SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 16-254 and DRB 16-296
District Docket Nos. IX-2013-0027E;
IX-2014-0006E; IX-2014-0012E;
IX-2014-0014E; and IX-2014-0015E;
XIV-2015-0182E; XIV-2015-0183E;
XIV-2015-0184E; XIV-2015-0250E;
XIV-2016-0155E; XIV-2016-0156E;
XIV-2016-0157E; and XIV-2016-0158E

IN THE MATTER OF	:
WILLIAM B. GALLAGHER, JR.	:
AN ATTORNEY AT LAW	:

Decision

Decided: March 15, 2017

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

These matters were before us on certifications of default, filed by the District IX Ethics Committee (DEC) and the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). They have been consolidated for the purpose of imposing a single form of discipline. Based on the facts in the matter docketed at DRB 16-296, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1968. At the relevant times, he maintained a law office, under the name Klitzman & Gallagher, in Asbury Park.

In 1997, respondent received an admonition for gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3), based on his handling of a medical malpractice case. In the Matter of William B. Gallagher, Jr., DRB 97-011 (May 5, 1997).

On January 30, 2015, the Court temporarily suspended respondent, based on claims of knowing misappropriation in grievances filed by John Louis Romeo and David Levitt. In re Gallagher, 220 N.J. 347 (2015). On March 31, 2015, Thomas J. Smith, III, Esq., was appointed attorney trustee of Klitzman & Gallagher.

Respondent remains suspended.

DRB 16-254

This case arises out of a formal ethics complaint, filed by the DEC, as the result of respondent's conduct in five client matters.

Service of process was proper. On January 30, 2015, the DEC sent a copy of the formal ethics complaint to respondent's office address, 1321 Memorial Drive, P.O. Box 468, Asbury Park, New Jersey 08802, by regular and certified mail, return receipt

requested. The receipt for the certified letter was returned, bearing an illegible signature and confirming delivery on February 6, 2015. The letter sent by regular mail was not returned.

On February 3, 2015, the DEC sent a copy of the formal ethics complaint to respondent's home address, by regular and certified mail, return receipt requested. Neither the letter sent by certified mail nor the receipt was returned. The letter sent by regular mail also was not returned.

On September 2, 2015, the DEC sent another copy of the formal ethics complaint to respondent's home address, by regular and certified mail, return receipt requested. The receipt for the certified letter was returned, bearing an illegible signature but no delivery date. The letter sent by regular mail was not returned.

On February 5, 2016, the DEC sent a letter to respondent's home address, by regular and certified mail, return receipt requested. The letter informed respondent that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, the DEC would certify the record directly to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The letter sent by certified mail was returned,

marked "Return to Sender, Unclaimed, Unable to Forward." The letter sent by regular mail was not returned to the DEC.

As of July 1, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The facts are taken from the DEC's six-count formal ethics complaint, dated January 23, 2015. In all five client matters, respondent was charged with having violated RPC 1.1(a)(gross neglect), RPC 1.2 (scope of representation), RPC 1.3 (lack of diligence), RPC 1.4 (presumably, (b)) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). He also was charged with having engaged in a pattern of neglect (RPC 1.1(b)).

Tanga R. Elie

On an unidentified date, Tanga R. Elie retained respondent to represent her in a personal injury action, arising out of injuries that she had sustained in a March 8, 2005 car accident. Although respondent filed a civil action complaint on Elie's behalf, in the Superior Court of New Jersey, the complaint was dismissed on January 8, 2010, presumably due to lack of

prosecution. Thereafter, respondent failed to "have said Complaint reinstated," failed to inform Elie of the dismissal, and "otherwise failed to act with the professional diligence required in the prosecution of the personal injury action on behalf of Elie."

Salah Ali

In November 2008, Salah Ali retained respondent to represent him in a personal injury action, arising out of injuries that he had sustained in an unspecified incident at an Asbury Park supermarket. Respondent failed to "undertake a timely investigation" and failed to file a lawsuit on Ali's behalf, within the statute of limitations, "despite assuring Ali that all appropriate paperwork had been filed" and that Ali's case was proceeding "in normal course."

Eddie Watt, Jr.

On January 23, 2009, Eddie Watt, Jr., was injured in a work-related accident. He retained respondent, who obtained a workers' compensation permanency award, payable through April 2012.

In 2013, Watt asked respondent to re-open his workers' compensation case because Watt's symptoms had worsened.

Respondent failed to take "the appropriate action" to re-open the case within the statute of limitations period.

Walter Coulter

Sometime in 2005, Walter Coulter retained respondent to represent him in a workers' compensation claim. Respondent "failed to file an appropriate workers' compensation claim petition, or, in filing a claim petition, otherwise failed to keep Coulter properly advised as to the status and progress of the claim."

Coulter, who was dissatisfied with respondent's handling of his claim, requested, on numerous occasions, that respondent release his file so that he could retain another attorney. Respondent ignored Coulter's requests.

Edwin Pankow, Jr.

In 2002, Edwin Pankow, Jr., retained respondent to represent him in a personal injury action. Although respondent filed a civil action complaint on Pankow's behalf, in the Superior Court of New Jersey, he "failed to keep Pankow informed as to his personal injury claim and/or otherwise misled Pankow as to the status of his personal injury claim and/or allowed the

personal injury complaint to be dismissed and failed to have same reinstated within the statutory period."

The Charges

In all five matters, the complaint charged respondent with gross neglect, lack of diligence, and failure to keep his clients informed about the status of their cases and to reply to their reasonable requests for information. The complaint also charged respondent with failure to "consult" with the clients about the cases to be pursued on their behalves (Elie, Ali, Pankow); to take the action requested by the clients, in order to protect their rights (Watt, Coulter); to keep one of them updated on the status of his matter (Ali); and to inform one of them of adverse determinations, such as the dismissal of her claim (Elie). In addition, the complaint charged respondent with having engaged in a pattern of neglect.[1]

Finally, the complaint alleged that respondent violated RPC 8.1(b), in all five matters, based on his alleged failure to reply to the grievances and to "disclose facts requested of the Respondent during the ethics investigation."

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[1] Although the complaint alleged that respondent misled Ali and Pankow about the status of their cases, it did not charge respondent with a violation of RPC 8.4(c).

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

The allegations of the complaint sustain the finding that respondent exhibited gross neglect, a pattern of neglect, and a lack of diligence in all five client matters. In the Elie and Pankow matters, his inaction led to the dismissal of the clients' complaints, which he failed to have reinstated. In the Ali matter, respondent failed to file a complaint within the statute of limitations period, and, in Coulter, he failed to file a workers' compensation petition at all. Finally, in the Watt matter, respondent failed to take the steps necessary to re-open the workers' compensation claim within the statute of limitations period.

Respondent's failures, in each matter, were the product of gross neglect and a lack of diligence on his part. Further, respondent's gross neglect in all five matters constituted a pattern of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12) (three instances of neglect establish a pattern of neglect).

Respondent also violated RPC 1.4(b) in all five cases. He neither kept the clients informed of the status of their matters nor complied with their requests for information about their cases.

In respect of the RPC 8.1(b) charge, although the complaint is inartfully worded, it is clear that, in all five cases, the DEC sent a copy of the grievance to respondent, and requested both the submission of a written reply and the disclosure of facts in each case. His failure to comply with the DEC's requests was a violation of RPC 8.1(b).

The allegations of the complaint, however, do not support a finding that respondent violated RPC 1.2. When read as a whole, it is clear that the Rule pertains to the overall scope of a legal representation, including strategic decisions, such as whether to oppose a motion or to settle a case. The Rule does not apply to the manner in which an attorney handles a representation, which is encompassed by RPC 1.1 and RPC 1.3, or to an attorney's obligation to communicate with the client, which is encompassed by RPC 1.4. Although it might be argued, for example, that, by failing to file the complaint within the statute of limitations period, respondent failed to abide by Ali's decision concerning the scope of the representation, stated more precisely, respondent's inaction was a failure to

abide by the basic norms of the competent practice of law. In short, RPC 1.2 simply does not apply to the facts underlying any of the five client matters subject to the DEC's complaint. We, thus, dismiss the charge.

To conclude, the allegations of the complaint support the finding that respondent violated RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), and RPC 8.1(b) in all five client matters. We will address the appropriate quantum of discipline to impose on respondent for these infractions after our discussion of the matter docketed at DRB 16-296, below.

DRB 16-296

This case arises out of a formal ethics complaint, filed by the OAE, as the result of respondent's misuse of client and escrow funds.

Service of process was proper. On June 23, 2016, the OAE sent a copy of the amended formal ethics complaint to respondent's home address, by regular and certified mail, return receipt requested. Prior to service of the amended complaint, the OAE confirmed with Thompson Reuters that respondent was living at that address. The letter sent by certified mail was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

On July 27, 2016, the OAE sent a letter to respondent's home address, by regular and certified mail, return receipt requested. The letter informed respondent that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, the OAE would certify the record directly to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The receipt for the certified letter was returned, bearing an illegible signature and confirming delivery on August 3, 2016. The letter sent by regular mail was not returned to the OAE.

As of August 18, 2016, respondent had not filed an answer to the amended complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

This matter involves allegations of respondent's knowing misappropriation of client and escrow funds, some of which were the product of lapping.[2]

At all relevant times, respondent maintained the following attorney bank accounts:

[2] Lapping occurs when an attorney takes the designated funds of one client or third party and uses them to satisfy trust obligations owed to another client or third party. In re Brown, 102 N.J. 512, 515 (1986).

a. Attorney Trust Account 1 (ATA1) XXXXX1699 at Chase Bank (closed December 2010);

b. Attorney Trust Account 2 (ATA2) XXXXX5366 at PNC Bank; and

c. Attorney Business Account (ABA) XXXXX7875 at Chase Bank.

On October 15, 2010, respondent opened ATA2, with a $5,000 deposit. ATA1 remained open, however, until December 29, 2010, when it was closed. The closing balance was $24,492.98. Respondent did not deposit those funds in ATA2, however, until January 21, 2011.

On January 30, 2015, the Court ordered respondent's immediate temporary suspension. Two months later, Thomas J. Smith III, Esq., was appointed attorney trustee for respondent's law office.

COUNT ONE
THE CONGREGATION AND ROMEO

The charges in this count arise out of respondent's representation of Congregation Agudath Achim (the Congregation), in a real estate transaction, and John Romeo, in a personal injury action. Although these matters are not related, they were combined into one count of the complaint.

Respondent represented the Congregation in the sale of a Bradley Beach property to JRN Developers, LLC (JRN). On June 9, 2008, he deposited JRN's $50,000 deposit check into ATA1.

Respondent did not have the parties' authorization to use the funds for any purpose, other than the real estate transaction. As discussed below, the transaction languished for four years, until June 2012, when it collapsed, and JRN forfeited its deposit.

From June 9, 2008 to June 14, 2010, respondent invaded and knowingly misappropriated the $50,000 deposit that he was required to safeguard for the Congregation and JRN in ATA1. He did so through numerous unidentified, unauthorized withdrawals, in even dollar amounts, totaling $74,000. As a result of these withdrawals, the ATA1 balance fell below $50,000, on the following dates:

Date	Daily Bank Balance	Shortage
April 1, 2009	$47,129.56	$(2,870.44)
April 29, 2009	$35,257.56	$(14,742.44)
May 11, 2009	$21,490.06	$(28,509.94)
May 29, 2009	$17,285.56	$(32,714.44)
June 2, 2009	$14,785.56	$(35,214.44)
July 22, 2009	$36,306.56	$(13,693.44)
October 13, 2009	$37,789.49	$(12,210.51)
November 10, 2009	$48,922.49	$(1,077.51)
November 25, 2009	$46,498.65	$(3,501.35)
December 18, 2009	$42,285.65	$(7,714.35)
January 27, 2010	$47,973.65	$(2,026.35)
February 8, 2010	$44,191.81	$(5,808.19)
March 30, 2010	$11,520.69	$(38,479.31)
May 4, 2010	$49,670.69	$(329.31)

As explained below, respondent used the $74,000 to "deal with personal financial issues, including business cash flow issues and tax issues."

In the unrelated personal injury matter, referenced above, on June 14, 2010, respondent deposited into ATA1 a $239,800 settlement check, received on behalf of Romeo, whose share of the settlement proceeds was $159,045.66. On September 4, 2010, respondent issued a $100,000 ATA1 check (no. 3723) to Romeo, representing a portion of the total settlement proceeds due to him. Respondent was required to safeguard the remaining $59,045.66 for the payment of Romeo's medical liens. After the $100,000 check posted on September 7, 2010, the balance in ATA1 was $122,924.30.

Between September 1, 2009 and June 10, 2010, respondent issued to his firm six attorney trust account checks, totaling $16,950, each containing the notation "Romeo," and representing the payment of attorney fees in that matter. Because all six checks were issued prior to respondent's deposit of the $239,800 Romeo settlement check, each of the six disbursements invaded other ATA1 trust funds.

On numerous unidentified dates, Romeo contacted, or attempted to contact, respondent to obtain the $59,045.66 due to him. Respondent failed to return any of his calls, however. In late 2012/early 2013, more than two years after respondent had partially disbursed Romeo's settlement proceeds, Romeo appeared unannounced at respondent's office and confronted him. Upon respondent's

recommendation, Romeo agreed to keep the $59,045.66 in trust while his divorce was pending.[3]

As stated previously, in June 2012, JRN breached the real estate contract with the Congregation and forfeited the $50,000 deposit. Yet, despite the Congregation's many attempts to recover the funds, it was not until October 30, 2013, sixteen months later, that respondent issued ATA2 check (no. 1696), in that amount. By this time, however, the $50,000 had been dissipated, respondent having withdrawn those funds, as explained above. As seen below, the "primary source" of the long-overdue $50,000 payment was the proceeds of an unrelated real estate transaction involving the Estate of George McCormack (the Estate).

On April 23, 2013, respondent deposited $52,000 into his trust account, representing the buyer's deposit in connection with the Estate's sale of a Belmar property to Aldo Merendino. As of that date, ATA2 should have held $50,000 in escrow for the sale of the Congregation's property, $59,045.66 for Romeo, and the $52,000 Estate deposit, for a total of $161,045.66. Because the balance was only $97,875.40, however, ATA2 was short by at

[3] Although respondent may have assisted a client in the perpetration of a fraud on the court and on Romeo's wife, the complaint did not charge any unethical conduct in this regard.

least $63,170.26. Further, by the time the closing for the sale of the Estate's property took place, on June 27, 2013, the balance was only $50,745.40, a shortage of $110,300.26.

The sale of the Belmar property generated $445,443.30 in proceeds to the Estate. When the funds cleared ATA2, on July 8, 2013, respondent should have been holding a total of $497,443.30 for the Estate alone. In addition, he should have been safeguarding $50,000 for the Congregation and $59,045.66 for Romeo, for a total of at least $606,488.96 for all three matters. Yet, the ATA2 balance, on July 8, 2013, was only $487,189.70, representing a shortage of $119,299.26.

After Romeo's divorce was finalized, in May of 2013, he attempted to contact respondent multiple times, to no avail. On January 22, 2014, Romeo faxed respondent a letter, requesting a reply within five days. Respondent admitted that he ignored Romeo's letter. Romeo, therefore, filed a grievance against him.

On April 2, 2014, after the OAE had begun its investigation of Romeo's grievance, respondent issued an ATA2 trust check (no. 1760) to Romeo, in the amount of $56,745.66, rather than the full $59,045.66.[4] The check cleared the account on June 3, 2014.

[4] Romeo had authorized respondent to reduce the $59,000 by "any remaining costs due in the case."

When respondent issued the check to Romeo on that date, ATA2 did not hold any of Romeo's funds because, from June 14, 2010 to April 2, 2014, respondent, through numerous unidentified, unauthorized withdrawals, in even dollar amounts, already had invaded and knowingly misappropriated the $59,045.66 in Romeo settlement funds "and/or" the $50,000 Congregation escrow. Consequently, on numerous dates between September 2010 and June 2014, the ATA balance fell below the $109,000 that respondent was required to safeguard for both the Congregation and Romeo:

Date	Daily Bank Balance	Shortage
September 17, 2010	$ 80,002.30	$(29,043.40)
April 4, 2011[5]	$ 2,245.93	$(106,799.77)
May 6, 2011	$132,020.85	$22,975.15
May 27, 2011	$108,765.85	$(279.85)
May 31, 2011	$147,465.85	$38,420.15
June 13, 2011	$ 82,298.85	$(26,746.85)
November 2, 2011	$107,828.32	$(1,217.38)
March 12, 2012	$ 99,961.76	$(9,083.94)
September 17, 2012	$ 92,808.66	$(16,237.04)
October 24, 2012	$ 6,874.46	$(102,171.24)
November 9, 2012	$ 7,774.46	$(101,271.24)
July 7, 2013	$ 41,746.40	$(67,299.30)

Respondent used the Congregation and Romeo funds to address personal financial issues, including business cash flow and tax obligations. Specifically, from January 2008 to January 2015,

[5] By this time, ATA1 was closed (in December 2010). Therefore, the ATA at issue is ATA2 into which all ATA1 funds presumably were transferred when ATA1 was closed.

respondent incurred $60,479.79 in insufficient funds and bank service fees related to numerous overdrafts in the ABA. In addition, in 2013, a federal court ordered the sale of his residence to satisfy $2 million in federal tax liens. Thus, similar to the $50,000 paid to the Congregation, the $56,745.66 paid to Romeo, in June 2014, was funded by monies held in ATA2 for the Estate, and other unidentified clients, which respondent was required to safeguard.

Because respondent had previously misappropriated Romeo's and the Congregation's funds by way of unidentified and unauthorized disbursements, he did not have their respective funds available when he issued ATA2 check numbers 1696 and 1760. Thus, in both the Congregation and Romeo matters, respondent engaged in a pattern of lapping, by using monies received in connection with the Estate and other client matters to fund the $50,000 check to the Congregation and the $56,000+ check to Romeo. He also repeatedly failed to communicate with the Congregation and with Romeo, both of whom attempted to reach him via letter and phone.

Respondent unequivocally stated to the OAE, in a recorded interview, that he knew that he was required to safeguard the Congregation's $50,000 and Romeo's $59,045.66 in trust; that he did not lose track of or forget that he was holding funds for

the Congregation and Romeo; and that he reviewed the ATA bank statements. Respondent also stated that, when he disbursed monies against the Congregation and Romeo funds, he knew that he did not have authorization from the clients to use their funds for his own purpose or for that of any of his other clients.

In addition to the knowing misappropriation charges, count one included allegations of respondent's failure to cooperate with the OAE. Specifically, on February 24, 2014, the OAE sent a letter to respondent, requesting that he submit a written reply to the grievances filed by the Congregation and Romeo. On March 7, 2014, respondent submitted a reply to the Congregation's grievance but not Romeo's.

On March 19 and April 2, 2014, the OAE sent follow-up letters to respondent, requesting a reply to the Romeo grievance. On April 3, 2014, the OAE scheduled a demand audit interview of respondent, for April 29, 2014, with regard to both grievances. On April 17, 2014, respondent finally submitted a written reply to the Romeo grievance.

Moreover, although respondent was directed to produce all of his attorney trust account bank statements from January 2009 to the date of the audit, at the April 29, 2014 demand audit, he produced only the following bank statements:

a. January 2009 to March 2009, September 2009 (ATA1);

b. July 2010 (ATA1);

c. June 2011 through September 2011 (ATA2);

d. January and February 2012 (ATA2);

e. August through December 2013 (ATA2); and

f. January through March 2014 (ATA2).

According to respondent, the missing bank statements were damaged by Super Storm Sandy, in October 2012, and by an additional storm in the winter of 2013-2014. As shown below, the statements that respondent produced reflected balances in excess of the amounts he was then required to safeguard for the Congregation and for Romeo, the matters under investigation at that time:

Month	Ending Monthly Bank Balance	Attorney Trust Account
January 2009	$116,680.65	ATA 1
February 2009	$111,520.65	ATA 1
March 2009	$ 50,129.56	ATA 1
September 2009	$ 70,789.49	ATA 1
July 2010	$357,288.57	ATA 1
June 2011	$156,610.32	ATA 2
July 2011	$150,115.32	ATA 2
August 2011	$192,542.32	ATA 2
September 2011	$134,168.32	ATA 2
January 2012	$122,721.27	ATA 2
February 2012	$124,100.42	ATA 2
August 2013	$570,549.52	ATA 2
September 2013	$528,624.70	ATA 2
October 2013	$524,205.10	ATA 2
November 2013	$467,115.91	ATA 2
December 2013	$409,699.91	ATA 2
January 2014	$356,949.91	ATA 2
February 2014	$323,245.31	ATA 2
March 2014	$356,685.31	ATA 2

On May 7 and 8, 2015, the OAE reviewed respondent's files and records at the trustee's law office. The review uncovered the

following original ATA1 bank statements, which respondent had failed to produce at the demand audit, upon the claim that they were illegible:

a. April through December 2009;

b. January through June 2010; and

c. August and September 2010.

Most of the ATA1 bank statements were undamaged, and, as shown below, reflected balances below the $109,045.66 that respondent was required to safeguard for the Romeo and the Congregation matters:

Month	Ending Monthly Bank Balance
April 2009	$ 35,257.56
May 2009	$ 17,285.56
June 2009	$ 95,227.56
July 2009	$ 28,231.56
August 2009	$129,858.82
October 2009	$ 61,622.49
November 2009	$ 42,448.65
December 2009	$ 24,285.65
January 2010	$ 45,473.65
February 2010	$ 31,691.81
March 2010	$ 11,520.69
April 2010	$ 55,670.69
May 2010	$ 34,889.31
June 2010	$334,161.02
August 2010	$275,321.82
September 2010	$ 89,797.30

Thus, respondent produced to the OAE only those bank statements that supported his claim that he had safeguarded funds belonging to the Congregation and Romeo, and withheld those that demonstrated that the funds were no longer intact.

The day after the April 29, 2014 demand interview, the OAE requested respondent to produce records that he was required to maintain, pursuant to R. 1:21-6. On May 15, 2014, respondent produced only an unspecified number of client ledger cards, rather than all of the requested documents.

Based on the above facts, the complaint charged respondent with the following RPC violations:

a. RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) - in that respondent knowingly misappropriated escrow and client funds;

b. RPC 8.4(b) - in that respondent committed criminal acts that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

c. RPC 1.15(a) - in that respondent failed to safeguard client funds;

d. RPC 1.15(b) - in that upon receiving funds or other property in which a client or third person had an interest, respondent failed to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive;

e. RPC 1.4(b) - in that respondent failed to communicate with the Congregation and Romeo.

f. RPC 8.1(a) and RPC 8.4(c) - in that respondent offered false statements to the OAE regarding the destruction of the attorney trust account statements.

g. RPC 8.1(b) - in that respondent failed to respond to a lawful demand for information by not providing certain bank statements and then lying to the OAE about the statements.

COUNT TWO
THE ESTATE, CECALA, AND MORGAN

The charges in count two of the ethics complaint arise out of respondent's representation of the Estate, in the sale of the Belmar property; Anthony Cecala, in a workers' compensation matter; and Glen Morgan, in a personal injury case, three unrelated matters.

On December 26, 2012, respondent deposited into ATA2 $104,059, representing a Medicare escrow for Cecala, which he was required to safeguard on Cecala's behalf for future medical treatment. Thus, as of that date, ATA2 should have held $50,000 for the Congregation, $59,045.66 for Romeo, and $104,059 for Cecala, for a total of $213,104.66. Yet, the balance, after the Cecala deposit, was only $112,863.95.

As stated previously, respondent represented the Estate in the sale of its Belmar property to Aldo Merendino. On April 20, 2013, respondent deposited Merendino's $52,000 deposit into ATA2, which cleared the bank three days later. Respondent was required to safeguard the $52,000 deposit until the June 27, 2013 closing took place. Yet, between April 18 and 26, 2013, respondent issued, to either himself or his firm, nine ATA2 checks, totaling $13,750, in addition to a $250 check, in July 2013, all of which represented the

payment of fees in the Estate matter.[6] The disbursements, two of which predated the $52,000 deposit in ATA2, are detailed below:

Date on Check	Made Payable to	Check #	Amount	ATA
April 18, 2013	William B. Gallagher, Jr.	1506	$ 500.00	2
April 19, 2013	William B. Gallagher, Jr.	1508	$ 250.00	2
April 20, 2013	Klitzman & Gallagher	1509	$ 2,000.00	2
April 23, 2013	Klitzman & Gallagher	1513	$ 2,000.00	2
April 24, 2013	Klitzman & Gallagher	1511	$ 2,000.00	2
April 26, 2013	William B. Gallagher, Jr.	1518	$ 250.00	2
April 26, 2013	Klitzman & Gallagher	1514	$ 3,000.00	2
April 26, 2013	Klitzman & Gallagher	1515	$ 2,250.00	2
April 26, 2013	Klitzman & Gallagher	1517	$ 1,500.00	2
July 2, 2013	William B. Gallagher, Jr.	1562	$ 250.00	2
		TOTAL:	**$14,000.00**	

Although the disbursements ostensibly represented the payment of fees, respondent had not billed any fees or costs in connection with either the Estate or the sale of its Belmar property. He also did not inform its executor, Edward McCormack, that he was taking fees against the $52,000 deposit. Moreover, respondent falsely stated to the OAE that he had not taken any fees from the Estate's funds.

Neither the Estate's beneficiaries nor its executor had authorized any of the above disbursements, which respondent either paid to himself as fees or used to cover liabilities in other client matters. Thus, by disbursing $14,000 in "legal fees" in the Estate matter, respondent invaded and knowingly misappropriated a portion of the $52,000 deposit.

[6] Although the complaint repeatedly stated that the disbursements represented the payment of fees, it later alleged that the funds also were used to "cover liabilities in other client matters."

Respondent could not have had any prior earned fees commingled in the trust account, as of April 26, 2013, because, as stated above, he should have been safeguarding $213,104.66 for the Congregation, Romeo, and Cecala matters; yet, the ATA2 bank balance was only $48,875.40 on that date.

As stated previously, after the $445,443.30 closing proceeds cleared ATA2, on July 8, 2013, ATA2 should have held $497,443.30 on behalf of the Estate.[7] When this amount is added to the $213,104.66 that respondent should have been holding in his trust account for the benefit of the Congregation, Romeo, and Cecala, the total funds that should have been in the account for all four matters was $710,547.96. Yet, on that date, the ATA2 balance was only $487,189.70. Thus, ATA2 was $223,358.26 short.

The ATA2 balance continued to be out of trust for all four matters in January, February, and March 2014, with ending balances of only $356,949.91 (January 2014), $323,245.31 (February 2014), and $356,685.31 (March 2014). Thus, for all four matters, ATA2 was short by the following amounts: $353,598.05 (January 2014), $387,302.65 (February 2014), and $353,862.65 (March 2014).

Although, by October 2014, respondent had returned the $50,000 to the Congregation and paid the $56,745.66 to Romeo, he still had

[7] Respondent failed to produce to the OAE the July 2013 ATA2 statement, which would have reflected the deposit.

not turned over the proceeds from the sale of the Estate's Belmar property. Between October and December 2014, McCormack attempted to contact respondent in person, by phone, and via letter, presumably without success. According to the complaint, respondent failed to communicate with McCormack during that time and failed to keep him informed regarding the status of the Estate because he knew that ATA2 did not have sufficient funds to cover the $497,443.30. Specifically, the ATA2 balance during each of those three months was, respectively, $346,728.78, $393,449.78, and $387,849.78.

Respondent failed to provide McCormack with any accounting of the Estate funds held in trust. However, he was aware of the shortages in the Estate funds because, by that point, he had produced to the OAE select ATA2 bank statements from January through March 2014 in connection with the Congregation and Romeo audits, as proof that he was maintaining those funds in trust, while knowing that, as a whole, the funds then in ATA2 were significantly short.

In addition to having finally paid the monies due to the Congregation and Romeo, by the fall of 2014, respondent also had disbursed some of the $104,059 in Cecala funds that he had deposited in ATA2 in December 2012. Specifically, between September 2013 and November 2014, respondent made the following disbursements either to Cecala or in his behalf:

Date	Payee	ATA Check #	Amount
9/18/2013	American Heart Center	1619	$ 120.00
9/18/2013	American Heart Center	1620	$ 208.60
10/28/2013	American Heart Center	1640	$ 746.15
3/14/2014	Anthony Cecala	1743	$ 1,500.00
3/14/2014	Anthony Cecala	1744	$ 35.00
5/27/2014	Laser Spine Institute	1776	$22,500.00
5/27/2014	Laser Spine Institute	1777	$ 552.00
6/30/2014	American Heart Center	1799	$ 511.25
7/2/2014	American Heart Center	1802	$ 876.34
8/2/2014	Anthony Cecala	1815	$ 2,190.70
8/22/2014	Anthony Cecala	1821	$ 4,600.00
9/11/2014	Anthony Cecala	1828	$ 600.00
11/19/2014	Anthony Cecala	1862	$ 1,400.00
		TOTAL	**$35,840.04**

Respondent made no additional disbursements, either to Cecala or to third parties on his behalf. Thus, once the $1,400 check to Cecala was cashed, on November 25, 2014, respondent should have continued to safeguard $68,218.96 for Cecala.

In December 2014, Cecala tried, without success, to contact respondent on several occasions to inquire about the Medicare escrow. Specifically, it appears from the complaint that Cecala needed some of the escrow funds to pay for medical procedures. Because respondent failed to communicate with Cecala or to disburse the funds to him, Cecala was forced to cancel the medical procedures. The funds remained unaccounted for when respondent was temporarily suspended, in January 2015, and ATA2 was frozen. Respondent was not entitled to any portion of the Medicare escrow.

Respondent represented Glenn Morgan in a personal injury action, which was settled on June 23, 2014. Approximately one month later, respondent received a $210,000 settlement check, which he deposited in ATA2 on July 25, 2014, and which cleared the account on the same date. Respondent was entitled to a $70,000 legal fee.

Prior to the settlement of Morgan's case and respondent's receipt and deposit of the $210,000 settlement check, however, he had already disbursed $56,055 to either himself or his firm, in the form of twenty-four separate checks in varying even dollar amounts, containing the notation "Morgan." The first check, in the amount of $300, was issued on November 17, 2011. The last check, in the amount of $2,260, was issued on July 7, 2014. As shown in the chart below, all checks were in even dollar amounts:

Date	Check #	Payee	Amount
11/17/11	1206	William Gallagher	$300
11/18/11	1203	Klitzman & Gallagher	$1,750
11/18/11	1204	Klitzman & Gallagher	$1,500
11/25/11	1209	Klitzman & Gallagher	$2,000
12/12/11	1218	William Gallagher	$300
12/12/11	1219	Klitzman & Gallagher	$1,600
12/15/11	1222	Klitzman & Gallagher	$1,500
12/16/11	1223	William Gallagher	$350
12/19/11	1224	Klitzman & Gallagher	$1,500
12/26/12	1440	Klitzman & Gallagher	$9,500
12/28/12	1441	Klitzman & Gallagher	$3,500
01/20/13	1465	Klitzman & Gallagher	$2,500
01/25/13	1463	Klitzman & Gallagher	$3,500
01/25/13	1464	Klitzman & Gallagher	$2,000

03/03/13	1488	Klitzman & Gallagher	$1,500
05/20/13	1540	Klitzman & Gallagher	$2,000
05/30/13	1541	William Gallagher	$500
05/31/13	1542	William Gallagher	$430
06/02/13	1544	Klitzman & Gallagher	$1,500
06/02/13	1545	Klitzman & Gallagher	$1,250
06/20/14	1792	Klitzman & Gallagher	$2,265
06/24/14	1796	Klitzman & Gallagher	$9,675
06/30/14	1800	Klitzman & Gallagher	$2,875
07/07/14	1805	Klitzman & Gallagher	$2,260
		Total	**$56,055**

Because respondent disbursed the above fees before Morgan's case was settled and before he received the settlement monies, he invaded and knowingly misappropriated the funds that he was required to safeguard for the Congregation, Romeo, Cecala, and the Estate.

Taken as a whole, count two of the complaint alleged that respondent knowingly misappropriated funds that he should have held for the benefit of the Estate, Cecala, and Morgan, by making numerous withdrawals payable to himself or his firm and by the regular lapping of client funds in some matters to pay liabilities in other client matters.

The final allegations of count two of the ethics complaint pertain to the effect of respondent's temporary suspension on ATA2. Pursuant to the Court's January 30, 2015 Order, ATA2 was frozen. On February 18, 2015, the Superior Court of New Jersey Trust Fund acknowledged receipt of $269,244.78, representing the balance of funds in ATA2. Yet, according to the complaint, when ATA2 was frozen, respondent should have been holding, at a minimum, the following funds:

Client	Amount
Cecala	$ 68,218.96
Estate	$458,172.22[8]
Morgan	$ 33,954.97[9]
DelMasto	$ 40,000.00[10]
TOTAL	**$600,346.15**

Thus, ATA2 was short $331,101.37 for the above matters alone.

Based on the above facts, the second count of the ethics complaint charged respondent with the same RPC violations asserted in the first count, with the exception of RPC 8.1(b).

COUNT THREE
DELMASTO

The charges in count three of the complaint arise out of respondent's representation of Anne DelMasto, in a personal injury action. Specifically, on an unidentified date, DelMasto retained respondent to represent her, on a contingent fee basis, in connection with injuries she sustained in a May 6, 2009 slip and fall incident at ShopRite.

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[8] Respondent should have been holding $497,443.30 for the Estate. Presumably, the $458,172.22 figure is based on respondent's prior use of a portion of the Estate's funds to cover the $50,000 check issued to the Congregation.

[9] The complaint does not explain the basis for this figure. The allegations substantiate only that respondent received $210,000 on Morgan's behalf and that he disbursed $56,055 against that sum.

[10] DelMasto is addressed in further detail in the discussion of count three.

The case was settled for $60,000. Respondent was entitled to one-third of the amount received as the attorney's fee, that is, $20,000. On December 3, 2013, respondent sent DelMasto the release, which she signed and returned to him. Thereafter, DelMasto heard nothing from respondent, until June 2014.

The $60,000 was paid by three entities: Stanley Black & Decker ($5,000), Boon Edam, Inc. ($5,000), and Gallagher Bassett Services, Inc. ($50,000). The funds were deposited into ATA2, on February 10, 2014 ($10,000) and March 27, 2014 ($50,000), respectively. Respondent was entitled to earned fees of only $3,333.33, after the $10,000 deposit cleared the bank on February 10, 2014, and the remaining $16,666.67 after the $50,000 deposit cleared the bank on March 27, 2014. Yet, long before the case had settled and before he received settlement monies, respondent had begun to advance fees to himself in the DelMasto matter.

Between March 19, 2012 and February 5, 2014, prior to respondent's receipt of the $60,000 settlement monies, he already had issued twenty ATA2 checks, totaling $76,300, to himself, to his firm, or to Carl Bauman, thereby invading other clients' funds, including monies that he was required to safeguard for Romeo, the Congregation, Cecala, and the Estate.[11] The disbursements are shown below:

[11] Respondent did not receive Morgan's funds until June 2014.

Date	Check #	Payee	Amount
03/19/12	1278	Klitzman & Gallagher	$3,000
03/21/12	1280	Klitzman & Gallagher	$1,500
03/29/12	1281	Carl Bauman	$6,500
04/21/12	1303	Klitzman & Gallagher	$16,000
05/04/12	1307	Klitzman & Gallagher	$4,500
01/30/13	1467	Klitzman & Gallagher	$1,500
02/03/13	1468	Klitzman & Gallagher	$2,250
02/07/13	1469	Klitzman & Gallagher	$3,500
02/12/13	1473	Klitzman & Gallagher	$2,500
02/15/13	1476	Klitzman & Gallagher	$1,500
02/17/13	1477	Klitzman & Gallagher	$2,500
02/22/13	1479	Klitzman & Gallagher	$2,500
10/17/13	1632	William Gallagher	$350
10/17/13	1633	Klitzman & Gallagher	$2,000
11/28/13	1675	Klitzman & Gallagher	$1,000
12/09/13	1682	Carl Bauman	$1,500
12/17/13	1698	Klitzman & Gallagher	$2,500
01/02/14	1700	Klitzman & Gallagher	$1,250
01/19/14	1711	Klitzman & Gallagher	$5,200
01/24/14	1713	William Gallagher	$300
01/24/14	1710	Klitzman & Gallagher	$1,500
01/24/14	1712	Klitzman & Gallagher	$5,000
01/29/14	1715	Klitzman & Gallagher	$1,250
02/05/14	1717	Klitzman & Gallagher	$3,400
02/05/14	1719	Klitzman & Gallagher	$3,300
		Total	**$76,300**

Respondent knew, at the time he issued the checks in the DelMasto matter, and prior to receipt of the settlement monies, that he was required to safeguard funds for Romeo, the Congregation, Cecala, and the Estate; that no settlement checks had been received in behalf of DelMasto; and that he was knowingly misappropriating other clients' funds, including, but

not limited to, those of Romeo, the Congregation, Cecala, and the Estate.

After depositing the $10,000 partial settlement, on February 10, 2014, but before receipt of the $50,000 settlement check, respondent issued to himself, to his firm, or to Bauman, seven additional checks, totaling $12,000. As a result, respondent disbursed $28,300 in excess of the total DelMasto settlement itself. Thus, the complaint alleged, respondent knowingly misappropriated the entire $60,000 settlement prior to the settlement checks having been issued or received. None of the funds were disbursed to DelMasto.

Maria Casali, to whom DelMasto had granted power of attorney, and DelMasto both denied that they had authorized respondent to utilize the settlement funds for any purpose other than in connection with DelMasto's case.

Despite respondent's receipt and deposit of all $60,000 by March 27, 2014, in June 2014, he informed Casali that he had received $5,000 from one defendant and would be reaching out to "them" shortly. Neither DelMasto nor Casali heard anything more from respondent.

On an unidentified date, the Centers for Medicare and Medicaid Services notified DelMasto that she was indebted to Medicare in the amount of $24,377.84. Although it is not clear

on the face of the complaint, it appears that Medicare sought to offset payments made to DelMasto's medical providers, presumably for the injuries sustained in the fall, by obtaining a portion of her $60,000 recovery. Casali made several attempts to communicate with respondent about the notice, to no avail. Casali retained Richard J. Holwell, Esq., to contact respondent on her behalf, but he, too, was unsuccessful.

During respondent's July 16, 2014 demand interview, he "feigned ignorance" of the DelMasto matter, repeatedly claiming that he could not remember any details about the settlement, including the amount. Yet, the final settlement payment of $50,000 was deposited only a few months prior, in March 2014. When the OAE confronted respondent about the fees exceeding the total settlement amount, he continued to claim that he did not remember the total settlement amount.

After respondent's January 2015 temporary suspension, Casali and DelMasto reviewed the settlement checks and denied that the signatures on the back of them were DelMasto's. Rather, respondent had signed the settlement checks and deposited them into ATA2.

DelMasto is a ninety-year-old woman whose main source of income is monthly Social Security payments, which have been reduced to offset the settlement monies that she never received.

Based on the above facts, the third count of the complaint charged respondent with the same RPC violations asserted in the first count, with the exception of RPC 8.1(a) and (b).

COUNT FOUR
LEES

The charges in count four of the complaint arise out of respondent's representation of Daniel Lees in a personal injury action.

Effective October 27, 2014, respondent became administratively ineligible to practice law, based on his failure to register ATA2 with the IOLTA fund, beginning in 2013. Thereafter, on November 11, 2014, respondent informed the OAE that he could not appear for the November 12, 2014 audit because the Lees matter was scheduled for trial on November 10 and 12, 2014. Respondent settled Lees' case for $550,000 during the trial. Respondent, however, was administratively ineligible at the time.

Respondent deposited the $550,000 settlement check into ATA2 on November 21, 2014. He then issued check no. 1865, dated November 25, 2014, to Lees in the amount of $362,728, representing the client's share of the settlement. Presumably, therefore, respondent's costs and fees totaled $187,272.

Respondent's ATA2 records demonstrate that, between February 24, 2013 and November 20, 2014, respondent already had

issued to himself and to his firm nineteen attorney trust account checks, totaling $48,035, each with the notation "Lees." Thus, respondent had disbursed his fees prior to the settlement of Lees' case, even though he was on direct notice by multiple demand interviews with the OAE of the significant issues and client shortages in ATA2.

During the October 8, 2014 demand interview, the OAE made respondent aware of the client shortages in ATA2. Yet, rather than reconciling and correcting existing client shortages in that account, following the settlement of Lees' case, respondent issued four additional ATA2 checks to himself, totaling $96,500, also representing the payment of fees in the Lees matter. Thus, he had taken a total of $144,535 in fees against a $550,000 settlement.

On November 20, 2014, prior to the Lees settlement, respondent was required to safeguard in ATA2 $68,218.96 for Cecala, $458,172.22 for the Estate, $33,954.97 for Morgan, and $40,000 for DelMasto, for a total of $600,346.15. As of November 20, 2014, the ATA balance was $283,977.78, rendering the account $316,368.37 short of the amount that respondent should have been safeguarding. Thus, by disbursing fees to himself prior to the settlement, respondent invaded and knowingly misappropriated the

funds of other clients, including Romeo, the Congregation, DelMasto, and the Estate.

Based on the above facts, the complaint alleged that respondent had violated the following Rules of Professional Conduct:

a. RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985) - in that respondent knowingly misappropriated client funds;

b. RPC 8.4(b) - in that respondent committed a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

c. RPC 1.15(a) - in that respondent failed to safeguard client funds;

d. RPC 1.15(b) - in that upon receiving funds or other property in which a client or third person had an interest, respondent failed to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive; and

e. RPC 5.5(a) - in that respondent practiced law while administratively ineligible.

COUNT FIVE
FAILURE TO COOPERATE AND TO COMPLY WITH COURT ORDER

The fifth count of the complaint charged respondent with failure to cooperate with the OAE and failure to comply with a Court Order.

As stated previously, respondent appeared at the OAE for three separate demand audits, which took place on April 29, July 16, and October 8, 2014. Between April 30 and November 19, 2014, the OAE sent to respondent seven letters, requiring the production of certain documents and financial records. Respondent failed to produce the records requested in any of the letters, including his attorney trust account and attorney business account records, as required by R. 1:21-6 and RPC 8.1(b).

At the October 8, 2014 interview, respondent agreed to cooperate fully with the OAE's investigation. Nevertheless, he neither produced the requested documents nor returned OAE telephone calls. Respondent did not even comply with basic, simple requests, such as providing the name of the Estate's executor.

As stated above, the Court temporarily suspended respondent on January 30, 2015. The Order required him to file a R. 1:20-20 affidavit within thirty days. Respondent did not do so.

After respondent was temporarily suspended, numerous clients filed grievances against him. Respondent failed to submit a written reply to any of them, to cooperate with the OAE in the investigation of any of the grievances, or produce records required to be maintained by R. 1:21-6.

Based on the above facts, the ethics complaint charged respondent with having violated RPC 8.1(b), RPC 8.4(d), and R. 1:20-20.

COUNT SIX
RECORDKEEPING VIOLATIONS

The final count of the ethics complaint charged respondent with having violated RPC 1.15(d) and R. 1:21-6, based on his failure to:

1. maintain financial records, as required by R. 1:21-6 (with the exception of ATA statements);

2. produce legible client ledgers that accurately reflected receipts and disbursements in the corresponding client matters;

3. produce all client ledger cards;

4. maintain a trust receipts journal [R. 1:21-6(c)(1)(A)];

5. maintain a trust disbursements journal [R. 1:21-6(c)(1)(A)];

6. maintain accurate client ledger cards [R. 1:21-6(c)(1)(B)];

7. maintain a client ledger card identifying attorney funds for bank charges [R. 1:21-6(d)];

8. prepare three-way reconciliations of his trust account on a monthly basis [R. 1:21-6(c)(1)(H)];

9. maintain a business receipts journal [R. 1:21-6(a)(2)]; and

10. maintain a business disbursements journal [R. 1:21-6(c)(1)(A)].

Inasmuch as R. 1:21-6 requires an attorney to prepare and maintain all of the above records, the complaint alleged that respondent's failure to produce any of them was a violation of that Rule and of RPC 1.15(d).

* * *

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

We analyze the charges brought against respondent by category, rather than by individual counts of the complaint, beginning with the knowing misappropriation charges. In counts one through four, respondent was charged with knowing misappropriation of client and escrow funds, a violation of RPC 1.15(a) (failure to safeguard funds) and the principles of Wilson and Hollendonner. Although knowing misappropriation charges typically include RPC 8.4(c), the complaint did not allege that respondent had violated that Rule in respect of the misappropriations proper.

The knowing misappropriation allegations also included violations of RPC 1.15(b) (failure to promptly notify a client or third party upon the receipt of funds and to promptly deliver those

funds to the client or third party) and RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

The complaint alleges sufficient facts to sustain a violation of RPC 1.15(b) in respect of respondent's failure to promptly notify and then deliver funds to his clients and/or third parties entitled to receive them in all of the client matters under docket number DRB 16-296. We, therefore, find that this RPC was properly charged and that respondent's knowing misappropriation of the client and escrow funds also violated that Rule. We do not reach the same conclusion, however, in respect of the RPC 8.4(b) charge.

RPC 8.4(b) prohibits a lawyer from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Although, on the face of the complaint, it does not appear that respondent was ever charged with a crime based on his alleged knowing misappropriation of client and escrow funds, this is not fatal to a finding that he violated the Rule. A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. See, e.g., In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime), and In

re McEnroe, 172 N.J. 324 (2002) (after we declined to find a violation of RPC 8.4(b), because the attorney was never charged with the commission of a criminal offense, the Court reinstated the charge, finding that the attorney had violated the Rule). The problem in this case, however, is that the complaint is silent with respect to the nature of the criminal conduct.

Although respondent's conduct might be characterized as theft, the complaint gives no indication that, by using client and escrow funds to pay personal obligations, for example, respondent intended to permanently deprive any client or third party of its money. See N.J.S.A. 2C:20-3 (defining theft as the unlawful taking, or unlawful control over, movable property of another with purpose to deprive him thereof). It may be that, in respondent's mind, he intended only to borrow the Congregation's and Romeo's funds to pay certain obligations. Borrowing is different from stealing, however. Thus, in the absence of a citation to a particular criminal statute violated by an attorney who knowingly misappropriated trust funds, and an explanation as to how the attorney's conduct violated that statute, we are not in a position to determine whether, in the absence of a criminal charge or conviction, the nature of the attorney's conduct was indeed criminal. Thus, we dismiss that charge.

Knowing misappropriation, however, requires no finding of an intent to steal or to permanently deprive one of property. In In re

Wilson, supra, 81 N.J. 451, the Court described knowing misappropriation as follows:

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

Six years later, the Court elaborated:

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

> Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since Wilson, it has been invariable.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

We consider first the $50,000 deposit in the matter involving the Congregation's sale of a property to JRN. The funds were deposited on June 9, 2008. Between the date of the deposit and June 10, 2010, respondent disbursed $74,000, without the consent of either JRN or the Congregation, resulting in the ATA2 balance falling below $50,000 on multiple occasions. JRN defaulted, in June 2012, and, therefore, the closing never took place.

An attorney who uses real estate deposits, without the parties' consent, knowingly misappropriates those funds. In re Goldstein, 167 N.J. 208 (2001). Thus, when respondent disbursed fees against JRN's $50,000 deposit, he knowingly misappropriated those monies.

An attorney who advances fees to himself prior to the deposit of settlement checks knowingly misappropriates other client funds. Ibid. Respondent engaged in this conduct in the Romeo, Morgan, DelMasto, and Lees matters.

In Romeo, respondent deposited the $239,800 settlement funds on June 14, 2010. Yet, between September 1, 2009 and June 10, 2010, he already had advanced $16,950 in legal fees to himself.

Thus, by advancing fees against the Romeo settlement, which had not yet materialized, respondent knowingly misappropriated other client funds.

Respondent did the same with the settlement monies in Morgan, DelMasto, and Lees. Morgan's case was settled on June 23, 2014. The $210,000 settlement check was deposited on July 25, 2014, and cleared the account three days later. Respondent was entitled to $70,000 in legal fees. Yet, well before the settlement of Morgan's case and respondent's receipt of the $210,000 settlement check, that is, between November 17, 2011 and July 7, 2014, respondent already had disbursed $56,055 to himself, in the form of twenty-four separate checks, containing the notation "Morgan." Thus, respondent's $56,055 in disbursements knowingly misappropriated funds held on behalf of the Congregation, Romeo, Cecala, and the Estate.

In the DelMasto matter, the entire $60,000 settlement was in ATA2 by March 27, 2014. Of that amount, respondent was entitled to $20,000. Yet, between March 19, 2012 and February 5, 2014, which was prior to the deposit of the settlement funds, respondent had disbursed $76,300 against the DelMasto matter. After $10,000 of the funds were deposited, but before the remaining $50,000 were deposited, he went on to disburse an additional $12,000 against the DelMasto matter.

Finally, in the Lees matter, respondent disbursed $48,035 in fees prior to the settlement of his client's case. Thus, he knowingly misappropriated other clients' funds.

In respect of the $497,443.30 respondent collected for the sale of the Estate's Belmar property, he used a portion of those monies to pay the $50,000 deposit to the Congregation and the $56,000+ to Romeo, which he already had used to pay bank fees and back taxes. By using the Congregation's and Romeo's monies to pay those obligations and then using the Estate's money to pay the Congregation and Romeo, respondent engaged in knowing misappropriation by lapping. In re Brown, supra, 102 N.J. at 515.

In counts one through four, therefore, respondent violated RPC 1.15(a) and (b), and the principles set forth in Wilson and Hollendonner. We dismiss the RPC 8.4(b) charge.

Respondent committed other ethics infractions as well. He violated RPC 1.15(d), by failing to comply with the enumerated recordkeeping requirements of R. 1:21-6. R. 1:21-6(i). Respondent also practiced law while ineligible, a violation of RPC 5.5(a)(1), when he represented Lees at trial at a time when he was administratively ineligible to practice law.

As alleged in counts one through three, respondent ignored his clients' repeated inquiries about the status of their funds, a violation of RPC 1.4(b) (failure to keep a client reasonably informed

about the status of a matter and promptly comply with reasonable requests for information). He violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) when he misrepresented to Casali, DelMasto's attorney in fact, that he had received only $5,000 of the $60,000, even though he had received the full amount months earlier.

A part of counts one and two, and all of counts five and six, involve charges relating to respondent's conduct in the disciplinary matters brought against him.

In counts one and two, respondent was charged with having violated RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The allegations of the complaint clearly and convincingly establish that respondent made significant misrepresentations to the OAE in respect of its requests for the production of bank statements. Specifically, as alleged in both counts, respondent produced only those statements that reflected balances that falsely suggested that the Congregation's and Romeo's funds had remained intact in the trust account. He withheld those statements that reflected balances demonstrating that the funds had not remained intact.

Further, respondent's representation to the OAE that he was unable to produce those statements because they had been damaged during two storms was false. Indeed, when the OAE reviewed respondent's files, it found the missing statements, "most of which were not damaged." Thus, respondent's misrepresentation was a violation of RPC 8.1(a) and RPC 8.4(c). Respondent further violated these Rules when he falsely stated to the OAE that he had not taken any fees from the Estate's funds.

Counts one and five charged respondent with a violation of RPC 8.1(b), which prohibits a lawyer, "in connection with a disciplinary matter," from "knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." As alleged, respondent failed to submit a reply to the Romeo grievance until after a demand audit was scheduled, failed to answer and return OAE telephone calls, and failed to comply with the OAE's multiple requests for information, such as the name of the Estate's executor, and the production of documents. By so doing, respondent violated RPC 8.1(b).

Count five charged respondent with unethical conduct based on his failure to abide by the provision in the Court's January 30, 2015 Order of temporary suspension requiring him to comply with R. 1:20-20. Rule 1:20-20(b)(15) requires an attorney, within thirty days after the date of the Order of suspension, to "file

with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Failure to do so constitutes a violation of RPC 8.1(b) and RPC 8.4(d). R. 1:20-20(c). Thus, as the complaint charged, respondent's failure to file the affidavit violated both RPC 8.1(b) and RPC 8.4(d).

To conclude, respondent knowingly misappropriated client and escrow funds, a violation of RPC 1.15(a) and (b), and the principles set forth in In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. He also violated RPC 1.4(b), RPC 1.15(d), RPC 5.5(a)(1), RPC 8.1(a) and (b), and RPC 8.4(c) and (d).

There remains for determination the appropriate quantum of discipline to impose on respondent for his infractions in both default matters before the Board.

Respondent must be disbarred for knowingly misappropriating client and escrow funds. Wilson, supra, 81 N.J. at 455 n.1, 461; Hollendonner, supra, 102 N.J. at 26-27. Accordingly, we need not consider the appropriate quantum of discipline for respondent's other infractions in DRB 16-296. Furthermore, in the matter docketed at DRB 16-254, we need not consider the appropriate discipline for respondent's failure to cooperate with the OAE, his failure to comply with R. 1:20-20, his recordkeeping violations, his gross neglect,

lack of diligence, failure to communicate with the clients, and failure to cooperate with the DEC.

Vice-Chair Baugh 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of William B. Gallagher
Docket Nos. DRB 16-254 and 16-296

Decided: March 15, 2017

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

Ellen A. Brodsky
Chief Counsel