

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-048
District Docket No. XIV-2014-0339E

IN THE MATTER OF
STEVEN LEON ELLMAN
AN ATTORNEY AT LAW

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Decision

Argued: April 20, 2017

Decided: August 2, 2017

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Kim Ringler 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's October 25, 2011 disbarment in California for his violation of the California equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); RPC

1.15(a) (negligent misappropriation and commingling of personal funds); RPC 1.15(b) (failure to promptly notify a client or third person of receipt of funds and failure to promptly disburse funds that a client or third person is entitled to receive); RPC 1.15(c) (failure to segregate disputed funds); RPC 1.15(d) (failure to comply with recordkeeping rules); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE seeks a three-month suspension. For the reasons expressed below, we determined to grant the motion and impose a three-month retroactive suspension.

Respondent was admitted to the California bar in 1988, the New Jersey bar in 1990, and the Pennsylvania bar in 1997. He has no history of discipline in New Jersey.

On April 4, 1998, the Supreme Court of California imposed a six-month suspension on respondent, stayed a one-year suspension, and placed him on probation for two years.¹

On October 25, 2011, the Supreme Court of California disbarred respondent, based on stipulated facts, detailed below. On January 27, 2014, the Supreme Court of Pennsylvania disbarred

¹ Respondent failed to notify the OAE of this discipline.

respondent, on a reciprocal basis, as a result of the California discipline.

On June 21, 2011, respondent entered into a stipulation of facts and conclusions of law with the State Bar of California (SBC), detailing his misconduct as follows.

Case Nos. 07-O-14091 and 07-O-14207

Respondent maintained an attorney trust account (ATA) with Wells Fargo Bank. Between December 2005 and September 2007, respondent failed to reconcile his ATA.

On December 28, 2005, respondent received a settlement check from AAA, on behalf of a client,² in the amount of \$4,535. He failed to deposit that check into his ATA. Respondent's accounting to the client indicated that the client would receive \$1,889.59, the client's doctor would receive \$755, and respondent would receive \$1,511.66 as his fees and \$378.75 for his costs. In April 2006, respondent issued ATA checks to his client and to the doctor for the appropriate amounts.

² The record does not identify the client by name.

More than one year later, in August 2007, respondent settled an unrelated client matter³ and issued ATA check number 7359 to himself for \$1,733.33, representing fees from that client matter. On August 27, 2007, that ATA check for his fees, along with two other ATA checks, totaling \$8,265.13, were presented for payment. Although the balance of respondent's ATA at the time was only \$7,803.10, Wells Fargo paid the checks, reducing respondent's ATA balance to negative \$462.03.

Soon thereafter, by letter dated September 5, 2007, AAA notified respondent that its settlement check of \$4,535 had not been negotiated. Although respondent admitted receiving this letter, the record lacks any information as to when, or whether, he deposited the AAA check.

On September 21, 2007, four checks were presented against respondent's ATA. On that same day, respondent made a cash withdrawal from his ATA. These transactions, totaling \$34,372.98, were presented against respondent's ATA, which had a balance of only \$34,255.35. Thus, his ATA balance was reduced to negative \$117.63.

³ The record also does not identify this client.

Because respondent failed to deposit the settlement check from AAA, he negligently misappropriated funds from other clients when he issued checks to his client and to the client's medical provider.

In California, respondent was found to have grossly neglected his recordkeeping obligations, a violation of California Business and Professions Code section 6106. That section provides, "[t]he commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney..., and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension. If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor."⁴

Case No. 08-0-11231 (The Arizmendi matters)

Respondent represented Meliton and Serafin Arizmendi for injury and property claims arising from an October 8, 2004 motor

⁴ New Jersey has no direct equivalent to section 6106.

vehicle accident. In May 2005, respondent settled Meliton's and Serafin's bodily injury claims for \$3,000, and \$4,500, respectively.

Respondent was responsible for paying Drs. Sobol and Velasco, \$175 and \$825, respectively, on behalf of Meliton. On May 26, 2005, respondent deposited Meliton's \$3,000 settlement check into his ATA. Respondent, however, failed to make prompt payments to those medical providers. Moreover, despite respondent's failure to disburse \$1,000 to those doctors, on August 27, 2007, his ATA balance fell to (\$462.03).

Previously, via fax, dated March 9, 2007, Dr. Velasco's administrator had requested a status of the Arizmendi cases. Respondent did not reply to the fax. In another fax, dated March 29, 2007, Dr. Velasco's agent again requested a status update. On the same date, Dr. Velasco's office received a fax from respondent's office that stated, "Both Dropped." That statement was not accurate, as respondent previously had settled the claims, as noted above.

Hence, on October 8, 2007, Meliton received from Dr. Velasco's administrator a letter and bill in the amount of

\$4,922.73 (the principal balance of \$3,850 plus \$1,072.73 interest) relating to his October 8, 2004 injury.⁵ The letter recounted respondent's office's statement that it no longer represented Meliton for his October 4, 2004 injury. On October 8 and 15, 2007, Meliton called respondent's office and spoke with "Linda," who confirmed that respondent's office would handle the bill. Subsequently, between October 26, 2007, and February 28, 2008, Meliton contacted respondent's office regarding the payment of Dr. Velasco's bill, but received no response.

Respondent did not pay those medical providers for over two years, until November 30, 2007, when he issued check number 7511, in the amount of \$1,000, to Dr. Velasco's agent, and March 25, 2008, when he issued check number 7686, in the amount of \$175, to Dr. Sobol. In the intervening time between respondent's receipt of the settlement check, and the disbursement of funds to the medical providers, his ATA balance regularly fell below the \$1,175 balance required to pay those two liens. On December

⁵ Dr. Velasco's original bill was \$3,850, which, it appears, was compromised to \$825. After Dr. Velasco learned that the personal injury matter had been "dropped," he sought to collect the full amount of his invoice.

10, 2007, Meliton resolved the remaining balance with Dr. Velasco by paying \$1,800 of his own funds.⁶

On March 27, 2008, the SBC received a complaint from Meliton regarding respondent's failure to pay his medical expenses. During its investigation, the SBC received a letter from respondent's counsel, dated August 5, 2008, explaining that respondent sent checks from his ATA to Dr. Sobol and Dr. Velasco in June 2005, for \$175 (check number 5636) and \$825 (check number 5631) respectively, but that neither check had been negotiated.

SBC discovered, however, that check number 5636 had not been issued to Dr. Sobol for \$175, but, rather, had been issued in the amount of \$2,733.33 and was negotiated from the ATA on July 1, 2005. Moreover, check number 5636 was unrelated to Meliton's \$3,000 settlement. Respondent had failed to reconcile Meliton's \$3,000 settlement for almost three years, from the date of deposit of the settlement funds, on or about May 26,

⁶ Presumably, after the November 30, 2007 payment of \$1,000 from respondent, Meliton negotiated with Dr. Velasco's agent the remaining principal balance of \$2,850 plus interest of \$1,072.73 (as of October 8, 2007) down to the sum of \$1,800.

2005, to the date he issued payment to Dr. Sobol on or about March 25, 2008.⁷

Case No. 08-0-11894 (The Gomez matter)

In June 2007, Iliana Gomez retained respondent for a personal injury claim stemming from a motor vehicle accident. Their fee agreement provided that, if Gomez unilaterally terminated the representation, respondent reserved the right to charge an hourly rate of \$150 for services rendered. The agreement further acknowledged that respondent would spend a minimum of four hours on Gomez' case, and that he may deduct the amount owed from any and all monies collected on Gomez' behalf. California does not require a contingent fee agreement to be in writing, as does New Jersey RPC 1.5(c). During the representation, respondent received medical payments totaling \$3,039, from Mercury Insurance and South County Health Services, which he deposited into his ATA. Respondent did not inform Gomez that he had received those payments.

⁷ The OAE notes that the Stipulation references an end date of November 30, 2007, when respondent issued ATA check number 7511 to Dr. Velasco, but that, arguably, the end date should be extended to March 25, 2008, when respondent issued ATA check number 7686 to Dr. Sobol.

In February 2008, Gomez terminated respondent's representation, and retained Renee Ayala, Esq., who, upon contacting Mercury Insurance, learned of the payments previously sent to respondent. On February 15, 2008, respondent informed Gomez that he had received an offer on her claim. Gomez did not accept the offer, and questioned respondent about his receipt of an offer, given that he no longer represented her. Respondent offered no explanation to Gomez.

Between February 15, 2008 and April 8, 2008, both Ayala and Gomez left several telephone messages for respondent regarding the medical payment checks, to no avail. On February 26, 2008, Ayala sent a letter to respondent, requesting that he forward the medical payment funds; once again, respondent did not reply. Instead, on March 15, 2008, more than one month after he had been discharged, respondent issued ATA check number 7726 in the amount of \$2,026, payable to Gomez' medical provider, Richard Abeyta, D.C. Respondent then withdrew the remaining balance of \$1,013 from his ATA as his one-third attorney's fee.

Respondent failed to make any demand for payment of his fees to Ayala or Gomez before withdrawing his fee from his ATA, and did not inform either of them that he had done so.

On March 25, 2008, Ayala sent a letter to respondent, asking for a reply to her request for the medical payment

checks. In a March 28, 2008 letter, respondent asserted a lien against any settlement or judgment related to Gomez' claim, adding that he would check his file and contact Ayala. Hearing nothing further, by letter dated April 9, 2008, Ayala asked respondent to forward the medical payment checks by April 14, 2008, asserting that, because he no longer represented Gomez, he had no authority to disburse funds from the medical payments. Presumably, respondent failed to forward these funds to Ayala.

According to the Stipulation, respondent agreed to repay Gomez the sum of \$3,039, with ten percent interest, within ninety days of the effective date of the California Supreme Court's order. According to that order, the amount of restitution to Gomez was reduced to \$1,013.

Case No. 08-0-13387 (The Jackson matter)

In July 2006, Johnnie Jackson retained respondent in a personal injury claim stemming from a June 25, 2006 motor vehicle accident. On July 28, 2006, respondent executed a lien, in favor of AccuCare Medical Group (AccuCare), against any settlement funds collected on Jackson's behalf. On March 26, 2007, respondent deposited Jackson's settlement check for \$13,882, into his attorney trust account.

In April 2007, respondent provided an accounting to Jackson, which detailed his entitlement to an attorney's fee of \$4,627.33 and costs of \$322.53.⁸ From the remaining balance, respondent was to pay Jackson \$4,304.78; Rialto Fire Department (Rialto) \$515.40; Arrowhead Regional Medical Group (Arrowhead) \$1,227.22; and AccuCare \$2,884.69.

On May 9, 2007, respondent issued ATA check number 7145, payable to Jackson for \$4,304.78. On May 22, 2007, respondent's ATA balance fell to \$1,379.79. Because respondent had yet to issue payments to Rialto, Arrowhead, or AccuCare, his ATA balance fell well below the required amount of \$4,627.36. Almost four months later, on August 27, 2007, even though payment still had not been made to Rialto, Arrowhead, or AccuCare, the balance in respondent's ATA fell to negative \$462.03 or, \$5,089.39 below the required balance of \$4,627.36.

On May 1, 2007, and again on November 8, 2007, AccuCare contacted respondent's office for a status update on Jackson's claim. Respondent's office informed AccuCare that the claim was

⁸ Although R. 1:21-7(d) requires New Jersey attorneys to calculate their fees in certain types of cases on the net recovery, rather than the gross amount, California has no equivalent requirement.

still pending. That statement was not accurate. One year later, on May 8, 2008, AccuCare contacted Jackson directly and learned that the claim had been settled in 2007.

By letter dated May 12, 2008, AccuCare demanded from respondent payment of its bill for Jackson. Having received no response, on June 2, 2008, AccuCare filed a breach of contract action against respondent, alleging that he had failed to pay AccuCare's bill, pursuant to their lien agreement. In March 2009, respondent and AccuCare entered into a settlement agreement whereby respondent paid \$4,000 to satisfy AccuCare's bill for Jackson.

In April 2009, respondent produced a revised accounting for Jackson's settlement to the SBC. The revised accounting reflected that \$138.72 had been paid by AccuCare to Rialto and that AccuCare should be reimbursed \$138.72; that no payment had been made to Arrowhead for its bill of \$2,033.54; and that \$4,000 had been paid to AccuCare. Thus, out of the \$13,882 settlement, an additional sum of \$488.64 was owed to Jackson. Respondent failed to pay \$138.72 to AccuCare, or to Jackson, and failed to pay the additional sum of \$488.64 to Jackson. Finally, although respondent was to make restitution to Jackson in the amount of \$4,627.36, plus interest, the order reduced that amount to \$627.36.

Case No. 09-014045 (The Wilks matter)

In July 2004, Douglas and Diane Wilks retained respondent to represent them in a personal injury claim arising out of a July 6, 2004 motor vehicle accident. In September 2007, respondent settled the Wilkses' claims. At the time, respondent represented to the Wilkses that he had satisfied their medical lien in the amount of \$4,150, to Mercury Imaging, a medical facility responsible for obtaining MRI films for Diane's injury. That statement was untrue, however, because the unsatisfied lien had gone to collection. According to the stipulation, respondent was to make restitution to Diane for \$4,150 plus interest.⁹

Case No. 09-0-17079 (The Salloum matter)

On April 2, 2007, Nada Salloum retained respondent to represent her in a personal injury claim arising from a March 8, 2007 accident. At respondent's direction, Salloum sought chiropractic care and treatment from Dr. Pirritano. She received

⁹ In its brief, the OAE notes that, although the Stipulation concluded that, by misappropriating \$4,150 from the Wilks' settlement, respondent violated section 6106 of the California Business and Professions Code, the record contains insufficient facts to establish whether the misappropriation was negligent or knowing.

treatments from May 17 to July 25, 2007, for which she was billed \$2,150. On February 29, 2008, respondent negotiated a settlement on behalf of Salloum for \$15,000. On March 20, 2008, respondent negotiated a reduction of Dr. Pirritano's lien from \$2,150 to \$930. Nonetheless, respondent paid Dr. Pirritano only \$586.75. Not only did respondent short-pay that lien by \$343.25, but he also failed to forward that difference to Salloum. Because respondent failed to honor the lien terms, a collection agency pursued Salloum for the full amount of the lien, plus interest. The stipulation does not include a provision for restitution to Salloum.

Case No. 09-0-19214 (The DeZubiria matter)

On May 13, 2008, Francisco DeZubiria retained respondent to represent him in a personal injury claim arising from an April 4, 2008, motor vehicle accident. DeZubiria was in regular contact with respondent's office from the date he signed his retainer agreement, on May 13, 2008, through February 10, 2009, at which time respondent's office ceased communications.

In the summer of 2009, DeZubiria relocated to Utah. When he tried to contact respondent's office from Utah, he learned that the telephone had been disconnected.

DeZubiria retained replacement counsel, Peter Martin, Esq., who was unsuccessful in his attempts to secure respondent's cooperation to facilitate a substitution of attorney. Martin thereafter contacted the insurance adjuster from the defendant carrier, who informed Martin that respondent had settled the claim for \$12,500, on March 10, 2009. According to the stipulation, respondent was to make restitution to DeZubiria for \$12,500. The Order Approving Stipulation reduced the restitution amount to \$8,333.33, presumably the amount of the settlement, less respondent's attorney's fee.

Case No. 10-0-01157 (The Campos matter)

Rene Campos retained respondent to pursue a personal injury claim arising from an August 31, 2005 motor vehicle accident. On June 8, 2006, respondent informed Campos that his case had been resolved for \$17,500, and that, in conjunction with that settlement, all of Campos's existing medical bills and liens had been satisfied. That statement was not accurate. Although Campos received his settlement share from the settlement check, three years later, on December 28, 2009, Dr. Ali Adini notified Campos of a \$2,306.88 unsatisfied lien for medical care and treatment. Respondent was to make restitution to Campos in the amount of \$2,306.88 plus interest.

Case No. 10-O-04105 (The Carrillo matter)

On December 18, 2007, Elva Carrillo retained respondent to pursue a personal injury claim arising from a December 14, 2007 motor vehicle accident. On March 4, 2008, respondent gave Carrillo a \$1,000 check from Safeco Insurance to compensate her for the deductible on her damaged vehicle. Thereafter, respondent performed no services on Carrillo's behalf, effectively abandoning her.

Case No. 10-O-05872 (The Kimball matter)

In May 2006, Sira Kimball retained respondent to pursue a personal injury claim. In August 2009, respondent informed her that he had received a settlement offer of \$63,462 and that he had negotiated her medical liens totaling \$24,688.66 to \$16,074.15. Kimball received her full share from the settlement check. The only medical lien addressed by respondent and successfully negotiated to a reduced amount, however, was that of Dr. Miller. Respondent negotiated that lien from \$5,130 to \$2,060. He was to make restitution to Kimball for \$19,558.66, plus interest, the balance of the unsatisfied liens.

* * *

Based on respondent's conduct in these eleven client matters, the Supreme Court of California disbarred respondent, finding that he violated:

1. California Business and Professions Code section 6068, similar to RPC 1.4(b);
2. California Business and Professions Code section 6106, which has no equivalent in New Jersey;
3. Rule 3-110(A), similar to RPC 1.1(a) and RPC 1.3;
4. Rule 4-100(A), similar to RPC 1.15(a);
5. Rule 4-100(A)(2), similar to RPC 1.15(c);
6. Rule 4-100(B)(1), similar to RPC 1.15(b);
7. Rule 4-100(B)(4), similar to RPC 1.15(b); and
8. Rule 4-100(C), similar to RPC 1.15(d) and R. 1:21-6

[OAEb.18.]¹⁰

The OAE argues that the most serious violations consist of the apparent misappropriation of funds to be paid on behalf of respondent's clients (Jackson, Wilks, DeZubiria, Campos, and Kimball) for their medical liens. It concedes, however, that the stipulated facts do not clearly establish knowing

¹⁰ "OAEb" refers to the OAE's brief in support of its motion, dated January 31, 2017.

misappropriation under In re Wilson, 81 N.J. 451 (1979), for which disbarment would be warranted.¹¹ The OAE posits that, because respondent had not complied with his recordkeeping obligations, it is more probable that the misappropriations were negligent, rather than knowing. In addition, respondent committed other recordkeeping violations, including commingling personal funds in his attorney trust account.

The OAE argues that, generally, a reprimand is imposed for recordkeeping violations that result in negligent misappropriation, citing In re Clemens, 202 N.J. 139 (2010) (attorney negligently misappropriated client funds and engaged in numerous recordkeeping violations); In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew \$4,100 in legal fees from his trust account before depositing the corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); and In re

¹¹ More accurately, some, if not all, of the monies should be characterized as escrow funds, because they were to be paid to third parties. Therefore, In re Hollendonner, 102 N.J. 21 (1985) would be applicable.

Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated \$31,000 in client funds and failed to comply with recordkeeping requirements).

Additionally, respondent failed to notify his clients of his receipt of funds on their behalf (Gomez and DeZubiria), failed to promptly disburse funds owed to his clients or to third persons (Arizmendi, Jackson, Wilks, Salloum, DeZubiria, Campos, and Kimball), failed to act with diligence and promptness in representing his clients (Arizmendi, Jackson, and Wilks), failed to keep his clients reasonably informed about the status of a matter (Gomez and DeZubiria), failed to promptly comply with reasonable requests for information (Arizmendi, Gomez, and DeZubiria), and grossly neglected one matter (Carrillo). The OAE asserts that those violations also typically result in a reprimand when involving one or a few client matters, citing In re Dorian, 176 N.J. 124 (2003) (attorney, after granting lien to client's chiropractor for \$6,763, disbursed settlement funds to client and himself, escrowing only \$1,250 for medical liens; prior admonition); In re Cubberley, 164 N.J. 363 (2000) (gross neglect in one case and lack of diligence and failure to communicate in two cases; prior admonition); In re Grossman, 145 N.J. 570 (1996) (attorney failed to notify prior counsel that a matter had been settled

and that monies had been received, contrary to his representation that he would do so; the attorney also failed to remit to prior counsel the portion of the funds to which he was entitled); and In re Devin, 144 N.J. 476 (1996) (gross neglect, lack of diligence, failure to communicate with a client, failure to provide a written retainer agreement, failure to expedite litigation, misrepresentation about the status of the case, and failure to cooperate with ethics authorities; prior three-month suspension).

Furthermore, the OAE argues, respondent misrepresented to three clients (Wilks, Campos, and Kimball) that he had resolved their pending liens, either by satisfying the debts in full, or by negotiating a reduction of the amounts due. Respondent's representations were false, as Wilks still owed \$4,150 on her lien, Campos still owed \$2,306.88 on his lien, and Kimball still owed \$19,558.55 on her liens. The OAE notes that conduct limited to oral misrepresentations to clients typically results in a reprimand, even when accompanied by other misconduct, citing In re Wiewiorka, 179 N.J. 225 (2004) (gross neglect, lack of diligence, failure to communicate, and conduct involving dishonesty, fraud, deceit and misrepresentation; attorney failed to investigate personal injury claim, told client he had filed suit when he had not, and the statute of limitations had run);

and In re Porwich, 159 N.J. 511 (1999) (gross neglect, pattern of neglect, lack of diligence, failure to communicate, and failure to cooperate with disciplinary authorities in two client matters; attorney also engaged in conduct involving dishonesty, fraud, deceit and misrepresentation when he told client he had filed suit when he had not); and In re Kasdan 115 N.J. 473 (1989).

The OAE also emphasizes that respondent's conduct did not affect just one or two clients, but, rather, nine (named) clients in total. Here, it argues that, if misconduct encompasses numerous matters, or the attorney has a disciplinary record, terms of suspension are imposed, citing In re Kubulak, 172 N.J. 318 (2002) (attorney suspended for three months for grossly neglecting a collection matter, failing to communicate with the client, and failing to cooperate with disciplinary authorities; the attorney had received two prior three-month suspensions for similar misconduct); In re Hintze, 171 N.J. 84 (2002) (three-month suspension for attorney guilty of misconduct in two matters, including gross neglect, lack of diligence, and failure to communicate with the clients; in one of the matters, the attorney failed to return to the client \$900 held in escrow; the attorney had prior reprimand for gross neglect, lack of diligence, failure to communicate with the client, and failure

to cooperate with disciplinary authorities); and In re Peluso, 156 N.J. 545 (1999) (three-month suspension for misconduct in six client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain matters to the extent necessary to permit clients to make an informed decision about the representation, failure to abide by clients' decisions concerning the representation, failure to return the file upon termination of the representation, and pattern of neglect; the attorney was also guilty of recordkeeping violations, including two trust account overdrafts).

Finally, the OAE asserts that, although respondent has no disciplinary history in New Jersey, in 1998, he received a six-month suspension in California. Respondent failed to report that suspension to New Jersey disciplinary authorities, as required by R. 1:20-14(a)(1), a fact that the OAE recognized as an aggravating factor. The OAE notes, however, that respondent did report the fact of his 2011 California disbarment to the OAE in a letter dated November 13, 2013.¹² The OAE advances, as a mitigating factor, the passage of time resulting from its

¹² The record does not indicate whether respondent reported his 2014 Pennsylvania disbarment to the OAE.

unexplained delay in filing the instant motion more than three years after respondent reported his disbarment, and that such mitigation offsets respondent's reporting delay.

The OAE submits that the totality of respondent's misconduct, resulting in his disbarment in California, warrants, at least, a three-month suspension in New Jersey.

Respondent stipulated to the facts, admitted his misconduct, and agreed with the OAE's recommendation. He requests that the suspension be imposed retroactively to 2013, when he informed the OAE of his California discipline.

Respondent also offered his apology for his failure to timely notify the OAE regarding his California discipline, claiming that he relied on the advice of counsel at the time, instead of investigating his obligations himself. Further, upon his disbarment in California, ending a twenty-year practice, respondent moved overseas and suffered mental health issues for which he sought professional help.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

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). Subsection (E), however, applies in this matter because respondent's unethical conduct warrants substantially different discipline in New Jersey than he received in California. Specifically, respondent committed ethics violations as follows.

In case nos. 07-0-14091 and 07-0-14207 respondent received a settlement check on behalf of his (unnamed) client, on December 28, 2005, but failed to deposit those funds into his ATA. Yet, in April 2006, he issued checks to his client and to

his client's medical provider. By so doing, he invaded and negligently misappropriated another client's funds, a violation of RPC 1.15(a).¹³

One year later, in August 2007, respondent settled an unrelated client matter and issued an ATA check, to himself, from those funds, representing fees from that matter. Respondent allowed his fees to stay in his ATA for over a year, resulting in the commingling of his personal funds, a violation of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6(a)(1).

Further, respondent failed to conduct three-way monthly reconciliations of his ATA, which resulted in a negative ATA balance beginning in August 2007, a violation of RPC 1.15(d) and R. 1:21-6(c)(1)(H).

In the Arizmendi matter, in May 2005, respondent settled bodily injury claims on behalf of his clients Meliton and Serafin Arizmendi, for \$3,000 and \$4,500 respectively, stemming

¹³ Based on these specific facts, the Supreme Court of California determined that respondent used another client's funds "and/or" his own when he issued these checks in April 2006 and, hence, he committed a negligent misappropriation of client funds or had commingled personal funds in the ATA. We are unable to discern any facts in the record supporting a finding that respondent used his own funds and, therefore, find, based on these specific facts, that respondent negligently misappropriated client funds.

from an October 8, 2004 accident. He then delayed payment to his client's medical providers for more than two years, until November 30, 2007 (\$1,000 check to Dr. Velasco) and March 25, 2008 (\$175 check to Dr. Sobol), a violation of RPC 1.3 and RPC 1.15(b).

In addition, after ignoring several status requests from Dr. Velasco's office, respondent ultimately misrepresented that the cases had been "dropped," causing the doctor to bill Meliton directly for services he had rendered. Although respondent's staff subsequently promised Meliton that respondent would "take care of" Dr. Velasco's bill, he did not do so and, further, did not respond to any of Meliton's follow-up inquiries. Eventually, Meliton settled the remaining balance with Dr. Velasco, using his own funds. Respondent's failure to respond to his client's requests for information, violated RPC 1.4(b).

During the period between respondent's receipt of the \$3,000 settlement check and his disbursement of funds to Meliton's medical providers, respondent's ATA balance fell below the required amount to satisfy those obligations. Hence, respondent negligently misappropriated Meliton's settlement funds, a violation of RPC 1.15(a). Finally, respondent failed to conduct three-way monthly reconciliations of his ATA for more

than two years from the date of the deposit of the \$3,000 settlement, a violation of RPC 1.15(d).

In the Gomez matter, respondent received, in his client's behalf, three medical payment checks totaling \$3,039, which he deposited into his ATA. Respondent never informed Gomez of his receipt of these funds, a violation of RPC 1.4(b) and RPC 1.15(b). Further, after Gomez terminated respondent's representation, between February 15 and April 8, 2008, respondent failed to reply to multiple requests for information from both Gomez and subsequent counsel, a violation of RPC 1.4(b).

Moreover, after he had been discharged by Gomez, respondent issued a \$2,026 check to her medical provider, withdrew \$1,013 from his ATA as his one-third fee, and subsequently asserted a lien against any settlement or judgment related to Gomez' claim. Respondent disbursed those funds to the medical provider and to himself at a time when he knew Gomez and her counsel expected to receive them. He was, therefore, in possession of funds to which he and another person claimed an interest, but failed to keep these disputed funds separate until there was an accounting and severance of their interests, or until the dispute was settled, a violation of RPC 1.15(c).

In the Jackson matter, although respondent had executed a lien in favor of AccuCare and other third parties that had provided medical services to his client, respondent failed to honor those liens on settlement of his client's personal injury claim. Rather, he disbursed only the client's portion of the settlement. During the ensuing months, respondent's ATA fell to \$1,379.79 – more than \$3,000 less than the amount required to satisfy the outstanding medical provider balances. Four months later, those payments were still outstanding, yet respondent's ATA balance fell even lower, to negative \$462.03, indicating that respondent negligently misappropriated Jackson's funds, a violation of RPC 1.15(a).

By April 2009, respondent had yet to satisfy all of the outstanding liens against Jackson's settlement. His failure to promptly disburse those funds to the parties entitled to receive them violated both RPC 1.3 and RPC 1.15(b).

In the Wilks matter, respondent settled claims on behalf of his clients in September 2007. He informed them that he had also satisfied a \$4,150 medical lien against their settlement. In fact, he never satisfied that lien. In failing to do so, respondent violated RPC 1.3 and RPC 1.15(b). Further, his misrepresentation to his clients, that he had settled the lien, violated RPC 8.4(c).

In the Salloum matter, on February 29, 2008, respondent negotiated a \$15,000 settlement on behalf of his client. In connection therewith, he negotiated a \$2,150 chiropractor's lien to \$930. Nonetheless, respondent remitted only \$586.75 to the chiropractor. As a result, a collection agency pursued Salloum for the full amount of the lien, plus interest. Respondent neither paid the full amount of the lien nor disbursed to his client the net savings, a violation of RPC 1.15(b).

In the DeZubiria matter, respondent was in regular contact with his client from the date he was retained, on May 13, 2008, through February 10, 2009, at which time respondent's office ceased communications. In the summer of 2009, after DeZubiria relocated out of state, he learned that respondent's office telephone had been disconnected. Respondent failed to communicate with his client, a violation of RPC 1.4(b).

Eventually, DeZubiria retained subsequent counsel who was unsuccessful in securing cooperation from respondent's office in his efforts to substitute as counsel into the matter. Subsequently, counsel learned from the defendant carrier that respondent had settled DeZubiria's claim for \$12,500 in March 2009. Respondent's failure to notify DeZubiria upon receipt of funds to which he was entitled and his failure to promptly deliver those funds to his client violated RPC 1.15(b).

In the Campos matter, respondent notified his client that his case had been resolved for \$17,500, and misrepresented to him that he had satisfied all of Campos' existing medical bills and liens from the settlement proceeds. However, three years after Campos had received his share from the settlement check, those liens remained unsatisfied. Respondent's failure to promptly send funds to his client's medical provider violated RPC 1.15(b). Moreover, respondent's misrepresentation to his client that he had satisfied all of the existing medical bills violated RPC 8.4(c).

In the Carrillo matter, respondent, who had been retained to pursue a personal injury action, performed no services in his client's behalf beyond disbursing to her the deductible her insurance company had paid on her damaged vehicle. Respondent effectively abandoned his client's personal injury claim, a violation of RPC 1.1(a).

In the Kimball matter, respondent told his client that he had received a \$63,462 settlement offer and that he had negotiated her medical liens totaling \$24,688.66 to \$16,074.15. Although Kimball received her share from the settlement check, respondent addressed only one medical lien. The lien holders pursued Kimball for \$19,558.66, plus interest. Respondent failed to promptly disburse funds to Kimball's medical providers, a

violation of RPC 1.15(b). He further misrepresented to her that he had successfully negotiated and reduced all of her liens, a violation of RPC 8.4(c).

* * *

In sum, respondent violated RPC 1.1(a) in one matter, RPC 1.3 and RPC 1.4(b) in three matters; RPC 1.15(a) in four matters; RPC 1.15(b) in eight matters; RPC 1.15(c) in one matter; RPC 1.15(d) and R. 1:21-6 in three matters; and RPC 8.4(c) in three matters.

Generally, a reprimand is imposed for negligent misappropriation of client funds, even when accompanied by other, non-serious infractions, such as recordkeeping deficiencies, commingling, or failure to promptly deliver funds to clients. See, e.g., In re Arrechea, 208 N.J. 430 (2011) (in a default matter, attorney negligently misappropriated client funds when he removed them from the trust account for his own purposes, believing that he had sufficient personal funds in the account against which to draw; attorney "routinely commingled" personal and client funds in the trust account; he also failed to promptly deliver funds to his client and violated the recordkeeping rules by writing trust account checks to himself for cash and making cash withdrawals from the account; significant mitigating factors included the attorney's cognitive

issues and unblemished disciplinary record since his admission to the bar in 1975); In re Clemens, supra, 202 N.J. 139 (as a result of poor recordkeeping practices, attorney over-disbursed trust funds in three instances, causing a \$17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies, but the attorney had not been disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered); and In re Winkler, supra, 175 N.J. 438 (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account).

Respondent, however, is guilty of other infractions. A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, supra, 115 N.J. 472. Here, in addition to making misrepresentations to three clients, respondent was guilty of gross neglect, lack of diligence, and failure to communicate with several of his clients. Nonetheless, a reprimand may still be imposed even if the misrepresentation is accompanied by such other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 1.4(c) and RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her from June 2009 through January 2011, and by his failure to communicate with her, except on occasion, between January 2011 and April 2014); In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to

take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that he should expect a monetary award in the near future were false, thereby violating RPC 8.4(c)); and In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the mitigating factor of the attorney's unblemished thirty-four-year history was outweighed by his inaction).

Based on the foregoing, the baseline level of discipline for the totality of respondent's violations is a censure. In aggravation, respondent's misconduct is indicative of a pattern that implicated, at a minimum, eleven clients, over the course of five years, from 2004 to 2009. Further, while restitution to these clients, in most cases, was ordered by the California Supreme Court, it was often a reduced amount. In some cases,

there was no order of restitution. In all cases, however, the record does not reveal whether respondent has satisfied his restitution requirements. What is clear, however, is that respondent caused economic harm to his clients, and, in some cases, that harm was significant, resulting in payment of their own monies to collection agencies.

In further aggravation, respondent failed to report to the OAE his disbarment in California, until 2013, two years after the fact. Further, respondent failed to report a 1998 six-month suspension in California.

In mitigation, respondent asserted that his failure to report his disbarment in a timely manner resulted from his reliance on the advice of counsel. Respondent acknowledged, however, that he should have researched his reporting obligations himself. He also explained that, after his disbarment, he moved overseas and suffered mental health issues for which he sought professional help. His delay in reporting is balanced against the OAE's delay in filing the instant motion. Respondent's failure to report his 1998 suspension, however, is not explained. Nonetheless, also in mitigation, respondent admitted his wrongdoing and appears contrite.


After considering the aggravating and mitigating factors, we determined to impose a three-month suspension, retroactive to

November 13, 2013, the date respondent reported his disbarment to the OAE.

Chair Frost was recused and 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
Edna Y. Baugh, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Steven Leon Ellman
Docket No. DRB 17-048

Argued: April 20, 2017

Decided: August 2, 2017

Disposition: Three-month retroactive suspension

Members	Three-month retroactive suspension	Recused	Did not participate
Frost		X	
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1


Ellen A. Brodsky
Chief Counsel