At the time of these disbursements, the trust account contained only \$5,717.39 in funds that did not belong to Parekh. Thus, respondent invaded Parekh's settlement funds when he made those additional unrelated disbursements.

On July 17, 2013, when respondent was temporarily suspended, he had still disbursed no money to Parekh, Therefore, he should have been holding, inviolate, \$23,500 of Parekh's settlement funds in his trust account. Instead, his trust account had an available balance of only \$15,842.39. Thus, respondent used at least \$7,657.61 of Parekh's funds without her knowledge or authorization. By doing so, respondent is guilty of

knowing misappropriation, in violation of RPC 1.15(a) and the principles of In re Wilson. In inducing Parekh to indorse the \$35,000 settlement check through deceit and misrepresentation, he also violated RPC 8.4(c).

Additionally, on October 27, 2014 and February 12, 2015, the OAE sent letters to respondent, at his home and office addresses of record, directing him to submit a written reply to the Parekh grievance and to produce specific documents, by dates certain. Respondent personally signed for the letter delivered to his home on February 17, 2015. Yet, he failed to reply to the grievance or produce the required documents. Respondent's failure to reply to the grievance and to produce the documents demanded by the OAE violated both RPC 8.1(b) and R. 1:20-3(g)(3).


In sum, respondent is guilty of violations of RPC 1.15(a) and the principles of In re Wilson, RPC 8.1(b) and R. 1:20-3(g)(3), and RPC 8.4(c). Because respondent knowingly misappropriated Parekh's funds, disbarment is the only appropriate sanction, pursuant to the principles of In re Wilson. We so recommend to the Court. In light of our recommendation, there is no need to address discipline for the additional ethics violations, addressed under both complaints.

Members Baugh and Clark did not participate.



We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matters of John F. Hamill, Jr.  
Docket Nos. DRB 15-101 and DRB 15-165

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Argued: September 15, 2015

Decided: December 16, 2015

Disposition: Disbar

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Clark						X
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	6					2

  
Eileen A. Brodsky  
Chief Counsel