SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-076

IN THE MATTER OF

JAMES F. CARNEY

AN ATTORNEY AT LAW

Decision

Argued: November 18, 1999

Decided: April 12, 2000

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Alan L. Zegas 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 Robert C. Shelton, Jr., J.S.C. (retired).

Initially, respondent's counsel requested that argument before us be adjourned

indefinitely or that he be transferred to disability inactive status pending a determination as to whether he was capable of assisting in the defense of the matter. Thereafter, respondent's counsel and the OAE agreed that respondent would be evaluated by Daniel P. Greenfield, M.D. and that respondent would abide by Dr. Greenfield's determination, if respondent's counsel found no fault in the evaluation process. Dr. Greenfield concluded that respondent was competent to assist his counsel. Respondent did not object to Dr. Greenfield's findings and conclusions. Therefore, the matter proceeded before us.

The complaints in this matter allege violations of RPC 1.15 (knowing misappropriation of client funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in eight matters; violations of RPC 1.5 (fee overreaching) and RPC 8.4(d) (conduct prejudicial to the administration of justice) in three matters; violations of RPC 8.1(a) (knowingly making a false statement of a material fact in connection with a disciplinary matter) in two matters and a violation of RPC 1.8(a) (conflict of interest) in one matter.

Respondent was admitted to the New Jersey bar in 1972; he is also admitted to the New York bar. On March 9, 1999, he was temporarily suspended in New Jersey until further order of the Court. In re Carney, 157 N.J. 526 (1999). He remains under suspension. In 1994, respondent was publicly reprimanded for failure to reveal to a client that the financial consultant who respondent recommended for advice on how to invest a substantial settlement was respondent's wife.

* * *

On May 5, 1993, the OAE began a random compliance audit of respondent's attorney records, followed by additional audit visits and a supplemental investigation. On September 19, 1995, the OAE and respondent entered into a disciplinary stipulation in which respondent admitted that he had violated RPC 8.4(d) (conduct prejudicial to the administration of justice) in three matters and RPC 1.15(a) (negligent misappropriation of client funds) and RPC 1.15(c) (failure to segregate funds in which both the lawyer and client claim an interest) in two of the matters.

On December 26, 1995, we rejected the stipulation and remanded the matter to the OAE for further investigation. Thereafter, the OAE filed complaints in the eight matters set forth below.

The Abbot Matter

Carolyn Abbott was a seventeen-year old student when she became a quadriplegic as a result of injuries sustained in a July 23, 1986 automobile accident. She initially retained James S. Dobis to represent her in connection with her claim. Because of a potential conflict, on July 10, 1987, Dobis referred the case to respondent. Respondent took the case on a contingency basis. They agreed that Dobis was to receive forty percent and respondent sixty percent of any legal fee recovered.

Thereafter, respondent filed a civil action on behalf of Abbott against several defendants. All but one of the defendants settled prior to trial and the remaining defendant settled during the April 1991 trial. The total settlement amount was $2,175,000. By June 4, 1991, respondent had received all of the settlement funds and, by September 11, 1991, he had disbursed all of the funds. Between April and September, he deducted $75,000 from the proceeds for litigation costs and $700,000 for legal fees, leaving a net recovery of $1,400,000 for Abbott.[1] At that time, the maximum fee to which respondent was entitled, without court approval, was $245,833. R.1:21-7. Respondent did not file an application with the court before taking the $700,000.

On June 28 1991, respondent sent Dobis a $90,000 check for his referral fee, and told Dobis that an additional amount would be sent after the court had approved respondent's "full attorneys fees." By that time, respondent had already taken $360,000 from the settlement funds.

Abbott complained to respondent about the amount she had received because, at the time of the settlement, respondent had promised her a minimum net recovery of $1,500,000. Respondent replied that the trial court had approved his receipt of one-third of the net

---

[1] Respondent transferred Abbott's $1,400,000 to a Merrill Lynch account managed by respondent's wife, Joan Tucker, a Merrill Lynch financial consultant. When respondent introduced Abbott to Tucker, he did not tell Abbott that he was married to Tucker. Tucker also managed the settlement funds of other clients listed below, Camuso, Munro and Freifeld. However, the complaint did not contain any charges concerning respondent's failure to disclose to his clients that Tucker was his wife.

settlement as a legal fee. By letter dated August 8, 1991, respondent reiterated his prior verbal statements to Abbott that he was "allowed to charge a 1/3 fee" and that, if she disagreed, she had the right to retain another attorney to contest the fee. He did not advise Abbott that R.1:21-7 required that he file an application with the assignment judge in Morris County, on written notice to her, for approval of a fee in excess of $245,833.

In late 1991, respondent agreed to give Abbott an additional $100,000, not because she was entitled to it, he claimed, but because he had told her, at the time of the settlement, that she would receive $1,500,000. He also advised Abbott that she had a good claim against her treating physician, Dr. Abelardo Inoa, for medical malpractice. He proposed that he retain $30,000 of the $100,000 as an advance on costs for the claim against Dr. Inoa. He also stated to Abbott that he should retain $20,000, the amount previously transmitted to an attorney who had represented Abbott's mother, a defendant in the litigation.[2] Finally, respondent requested that Abbott consider the remaining $50,000 a loan to him. He promised to repay the loan by early 1992, with interest. Abbott agreed to respondent's proposals. However, respondent did not repay the $50,000 loan, as promised.

In January 1992, Dobis wrote to respondent about the remainder of his referral fee because Abbott had told him that, according to respondent, the court had already approved

---

[2] Abbott's mother also had a derivative claim against the other defendants. During the settlement negotiations, the other defendants had objected to the mother's receiving any money on her affirmative claim. The attorney for Abbott's mother had insisted on some payment. In order to finalize the settlement, respondent had agreed to pay $20,000 out of his fee for Abbott's mother's claim, one-third of which would go to her attorney.

respondent's fee application. Respondent's answer was that he had to apply to the court for the additional fee because Abbott had disagreed with it. By letter dated March 3, 1992, respondent forwarded Dobis an additional $10,000, informed Dobis that he had spoken with the trial judge about the fee application and that the trial judge had promised to consult with the assignment judge about how extensive the fee application would have to be.[3]

In June 1992, more than a year after the settlement, respondent filed a motion for an order setting his fee at $575,000. He told the court that he had initially advised Abbott that he believed he was entitled to $690,000, but that Abbott had disagreed with that amount. Respondent further represented that, "after extensive negotiations involving the family and personal attorney," it was agreed that respondent was entitled to $575,000. Respondent's representations to the court were untrue. Also, respondent did not notify the court that he had already taken $700,000.

At the July 10, 1992 hearing on respondent's motion, the assignment judge set respondent's fee at $500,000. The order was signed on December 16, 1992.[4] Respondent appealed the decision. It was affirmed by the Appellate Division on January 13, 1994 and by the Supreme Court on April 7, 1994.

According to Abbott, respondent had sent her a copy of his notice of motion for the

---

[3] In August 1992, Dobis filed a breach of contract action against respondent. The case was ultimately settled. Dobis received a total referral fee of $125,000.

[4] Respondent could not recall why it had taken him five months to submit a one-page order to the judge.

enhanced fee, but not his affidavit or brief. She did not know at the time that respondent had to apply to the assignment judge for a fee in excess of $245,833. She believed that the trial court had already approved a $700,000 fee. Abbott's understanding of what respondent had requested in his fee application is not clear.

Abbott testified that it was not until she saw a newspaper article concerning the Appellate Division's affirmance of the $500,000 fee that she understood that respondent had to file an application for an enhanced fee. After reading the article, Abbott demanded that respondent give her $200,000, rather than the $100,000 respondent had agreed to return, plus ten percent interest from the date of settlement. According to Abbott, respondent agreed to give her $200,000, appeared "uneasy" and told her that he was being investigated by the ethics authorities.

Despite numerous promises that he would repay Abbott, as of December 1998, respondent still owed her $185,000.

During the 1993 audit, respondent had provided the OAE with an undated settlement statement allegedly signed by Abbott and witnessed by respondent. The settlement statement showed costs of $100,000, fees "approved by client and trial court" of $575,000, costs advanced for the Inoa litigation of $80,000 and a $1,400,000 disbursement to Abbott. The settlement statement did not show the $50,000 loan to respondent. Respondent had also given the OAE two fee agreements: one dated April 20, 1987, for Abbott's personal injury claim and the other, undated, for the medical malpractice claim and several releases for the

defendants in the personal injury litigation. All of the documents contained Abbott's signature. The signatures appear to have been made by someone who had difficulty writing. Except for the retainer agreements, respondent had signed the documents as witness to Abbott's signature.

Abbott denied having signed the documents or having given respondent permission to sign her name on documents. According to Abbott, she saw the documents for the first time when the OAE showed them to her. Abbott testified that, in 1987, she had to use a "mouth stick" to write and that she would write an "X" for her name. She later progressed to being able to sign her name with the "mouth stick." She signed, however, as "C. M. Abbott," while the documents purportedly signed by her showed her full name. Finally, Abbott testified, the signatures on some of the documents contained a misspelling of her last name.

According to Abbott, respondent had given her a different settlement statement. That statement, which was undated and unsigned, showed $700,000 in fees, $75,000 in costs and $1,400,000 to Abbott.

Abbott also denied having received two letters that respondent had purportedly sent to her. The first letter, dated September 21, 1991, allegedly confirmed Abbott's agreement to allow respondent to retain $80,000 for costs for the Inoa litigation to use as "I see fit subject to a final accounting." The second letter, dated August 15, 1992, purportedly confirmed Abbott's consent to the $575,000 fee, respondent's appeal of the court's decision

lowering the fee to $500,000 and their agreement that respondent would pay interest on the additional $75,000, pending the completion of the appeal.

Respondent, in turn, testified that, during his first or second meeting with Abbott, she had given him permission to sign her name on documents. He admitted that he had signed Abbott's name on the fee agreements, settlement statement and releases. He denied that he had written Abbott's name to look as though it had been signed by someone who had difficulty writing. According to respondent, he prepared the settlement statement given to Abbott at the time of the settlement and prepared the statement given to the OAE when he filed his excess fee application. Respondent testified that he gave the second settlement statement to Abbott soon after it was prepared. Respondent explained that the later statement showed $80,000 in advanced costs for the Inoa litigation,[5] rather than $30,000 in costs and the $50,000 loan to him, because he believed that, once advanced costs had been deposited in an attorney's business account, the funds could be used for any purpose. Respondent theorized that, because he had used the $50,000 for other clients' litigation expenses, it was appropriate to show the entire $80,000 as costs advanced for the Inoa litigation. According to respondent, he based his belief that costs advanced by one client could be used for other clients' expenses on the OAE's manual titled Trust and Business Accounting for Attorneys.

---

[5] Respondent filed a malpractice action against Inoa in December 1991. According to Abbott, respondent repeatedly told her the case was "going good." The Inoa case was dismissed based upon the entire controversy doctrine. On March 22, 1996, the Appellate Division affirmed the dismissal. In respondent's June 21, 1996 letter to Abbott, he stated that he was still awaiting the Appellate Division's decision. However, the complaint does not contain any allegations of misrepresentations about the Inoa litigation.

Respondent further testified that his belief that he was entitled to the $700,000 fee was based on his understanding that the trial court had agreed that he was entitled to a fee of one-third of the net recovery.[6] According to respondent, it was his experience in Essex County that the trial judge usually decided excess fee applications, even though the rule stated that the application should be made to the assignment judge.[7]

The complaint charged that respondent's conduct in the Abbott matter violated RPC 1.5 (fee overreaching), RPC 1.8(a) (conflict of interest), RPC 1.15 (knowing misappropriation of client trust funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.1(a) (knowingly making a false statement of a material fact in connection with a disciplinary matter) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The Camuso Matter

On April 20, 1986, Gail Camuso sustained serious injuries when she was a passenger on a motorcycle operated by Gary Anderson, her fiancé. The accident rendered her a quadriplegic. In November 1986, Camuso retained respondent to represent her. There were

---

[6] By the time of the ethics hearings, the trial judge had passed away.

[7] According to the Honorable Alvin Weiss, assignment judge for Essex County, applications for enhanced fees were made to the assignment judge, the civil presiding judge or to the trial judge. If the application was made to the civil presiding judge or the trial judge, he or she would contact the assignment judge to ascertain whether he wished to hear the matter. The assignment judge would generally refer the matter to the civil presiding judge, who, in turn, would refer it to the trial judge.

two retainer agreements: a standard form contingent fee agreement, dated November 10, 1986, which covered any claims against anyone other than Anderson and a letter, dated November 14, 1986, in which it was agreed that respondent would pursue Camuso's claims against Anderson at an hourly rate of $100. As to the separate fee agreement for the claim against Anderson, respondent testified that, in his view, a one-third fee was not justified because liability was unquestionable and he expected that Anderson's insurance company would offer its $100,000 policy amount without difficulty.

Thereafter, respondent filed suit against Anderson, Harley Davidson and B&D — the manufacturer of the motorcycle and the retailer, respectively. In November 1990, all of the defendants agreed to settle the claims for a total of $1,450,000. Respondent's client ledger card showed the following credits:

November 27, 1990	Harley Davidson	$ 750,000.00
December 4, 1990	B&D	600,000.00
February 2, 1991	Interest	4,047.44
March 1, 1991	Gary Anderson	118,732.18[8]
September 19, 1991	Interest	1,239.61
Total		$1,474,019.23

Respondent took $364,732.18 for his fees, $84,000 for costs[9] and transferred

---

[8] The amount of the Anderson settlement was $100,000; the additional $18,732.18 represented post-judgment interest.

[9] Although respondent's settlement statement showed costs of $84,000, the client ledger card reflected only a $75,000 deduction for "cost." The remaining deductions were either attributed to fees or not accounted for.

$1,020,000 to Merrill Lynch on behalf of Camuso. Most of the funds were disbursed between November 30, 1990 and March 19, 1991. Respondent began taking his fees on November 30, 1990. When the first distribution was made for his client, on December 21, 1990, respondent had already taken $305,000 in fees and $75,000 in costs. Respondent transferred $850,000 to Merrill Lynch on behalf of Camuso on December 21, 1990 and $170,000 on March 19, 1991.

By letter dated March 15, 1991, respondent forwarded a settlement statement to Camuso. In his letter, respondent stated that he had enclosed "a computerized breakdown of all of the costs expended in preparing the case." He further stated that he had waived his fee on the $100,000 paid by Anderson's insurance company and had taken "a 10% fee on the amount over one million dollars, which resulted in an additional $96,333.00 to you." Finally, respondent advised Camuso that $1,020,000, which included $13,000 in interest, had been deposited in her Merrill Lynch account.

In the settlement statement, respondent showed two different methods for computing his fee. The first showed that, if he had taken a one-third fee from the total settlement figure of $1,450,000 less $84,000 for expenses, he would have received $455,333 and Camuso $910,667. The second method, which allegedly resulted in the "additional $96,333" to Camuso, deducted both the expenses and the $100,000 Anderson payment from the gross settlement, leaving a net of $1,266,000. Respondent calculated his fee of $359,000 by taking one-third of the first $1,000,000 and ten per cent of the remaining amount.

Respondent did not disclose to Camuso in the settlement statement or in the cover letter that he was obligated to seek court approval for any contingent fee in excess of $245,833. It is undisputed that respondent never filed an application for the excess fees.

Respondent testified that, at the time of the settlement, he met with Camuso, her mother, Neil Geltzeiler and Philip Portnoy — friends and advisors of Camuso — to discuss the settlement amount and the amount of his fee. According to respondent, he explained to them that "I'm usually in Essex County where I've never been denied the full one third [fee]... And if there were ever a case where an increased fee would be granted, it would be this one." According to respondent, the parties agreed at that meeting that Camuso would get $1,020,000 from the settlement and that he would take the remainder of the settlement funds as fees, in exchange for his agreement not to seek a fee for pursuing the claim against Anderson and not to file an application for an enhanced fee award. Respondent testified that Geltzeiler was an insurance agent who did a significant amount of business with law firms and that Geltzeiler "knew all about [attorneys'] fees." In fact, according to respondent, it was Geltzeiler's idea that respondent not file a fee application and that the parties work out a fee arrangement.

The settlement statement reflected a fee of $359,000; however, respondent actually took $364,732.18, which included interest earned while the Anderson funds were deposited

in court and, later, while they were in respondent's trust account.[10]

According to Camuso, it was respondent's associate, Michael Gordon, not respondent, who had told her about the settlement. Gordon thereafter came to her house to have her sign a document authorizing respondent to endorse the settlement checks on her behalf. She recalled attending a meeting with respondent, Geltzeiler and Portnoy, when there was a discussion of respondent's fee, but did not remember when the discussion occurred or what was discussed. She claimed that she was confused and overwhelmed at that time because "I never in my life had to deal with figures of that magnitude....This kind of money. The situation of having to even deal with a lawyer. I never in my life had to even deal with a lawyer before this."

Camuso testified that she received respondent's March 15, 1991 letter and the settlement statement, but with no accompanying breakdown of costs, as stated in the letter. She remembered asking respondent for a detailed breakdown of the costs, which she never received.

---

[10] Respondent testified that the court rules permitted him to take one-third of the interest earned on the Anderson funds while they were deposited with the court. He further claimed that his bookkeeper had mistakenly transferred to him, instead of Camuso, the interest earned while the funds were in his trust account. Apparently, respondent routinely kept interest on settlement funds. According to respondent, after the OAE investigator explained that this practice was improper, respondent turned over the interest to his clients. The OAE investigator testified that, at her May 1993 audit, she told respondent that he was not entitled to the interest on clients' funds and that he had to return those monies to his clients. Respondent did not reimburse Camuso for the interest until June 1994. In any event, the complaint did not allege misappropriation of interest belonging to clients.

According to Camuso, it was Geltzeiler who first questioned respondent's fee. He told her that he had been reading "some book" and realized that something was not right about the amount of fees respondent had taken. Subsequently, Camuso retained an attorney, who filed a complaint against respondent. The case was settled for $90,000, payable in installments, in March 1994. Although respondent did not meet the payment schedule, the last payment was finally made in August 1995.

Geltzeiler testified that he had called respondent because more than three weeks had passed after Camuso had signed the authorization for respondent to endorse the settlement checks and Camuso still had not received her funds. Respondent told him that the funds were in his trust account and that Camuso would receive "a little over a million dollars." Geltzeiler thought the amount was too low. According to Geltzeiler, he researched the issue of attorneys' fees and found a "schedule" that explained the allowable attorney contingency fee. Geltzeiler testified that he then called respondent and told him that respondent had "shorted [Camuso] about $113,000." Geltzeiler requested a breakdown of the expenses. According to Geltzeiler, respondent never provided a detailed itemization of the expenses and ultimately told him to "go to hell," when he continued to question the fees.

The complaint charged that respondent's conduct in the Camuso matter violated RPC 1.5 (fee overreaching), RPC 1.15 (knowing misappropriation of client trust funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The Munro Matter

There are several aspects to the Munro matter, including five separate litigations. Although the various aspects overlap in time, they will be treated separately for clarity.

A. The Medical Malpractice Litigation

In 1988, Jacqueline Munro, age 28, became a quadriplegic following an operation performed by Dr. Abbott Krieger. Munro retained James LePore to represent her in a claim against Dr. Krieger. In November 1989, LePore filed a medical malpractice complaint. In March 1990, Munro transferred the case to respondent.

Respondent settled the medical malpractice suit for $3,000,000 and, on December 17, 1992, deposited the settlement funds in his trust account. On December 23, 1992, respondent deposited $2,000,000 in a Merrill Lynch account that his wife, Tucker, had established for Munro. Between December 1992 and March 31, 1993, respondent took for himself the remaining $1,000,000 ($950,000 in fees and $50,000 in costs). As previously stated, the maximum fee to which respondent was entitled, without court approval, was $245,833. Respondent did not file an application with the court prior to taking the $950,000.

B. The NJHA/Hartford Litigation

Munro lived with her parents and received twenty-four hour nursing care through Bayada Nurses. Blue Cross-Blue Shield had initially paid for the nurses, based on a health

insurance policy issued to Munro's mother, Ellen Munro. Ellen Munro received health benefits through her employer, St. Clare's Hospital. In January 1991, St. Clare's adopted a self-funded employee health benefits plan as a member of the New Jersey Hospital Association ("NJHA"). The NJHA plan was administered by the Hartford Insurance Group ("Hartford"). Hartford advised Munro that it would pay for only seventeen hours per day of nursing care. Nevertheless, Munro continued to receive twenty-four hour nursing care from Bayada.

In November 1991, respondent filed a complaint against NJHA and Hartford seeking twenty-four hour nursing care coverage for Munro. The defendants removed the case from state court to federal court.

Effective January 1, 1992, St. Clare's amended its benefit plan to limit the maximum amount that it would pay for nursing care to $25,000 per year.

In April 1992, Bayada learned that Munro might have health insurance coverage under her father's employer's health plan. Munro's father, John Munro, was employed by Coin Depot Corporation. In fact, it appeared that the Coin Depot plan provided primary coverage for Munro. As explained below, although it initially appeared that the Coin Depot plan would pay for twenty-four hour nursing care for Munro, that was not the case.

In November 1992, respondent's associate, Michael Gordon, signed a stipulation of dismissal of Munro's complaint against NJHA and Hartford. According to the attorney for NJHA, Gordon told him he intended to file a new complaint naming all of the parties to both

the St. Clare's and Coin Depot health plans.

C. The Employee Benefit Plans Litigation

Coin Depot also had a self-funded health plan, which was administered by Comprehensive Benefits Service Company, Inc. ("CBSC"), a subsidiary of Employee Benefit Plans, Inc. Although it appeared, in April 1992, that CBSC would pay for twenty-four hour care for Munro, by letter dated May 26, 1992, CBSC denied the claim for services rendered between January and August 1991, finding that the services were merely "custodial care" and, hence, not covered. CBSC also indicated that it was reviewing the claims for more recent services, as well as Munro's eligibility under the Coin Depot plan.

Sometime during the summer of 1992, Munro was hospitalized. Respondent advised Employee Benefit Plans that Munro was unable to leave the hospital because the company had refused to pay for her home nursing care. By letter dated August 26, 1992, an attorney for Employee Benefit Plans notified respondent that coverage had been approved for sixteen to eighteen hours per day of skilled home nursing care for Munro. Munro continued to require round-the-clock care, however.

Effective December 1, 1992, Coin Depot amended its benefit plan to limit the maximum amount that would be paid for nursing care to $30,000 per year.

In February 1993, respondent filed a complaint in federal court against Employee Benefit Plans, CBSC, Coin Depot, NJHA and St. Clare's. The complaint sought a judgment

requiring the defendants to pay for twenty-four hour nursing care for Munro and prior unpaid claims.

In October 1994, Robert Vort, Esq., replaced respondent as counsel and, in December 1994, moved to amend the complaint to include a claim of promissory estoppel against Employee Benefit Plans and CBSC, based on the August 26, 1992 letter from the attorney for Employee Benefit Plans. The motion was denied.

During discovery in the litigation, the defendants learned about the malpractice settlement. In early 1995, they sought summary judgment on the grounds that plaintiff had recovered her future medical expenses in the malpractice settlement and that their insurance policies precluded a double recovery. They further argued that Munro's settlement violated their rights to seek subrogation from Dr. Krieger. In September 1995, the court granted summary judgment to the defendants. The judgment was affirmed by the Court of Appeals for the Third Circuit.

D. The Bayada Litigation and Settlement

As explained above, in January 1991, Munro's insurance company ceased to pay Bayada for round the clock nursing service. When Bayada sought payment of its outstanding bills, Munro referred Bayada to respondent. Bayada's director testified that respondent's secretary and respondent's associate, Michael Gordon, repeatedly assured her that Bayada would be paid in full when Munro's malpractice case was settled. In September 1991,

respondent personally guaranteed payment to Bayada for seven hours of care for Munro, five days per week. Respondent testified that he believed that he had personally guaranteed payment for all of Bayada's services, not merely thirty-five hours per week.

Although Bayada had allegedly been told that it would be paid out of the malpractice settlement, it was not notified of the settlement. Despite several telephone calls and letters to respondent and his associate demanding payment, Bayada was not paid. In March 1993, Bayada's attorney learned of the settlement though the defendant's attorney. In August 1993, Bayada filed suit against the Munros (Munro's parents had also guaranteed payment to Bayada) and respondent, seeking payment of $140,337.70 from the Munros and $38,702.88 from respondent.

Respondent retained Vort to represent him and the Munros. After Bayada's attorney filed a motion for summary judgment in 1994, the case was settled for $180,000. Because the settlement amount was not paid, Bayada filed a motion to enforce the settlement. By letter dated March 16, 1995, Vort sent three checks to Bayada's attorney: a $100,000 check to Bayada from respondent's trust account, an $80,314.52 check to Bayada from respondent's business account and a $500 check to Bayada's attorney from respondent's business account.[11] According to Vort, he did not discuss the settlement with the Munros, only with respondent.

---

[11] The additional $500 was to reimburse Bayada's attorney for the cost of filing the motion to enforce the settlement and then adjourning it to give the defendants additional time to pay the settlement amount.

Part of the Bayada settlement funds came from Munro's Merrill Lynch account. On February 14, 1995, respondent drafted an authorization directing Merrill Lynch to issue a check for $100,000 and another for $70,000, "for purposes of settling the dispute with Bayada Nursing." On February 15, 1995, Merrill Lynch issued two checks to Munro. The Merrill Lynch check advice forms indicated that Tucker had picked up the two checks to be delivered to Munro.

The $100,000 check was deposited in respondent's trust account and was the source of the $100,000 check to Bayada. The $70,000 check was deposited in respondent's business account and used for purposes other than the Bayada settlement. Respondent thereafter borrowed money from the settlement funds of another client, William Reimer, to pay the additional sums to Bayada.[12]

Munro denied that she had given respondent authorization to withdraw funds from her Merrill Lynch account and denied any knowledge that the settlement funds had come from her account. She testified that she learned of this fact from the OAE. Munro also denied having loaned money to respondent.

Henry Kiel, Munro's accountant, also testified at the hearing. Kiel, not Munro, signed

---

[12] Although respondent had been ordered to deposit the Reimer settlement funds with the surrogate because Reimer was a minor, respondent did not do so. According to respondent, he did not follow the judge's order because Reimer's eighteenth birthday was only a few months after the order. When Reimer turned eighteen in late February 1995, respondent transferred his settlement funds to a Merrill Lynch account. $150,000 was disbursed to respondent from the account. The complaint did not contain any allegations regarding the Reimer transaction.

Munro's Merrill Lynch checks and received her monthly account statements. Kiel testified that Munro never requested that he issue checks to pay the Bayada settlement and that he was unaware of the February 15, 1995 transactions until he received the Merrill Lynch statement the following month. According to Kiel, when he spoke with Munro in March 1995, she told him that respondent had advised her that the Bayada case had been settled. In reply, Kiel told Munro that the payments had been made. Because he received only the Merrill Lynch statements, Kiel assumed that Munro knew that the money for the settlement had been taken from her Merrill Lynch account. However, according to Kiel, neither he nor Munro mentioned the amount of the settlement or the fact that the funds had been taken from her account. He did not show Munro the February 1995 statement.

In June 1995, when the OAE initially questioned respondent about the source of the funds for the Bayada settlement, respondent told the OAE that he had borrowed $100,000 from Munro and that he had supplied the remaining funds.[13] Subsequently, the OAE obtained copies of respondent's 1995 business account bank statements and questioned him about the $150,000 deposit that had provided the funds for the $80,314.52 check to Bayada. By letter dated June 23, 1995, respondent replied that the $150,000 was a loan from a personal friend and enclosed a copy of a March 10, 1995 note evidencing a $150,000 loan from a Richard Goodwin. By letter dated December 16, 1996, respondent's attorney notified

---

[13] As explained above, respondent believed that Bayada had sued him, as well as the Munros, for the entire amount of its unpaid invoices and that the personal guarantee he had given Bayada was unlimited.

the OAE that respondent had been mistaken and that respondent believed he had borrowed the funds from another client. Although respondent's attorney promised to provide the OAE with the name of the client and documentation of the loan, that information was never submitted. The OAE apparently discovered the Reimer transaction in the course of its investigation.

Respondent explained that he had mistakenly told the OAE investigator that he had borrowed the Bayada settlement funds from Goodwin because the investigator had been questioning him all day, because he did not remember the source of the funds and because he felt pressured by the investigator to explain where he had obtained the funds. Respondent did not explain why, sometime after the meeting with the OAE, he had sent a letter forwarding the Goodwin note to the OAE to allegedly document the source of the funds.

Respondent further testified that he had called Munro for authority to settle the Bayada case and had requested that she call Merrill Lynch and Kiel to arrange for $100,000 to be withdrawn from her account. According to respondent, he also requested a $70,000 loan from Munro and promised her that, if the litigation against the health insurance companies was not successful, he would reimburse her for the Bayada settlement.

According to respondent, he drafted the authorization, with Munro's assent, had someone in his office sign Munro's name on the document and then had someone from his office pick up the checks and bring them to his office.

E. The LePore Litigation

As previously explained, LePore had initiated the medical malpractice action prior to its transfer to respondent. By letter dated February 28, 1990, respondent agreed that LePore would receive one-third of any legal fee recovered. In November 1992, LePore sent a $5,000 check to respondent, after respondent requested assistance with the costs of the litigation.

In early January 1993, the attorney for the defendant in the malpractice action notified LePore that the case had been settled for $3,000,000. LePore testified that he then called respondent, who stated that the funds were in his trust account and that he would forward LePore's share of the allowed fees on the first $1,000,000. By letter dated January 13, 1993, respondent sent LePorre $65,000: $5,000 for the costs LePore had advanced and $60,000 for his fee. Respondent advised LePore that he was reducing LePore's share from one-third to one-quarter of the total net recovery because "[m]y preliminary inquiries with Judge Weiss indicate that I will probably not receive much of a fee on the remaining monies.... If I am successful with the Judge, I will be glad to adjust."

Although respondent had indicated to LePore that he was applying for court approval for an award of fees in excess of $245,833, he never sought such approval. During 1993 and 1994, LePore wrote several letters to respondent requesting the status of the excess fee application. Respondent initially replied that he had been too busy to file the application. In January 1994, respondent told LePore that he had not filed the application because the

health insurance companies had "backed out of their commitment to pay medical bills.... I relied on this when I settled. As a result, there may not be any additional fee and I will have to notify my malpractice insurance company."

Respondent testified that the letters to LePore were done to "put [him] off" because respondent had determined that he would not pay any more money to LePore. Respondent had decided that, despite his earlier agreement to share the fee, LePore did not deserve any additional money because he had not referred the case to respondent; rather, Munro had terminated LePore's services.

In April 1996, LePore sued respondent for his share of the fee. Although respondent filed an answer to the complaint, he did not comply with discovery and LePore obtained a default judgment in excess of $200,000.

F. The Retainer Agreements and Closing Statements

During the 1993 audit, respondent gave the OAE two fee agreements with Munro. The first was a standard contingent fee agreement, dated March 12, 1990. According to respondent, it was the retainer agreement for the medical malpractice case. The form was not filled in, except for the date and respondent's and Munro's names and signatures. The second agreement was a March 20, 1990 "Retainer Agreement (Contract Action)," in which Munro agreed to pay respondent one-third of any recovery on her claims for home nursing services.

During the 1993 audit, respondent also produced two settlement statements to the OAE. The first was a September 19, 1992 statement for litigation titled: Munro v. Employee Benefits Plan Inc., Comprehensive Benefits Service Co., Inc., Coin Depot, Inc., New Jersey Hospital Association and St. Clare's. According to the statement, Munro (1) understood that the defendants had agreed to pay for her past unpaid medical expenses and for future ones and that the estimated value of the future expenses was between $9,860,000 and $25,200,000; (2) agreed to pay legal fees in accordance with the March 20,1990 contract retainer agreement that called for a legal fee of one-third of any recovery on her claims for nursing care coverage; and (3) agreed to pay respondent's legal fees for the insurance settlement from any recovery in her malpractice action against Dr. Krieger.

The second statement, dated December 4, 1992, was titled "Closing Sheet - Settlement Statement." It showed the $3,000,000 settlement of the malpractice action, $245,833.33 in attorney's fees and $50,000 in costs. The agreement also stated that Munro understood the following:

- respondent had the right to apply for additional fees in the malpractice action and Munro agreed he should receive one-third of $3,000,000;
- respondent had obtained medical benefits for her in another case, Munro v. Employee Benefit Plans, Inc., worth in excess of $10,000,000;
- Munro had agreed to pay respondent a one-third fee in the Employee Benefit case and respondent had agreed to reduce his fee to ten percent; in exchange for the fee reduction in the Employee Benefit case and respondent's agreement not to seek an enhanced fee in the malpractice

action, respondent would receive a total fee of $950,000, $245,833.33 for the malpractice action and $704,166.67 for the Employee Benefit case;

- if the insurance companies reneged on their agreement to provide benefits, respondent would continue to represent Munro without additional legal fees.

In 1993, respondent explained to the OAE that the two retainer agreements and two settlement statements documented his entitlement to the $950,000 fee that he took from the malpractice settlement. Respondent maintained that his fee did not violate R.1:21-7 because he took only $245,833.33 for the malpractice case, for which court approval was not required, and the remaining $704,166.67 for the contract action, which was not covered by the rule.

Apparently, it was not until the OAE investigator spoke with Munro, in 1995, that he learned that Munro had not signed the fee agreements and settlement statements. Munro had refused to speak with the investigator prior to July 1995. Munro denied having signed the fee agreements or the settlement statements. She testified that she was unable to write because of her injuries and used a signature stamp to sign documents. Although the signatures on the four documents were written to look like her stamped signature, it was obvious that the signatures on the agreements and settlement statements were not stamped. Munro further testified that she had never seen the documents before. Finally, Munro denied that she had given respondent authority to sign documents for her.

Respondent testified that, during his first meeting with Munro, she allowed him to

make a facsimile of her signature stamp and gave him permission to sign her name on documents. Thereafter, according to respondent, he would have someone in his office, usually Tessa VanHorne,[14] sign Munro's name on documents by using the facsimile of Munro's stamped signature as a guide. It was his procedure, respondent added, to describe the document to Munro prior to having it typed, obtain her permission to have the document signed on her behalf and give her a copy of the document after it had been signed. According to respondent, that was the procedure he followed with respect to the retainer agreements and settlement statements.

With regard to the March 20, 1990 retainer agreement for the "contract action," respondent signed the document as a witness to Munro's signature. Respondent was not sure whether the caption, "Munro v. Employee Benefit Plans et al.," had been on the agreement when it was signed. Respondent testified that he might have had the agreement signed "in blank" because he believed at the time that securing insurance coverage for Munro's nursing care was going to be only a "minor problem."

In fact, as noted above, as of March 1990 respondent did not know that Munro might be entitled to benefits under the Employee Benefits/Coin Depot plan. Through December 1990, Blue Cross-Blue Shield had been paying for round the clock nursing care for Munro. It was sometime after January 1991 that insurance coverage became an issue and it was not until April 1992 that Bayada discovered that the Employee Benefit/Coin Depot plan might

---

[14] By the time of the hearing, Tessa VanHorne had passed away.

provide coverage for Munro. In fact, respondent did not file suit against Employee Benefit Plans until February 1993.

Respondent also "witnessed" Munro's signature on the two settlement statements. Although the statements indicated that respondent had settled the Employee Benefit Plans case, the complaint had not yet been filed. Respondent testified that he drafted the September 19, 1992 settlement statement after he believed that he had resolved Munro's insurance coverage issue. According to respondent, his belief was based on the August 26, 1992 letter from Employee Benefit Plans' attorney, stating that the company had approved sixteen to eighteen hours' nursing care for Munro, as well as from a September 8, 1992 letter from a legal assistant for the company to the New Jersey Department of Insurance, stating that Munro's "home treatment" would be covered.

The complaint charged that respondent's conduct in the Munro matter violated RPC 1.5 (fee overreaching), RPC 1.15 (knowing misappropriation of client trust funds), RPC 8.1(a) (knowingly making a false statement of a material fact in connection with a disciplinary matter), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The Owens/Robinson Matter

In 1988, John E. Robinson retained respondent to represent him in a medical malpractice action. At the end of the trial, the jury returned an award of $1,194,000, which

was affirmed on appeal. On April 30, 1991, the case was settled for the full amount of the judgment, plus $130,686.07 in post-judgment interest, for a total of $1,324,686.07.

On June 8, 1991, Robinson signed a settlement statement showing that he had received $773,124.05 ($873,124.05 less $100,000 that respondent had advanced to Robinson). Respondent received $15,000 in costs and $242,833.33 in legal fees. The settlement statement also provided that respondent was to hold $193,728.69 in escrow, pending his application to the court for a one-third fee on the net settlement amount. Respondent did not file the application. Nevertheless, by September 11, 1991, respondent had taken for himself the remaining settlement funds.

In October 1991, Robinson retained another attorney to recover the funds. Robinson's attorney obtained an order to show cause seeking an accounting and distribution of the settlement funds. Among other things, the order sought to compel respondent to deposit the escrow funds with the court.

In reply, respondent filed a cross-motion for counsel fees of one-third of the net settlement. In respondent's certification in support of the cross-motion and in a November 21, 1991 letter to the court, respondent misrepresented that he was holding the funds in escrow.

On December 20, 1991, the Honorable Donald S. Coburn heard the motion and cross-motion and awarded respondent an additional $132,471.25 in fees. Judge Coburn directed that respondent pay Robinson the remaining $61,257.44 plus $1,301.72 interest.

After respondent appealed the judge's decision, Robinson's attorney filed a motion with the Appellate Division requesting that $193,728.69 be deposited with the court or that respondent provide proof that the funds were in his trust account. In his certification in opposition to the motion, respondent again misrepresented that he was holding the funds in escrow. The Appellate Division denied Robinson's motion.

On December 23, 1992, Robinson died of a heart attack.

On June 11, 1993, the Appellate Division affirmed Judge Coburn's determination in all respects, but remanded the case because it was unclear whether Judge Coburn had included pre-judgment interest in his calculation of respondent's fee.

Respondent petitioned the Supreme Court for certification of the Appellate Division's decision. The petition was denied on January 27, 1994.

On August 1, 1994, Judge Coburn confirmed his original determination, awarding $132,471.25 to respondent and $62,559.16 to Robinson.

After Robinson's death, Leonys Owens was appointed administratrix of his estate and retained a new attorney. By letter dated July 28, 1994, the new attorney demanded that respondent immediately remit Robinson's funds. He enclosed copies of Robinson's death certificate and of Owens' February 1, 1993 letters of administration. Respondent replied that he would remit the funds after he received a retainer agreement or other proof that the attorney represented the estate, a certification that there were no liens against the funds and a new surrogate's certificate showing that the letters of administration were still in effect.

Thereafter, it was discovered that Robinson had a will in which Owens and a bank had been appointed co-executors. The bank, however, renounced its executor's position. The will was then probated with Owens as executrix. Owens retained another attorney, who supplied respondent with letters testamentary naming Owens as executrix of the estate and requested that the monies due the Robinson estate be forwarded immediately. As of the date of the ethics hearing, respondent had not paid the estate.

Respondent testified that he had not held the Robinson funds in escrow because he had obtained Robinson's permission to use the funds. In support of his contention, he produced a copy of a November 8, 1990 letter from him to Robinson. In the letter, respondent stated that he was loaning $100,000 to Robinson pending the hospital's appeal of the jury award and, in return, Robinson "will allow me to immediately use a full one third (1/3) legal fee .... [and that], if the judge's final award of fees is less than the full one third, ... you in turn will allow me the use of the funds...for an indefinite amount of time."

According to respondent, he did not disclose the 1990 "loan agreement" to Judge Coburn because "I didn't think about it as being anything that had to be disclosed, you know, in the context of the fee application" and did not disclose it to the Appellate Division because "I didn't think it was relevant to the initial agreement that I had with Robinson, and that was that we would let the fee be decided by the judge and/or the Appellate Division."

Respondent testified that, when Robinson signed the 1991 settlement statement, which called for the funds to be escrowed, respondent reminded Robinson of their prior agreement.

Thereafter, it was discovered that Robinson had a will in which Owens and a bank had been appointed co-executors. The bank, however, renounced its executor's position. The will was then probated with Owens as executrix. Owens retained another attorney, who supplied respondent with letters testamentary naming Owens as executrix of the estate and requested that the monies due the Robinson estate be forwarded immediately. As of the date of the ethics hearing, respondent had not paid the estate.

Respondent testified that he had not held the Robinson funds in escrow because he had obtained Robinson's permission to use the funds. In support of his contention, he produced a copy of a November 8, 1990 letter from him to Robinson. In the letter, respondent stated that he was loaning $100,000 to Robinson pending the hospital's appeal of the jury award and, in return, Robinson "will allow me to immediately use a full one third (1/3) legal fee .... [and that], if the judge's final award of fees is less than the full one third, ... you in turn will allow me the use of the funds...for an indefinite amount of time."

According to respondent, he did not disclose the 1990 "loan agreement" to Judge Coburn because "I didn't think about it as being anything that had to be disclosed, you know, in the context of the fee application" and did not disclose it to the Appellate Division because "I didn't think it was relevant to the initial agreement that I had with Robinson, and that was that we would let the fee be decided by the judge and/or the Appellate Division."

Respondent testified that, when Robinson signed the 1991 settlement statement, which called for the funds to be escrowed, respondent reminded Robinson of their prior agreement.

According to respondent, even after Robinson retained new counsel to recover the funds, he and Robinson orally agreed that respondent could use the funds, pending resolution of the fee application. None of the papers submitted by respondent to the trial court, the Appellate Division or the Supreme Court mentioned the agreement between respondent and Robinson.

Robinson's attorney testified that, throughout the course of his representation of Robinson, respondent never claimed that Robinson had agreed to loan him money and that he had never seen the November 8, 1990 letter from respondent to Robinson.

The complaint charged that respondent's conduct in the Robinson/Owens matter violated RPC 1.15 (knowing misappropriation of client trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Kraus Matter

The Kraus matter was initiated by Stephen Kraus, an attorney for CNA Insurance Company, because respondent did not pay CNA's workers' compensation lien from the proceeds of the settlement of a third-party claim of respondent's client, Jose Alberto Rodriguez.

On September 17, 1988, Rodriguez suffered serious injuries, including the loss of his right leg below the knee, in the course of his employment for Lucas Brothers, Inc. ("Lucas").

Rodriguez consulted an attorney, Alexander B. Iler, who referred him to respondent for his personal injury claims and to another attorney for a workers' compensation claim.

Respondent agreed to pay Iler one-third of any fee obtained from Rodriguez's third-party claims.

On December 6, 1989, respondent filed a complaint on behalf of Rodriguez against Ford Motor Company and Ecolotec, Inc. In March 1992, the claim against Ecolotec was settled for $80,000. The payment was made in two checks payable to respondent, one from Ecolotec for $9,469 and one from its insurance company for $70,531. Respondent endorsed both checks and apparently deposited them in his business account. It is undisputed that the checks were not deposited in his trust account.

In a March 11, 1992 letter to Ecolotec's attorney, respondent stated: "this is to confirm that I will hold your client harmless for any potential claim by the worker's compensation carrier for a pro rata share of this settlement." Two CNA employees testified that CNA was never notified of the Ecolotec settlement, even though CNA was in contact with respondent and his employees during 1992.

In February 1992 and March 1993 letters to CNA, respondent took the position that the compensation lien did not have to be paid because Lucas' destruction of the truck had deprived Rodriguez of evidence crucial to his third-party action. However, in respondent's December 10, 1993 letter to CNA, he stated that CNA's lien "will, of course, be protected out of the proceeds of any settlement or jury award."

In June 1995, Gordon notified CNA that Ford had agreed to pay $225,000 to Rodriguez and asked if CNA would agree to a "three way split of the settlement proceeds

between [sic] itself, Mr. Rodriguez and plaintiff's counsel." CNA rejected that proposal.

None of the letters from respondent or Gordon to CNA mentioned the Ecolotec settlement.

In July 1995, respondent settled Rodriguez's claim against Ford for $225,000. In a July 26, 1995 letter to Ford's attorney, Gordon stated: "I have agreed to satisfy any lien out of the proceeds of this [$225,000 settlement] check and I will further indemnify and hold harmless the defendant with respect to any claim of the worker's compensation insurance carrier." According to testimony from CNA's employees, respondent did not notify CNA of the Ford settlement.

On August 3, 1995, respondent paid Rodriguez $125,000 and disbursed the remaining $100,000 to himself: $68,352.70 for fees, and $31,647.30 for costs.[15]

In May 1997, CNA filed a civil action against respondent, Rodriguez, Ford and Ecolotec for enforcement of its workers' compensation lien. Rodriguez filed a cross-claim against respondent. Respondent did not answer the complaint or cross-claim. CNA obtained

---

[15] According to Rodriguez, he did not receive any money from the Ecolotec settlement. Although the complaint had alleged that respondent's "unilateral conversion of the Ecolotec settlement funds" constituted a knowing misappropriation, that charge appears to have been abandoned. During the hearing, an issue arose as to whether there had been a waiver of the attorney/client privilege between Rodriguez and his new attorney. During that discussion, the special master made it clear that, despite the fact that the Rodriguez grievance was in evidence, the hearing did not involve that grievance because a complaint had not been filed. The OAE agreed and indicated that it intended to call Rodriguez to testify that he did not know about the Ecolotec settlement because the testimony "indirectly" affected the Kraus matter, in that it showed "a pattern of conduct". The special master ruled that he would allow Rodriguez's testimony for that purpose, but reiterated that respondent was only compelled to reply to the eight matters, which did not include Rodriguez. In light of the foregoing, we did not make any determination on the issues involved in the Rodriguez grievance.

a default judgment against respondent for $201,957.27. CNA also obtained summary judgment against Rodriguez for $125,000, but the judgment was stayed pending the resolution of Rodriguez's cross-claim against respondent.[16] As of December 1998, Rodriguez had obtained a default against respondent, but had not yet obtained a default judgment; respondent had not paid the outstanding CNA judgment and had not complied with CNA's information subpoenas.

Respondent testified that, prior to the Ecolotec settlement, he discussed it with CNA and proposed that, after deducting his costs, the net proceeds be split among CNA, respondent and Rodriguez; CNA had rejected that proposal. Respondent was "pretty certain" that CNA was aware either that he was close to settling or had settled with Ecolotec.

Respondent stated that he did not hold the $80,000 in trust because "I felt that I had a valid claim for spoliation, and I felt that I had the right to use the balance of the fees. That's why I didn't remit anything to Mr. Rodriguez and put it into the cost account to be used as costs in pursuing [Ford and the spoliation claim]."

According to respondent, he had disclosed the Ford settlement to CNA and advised CNA that he did not intend to honor its lien because of the spoliation claim. Respondent testified that he had intended to either file a complaint against CNA on the spoliation claim or file a counterclaim when CNA sought to enforce its lien. According to respondent, Vort was supposed to file the counterclaim in the CNA suit, but "it just got lost in the shuffle."

---

[16] Ford and Ecolotec had been dismissed from the case.

During the ethics hearing, respondent produced copies of the following documents:[17]

- February 12, 1992 power of attorney signed by Rodriguez and witnessed by respondent in which Rodriguez authorized respondent to endorse his signature on the Ecolotec release and on any settlement drafts and to use the funds as set forth on an undated attachment.

- Undated statement attached to the power of attorney, signed by Rodriguez, providing that, although respondent "wanted to divide [the $80,000] 3 ways so I could receive some money, my workers compensation insurance company would not agree. Mr. Carney will take responsibility for fighting them and use this money for legal fees and expenses against Ford and protect me from any claim by workers compensation."

- July 14, 1995 settlement statement for the Ford claim, signed by Rodriguez and witnessed by respondent, showing $125,000 to Rodriguez, $31,647.30 to respondent for costs and $68,362.70 as "balance for Counsel fee and Worker's Compensation."

- Undated statement attached to the settlement statement, signed by Rodriguez, acknowledging that respondent had explained that more than $200,000 was still owed to the workers' compensation carrier and that the "difference between legal fee and costs and first settlement - $26,000 will be used to file a claim against the workers compensation insurance company for destroying the evidence. If successful, Mr. Carney will attempt to recover additional monies for me."

Rodriguez denied having signed any of the above four documents. He maintained that the only document he had signed was an August 3, 1995 receipt, witnessed by respondent's paralegal, acknowledging receipt of $125,000 as his "share of the settlement proceeds in the matter of Rodriguez v. Ford Motor Company."

---

[17] Although the OAE had requested respondent's relevant client files and financial records prior to the hearing, some of the records were produced in piecemeal fashion during the hearing.

Rodriguez testified that respondent did not tell him about the Ecolotec settlement and that, when he questioned respondent about the case against Ecolotec, respondent told him it had not yet been resolved. According to Rodriguez, respondent also told him that he had reached an agreement with CNA, whereby CNA was to receive approximately $80,000 from the Ford settlement and respondent was to retain the remaining funds for his fees and costs.

Later in the ethics hearing, respondent sought to withdraw from evidence the four documents. He claimed that apparently Rodriguez's signatures on the undated statements had been photocopied on the documents. Respondent testified that he saw Rodriguez sign the power of attorney and settlement statement, but did not remember seeing him sign the undated attachments to those documents. When asked if it appeared that Rodriguez's signatures on the power of attorney and settlement statement had also been photocopied, respondent replied, "I can't answer that."[18] Respondent stated that he preferred to withdraw from evidence all four documents until he could locate the originals of the documents. Respondent denied that he had photocopied Rodriguez's signature on the four documents.

The complaint charged that respondent's conduct in the Kraus matter violated RPC 1.15 (knowing misappropriation of client trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

---

[18] If the four documents are held in back of one another, the lines of the signatures and typewritten names align exactly.

The Bary Matter

In 1991, Hilda Bary retained respondent to represent her in a claim against Dr. Stephen Fox, a podiatrist. Respondent subsequently filed a medical malpractice action, which was settled for $50,000. Bary signed a release on July 9, 1996. According to the OAE, the $50,000 settlement check was not deposited in respondent's trust account.

It is undisputed that respondent did not provide Bary with a retainer agreement. According to Bary, she thought that respondent was not going to charge her for the representation. She explained that she had been a friend of Tucker since high school and had become friendly with respondent after his marriage to Tucker.

According to Bary, Gordon called her in July 1996, told her that a settlement had been reached and arranged to meet her so that she could sign the release. At that time, Bary testified, Gordon told her that she would receive a check within a few days. However, a week or two later, Gordon called and told her that her funds would be delayed because respondent "was going to try to get more money," which Bary understood to mean a larger settlement. Bary agreed to the delay.

Bary testified that, when she did not hear from respondent for several months, she began calling him, but was unable to speak with him. Usually either respondent's secretary or his paralegal would tell her that she would get the money "quite soon." Beginning in April 1997, she began writing letters to respondent requesting information about her case. She then retained an attorney who, by letter dated August 22, 1997, requested that respondent

provide her with information about the status of the case. Also, on September 2, 1997, Bary filed a grievance against respondent.

By letter dated September 8, 1997, respondent apologized to Bary for the fact that communications with her had broken down "all due to changes in the office." In the letter, respondent also stated the following:

> I was very unhappy that Michael Gordon had agreed to settle for an amount yielding only $40,000 to you. As a result, I held things up to enable me to provide at least $50,000 to you, if not more.... I promise you that I would never keep you from getting your money. I thought I was watching out for you, but obviously screwed it up. Would you please allow me a few more weeks and I promise you will receive by hand delivery at least $50,000 and probably $60,000.

Ten months later — not a few weeks later — in July 1998, respondent sent Bary a check for $40,000. In the accompanying letter, he promised that he would "send additional monies to further compensate you for this ordeal" and claimed that he had legitimately borrowed the settlement funds from Bary. Bary denied that she had ever agreed to loan the funds to respondent.

Respondent testified that, sometime between the signing of the release and the receipt of the settlement check, he had told Gordon to ask Bary "if she'll wait for her share of the settlement proceeds and let me have the use of those funds." He did not mention any specific time or interest rate, "just that I would give her much more money than the proceeds were." Thereafter, Gordon told him that Bary had agreed to let him use the funds. Respondent could not recall whether he had deposited the settlement check in his trust or business account;

however, he was sure that, once Bary had agreed to let him use the funds, they would have been deposited in his business account and used for other clients' litigation expenses.

According to respondent, he did not receive Bary's initial letters because he had moved his office location twice in a short period of time and his mail was not being rerouted to the new location. He added that, even after he became aware, in September 1997, that Bary wanted her funds, he was unable to repay her because he "just wasn't making money."

Gordon testified that, a few weeks after Bary had signed the release, he received instructions from respondent either by a "faxed" message or through one of respondent's employees that he should call Bary and ask if she would agree to a delay in the payment of her settlement proceeds. Apparently, respondent frequently worked at home and his employees communicated with him by telephone or "fax." According to Gordon, he called Bary, relayed respondent's request and Bary agreed to the delay. Gordon did not recall any details about the message or the terms relating to the delay in payment.

The complaint alleged that respondent's actions in the Bary matter violated RPC 1.15 (knowing misappropriation of client trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Freifeld Matter

In 1988, Richard Freifeld, age eighteen, sustained serious injuries in a diving accident at a Bergen County park, as a result of which he became a quadriplegic. In the fall of 1988,

Freifeld retained respondent to represent him in connection with potential personal injury claims. At that time, Freifeld was an in-patient at Kessler Rehabilitation Institute, West Orange, N.J. and his permanent residence was with his parents, also in New Jersey

In 1989, respondent filed a civil action against Bergen County in Superior Court, Law Division, Bergen County. In January 1994, the suit was settled for $1,425,000. Because Bergen County had to liquidate securities to pay the settlement, three checks were issued, in the amounts of $50,000, $450,000 and $925,000. The checks were deposited in respondent's trust account on January 24, February 4, and February 10, 1994, respectively.

On March 8, 1994, respondent issued a $900,000 trust check to Freifeld. The check was deposited in Freifeld's Merrill Lynch account, which had been opened for him by Tucker. Respondent had begun taking his fees from the settlement funds on February 3, 1994 and, by April 4, 1994, had withdrawn all of the remaining settlement funds from his trust account.

Freifeld testified that respondent did not prepare a retainer agreement and did not tell him what he was going to charge for the representation. According to Freifeld, at the time of settlement, respondent told him he would receive $1,000,000 from the settlement. Freifeld recalled having seen, in early 1994, a settlement statement that showed approximately $40,000 in expenses, but did not have a copy of the document. Respondent did not produce any settlement statement at the ethics proceedings.

In March 1994, according to Freifeld, respondent told him that he would receive

$900,000, instead of the promised $1,000,000, because Bergen County could not immediately liquidate certain bonds. Respondent told Freifeld that he had negotiated a deal with the county whereby Freifeld would receive $30,000 in interest for waiting an additional nine months for the $100,000. At the end of the nine months, according to Freifeld, respondent told him that the county was still unable to pay the balance. Respondent added that he had negotiated a new deal for the county to pay Freifeld $60,000 in interest, instead of $30,000, in exchange for Freifeld's agreement to wait an additional nine months for the payment.

Freifeld testified that, at the conclusion of the second nine-month period, he began to press respondent for the payment and that, at a May 1996 meeting, respondent told Freifeld that he would take personal responsibility for the outstanding settlement funds, but could not pay Freifeld immediately. According to Freifeld, respondent also offered to reimburse him for approximately $50,000 in losses that he had sustained during Tucker's management of his Merrill Lynch account.

By letter dated June 2,1996, Freifeld suggested that respondent pay him the $250,000 that had been agreed to by sending him $25,000 per week. On July 3, 1996, respondent replied that he could not meet Freifeld's proposed schedule, "but [would] act quickly." Respondent enclosed a $10,000 certified check and a signed note confirming that he owed Freifeld $200,000. In a separate letter to Freifeld the same day, respondent stated that, "if

you will give me some flexibility, I will make you whole on whatever loss you took in the market."

By letter dated November 13, 1996, respondent sent Freifeld a $15,000 check and promised that the balance would be paid within a month. Freifeld did not receive any other funds from respondent. Ultimately, Freifeld retained another attorney, who filed a civil action against respondent. Respondent did not answer the complaint and, on December 1, 1997, a $235,960.43 default judgment "for fraud" was entered against respondent. As of the date of the hearing, the judgment remained unpaid.

With regard to the retainer agreement issue, respondent produced for the OAE a New York form agreement. Except for what purported to be Freifeld's signature, the agreement was not filled in. Freifeld denied having signed the document. Approximately a week after Freifeld had testified, respondent produced a copy of another New York form retainer agreement, allegedly signed by Freifeld on July 19, 1989 and witnessed by respondent. The agreement stated that Freifeld retained respondent for claims arising out of the negligence of "Bellevue Hospital/Bergen County" and that respondent was entitled to thirty-three and one-third percent of any sums recovered. Respondent also produced a copy of an undated settlement statement, allegedly signed by Freifeld and witnessed by respondent. The statement showed $30,829.01 in costs, $465,000 in fees and $929,170.99 due to the client.

Freifeld submitted a certification denying that he had signed the agreement or the settlement statement and also denying that he had seen the documents before they were given

to him by the OAE.[19]

Respondent testified that he had been retained by Freifeld to pursue a medical malpractice action against Bellevue Hospital in New York. He retained an expert and believed that he had served a summons on the hospital. He never filed the complaint because the expert could not give him a favorable report. He thereafter filed a tort claim action against Bergen County in New Jersey. According to respondent, even though the settlement funds had been obtained in a New Jersey action for injuries sustained in New Jersey and his client and the defendant were New Jersey residents, he believed that he was entitled to take one-third of the net recovery, pursuant to the New York rules, because he had initially pursued the malpractice action against the hospital in New York. Respondent maintained that he had been "retained in New York out of my New York office, and the only major case that I thought I had was against the hospital for not operating quickly enough."

According to respondent, there were two retainer agreements; he had started to complete one, but had put it aside because Freifeld was in the middle of his rehabilitation at Kessler. Respondent stated that, in July 1989, he had Freifeld sign a second agreement.

Respondent denied telling Freifeld that Bergen County was unable to pay the full settlement. According to respondent, he provided the settlement statement to Freifeld around the time of the settlement, but told Freifeld that he would "refund a portion of the fees and

---

[19] The special master permitted Freifeld to submit a certification to avoid a second trip by Freifeld from his home in Chester, New York to the site of the ethics hearings.

the costs so he would net $1,000,000." Respondent testified that he had explained to Freifeld that the $100,000 was going to be used for other clients' costs, but that respondent would, at some unspecified time, pay Freifeld an additional $100,000. Thereafter, according to respondent, Freifeld pressed him for the funds and complained that he had lost money on his Merrill Lynch investments. Respondent testified that Freifeld threatened to report him to the ethics authorities unless he agreed to pay him the $100,000 plus interest and reimburse him for his Merrill Lynch losses.

Gordon, in turn, testified that respondent had told him that $100,000 of the settlement amount could not be paid because Bergen County had that amount in a certificate of deposit that would not mature for a year. According to Gordon, respondent instructed him to relay that information to Freifeld, which Gordon did.

The complaint charged that respondent's conduct in the Freifeld matter violated RPC 1.15 (knowing misappropriation of client trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Brady Matter

In August 1995, Joseph Galiastro joined respondent's firm as an associate. He had previously been associated with the firm of Doyle & Brady and brought several clients to respondent's firm. At Doyle & Brady, Galiastro had been a salaried employee and also received one-third of the fee on cases that he had originated. He made the same arrangement

with respondent.

One of the cases that Galiastro brought with him from Doyle & Brady was Leonard Bucaro's personal injury lawsuit against Consolidated Rail Corporation ("Conrail"). The case was tried by respondent and Galiastro. The jury returned a $540,000 verdict for Bucaro. After Conrail indicated that it would appeal the verdict, the case was settled for $525,000.

The settlement check was deposited in respondent's trust account on or about April 1, 1996. Respondent then instructed Galiastro to prepare a motion for an increased fee of one-third of $525,000.

On April 15, 1996, Galiastro sent the following handwritten "fax" to respondent's home:

> I have settled my differences [with] Larry Brady. Can you please authorize sending him his $53,315.94 which represents 1/3 (49,442.17) + expenses ($3,872.77) I would like to have this guy out of both our lives. Thanks, Joe G.

Respondent replied as follows:

> I understand Joe but I will take responsibility for waiting until the Court decides the increased fee. I asked that you not advise him money in yet. I will cause you no problem!!

The motion for an increased fee was denied on May 24, 1996. Within a week of the denial of the fee application, respondent terminated Galiastro's employment.

Respondent did not pay Doyle & Brady any money. The settlement funds were disbursed as follows:

April 3, 1996	Galiastro	$ 49,443.17
April 3, 1996	Bucaro	341,653.06
April 3, 1966	Respondent	58,089.57
April 4, 1996	Respondent	53,315.94
May 27, 1996	Bucaro	22,598.26

Doyle & Brady sued Galiastro and respondent for his fee. It obtained summary judgment against Galiastro, who thereafter filed a Chapter 13 bankruptcy petition. As of the date of the ethics hearing, Doyle & Brady's case against respondent was still pending.

According to Galiastro and Lawrence Brady, when Galiastro left Doyle & Brady to join respondent, they had agreed that Doyle & Brady would receive one-third of the fees recovered on the files Galiastro had taken with him and be reimbursed for expenses paid by Doyle & Brady. The agreement was never put in writing. Lawrence Brady testified that he had never spoken with respondent about the shared fee arrangement.

Edward Martin, an attorney and long-time friend of both respondent and Galiastro, had been present at two meetings at which respondent and Galiastro had discussed Galiastro's joining respondent's firm. Martin did not recall that respondent had agreed to the payment of a specific percentage to Doyle & Brady. He did recall that, when Galiastro expressed concern that Doyle & Brady be paid for the files, respondent assured Galiastro that he "would take care of Brady."

According to respondent, he had not agreed, when he hired Galiastro, to satisfy any

liens by Doyle & Brady and he did not recall having been informed by Galiastro that Galiastro had agreed to pay his former firm one-third of the recovered fees. Respondent testified that, when he received Galiastro's April 15,1996 fax, he believed that Doyle & Brady was only entitled to a quantum meruit fee and that, in his reply, he agreed to "take responsibility out of [his] share to pay some kind of quantum meruit to Brady if it could be resolved."

In two other cases that Galiastro had brought from Doyle & Brady, one that settled before Bucaro and the other after Bucaro, respondent had remitted one-third of the net fee to Doyle & Brady. However, in those cases, respondent had not taken any fee and had allowed Galiastro to keep the entire fee, less the portion paid to his former firm.

The complaint charged that respondent's conduct in the Brady matter violated RPC 1.15 (knowing misappropriation of trust funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

* * *

The special master found that respondent was guilty of all of the violations alleged in the complaints. With respect to those instances where clients claimed that they had not signed documents and had not given respondent authorization to sign documents on their behalf, the special master found that the clients' testimony was credible and that respondent's was not. The special master rejected respondent's reasons for taking the excess fees in the

various cases.

The special master concluded that respondent is "unquestionably a liar and a thief" and that he "used his intelligence and ability to embezzle from those who in their helplessness turned to him with trust and confidence." The special master recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The special master correctly concluded that respondent's explanations for taking the excess fees without court approval were contrived and incredible. He also properly found that respondent had created fraudulent documents and had signed — or had his employees sign — clients' names on documents, without the clients' knowledge or consent. Finally, the special master correctly determined that respondent was guilty of multiple instances of knowing misappropriation and should be disbarred.

Respondent's actions and his testimony in the Abbott matter exemplify why his explanations were incredible. In Abbott, he testified that he believed that he was entitled to take $700,000 instead of $245,833, without the need to file a motion for an enhanced fee,

allegedly relying on comments made by the trial judge. Yet, respondent was an experienced trial attorney who clearly knew the requirements of R.1:21-7 because he had filed motions for enhanced fees in prior cases.

Even if we were to believe respondent, the timing of respondent's actions, his conflicting statements to Abbott and Dobis, his misrepresentations to the court and the false documents he provided to the OAE belie any "misunderstanding" about the need for filing a fee application. At the time of the April 1991 settlement, respondent gave Abbott a settlement statement showing the $700,000 fee and told her that he had been "allowed" that amount. In June 1991, respondent told Dobis that he would send Dobis an additional referral fee after the court had approved his full fee. By that time, however, respondent had already taken a fee in excess of the allowable amount. In August 1991, respondent reiterated in a letter his prior oral statements to Abbott that he had been "allowed to charge a 1/3 fee" and that, if she disagreed, she had the right to retain another attorney to contest the fee. By the end of September 1991, respondent had taken the entire $700,000 from the settlement funds. Yet, in January 1992, respondent told Dobis that he still had to apply to the court for an excess fee and, in March 1992, he told Dobis that he had spoken with the trial judge about the fee application and the trial judge had promised to speak with the assignment judge about how extensive the application would have to be. The timing of respondent's disbursements to himself of the $700,000 and his conflicting statements to Abbott and Dobis belie any claim

that he had mistakenly believed that he was entitled to take a full one-third of the net recovery without having to file an application for the excess fee.

Furthermore, respondent made misrepresentations to the court in his June 1992 fee application. He told the court that he had advised Abbott that he believed that he was entitled to $690,000 but that, "after extensive negotiations involving the family and personal attorney," Abbott had agreed to a $575,000 fee. Those statements were clearly untrue, as shown by respondent's own letters to Abbott. He never advised the court that he had already taken $700,000 and that he had told Abbott that he had been "allowed" to take that amount.

After the assignment judge ruled, on July 10, 1992, that respondent was only entitled to $500,000, respondent continued to mislead Abbott. In his July 23, 1992 letter to Abbott, he did not inform her of the amount he had been awarded. Rather, he stated that, in addition to the $1,400,000, she might receive an additional $50,000 to $125,000, depending upon the success of his appeal of the judge's decision. Although the letter was artfully worded to avoid discussing the amount of the fee allowed by the court, respondent clearly intended to deceive Abbott into believing that the judge had "reduced" his fee from $700,000 to $675,000.

Then, in 1993, respondent created fraudulent documents to justify to the OAE his entitlement to the fees, including a settlement statement different from that given to Abbott.

At the hearing, respondent attempted to explain the differences in the two settlement statements by testifying that the one given to the OAE had been prepared about the time of his June 1992 excess fee application. However, that settlement statement conflicts with both the fee award and with respondent's contemporaneous letters to Abbott. The statement shows costs of $100,000, when respondent had represented to Abbott that his costs were $75,000; it shows that a $575,000 fee had been approved by the court and the client, when the court only awarded him $500,000, and it indicates that Abbott had advanced costs of $80,000 for the Inoa litigation, when respondent's contemporaneous letters to Abbott stated that he was retaining $30,000 for Inoa and seeking a $50,000 loan from Abbott.

In the Camuso matter, respondent's assertions that he had Camuso's and her advisors' consent to take the excess fee was disclaimed by Camuso and one of the advisors.[20] Even if Camuso had agreed to the excess fee, R.1:21-7 required that respondent apply to the court. The alleged "waiver" of his fee on the $100,000 Anderson settlement was deceitful. Pursuant to his fee agreements with Camuso, respondent was only entitled to an hourly fee of $100 for pursuing the Anderson settlement. Respondent testified that, at the time he took the case, he was confident that Anderson's insurance company would immediately deposit its $100,000 policy into court to stop the running of post-judgment interest. Apparently, that is precisely what the company did. Therefore, respondent was entitled to only a minimal fee

---

[20] The other advisor was deceased at the time of the hearing.

for the Anderson matter. It was deceptive for respondent to show, in his alternate calculation of fees, an entitlement to one-third of the Anderson settlement funds.

Similarly, respondent's statement that he believed that he was entitled to one-third of the $1,425,000 Freifeld settlement, based on New York law, was an obvious fabrication. The settlement was of a New Jersey tort claims action filed in a New Jersey court for injuries sustained in New Jersey by a New Jersey plaintiff against a New Jersey public entity. It is inconceivable that respondent genuinely believed that his fee would be governed by New York law. See Peteroy v. Trichon, 302 N.J. Super. 44 (App. Div. 1997) (holding that R.1:21-7 was applicable to a retainer agreement between a New Jersey resident and an out-of-state attorney, even though the matter had been settled before suit was filed) and Anderson v. Conley, 206 N.J. Super. 132 (Law Div. 1985) (applying R.1:21-7 to an out-of-state firm prosecuting an action in New Jersey by way of local counsel).

Not satisfied with taking an excess fee, respondent then tried to keep an additional $100,000 that he had promised Freifeld, by telling him that the county could not immediately pay the full settlement amount. Although respondent denied making a misrepresentation to Freifeld, his former associate, Gordon, testified that respondent had told him also that the county could not pay $100,000 of the settlement because the county had a certificate of deposit that would not mature for one year. Gordon testified that he had relayed that information to Freifeld.

The evidence is, thus, clear and convincing that respondent was not entitled to approximately $248,338 that he took from the Freifeld settlement and that he knew, at the time he took the funds, that he was not entitled to them.

In the Owens/Robinson matter, too, respondent's explanation for not holding the $193,728.69 in escrow pending the court's determination of his excess fee application was incredible. Despite the clear wording of the settlement statement that the funds were to be held in escrow, respondent claimed that he had a pre-existing agreement with Robinson that permitted him to use those funds. The only evidence of that agreement was a copy of a letter that respondent had allegedly sent to Robinson. Yet, when Robinson sued respondent for the funds, respondent never mentioned their purported agreement. Respondent also maintained that, even after Robinson had retained another attorney and sued him for the funds, he and Robinson had verbally agreed that respondent could use the funds, pending a final court determination. Respondent's testimony, thus, strains credulity.

Respondent's credibility in the Owens/Robinson matter is also questionable, in light of the fact that he misrepresented to the trial and appellate courts that he was holding the funds in escrow.

Respondent's conduct in the Munro matter was particularly egregious. He created fraudulent fee agreements and settlement statements to convince the OAE that he had been entitled to take a $950,000 legal fee from the settlement proceeds and forged or had his

employee forge Munro's signature on the documents. That the documents were fabricated is proven not only by Munro's testimony that she did not authorize respondent to sign her name on documents, but by the documents themselves. The retainer agreement for the "contract action" against the insurers included parties that were unknown to respondent when the agreement was allegedly "signed" by Munro. The settlement statement indicated that respondent had settled the Employee Benefit Plans litigation, but the document had allegedly been "signed" by Munro before the litigation had even been instituted.

Respondent's assertion that he was entitled to take a $704,167 contract contingency fee because of his successful conclusion of the nursing care insurance issue lacks any factual basis. Respondent claimed that he had been entitled to take the fee because, in August 1992, an attorney for one of the insurance companies had sent him a letter stating that coverage had been approved for sixteen to eighteen hours per day of nursing care. Between December 1992 and March 1993, respondent took the fees for the "contract" case against the insurers from the tort settlement funds. In November 1992, he had taken a voluntary dismissal of Munro's claim against one of the insurers, ostensibly because he intended to file a new complaint against both insurance companies and other parties to the health insurance plans. The new complaint was filed in February 1993. It is clear that, when he took the funds, respondent knew that he had not successfully resolved the issue of insurance coverage for Munro's home nursing care.

Furthermore, during the same time period that respondent took the excess fees, he told the referring attorney that he was in the process of filing an enhanced fee application and that, based on his preliminary inquiries with the judge, he did not expect to receive much more than the $245,833 he was entitled to take without court approval.

Respondent displayed particular audacity when he obtained from Munro's Merrill Lynch account the funds for the Bayada settlement. He created a fraudulent authorization that was presented to Merrill Lynch and had his employee pick up the two checks. He then used $70,000 for purposes other than the Bayada settlement. When initially questioned by the OAE as to the source of the settlement funds, respondent stated that he had borrowed $100,000 from Munro and that the remainder had come from his personal funds. He later told the OAE that he had borrowed some of the settlement funds from a personal friend and provided the OAE with a note that purportedly evidenced the loan from the friend. Subsequently, respondent recanted that position, stating that he had borrowed the funds from another client. However, he never provided the OAE with the name of the client. Then, at the ethics hearing, respondent claimed that he had obtained Munro's authorization to take $100,000 from her Merrill Lynch account for the settlement and $70,000 as a personal loan.

Respondent's misappropriation from Munro was all the more egregious because of the absolute trust she had placed in him. She had initially refused to speak with the OAE

because of her high opinion of him and her belief that he had deserved whatever funds he had received. She testified that, when she became aware of what respondent had done, she was "very hurt" because she had "loved him."

In summary, respondent knowingly misappropriated more than $1,000,000 of his clients' funds in the Abbott, Camuso, Munro, Owens/Robinson and Freifeld matters and stole another $170,000 from Munro's Merrill Lynch account. He forged clients' names on documents in the Abbott, Munro and Freifeld matters and created fraudulent documents in the Abbott, Munro, Owens/Robinson and Freifeld matters. Finally, respondent lied to the courts in the Abbott and Owens/Robinson matters.

Respondent's actions in any one of the above five matters constituted knowing misappropriation and, therefore, warrant disbarment. In re Wilson, 81 N.J. 451 (1979). See, also, In re Ort, 134 N.J. 146 (1993) (disbarment where attorney misrepresented to the court the value of his services, charged excessive and unreasonable fees and withdrew money from an estate account without authorization) and In re Wolk, 82 N.J. 326 (1980) (disbarment where attorney attempted to commit a fraud on a federal court and his clients to obtain a legal fee larger than was due, advised a widowed client to make a hopeless investment in a building in which the attorney had an interest and concealed the fact that the building was in foreclosure).

Whether respondent is guilty of knowing misappropriation in the Kraus, Brady and Bary matters is not so clear. However, in light of the overwhelming evidence of knowing

misappropriation in the five matters discussed above, we need not determine whether respondent's conduct in the three remaining matters constituted knowing misappropriation.

For respondent's knowing misappropriation of more than $1,000,000 from five clients, we unanimously determined to recommend that respondent be disbarred from the practice of law. One member did not participate.

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

Dated: 4/12/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James F. Carney
Docket No. DRB 99-076

Argued: November 18, 1999

Decided: April 12, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Cole	x						
Boylan	x						
Brody	x						
Lolla	x						
Maudsley	x						
Peterson							x
Schwartz	x						
Wissinger	x						
Total:	8						1

Robyn M. Hill 5/12/00
Robyn M. Hill
Chief Counsel