

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-320  
District Docket No. XIV-2016-0067E

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IN THE MATTER OF :  
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JACQUELINE ROCHELLE HARRIS:   
:   
AN ATTORNEY AT LAW :   
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Decision

Decided: February 8, 2018

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.15(a) (knowing misappropriation of client funds) and the principles of In re Wilson, 81 N.J. 451 (1979); RPC 1.15(d) and R. 1:21-6(c)(1)(H)(2)<sup>1</sup> (recordkeeping violations); RPC 5.5(a) (practicing law while suspended); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving

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<sup>1</sup> This section prohibits "ATM" or cash withdrawals from a trust account.

dishonesty, fraud, deceit, or misrepresentation). For the reasons expressed below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1990. At the relevant time, she maintained a law office in Orange, New Jersey.

In 2001, respondent was admonished for practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. In the Matter of Jacqueline R. Harris, DRB 01-137 (June 29, 2001).

In 2009, respondent received a censure for failure to promptly notify a third-party lienholder of her client's receipt of settlement funds and failure to safeguard those funds by disbursing them to her client. She also failed to cooperate with the district ethics committee, by failing to turn over information it requested during the course of its investigation. In re Harris, 213 N.J. 540 (2009). We found, as aggravating factors, respondent's belligerent behavior toward the hearing panel and her failure to recognize or acknowledge her wrongdoing. In the Matter of Jacqueline R. Harris, DRB 09-038 (August 25, 2009) (slip op. at 15). In addition to the censure, the Court ordered that respondent complete six hours of courses in professional responsibility and that the OAE audit her attorney accounts in respect of that client matter.

Respondent was temporarily suspended, effective May 3, 2013, for failure to pay costs assessed in connection with her disciplinary matter. In re Harris, 213 N.J. 540 (2013). She was again temporarily suspended on May 31, 2017 for failure to cooperate with the OAE's investigation. In re Harris, 229 N.J. 219 (2017). Respondent remains suspended to date.

Service of process was proper in this matter. On June 21, 2017, the OAE sent a copy of the ethics complaint by regular and certified mail to respondent's last known home address listed in the attorney registration records. On July 13, 2017, the certified mail was returned marked "Attempted not known, unable to forward." The regular mail also was returned with a similar notation.

Respondent did not file an answer to the complaint. Therefore, on July 21, 2017, the OAE sent letters to the same address and to respondent's office address by regular and certified mail. The letter notified respondent that, if she did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The letter sent to respondent's office address included a copy of the complaint.

The certified letter sent to respondent's home address was returned marked "return to sender, vacant, unable to forward." The regular mail sent to respondent's home address was returned marked "return to sender, undeliverable as addressed, unable to forward." A handwritten note on the envelope indicated that respondent did not reside at the address. The certified mail sent to respondent's office address was returned marked "refused" and unable to forward. The regular mail sent to the office address was not returned.

Thereafter, on August 7, 2017, notice of the complaint was published in both the New Jersey Law Journal and the Star Ledger.

As of the date of the certification of the record, August 30, 2017, respondent had neither contacted the OAE, nor filed an answer to the ethics complaint.

The allegations of the complaint are as follows. In 1998, respondent began representing Valerie Cobb in a personal injury matter. In May 2003, Cobb entered into an agreement with New Amsterdam Capital Partners, LLC (NACP) for an advance on anticipated settlement proceeds. Respondent and Cobb signed an acknowledgement and assignment with NACP, which, in part, obligated respondent to notify NACP when Cobb's case settled and to disburse the settlement proceeds and a fee to NACP, in full, on the date the proceeds were recovered. Respondent indicated in the

agreement that there were medical liens of \$14,000 on the settlement proceeds.

On April 13, 2005, respondent received Cobb's settlement funds, totaling \$28,000, which she deposited in her trust account, in Cobb's subaccount. Between April 14 and December 13, 2005, respondent made seven disbursements to herself and Cobb, totaling \$16,787.77, leaving a balance of \$11,212.23 in the Cobb subaccount. Respondent failed to satisfy NACP's lien before disbursing the funds.

On August 28, 2009, respondent attended an OAE demand audit, the purpose of which was to determine whether she had safeguarded Cobb's funds. She provided documentation showing that she continued to hold the remainder of Cobb's funds intact. In February 2016, however, the OAE received notice of a \$99.25 overdraft in respondent's trust account.

On February 17, 2016, the OAE sent a letter to respondent, at her office, seeking an explanation, by March 3, 2016, for (1) the overdraft; and (2) the reason for her ineligibility to practice law. Respondent did not reply. Thus, on May 4, 2016, the OAE sent a letter to respondent's home address, requesting a reply by May 9, 2016. Because respondent failed to reply, the OAE telephoned her, at which time she claimed that she had not received the

letters and requested that the OAE use her office address in Orange, New Jersey, not West Orange.

The OAE re-sent the letter and, on May 31, 2016, received respondent's reply. By letter dated June 3, 2016, sent by regular and certified mail, the OAE noted that respondent had failed to provide the previously requested documentation and demanded that, on June 22, 2016, she appear and produce her books and records, and demonstrate that she did not misappropriate the funds. Respondent failed to appear. The certified mail was returned marked "return to sender, not deliverable as addressed, unable to forward." The regular mail was not returned. When the OAE contacted respondent by phone, she explained that she was out of the state "getting her mother's affairs in order" and would not disclose when she planned to return.

In 2009, respondent had provided the OAE with a copy of the April 13, 2005 Cobb settlement statement showing that, of the remaining \$11,212.23 from the settlement, \$11,151.22 was for outstanding medical bills, and respondent was entitled to only \$61.01 in outstanding attorney's fees and costs.

On February 11, 2013, respondent's business account had a negative balance. The bank ultimately closed that account due to

insufficient funds. From June 3, 2013<sup>2</sup> through January 29, 2014 respondent used her "B. Harris" trust subaccount to make several payments for personal expenses, totaling \$7,900.23.<sup>3</sup> On February 5, 2014, she issued a \$700 check to her client, Courtney McQuine, from the B. Harris subaccount. Thereafter, from February 5 through October 28, 2014, respondent's trust account balance remained at approximately \$16,000, fluctuating minimally due to interest activity. The balance included only \$131.05 attributable to the Harris subaccount. As of October 28, 2014, respondent was still holding \$11,212.23 in the Cobb matter.

Beginning on October 29, 2014, however, respondent began drawing on the Cobb subaccount, rather than the Harris subaccount, for her personal expenses, without Cobb's authority or permission. Between October 29, 2014 and April 21, 2016, respondent made seven disbursements and one cash withdrawal totaling \$11,212.23. Respondent, therefore, misappropriated Cobb's funds for either respondent's or her family member's benefit.<sup>4</sup>

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<sup>2</sup> As noted previously, respondent's first temporary suspension was effective May 3, 2013. She has remained suspended since that time.

<sup>3</sup> The record does not identify the owner of the funds in the "B. Harris" subaccount other than as "Berta Harris."

<sup>4</sup> Presumably, the "family member" reference is connected to the "B. Harris" subaccount.

Cobb confirmed that she did not recall personally paying the NACP lien and was not aware whether respondent had made the payment. Cobb had expected respondent to use the remaining funds from her settlement to pay outstanding "items" only.

On September 8, 2015, more than two years after her initial temporary suspension, respondent deposited \$2,000 in her trust account, representing the proceeds of client Michelle Flowers' personal injury settlement. She then issued trust account checks, totaling \$4,133.20 from the subaccounts that still contained balances. On April 21, 2016, respondent made a \$3,488.89 cash withdrawal from the remaining balances in her trust account subaccounts, which included a withdrawal in the amount of \$822.23 from the Cobb subaccount. In so doing, she closed out her trust account.

Respondent's failure to cooperate prevented the OAE from fully investigating whether she had knowingly misappropriated client trust funds other than Cobb's.

By letter dated January 23, 2017, sent by regular and certified mail, the OAE demanded that respondent appear, on February 15, 2017, and produce her books and records. The certified mail was returned marked "return to sender, not deliverable as addressed, unable to forward." The regular mail was not returned. Respondent failed to appear for the demand audit.



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

The alleged facts clearly and convincingly demonstrate that respondent misappropriated a portion of the Cobb settlement funds. The settlement statement for that matter showed that respondent was entitled to only \$61 in outstanding fees, and that the remaining \$11,151 in the Cobb account was for outstanding medical bills. That notwithstanding, respondent systematically invaded those funds for personal purposes, without Cobbs' authorization or consent. Her conduct in this regard violated RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, supra.

In addition, it is clear that respondent did not disburse funds owed to NACP, despite her obligation to do so. Because the complaint did not charge respondent with knowing misappropriation of escrow funds, however, we do not find such a violation in respect of the NACP funds.

Finally, respondent failed to cooperate with the OAE's investigation of the matter, by failing to appear at two scheduled demand audits, which resulted in the Court's issuing another Order

of temporary suspension on May 31, 2017. Respondent, therefore, violated RPC 8.1(b).

Misappropriation is defined as:

any unauthorized use by the attorney of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

[In re Wilson, supra, 81 N.J. 455, n.1.]

As noted by the Court in In re Noonan, 102 N.J. 157 (1986):

The misappropriation that will trigger automatic disbarment under [In re Wilson], disbarment that is "almost invariable," [citation omitted] 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. . . . The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" -- all are irrelevant.


[Id. at 160.]

For respondent's misappropriation of trust funds alone, we recommend that she be disbarred. The complaint alleged that respondent engaged in the unauthorized practice of law by issuing a trust account check to her client after her temporary suspension and by depositing personal injury settlement proceeds into her trust account more than two years after her temporary suspension. In light of our finding that respondent is guilty of knowing misappropriation and our recommendation that she be disbarred, we need not determine whether respondent is guilty of additional violations or the appropriate sanction therefor.

Vice-Chair Baugh and Members Gallipoli, Rivera, and Zmirich did not participate.

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

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Jacqueline Rochelle Harris  
Docket No. DRB 17-320


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Decided: February 8, 2018

Disposition: Disbar

<i>Members</i>	Disbar	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera		X
Singer	X	
Zmirich		X
Total:	5	4

  
Ellen A. Brodsky  
Chief Counsel