SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-011
District Docket No. XIV-2014-0550E

IN THE MATTER OF

DEAN I. ORLOFF

AN ATTORNEY AT LAW

Decision

Argued: April 21, 2016

Decided: October 6, 2016

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

Respondent appeared pro se

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following Pennsylvania's suspension of respondent for one year and one day, for his violation of the Pennsylvania equivalent of New Jersey RPC 1.4(b) (failure to communicate with the client); RPC 1.15(a) (knowing misappropriation and commingling); RPC 1.15(b) (failure to promptly disburse funds to client or third

party); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE seeks disbarment. For the reasons expressed below, we determined to grant the motion, and recommend that respondent be disbarred.

Respondent was admitted to the Pennsylvania bar in 1986 and to the New Jersey bar in 1987. He has no history of discipline.

On August 15, 2012, the Pennsylvania Office of Disciplinary Counsel (PaODC) filed a one-count petition for discipline, alleging that respondent violated the following Pennsylvania Rules of Professional Conduct: RPC 1.4(a)(3) (keep client reasonably informed about the status of a matter); RPC 1.15(b) (hold all fiduciary funds separate from the attorney's own funds; properly identify and safeguard fiduciary funds); RPC 1.15(d) (promptly notify client or third party upon receipt of fiduciary funds); RPC 1.15(e) (promptly deliver to client or third party any property, including fiduciary funds, that the client or third party is entitled to receive and, upon request by the client or third party, promptly render a full accounting of the property); and RPC 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

On February 26 and May 23, 2013, a Pennsylvania ethics committee conducted a hearing and determined the following facts:

In 2003, Glenford Creary retained respondent, then employed by Gordon & Weinberg, P.C. (Gordon), to represent him in connection with injuries he sustained in an automobile accident in Maryland. Sometime in 2005, respondent obtained a settlement on Creary's behalf in the amount of $28,920. Creary received a check for $12,253, and $6,500 was held in escrow for unpaid medical bills. Creary maintained that, at that time, respondent told him that he was "not through with it yet" and that he would "get" him more money. Respondent also explained to Creary that there was a four-year period during which his treating physician could pursue a claim for the medical bills and that, at the end of that period, if no claim were made, the funds would belong to Creary. Nonetheless, respondent never advised Creary of the exact amount of the settlement and never provided him with a final settlement statement.

As time passed, through 2009 and 2010, Creary called respondent for status updates once or twice a year, but was not able to speak with him. Eventually, respondent informed Creary that he was no longer with Gordon. At that point, Creary no longer reached out to respondent for updates. In February 2010, respondent asked the Gordon firm to transfer to him the remaining $6,500 it held on Creary's behalf. Soon thereafter, respondent received the check from Gordon, which had been issued

to both respondent and Creary. Respondent endorsed the check with both his and Creary's signatures, and deposited the funds into his trust account. He never informed Creary that he had received the funds from the Gordon firm. From February 2010 to December 2010, the funds were maintained in respondent's trust account.

On December 7, 2010, however, respondent made a $2,500 withdrawal from his trust account. Prior thereto, respondent's trust account balance had been $6,511.99. Following this withdrawal, the balance of the account dropped to $4,011.99. One month later, on January 7, 2011, respondent made another $500 withdrawal from his trust account, reducing the balance of the account to $3,511.99. Respondent used both cash withdrawals, totaling $3,000, to pay his personal expenses, including his child support obligations. Respondent admitted that he did not have Creary's permission to take his funds, that he was under "financial stress," and that he made a "stupid mistake." Respondent claimed that he was under personal pressure, including his divorce and child support obligations. On March 24, 2011, respondent deposited $3,000 into his trust account, restoring the full balance of Creary's funds.

Subsequent to the accident in or around 2003, Creary was in another automobile accident in January 2011 and retained Neal

Cohen, Esq., to represent him. Creary told Cohen about his previous personal injury case. Cohen contacted respondent, who then transferred Creary's funds to Cohen. Cohen eventually filed a malpractice suit against respondent on Creary's behalf.

In connection with the malpractice action, Dr. William Russell (Dr. Russell) examined respondent, in December 2012.[1] Dr. Russell diagnosed respondent with "classic post trauma reaction," or "adjustment disorder." Respondent's father had been murdered while respondent was a student in college. Respondent had visited the crime scene while his father's body was still there. He then returned immediately to college and then went to law school. Dr. Russell opined that respondent was in denial and that he never had processed the trauma.

The hearing committee noted that Dr. Russell had not "unequivocally link[ed] Respondent's mental health disorder and his misconduct." It further observed that respondent sought treatment "primarily in connection with this disciplinary proceeding" and that "nothing in Dr. Russell's testimony demonstrated a plausible, convincing link between Respondent's

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[1] After being served with the civil action, respondent self-reported his misconduct to the PaODC.

psychiatric disorder and the misconduct." The committee concluded that "Dr. Russell's attempt to link the Respondent's disorder to his conversion of funds and his dishonesty is not persuasive."

On October 21, 2013, the hearing committee issued its report finding that respondent misappropriated client funds for his own use and attempted to conceal his conduct thereafter. The committee recommended that respondent receive a one-year suspension.

On March 31, 2014, the Disciplinary Board of the Supreme Court of Pennsylvania (PaDB) issued its report and recommended that respondent be suspended for one year and one day, "which would place on Respondent the extra burden to petition for reinstatement from suspension." In so doing, it noted that respondent did not demonstrate sincere remorse or acceptance of his conduct, which justified an enhancement of discipline to a suspension of one year and one day. On August 14, 2014, the Pennsylvania Supreme Court suspended respondent for one year and one day.

Following a review of the record, we determined to grant the OAE's motion.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on

which it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the PaDB.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Paragraph E applies, however. In New Jersey, respondent's misconduct amounts to knowing misappropriation and would merit

discipline more severe than the one-year and one-day suspension imposed in Pennsylvania.

The Court has described knowing misappropriation as:

> "any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom."
>
> [In In re Wilson, 81 N.J. 451, 456 n.1 (1979).]

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson*, 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of

> "dishonesty, venality, or immorality" -- all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since *Wilson*, it has been invariable.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Based on the above, to establish knowing misappropriation, the OAE must prove, by clear and convincing evidence, that respondent deliberately took his client's funds and used them, knowing that the client had not authorized him to do so. This, respondent has admitted. He attempted to mitigate his conduct, however, by offering details about his dire financial straits, the need to pay his child support, and his asserted mental health issues stemming from his father's murder. Although these factors may engender some sympathy, "no amount of mitigation will save from disbarment an attorney who knowingly misappropriates trust funds." Id. at 160.

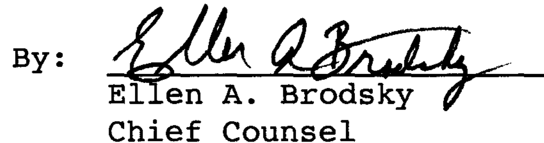
Respondent committed several other ethics violations that warrant discipline. These violations, however, are less severe in nature than the knowing misappropriation of client funds, and would result in less severe discipline had they occurred on their own. Hence, in light of our recommendation, we do not address the appropriate quantum of discipline for those other violations. Respondent has admitted that he took client funds from his trust account, without authorization, and used them for

his own personal benefit. In New Jersey, that misconduct requires that respondent be disbarred. We so recommend.

Member Gallipoli did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

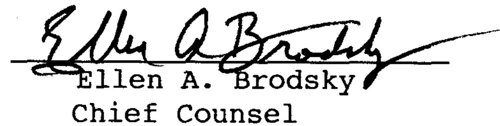
In the Matter of Dean I. Orloff
Docket No. DRB 16-011

Argued: April 21, 2016

Decided: October 6, 2016

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1



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