SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-336
District Docket No. XIV-2013-0658E

IN THE MATTER OF

MICHAEL R. SPECK

AN ATTORNEY AT LAW

Decision

Argued: November 16, 2017

Decided: March 15, 2018

Andrea R. Fonseca-Romen appeared on behalf of the Office of Attorney Ethics.

Donald M. Lomurro 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 recommendation for an admonition, which we decided to treat as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4). The formal ethics complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client trust funds); RPC

1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 7.1 and RPC 7.5 (false or misleading letterhead); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Office of Attorney Ethics (OAE) recommends respondent's disbarment. Respondent asserts that an admonition is sufficient discipline for his misconduct. For the reasons detailed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1987. He is currently engaged in the practice of law in Freehold, New Jersey. During the relevant time frame, he practiced in Iselin, New Jersey.

Respondent and Keith Burns, Esq. were best friends, who enjoyed a relationship forged in the 1990s, during their hectic, overlapping New Jersey municipal court practices. Respondent fondly described their friendship, recounting their daily telephone conversations; parallel interests, including golf, baseball, and gambling; and joint family vacations. Burns was both a certified civil and certified matrimonial attorney, and focused his practice primarily on divorce cases.

During multiple periods between 1996 and 2008, respondent worked as an associate in three different "incarnations" of firms managed by Burns. In 2008, however, respondent joined the

law firm of Garces & Grabler, as an associate, where he remained before rejoining Burns, claiming that he and Burns had formed a partnership, effective May 31, 2011. Respondent testified that, for his entire legal career prior to joining Burns as a partner, he had been an associate, and, thus, had never been in charge of recordkeeping, trust accounts, or the administration of a law firm.

During the relevant time frame, Burns was the sole attorney and principal of Burns Law Office, LLC, (Burns Law) located in Iselin, which he had formed in 2006. Burns had only one steady employee, Suzi McMillon, who served as his office manager and paralegal. McMillon originally had worked for Burns in 1995, moved to Mississippi in 1997, and then returned to Burns' employ from 2005 until Burns' 2011 death. McMillon handled law office finances and operations, drafted legal documents, and even administered the personal finances of Burns and his wife, Angela Burns (Angela). McMillon collected fees from clients, made all deposits and disbursements, paid all of the firm's obligations, including her own salary; and had full access to the firm's attorney business and attorney trust accounts with Sovereign Bank. She drafted all business checks for Burns and, "[n]inety-nine percent of the time," even issued them, using a signature

stamp for Burns. She testified that he signed all attorney trust account checks.

In 2010, Burns was diagnosed with esophageal, stomach, and liver cancer, and was told that he had one to three years to live. He began aggressive and debilitating cancer treatment, including chemotherapy. Angela testified that Burns' illness and treatment severely taxed him and immediately negatively impacted his law practice. According to McMillon, Burns did not come to the office between August 2010 and January 2011. Instead, he managed the firm from home and through daily telephone conferences.

In October 2010, respondent began assisting with Burns Law work, with the consent and support of Garces & Grabler. In April 2011, respondent moved into the Burnses' home in Chester. He was going through a bitter divorce, needed a place to live, and was willing to help Angela care for Burns.

During an OAE interview on October 7, 2015, respondent represented that he and Burns had held in-depth discussions about forming a law partnership, named "Burns & Speck," to become effective on June 1, 2011. Angela corroborated this assertion, testifying that Burns was "anxious to get something in writing" with respondent, and that they had drafted a partnership agreement. McMillon, too, recounted that Burns had

informed her, before he died, that he and respondent were forming a partnership.

Angela maintained, however, that the partnership had never actually been formed. Moreover, she testified that respondent had promised her that he would take care of her, representing that she would receive about $100,000 after he wound down Burns Law. Over time, she claimed, that $100,000 promise shrunk to $65,000, then to $50,000, and, ultimately, respondent claimed that she actually owed the firm money.

Respondent testified that he and Burns had begun their discussions regarding the creation of the law partnership in February 2011. Respondent admitted that he neither inquired about the financial status of Burns' firm, nor reviewed Burns Law financial records in connection with the partnership negotiations. Respondent maintained that he and Burns had "agreed on some ideas," which Burns then memorialized, via bullet points, in a February 8, 2011 e-mail to respondent. Respondent then expanded those bullet points into a March 12, 2011 outline of a proposed partnership, which he e-mailed to Burns. He and Burns further negotiated terms, which were reflected in a draft partnership document. Respondent stipulated, however, that they never executed a final agreement. Nevertheless, respondent repeatedly asserted that the terms of

the partnership were final, because they "shook hands on it" prior to May 31, 2011, and further represented that he and Burns had adopted handwritten changes to the partnership agreement.

The draft agreement contemplated a partnership for at least two years; for Burns initially to work only twenty hours per week while he recovered; for Burns to be the managing partner; for Burns' monthly draw to be $15,000 and respondent's to be $10,000; and, notably, stated that each attorney's existing accounts receivable, from his respective prior law firm, would remain an "individual partner asset" unless otherwise agreed. During OAE interviews on July 22, 2014 and October 7, 2015, respondent claimed that he had properly applied that final provision of the agreement in his administration of Burns Law. Specifically, he asserted that, if legal fees were received for services that Burns had performed for Burns Law, those funds were deposited in the Burns Law attorney business account, and "[i]f it was a new retainer agreement for me, it would have went [sic] into Burns and Speck."

On June 4, 2011, Burns died. Respondent testified that, by this time, he "was running the law practice" known as Burns Law. Respondent conceded, however, that he was formally associated with Burns, at most, from May 31 to his death on June 4, 2011.

According to both McMillon and respondent, Burns Law was in "a lot of debt." The practice owed multiple fee arbitration awards, and was obligated to refund client and expert retainers, given Burns' failure to perform promised work after he fell ill. At least one of the fee arbitration awards had been reduced to a judgment against Burns Law. Bills for law office equipment and other operating expenses remained unpaid, and the firm's landlord was threatening eviction over past-due rent. McMillon testified that, due to Burns' illness, the office was not receiving legal fees, and that Burns had to cover his significant personal expenses. Based on information gathered by Dennis Estis, the attorney-trustee ultimately appointed for Burns Law, as detailed below, Burns Law owed more than $56,000 to clients and third parties.

Conversely, Burns Law was owed significant legal fees from clients for work completed. For example, one client owed Burns more than $91,000. Based on information that Estis gathered, clients owed Burns Law more than $172,000 in outstanding legal fees. Additionally, Burns was holding $25,000 in a trust account associated with one of his prior law partnerships, and more than $80,000 in a trust account for the Estate of Della Katenkamp, a long-standing client matter. Ultimately, $107,226.91 was disbursed from the Burns Law attorney business account to Estis,

partially paying him for services rendered as the trustee. After Burns Law was wound down, Angela received only two paintings and an office chair from the firm's assets.

Respondent admitted that, on June 2, 2011, he paid his divorce attorney $5,000 in legal fees from the Burns Law attorney business account, claiming that he and Burns had contemplated his doing so, and that he had deposited enough of his own earnings into that account to cover that disbursement. Moreover, respondent maintained that he actually had saved money for Burns' estate by remaining in the Burns Law office space and paying the rent and other operating expenses.

On June 14, 2011, ten days after Burns' death, respondent formed Burns & Speck Attorneys at Law, LLC (Burns & Speck), of which he was the sole owner. The firm used the same office, in Iselin, that Burns Law had occupied. Respondent and McMillon testified that respondent had formed the new firm because he and Burns had agreed to a partnership, and because he wanted to "honor" Burns. McMillon testified that Angela, a graphic designer, had created letterhead and envelopes with the Burns & Speck logo, and had personally brought the stationery to the office, after Burns had died. Angela disputed that assertion, testifying that she had created the letterhead, at Burns' request, in March 2011, and only as a sample for use in "talking

about the partnership." She conceded that she had hoped the partnership would work out, and that Burns would fully recover from his cancer, but steadfastly maintained that the partnership was never consummated.

Angela became concerned when she visited the bank and learned that respondent had formed Burns & Speck and was "commingling [Burns Law] money." At the time, she believed that respondent represented her on a case she had against an architect, and further claimed that respondent owed a fiduciary duty to her, based on promises he had made to Burns, and because she was Burns' heir. She related that, upon confronting respondent about his use of Burns Law funds, he represented that he would pursue a bankruptcy for Burns Law, "screw all the creditors," and split the money with her. At that point, respondent was still living in her home. During a July 2014 OAE interview, respondent admitted having represented the Burnses in litigation against an architect, but asserted that any such representation had ended before Burns' death, and, thus, he no longer had an attorney-client relationship with Angela.

After learning of the "commingling," Angela went to the offices of Burns Law, while respondent was in Utah. She testified that her visit was spurred by "[t]oo many odd things" happening, citing a judgment against Burns Law that had attached

to her personal bank account, the repossession of Burns' car from their home, and the receipt of notices informing her that McMillon had not paid her health insurance premium or mortgage payment. Upon visiting the office, Angela learned of the existence of the Burns & Speck law firm. Respondent had not informed her of the formation of the law firm.

According to respondent, many of Burns' files had been ignored during his illness, and needed "[m]ore than CPR." Shortly after Burns' death, respondent began to meet with existing clients of Burns Law, in an effort to convince them to allow him to assume their representation. Notably, and contrary to his fundamental position in this case, on June 7, June 29, and August 2, 2011, respondent executed retainer agreements, which identified his firm as "Michael R. Speck, Esq.," yet another new firm that respondent had apparently formed - not Burns Law or Burns & Speck. On at least one occasion thereafter, on July 5, 2011, however, respondent executed a retainer agreement with a client that identified his firm as Burns & Speck.

On May 31, 2011, respondent deposited checks, totaling $6,250, for fees owed to him in connection with his prior law

practice, into Burns Law bank accounts.[1] McMillon testified that she saw no problem with the continued use of the Burns Law bank accounts. Moreover, she admitted repeatedly using Burns' signature stamp, after he had died, to issue business account checks drawn on Burns Law funds. Specifically, she testified regarding her June 10 and June 14, 2011 issuance of attorney business account check numbers 1206 and 1207 to respondent, in the amounts of $2,000 and $500, respectively, as "draws," as well as a check to herself, for $1,000, representing money that she claimed Burns had borrowed from her, in April 2011, to cover a gambling debt. She also issued numerous checks to pay law firm operating expenses.

On June 14, 2011, the same day that he created Burns & Speck, respondent opened three bank accounts for the firm – an attorney business account, an attorney trust account, and a money market account. Respondent was the only authorized signatory on all three accounts. Respondent used $2,000 from the Burns Law attorney business account to open the new accounts. The deposited check was signed using Burns' signature stamp, and

[1] The record does not specify whether respondent's prior firm, Garces & Grabler, knew of respondent's receipt and disposition of these fees.

included the notation "open new account."[2] The $2,000 was distributed in the new accounts as follows:

Attorney Business Account	-	$1,400
Attorney Trust Account	-	$ 100
Money Market Account	-	$ 500

During an OAE interview in October 2015, respondent claimed that the only reason he could "think of" that this $2,000 was used was it "could have been money that got mis-deposited [sic]" from his client matters into the Burns Law attorney business account. During the ethics hearing, however, respondent testified that he had intentionally used the $2,000 in Burns Law funds to "transfer assets into the new partnership account," as he and Burns had contemplated. Sovereign Bank sent statements for these accounts to Angela's house, because respondent still lived there and had used her mailing address. Angela admitted that she had opened the statements because "she was Burns." As detailed above, weeks after Burns' death, she discovered that respondent was using Burns Law funds. Thus, on July 14, 2011, she complained to the bank, which froze those accounts. She claimed that, in turn, respondent called her on the phone and began "screaming" at her.

Respondent acknowledged that, "at some point" after Burns' death, he became concerned with the ethics implications of using

[2] The formal ethics complaint did not charge respondent with an ethics violation for this conduct.

Burns' signature stamp, stating that he "figured out [McMillon] was writing checks with a stamp." Despite his purported concern, respondent conceded that, as late as June 20, 2011, almost three weeks after Burns had died, respondent deposited a $500 draw check using Burns' stamp. Moreover, he could not recall taking any corrective action in respect of McMillon's use of Burns' signature stamp.

On June 14, 2011, the same date that he created Burns & Speck and opened the Sovereign Bank accounts, respondent applied to be appointed the attorney-trustee for Burns Law, pursuant to R. 1:20-19, via an e-mail to the Honorable Travis L. Francis, A.J.S.C., then the Middlesex County Assignment Judge. In that e-mail, respondent stated that, due to Burns' illness and his heavily medicated state near the end of his life, respondent believed that Burns was not "competent enough to go forward with our partnership" and that "[w]e never consummated the deal." During a July 22, 2014 OAE interview, respondent also stated that, in the last month of his life, Burns was "on very large doses of pain killers. And I started to worry about his competence." He described Burns & Speck as a single-member entity, with Burns' name on the letterhead "solely to honor him," and twice referred to Angela as Burns' "sole heir." During the hearing before the special master, respondent stated "I

understand the way it looks," but maintained that he meant that Burns was not competent to continue to practice law, but was mentally competent to agree to form a partnership. In requesting the appointment from Judge Francis, respondent stressed the outstanding obligations of Burns Law to existing clients, specifically referencing multiple distributions that needed to be made posthaste, including for overdue fee arbitration awards.

The next day, Judge Francis appointed respondent as the attorney-trustee of Burns Law. Despite the overtures that respondent had made to the court in his appointment request, he neither conducted an accounting of Burns Law's assets and debts, as required of an attorney-trustee, nor paid any of Burns Law's fee arbitration or client debts. Indeed, he admitted he "didn't do anything with the Court pursuant to [his role as] the attorney-trustee." Respondent testified that, in retrospect, it was imprudent for him to have applied to be the attorney-trustee, as he "wasn't equipped to do it." Notably, during oral argument before us, respondent's counsel repeatedly took the position that the new firm, Burns & Speck, had assumed all of the debts of Burns Law.

Angela learned of respondent's appointment as the attorney-trustee for Burns Law after respondent locked her out of the office and, as she recounted, "sent [her] a big reprimand,"

which stated that "he was in charge now." At the end of July or in early August 2011, given his deteriorating relationship with Angela, respondent vacated the Burnses' residence. On August 11, 2011, Angela's attorney, Mark Goldstein, filed a motion seeking respondent's immediate removal as the attorney-trustee of Burns Law. On September 30, 2011, Judge Francis removed respondent and appointed Dennis Estis as the attorney-trustee.

Meanwhile, on July 1, 2011, invoices for outstanding Burns Law legal fees were sent to existing Burns Law clients, using Burns & Speck letterhead. Also, on July 8, 2011, McMillon had deposited a $13,503.59 check into the Burns & Speck trust account, drawn on a trust account that Burns Law had held exclusively for the Estate of Della Katenkamp, one of Burns' earliest clients. Burns had received these funds decades earlier, in 1982. Multiple witnesses testified regarding the curious details of the Katenkamp matter.

Michael Richmond, one of Burns' former partners, testified that, in the early 1990s, while associated with Burns, he had performed work on the Katenkamp matter. Katenkamp and Burns had been friends, and, before she passed away in 1982, she had asked Burns to serve as the executor of her estate. According to Richmond, the case dated back "almost to the time that [Burns] began practicing" law. Upon her death, a hospital had filed a

judgment against Katenkamp's estate, for medical bills, which exceeded the value of the estate. Richmond believed that Burns, as Katenkamp's executor, had devised a "risky strategy" to wait out the hospital's twenty-year judgment period, and, if the hospital failed to renew its judgment, to then distribute the estate's assets to Katenkamp's heirs.

In the interim, Burns had placed the Katenkamp estate funds in a money market certificate, exclusively in the name of the estate, for which he was the sole signatory. In the early 1990s, Burns' law partner, Richmond, had located Katenkamp's heirs, determined their shares and the amount of the inheritance tax classification for each heir, and secured refunding bonds and releases. Essentially, Richmond completed all of the legal work necessary to distribute the estate's funds and, thus, was surprised to learn, in 2011, while representing respondent in connection with his appointment as the attorney-trustee over Burns Law, that Burns had never disbursed the Katenkamp estate funds.

Richmond made the 2011 discovery after Judge Francis asked him to complete an inventory of the assets and liabilities of Burns Law. After he completed that inventory, Estis replaced respondent as attorney-trustee of Burns Law. Richmond did not recall Burns ever taking a fee in the Katenkamp matter, and

asserted that Burns also would have been entitled to an executor's commission of six percent, pointing out that, by Rule, all such compensation would be subject to court approval.[3]

Two weeks prior to the ethics hearing, Richmond had located Burns' "backup" copy of the Katenkamp file, in his home attic, while packing for a move, and had promptly provided the file to respondent's counsel. The OAE then reviewed the contents of Richmond's Katenkamp file, but was unable to assess the amount of a reasonable legal fee for the work performed, due to a lack of billing records. The records contained in the file pre-dated 2005.

Angela testified that, when the Burnses' financial situation had become "frightening," presumably due to Burns' illness, Burns had told her about the Katenkamp trust funds, explaining that there was

> a trust account that had been in his office for years and years and years. Nobody knew whose it was or they couldn't find the people it was owed to. And he told me that if things just got unbearable . . . [and we] had no more money for food or anything, that he would take the money. But he did not want to do it because he said it would have meant that he would have been disbarred and he

[3] Richmond acknowledged the complexity of determining the legal fee and commission so many years later, noting that such a fee and commission would be subject to court review and approval, and alluded to the heightened scrutiny that might result from Burns' lack of action on the file for almost three decades.

> never wanted that to happen. He loved being a lawyer so much.

Jeanine Verdel, OAE Assistant Chief of Investigations, testified that, since 1982, when Katenkamp had died, Burns had kept more than $80,000 in the trust account for the estate. Verdel added that, according to Estis, the attorney-trustee, Burns had never settled Katenkamp's estate and, as of the date of the ethics hearing, approximately thirty-four years after her death, more than $70,000 remained in the estate trust account.

McMillon testified that the Katenkamp estate file was "a rather large file that [Burns and his colleagues] had worked on before I came back to work for [Burns] in 2005." McMillon had never seen a physical file for the case during her 2005-2011 stint as office manager, but recognized the name from firm filing records.

The $13,503.59 Katenkamp estate check, which respondent authorized McMillon to deposit, was dated October 21, 2010 and was payable to "Keith Burns ITF Della Katenkamp." McMillon testified that, based on her experience, "ITF" stood for "in trust for." McMillon had been holding this check for "months and months," after Burns had given it to her and told her, "this check [is] for legal fees . . . hold it until [I] tell you to deposit it." McMillon stated that it was unusual for Burns to give her such a significant check and tell her to hold onto it.

The check contained no memorandum or notation identifying it as Burns' legal fee. At some point after Burns' death, McMillon told respondent that she held the check, that it was for Burns' legal fee, that bills had to be paid, and that they should deposit it; respondent agreed and authorized the deposit. McMillon testified, in retrospect, that the check should have been deposited into the Burns & Speck attorney business account, not the attorney trust account, and that the mistake was hers alone.

At her October 7, 2015 OAE interview, McMillon had denied any recollection of the Katenkamp check or its origin, but was not provided either the check or the deposit slip for review at that time. During the ethics hearing, McMillon explained that her memory had been jogged upon being provided the check and deposit slip to review, approximately two weeks prior to her testimony.

During respondent's October 7, 2015 OAE interview regarding the Katenkamp check, he expressed concern, stating "[b]elieve me, that would have never been done had I known about it. But I'm responsible . . . money from some estate that I didn't earn . . . I don't know who the check is made out to or where it comes from." He stated "I know it looks terrible, but, believe

me, I'm not going to put my license on the line for thirteen grand."

During the ethics hearing, respondent claimed that, since McMillon had made the deposit, he had never actually seen the check until it was presented to him during the OAE interview in October 2015, but had believed it represented legal fees that Burns had previously earned. Respondent admitted that he had performed no work for Della Katenkamp or her estate and that, at the time he authorized the deposit of that check, he had relied solely on McMillon's representation that the check was for legal fees earned by Burns. Respondent asserted that McMillon handled all checks and deposits, and that he had expected that she would deposit the $13,403.59 in the Burns & Speck business account, because that is "where you put legal fees." During oral argument before us, respondent reiterated the position that the check represented legal fees earned by Burns, which he was entitled to use to operate Burns & Speck, pursuant to the existence of the partnership and the fact that Burns & Speck had assumed all of the debts of Burns Law.

On August 2, 2011, the balance of the Burns & Speck attorney trust account was $13,503.59 – representing the funds from the deposit of the Katenkamp check, plus the initial $100 from the deposit of the Burns Law attorney business account

funds used to open the account. On that date, respondent made his first disbursement of the Katenkamp funds, issuing and signing Burns & Speck attorney trust account check number 1055, in the amount of $8,000 and payable to Burns & Speck, adding the notation "legal fees," but no client matter information. Also on August 2, 2011, check number 1055 was deposited in the Burns & Speck business account. Thus, $5,403.59 of the Katenkamp funds remained in the Burns & Speck attorney trust account.

On August 17, 2011, respondent again made a disbursement from the Katenkamp funds, issuing and signing Burns & Speck attorney trust account check number 1056, in the amount of $5,000 and payable to Burns & Speck, including the notation "legal fees," but containing no client matter information. On that same date, check number 1056 was deposited in the Burns & Speck business account. The Katenkamp estate balance in the Burns & Speck attorney trust account, thus, was reduced to $403.59.

Respondent claimed that he had not reviewed the checks that transferred the Katenkamp funds from the Burns & Speck attorney trust account to the Burns & Speck attorney business account; rather, McMillon had "presented" them to him and he had signed them. Respondent was resolute, however, during the ethics hearing and before us, that the $13,403.59 represented "fees

that were earned" by Burns and not "client money." Angela testified that, despite respondent's status as the Burns Law attorney-trustee, or claimed status as Burns' partner, he never informed her of the receipt or disposition of the more than $13,000 fee that her husband had earned, or that he was using those funds.

On various dates in August and September 2011, respondent issued attorney business account checks against the Katenkamp funds to pay both law firm and personal expenses, including gasoline, restaurants, and airfare. On August 11, 2011, more than two months after Burns had died, respondent also used those funds to pay Burns' New Jersey Lawyers' Fund fee, in the amount of $244. During the October 2015 OAE interview, respondent was puzzled as to this disbursement, speculating that he may have made the payment because he was worried about future malpractice and other third-party claims against Burns Law and against Burns.

Between August 2 and September 7, 2011, respondent exhausted all of the Katenkamp funds in the Burns & Speck attorney business account and, by September 7, 2011, had overdrawn that account by $4,811.46, repeatedly incurring overdraft fees.

During an October 7, 2015 OAE interview, respondent admitted that he had performed no legal work on the Katenkamp case; had made no attempt to find or review the file; and had signed attorney trust check number 1055. Respondent claimed a belief that the $13,403.59 in Katenkamp funds were "legal fees that had been earned by Mr. Burns and not yet transferred to his business account. [Respondent] had been specifically informed of that fact [by McMillon] and relied on the truthfulness" of McMillon's representation. Angela testified that, when respondent assumed control of Burns Law, and ultimately formed Burns & Speck, respondent's financial situation was "not good. A lot of creditors. He had a -- a credit card cancelled. He was going through a bitter divorce."

Respondent concluded his testimony during the ethics hearing by addressing lessons that he had learned from this case. He no longer authorizes the use of signature stamps, and keeps his attorney business account and attorney trust account at different banks, with his firm payroll account linked to the attorney business account. He is the only authorized signatory on checks, and performs his own recordkeeping.

* * *

In its post-hearing summation brief to the special master, and during oral argument before us, the OAE advanced two

theories in support of the knowing misappropriation charge. First, the OAE argued that respondent knowingly misappropriated client funds belonging to the Estate of Della Katenkamp, in violation of the Wilson rule, emphasizing that the check under scrutiny was payable "in trust for" the estate, with no indication that it represented legal fees owed to Burns. In support of this theory, the OAE noted that Richmond testified that he had performed work on the file in the 1990s, and that the file had then been in his home attic from 2005 through 2016; that McMillon had not observed Burns perform work on the file in the entire period that she worked for him; and that respondent admitted that he had performed no work on the Katenkamp file and was not entitled to any legal fee.

The OAE contended that respondent had motive to steal the Katenkamp client funds, pointing to evidence that he deposited and used those funds at a time when he "desperately needed them" to pay his firm's operating expenses, such as rent and payroll, and his own personal expenses, including airfare, gasoline, and restaurant bills. Moreover, the OAE noted that, despite respondent's asserted defenses that he was the attorney-trustee for Burns Law, as well as a valid partner of Burns, respondent did not use the Katenkamp funds to pay any of Burns Law's outstanding debts, including the fee arbitration awards and

client retainer refunds that he had emphasized in his e-mail to Judge Francis.

The OAE further argued that respondent's assertion that he was a valid partner of Burns & Speck established that the Estate of Della Katenkamp was, thus, one of his clients, whose funds he had a duty to safeguard, and that respondent had no right to use the $13,403.59 without the clients' (heirs') permission. The OAE stressed that, at the time he used the Katenkamp funds, respondent was also the attorney-trustee for Burns Law, and, thus, had a duty to perform trustee responsibilities, including the safeguarding and distribution of trust funds to clients and other parties. As detailed above, respondent admitted that he had performed none of the duties expected of him while appointed as the attorney-trustee for Burns Law.

Second, the OAE alternatively argued that, if the $13,403.59 in Katenkamp funds truly represented legal fees owed to Burns, respondent was guilty of the knowing misappropriation of law firm funds, in violation of In re Siegel, 133 N.J. 162 (1993). In support of this argument, the OAE wielded, as a sword, respondent's assertion that he was a valid partner of Burns & Speck, arguing that, under that scenario, the draft partnership agreement clearly stated that legal fees due to Burns in connection with work performed by him, prior to

formation of the partnership, represented Burns' "individual partner asset," and, thus, could not be used to fund the partnership without prior agreement.

The OAE noted that the Katenkamp check was issued on October 21, 2010, nearly nine months before the purported partnership between Burns and respondent was formed, and that there was no evidence that he and Burns had contemplated using these legal fees, earned exclusively by Burns, to fund the partnership. Moreover, the OAE emphasized that respondent did not assert, and did not produce evidence of, any such agreement to treat those legal fees as something other than Burns' "individual partner asset."

In addition, the OAE argued that respondent violated RPC 8.4(c) by failing to notify Burns Law's financial institutions of Burns' death; by allowing the use of Burns' signature stamp to issue checks under his name after he had died; and by using Burns' name in the new firm (Burns & Speck) in order to continue to access funds belonging to Burns, even after Angela – whom respondent admits was Burns' sole heir - had frozen the Burns Law bank accounts.

According to the OAE, respondent again violated RPC 8.4(c) in his dealings with Judge Francis, where he supported his request for appointment as the attorney-trustee for Burns Law

with misrepresentations. Specifically, the OAE cited the fact that, in his e-mail to Judge Francis, respondent admitted that the partnership had never been consummated, yet he had already formed Burns & Speck.

The OAE further argued that respondent committed numerous recordkeeping infractions, in violation of RPC 1.15(d) and R. 1:21-6. Specifically, the OAE cited respondent's complicity in McMillon's issuance of checks using Burns' signature stamp after Burns' death; his admitted failure to oversee the Burns Law attorney trust and business accounts, despite his purported status as a partner and uncontroverted short service as attorney-trustee; his admitted failure to review and reconcile the Burns & Speck attorney trust and business accounts; and his practice of allowing checks for legal fees to be deposited in Burns & Speck accounts, without identifying which client matters corresponded to the checks.

Finally, the OAE charged that respondent's use of the firm name "Burns & Speck" on letterhead and in advertising violated RPCs 7.1 and 7.5. Specifically, the OAE reasoned that, even if the law firm had been duly formed prior to Burns' death, respondent was required to denote Burns as deceased on the face of the letterhead.

Given its position that respondent committed knowing misappropriation in this case, the OAE urged both the special master and us to recommend respondent's disbarment.

* * *

Respondent argued that the OAE failed to prove that he had committed knowing misappropriation or any other ethics violations. Rather, he claimed that the evidence showed that he was "inexperienced in running a law practice," especially one that had been formed only days before his best friend and partner had died from cancer.

Specifically, in respect of the knowing misappropriation charge, respondent maintained (1) that he and McMillon had reasonably relied on Burns' representation to McMillon that the Katenkamp check represented legal fees earned by Burns, stressing that the amount of the check - $13,403.59 – was "consistent with being a legal fee;" (2) that Richmond had testified that, despite the work performed on the file, Burns had never taken a fee and, thus, must be entitled to one; and (3) that, at worst, respondent committed negligent misappropriation by relying solely on McMillon's representation that the check constituted Burns' earned legal fees on the Katenkamp matter. Respondent asserted that, even if Burns had committed knowing misappropriation of the Katenkamp funds,

Burns' wrongdoing may not be imputed to him, as he reasonably relied on McMillon's representation that the funds were Burns' earned fees.

In an October 27, 2017 brief to us, respondent also refuted the OAE's alternate theory that he had committed the knowing misappropriation of law firm funds objecting to the OAE's late proposal of the theory, asserting that the OAE presented no evidence that the monies did not constitute a legal fee, and contending that "nothing required [respondent] to obtain Mr. Burns' permission to use monies that Mr. Burns earned before the parties' [sic] merged their practices." In support of his final point, respondent cited N.J.S.A. 42:1A-11, which states that "[p]roperty acquired by a partnership is property of the partnership and not of the partners individually." Nonetheless, respondent again invoked the terms of the draft partnership agreement in his defense, emphasizing that Burns had died, and the partnership agreement "did not provide for what occurs after a partner's death." Respondent concluded that, "[a]s reward for this admirable goal of helping his best friend, [respondent] has to face the accusation that he stole money when he was attempting to serve Mr. Burns' clients and take care of" Angela. As previously noted, during oral argument before us, respondent's counsel justified respondent's use of these funds,

arguing that respondent had been transparent and had done the right thing by assuming all Burns Law debt, and, thus, was entitled to use the funds to keep the new firm "afloat."

Respondent denied that he committed recordkeeping violations, asserting that the Burns & Speck financial accounts were both properly created and delineated as attorney trust and attorney business accounts. Respondent argued that, even if the Burns & Speck attorney trust account had not been clearly identified as such, as required by the Rules, he should not be punished for an "administrative bank error that the public never saw."

Finally, in respect of the alleged violations of RPCs 7.1 and 7.5, respondent maintained that, because he and Burns had formed the partnership on May 31, 2011, he was permitted to operate the firm under the name "Burns & Speck," without further clarification on the letterhead, even after Burns had died.

Accordingly, respondent urged the special master to dismiss all of the ethics charges in the complaint. Before us, respondent acknowledged that he committed a recordkeeping violation and improperly used Burns' signature stamp, and requested the imposition of an admonition.

* * *

The special master determined that respondent was not guilty of knowing misappropriation, reasoning that he had been in a "difficult situation" in assuming Burns' practice; that there was no evidence that the finances for Burns Law had ever been explained to respondent; that Burns Law had significant debts, including fee arbitration awards; and that retainers needed to be returned for work Burns had failed to perform.

Moreover, the special master determined that the OAE failed to establish, by clear and convincing evidence, that respondent knew that the Katenkamp check represented client funds, finding that respondent had reasonably relied on McMillon's representation that Burns had told her the check represented Burns' earned legal fees. The special master stated that "[o]f course we now know through the testimony of Angela Burns . . . that the money likely was not for legal fees or otherwise belonged to Mr. Burns for his use," but concluded that there was "not a scintilla of evidence" that McMillon or respondent had any reason to doubt Burns' representation that the check represented earned legal fees. The special master did not address the OAE's argument that respondent knowingly misappropriated of law firm funds, in violation of Siegel.

The special master further found respondent not guilty of violating RPC 8.4(c), concluding that respondent was "not

equipped to take over" Burns Law, given the issues associated with the firm, combined with his duties as attorney-trustee for Burns Law. Although the special master found that respondent "did not handle those matters with the efficiency and expertise" required, and that his conduct was "dilatory and sloppy," he concluded that there was no evidence that respondent acted with dishonesty, fraud, deceit or misrepresentation.

The special master determined that the OAE had proven, by clear and convincing evidence, that respondent had violated the recordkeeping requirements set forth in RPC 1.15(d) and R. 1:21-6. Specifically, the special master found that respondent was aware that Burns' signature stamp was being improperly used, after his death, to issue checks from the Burns Law bank account; that respondent had failed to account for the Katenkamp funds after they were deposited into the Burns & Speck trust account, and that the funds should not have been deposited into that trust account, since it was believed that they were legal fees; and that he endorsed checks drawn on the Katenkamp account, without having made any inquiry into the legal work that purportedly justified Burns' fee.

Finally, the special master found that the OAE had proven, by clear and convincing evidence, that respondent had violated RPCs 7.1 and 7.5. Specifically, the special master determined

that respondent's use of the Burns & Speck letterhead without a notation that Burns was deceased did not comply with the applicable Rules.

The special master found, in mitigation, that respondent had no disciplinary history and that there was "little likelihood of repeat offenses as the circumstances that led to the violations surrounded the emotional death of a close friend and business partner." He did not find any aggravating factors.

The special master recommended an admonition for respondent's unethical conduct.

* * *

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. We conclude, however, the evidence does not support a finding that respondent is guilty of the knowing misappropriation of either client or law firm funds.

In Wilson, the Court announced that attorneys who steal or borrow clients' monies without their consent [will] be disbarred. Wilson described knowing misappropriation of client trust funds 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.
>
> [In re Wilson, 81 N.J. at 455 n.1].

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment that is "almost invariable" . . . 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 was 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.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986)].

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client, and knowing that the client had not authorized him or her to do so.

Here, the OAE has failed to satisfy its burden of proof in respect of two key elements of Wilson: (1) that respondent used the Katenkamp funds, knowing that they were client trust funds; and (2) that respondent did so, despite knowing that the client (in this case, the Katenkamp heirs) had not authorized the taking.

Specifically, there is no evidence that, on July 8, 2011, when respondent authorized the deposit of the $13,503.59 Katenkamp check, he had information regarding the legal posture of the Katenkamp estate, and had reviewed Burns Law's financials. He, therefore, had no understanding of the nature of the Katenkamp estate trust funds. Moreover, the record is bereft of evidence that he had knowledge that Burns previously had discussed the Katenkamp funds with his wife, and had confessed a contingency plan involving the theft of those client trust funds. Further, the undisputed evidence established that McMillon told respondent, after Burns had died, that the $13,503.59 Katenkamp check represented legal fees that Burns had earned. McMillon had unfettered access to Burns Law's attorney trust and business accounts, and had been Burns' "right hand" for years.

Based on the foregoing, the OAE failed to establish that, when respondent received and disbursed the Katenkamp funds, he

knew that they were client funds, that the client had not authorized him to use those funds for his own purposes, and that he used them, nevertheless. Instead, the record supports respondent's position that he reasonably relied on McMillon's representation that the funds represented fees that Burns had earned, but had not taken, during the course of his representation of the Katenkamp estate.

Moreover, the OAE failed to establish, by clear and convincing evidence, that respondent's defense to the Wilson charge (perhaps unwittingly) established, by clear and convincing evidence, a Siegel violation. Respondent asserted, as an affirmative defense, that, as of May 31, 2011, he and Burns had formed a legitimate law partnership. In turn, the OAE argued that, in respect of that defense, respondent's admissions and sworn testimony place his conduct squarely in the realm of knowing misappropriation prohibited by Siegel. As a threshold matter, the formal ethics complaint did not explicitly charge respondent with the Siegel variety of knowing misappropriation and the OAE made no effort to amend the complaint during these proceedings. We do not find, however, that respondent was never put on notice of such an allegation, nor afforded the opportunity to mount any defense to it, as due process requires,

or that the Siegel allegation be rejected outright. See R.1:20-4(b) and In re Roberson, 210 N.J. 220 (2012).

Rather, we accept the OAE's position that respondent affirmatively implicated the OAE's Siegel theory of knowing misappropriation through his hybrid defense: that he and Burns had formed a law partnership as of May 31, 2011, and that the Katenkamp check represented legal fees earned by Burns prior to his death. We find that he and Burns had formed a law partnership as of May 31, 2011, and, thus, consider the OAE's argument that he knowingly misappropriated law firm funds, in violation of Siegel.

Based on the record before us, however, the OAE failed to prove, by clear and convincing evidence, that respondent knowingly misappropriated law firm funds, in violation of Siegel. In In re Sigman, 220 N.J. 141 (2014), the most recent opinion addressing such misconduct, the Court

> construed the 'Wilson rule, as described in Siegel,' to mandate the disbarment of lawyers found to have misappropriated firm funds '[in] the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.
>
> [Sigman, 220 N.J. at 157 (quoting In re Siegel, 133 N.J. 162, 167-68 (1993)].

In Siegel, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds

should result in disbarment. During a three-year period, Siegel had converted more than $25,000 in funds from his firm by submitting false disbursement requests to the firm's bookkeeper. Id. at 163-64. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal expenses, including a mortgage service fee for his mother-in-law. Ibid. While the payees were not fictitious, the stated purposes of the expenses were. Ibid.

Although the Board did not recommend the attorney's disbarment, the Court agreed with the dissenting public members of the Board, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." Ibid. The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline. Id. at 168.

In In re Greenberg, 155 N.J. 138 (1998), the Court refined the principle announced in Siegel. Greenberg was also disbarred, after misappropriating $34,000 from his law firm, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. Id. at 153, 159. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing

the checks in his firm's trust account. Id. at 141. Per his instructions, the client then issued checks for legal fees directly payable to Greenberg. Ibid. Additionally, the attorney falsified disbursement requests, and used those proceeds to pay personal expenses. Id. at 141-43.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Id. at 153. Additionally, he submitted over 120 letters from peers and community members, testifying to his reputation for honesty and integrity. Id. at 162. Determining that Greenberg appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158, 162.

In In re Staropoli, 185 N.J. 401 (2005), the attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli, an associate in a Pennsylvania law firm, was aware that contingent fees were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005) (slip op. at

2). In May 2000, Staropoli settled a personal injury case he had originated, earning a contingent fee. Ibid. The insurance company issued a check payable to both him and the client. Ibid. He did not tell the firm of his receipt of the check and deposited it into his personal bank account, rather than the firm's account. Ibid. He then distributed $6,000 to the client and kept the $3,000 fee for himself. Ibid.

In August 2000, Staropoli left the firm without disclosing his receipt of the fee in the personal injury case. Id. at 3. The firm learned of his misconduct when the insurer called the firm seeking the client's post-settlement release. Ibid. When the firm confronted Staropoli, he alternately misrepresented that he had not charged the client a fee because she was a friend; that he charged her less than a one-third fee; and that he charged her only $1,500. Ibid. In May 2001, he made restitution to the firm for its portion of the fee. Ibid.

At the Pennsylvania disciplinary hearing, Staropoli expressed remorse and embarrassment. Id. at 4. In addition, two lawyers, from the very firm from which he misappropriated the funds, testified to his good character. Id. at 5. At no point, during either the Pennsylvania or New Jersey disciplinary proceedings, however, did Staropoli assert that he misunderstood his firm's fee-sharing policies, that there was a genuine dispute

about his entitlement to the entire fee, or that he had resorted to "self-help" because the firm denied him compensation to which he was entitled. Id. at 20. Rather, he admitted that he misappropriated the legal fees due to financial need and anger at the firm, caused by the imminent termination of associates, including him. Ibid.

The Board issued a divided decision. Four members found that the attorney's single aberrational act should not require "the death penalty on [Staropoli's] New Jersey law career." Id. at 22-23. Those members were convinced that his character was not permanently flawed or unsalvageable. Id. at 23.

The four members who voted for disbarment found that the attorney did not have a reasonable belief of entitlement to the funds that he withheld from the firm, and that he had advanced no other valid reason for his misappropriation of law firm funds. Id. at 19-20, 22. The Court agreed with these members and disbarred the attorney.

See also In re Malanga, 227 N.J. 2 (2016) (attorney disbarred for knowingly misappropriating client and law firm funds, repeatedly, over the course of years; although the attorney asserted that he had committed no misappropriation of funds, the evidence revealed that he had engaged in a methodical scheme designed to render his invasion of funds undetectable; the

attorney had also fabricated court documents to conceal from his clients that he had mishandled their cases); In re Leotti, 218 N.J. 6 (2014) (attorney disbarred for knowingly misappropriating funds from his law firm; in six cases, the attorney instructed clients to pay fees directly to him; he then retained the funds for his personal benefit); In re Epstein, 181 N.J. 305 (2004) (attorney disbarred for knowingly misappropriating funds from his law firm; in four cases, the attorney instructed clients to issue fee checks to him; he then cashed the checks and retained the funds); and In re LeBon, 177 N.J. 515 (2003) (attorney disbarred for diverting $5,895.23 of law firm funds by instructing a client to make a check for fees payable to him; he directed his secretary to confirm the instructions).

In other cases, however, the Court has found that attorneys who were embroiled in a business dispute with their law firms were not guilty of knowing misappropriation and, thus, were saved from disbarment. See, e.g., In re Bromberg, 152 N.J. 382 (1998) (attorney's belief that he owned a partnership interest in a law firm led him to understand that he was entitled to receive checks from a client); In re Spector, 178 N.J. 261 (2004) (attorney retained fees earned at his prior law firm while in a dispute with that firm over an employment agreement); and In re Nelson, 181 N.J. 323 (2004) (attorney took funds while

in the midst of a partnership dispute over concealed malpractice lawsuits, improper referral payments, attempts to "steal" his clients, and improper expenditure of law firm funds).

Given the unique circumstances of this case, where respondent was attempting to navigate (1) the formation of a new law firm; (2) the assumption of Burns Law's debts and continuing client obligations; and (3) the death of his best friend all within a relatively short period of time, we conclude that the OAE's Siegel theory of knowing misappropriation is not supported by clear and convincing evidence. Rather, respondent's conduct, while not on all fours given the unique facts of this case, was most akin to the facts of Bromberg, in that respondent had a reasonable belief of entitlement to use the funds, based on his partnership interest in Burns & Speck.

In the fog within which he was operating, respondent authorized the deposit of the Katenkamp funds in Burns & Speck's firm accounts, and ultimately spent those funds to operate the new firm and to pay his personal expenses, based on the belief that those funds represented legal fees duly earned by Burns, prior to his death, and were, thus, available for use by Burns & Speck – including for his authorized draws as a partner, which represented compensation for legal work he was performing at the time he utilized those funds. Based on the record before us, we

determine that he sincerely believed his actions to be justified, as evidenced by his contribution of his own previously-earned legal fees to fund the new law firm. Undoubtedly, respondent should have been much more diligent and careful in his treatment and use of the purported legal fees derived from the Katenkamp estate. We determine, however, that he did not fully appreciate the nature of those funds or the attendant circumstances, in respect of either the incomplete terms of the partnership between he and Burns, or his role as the then attorney-trustee for Burns Law, which he was truly ill-equipped to handle. We also cannot conclude that Burns, were he alive, would not have agreed to use his previously-earned fees to fund the new venture. Therefore, although respondent's treatment and use of those fees is aptly characterized as irresponsible, based on the unique facts and circumstances of this case, we cannot conclude that it constituted the knowing misappropriation of law firm funds.

Given our finding that a partnership existed between Burns and respondent, prior to Burns' death, we further determine to dismiss the charges that respondent's use of the firm name "Burns & Speck" on letterhead and advertising violated RPCs 7.1 and 7.5. Specifically, we find that, despite the short duration of the partnership prior to Burns' death, respondent's use of

his deceased law partner's name was not misleading, and thus, was not unethical.

Respondent's additional conduct, however, was unethical and is worthy of discipline. Specifically, respondent admits having committed recordkeeping infractions. First, he failed to adequately oversee the Burns Law attorney trust and business accounts, despite his purported status as a partner and uncontroverted, but short appointment as attorney-trustee. Next, he failed to review and reconcile the Burns & Speck attorney trust and business accounts, basic obligations required of him, as the sole attorney of the firm. Finally, he allowed McMillon to deposit checks in Burns & Speck accounts without reasonable inquiry into the source of the funds, and failed to identify which client matters corresponded to the checks. Respondent, thus, violated both RPC 1.15(d) and R. 1:21-6.

Respondent also failed to oversee the transition from Burns Law to Burns & Speck in an honest and transparent fashion. Although the special master determined that his conduct was simply "dilatory and sloppy," we determine that it was unethical. Specifically, he failed to promptly notify Burns Law's financial institutions of Burns' death. Worse, he was complicit in McMillon's issuance of checks using Burns' signature stamp after Burns' death. He acknowledged that, "at some point" after Burns' death, he became

concerned with the ethics implications of using Burns' signature stamp, stating that he "figured out [McMillon] was writing checks with a stamp." Yet, he conceded that, as late as June 20, 2011, almost three weeks after Burns had died, he deposited a $500 draw check, obviously issued using Burns' stamp, and could not recall taking any corrective action in respect of McMillon's use of Burns' signature stamp. Respondent, thus, violated RPC 8.4(c).

We now turn to the appropriate discipline for respondent's violations of RPC 1.15(d) and RPC 8.4(c). An admonition is the usual form of discipline for recordkeeping violations, as long as they do not cause negligent misappropriation of funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after the attorney's business account was closed, due to an overdrawn balance, he deposited a $200 check, representing the payment of a fee, into his trust account, which had a $1 balance; due to insufficient funds in the client's checking account, when respondent withdrew funds against the $200 deposit, he overdrew the trust account; a demand audit uncovered several violations of R. 1:21-6, including the attorney's failure to maintain trust or business receipts or disbursements journals, or client ledger cards, contrary to RPC 1.15(d); we considered his unblemished disciplinary history and his

cooperation with ethics authorities by admitting his conduct); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances; failed to promptly remove earned fees from the trust account; and failed to perform monthly three-way reconciliations; violations of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline); and In the Matter of Tonya M. Smith, DRB 13-193 (November 25, 2013) (the attorney had failed to prepare monthly three-way trust account reconciliations; the trust account balances included unidentified client funds; and she had cashed a trust account check, payable to herself for a legal fee, without first depositing it into the business account; in mitigation, we considered that no disciplinary infractions had been sustained against her since her 1984 admission to the New Jersey bar, that she had admitted her wrongdoing, and that she had retained the services of a qualified certified public accountant to assist her in the proper maintenance of her books and records).

Respondent's failure to promptly notify financial institutions of Burns' death, and his complicity in McMillon's use of Burns' signature stamp, constituted conduct involving dishonesty, fraud, deceit, or misrepresentation, which ordinarily results in at least a reprimand. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation); and In re Frey, 192 N.J. 444 (2007) (attorney, while representing a purchaser, misrepresentated to a real estate agent that he had received an additional deposit of $31,900; when the attorney received from his client an $11,000 installment toward the deposit, he later

released those funds to his client, despite his fiduciary obligation to hold them and to remit them to the realtor).

On balance, we determine that a reprimand is the proper quantum of discipline for respondent's violations of RPC 1.15(d) and RPC 8.4(c). In so determining, we again emphasize the unique circumstances of this case, wherein respondent was navigating through the death of his best friend, while both attempting to assume the debts and obligations of Burns Law and endeavoring to launch the new law firm that he and Burns had hoped would evolve into a successful partnership.

Member Singer agreed with the imposition of a reprimand, but determined that respondent's conduct did not constitute a violation of RPC 8.4(c).

Member Gallipoli voted to recommend respondent's disbarment, finding that respondent offered no evidence of entitlement to the Katenkamp funds that he took, which he understood to be legal fees earned by Burns decades prior to the formation of their partnership. Given those circumstances, Member Gallipoli concluded that respondent's wielding of the partnership agreement with Burns, as a sword, to defend the Wilson charge, while providing sworn testimony that he believed the Katenkamp funds were a legal fee earned by Burns, leads to the inescapable conclusion that respondent must fall on that sword. His status as

Burns' law partner (and as the attorney-trustee for Burns Law) convinces Member Gallipoli to conclude that, when respondent authorized the deposit of the Katenkamp funds as Burns' earned fee, and then proceeded to use those funds, in violation of the express terms of the partnership agreement, he knowingly misappropriated law firm funds. He, thus, must face the ultimate sanction of disbarment.

Vice-Chair Baugh and Member 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael R. Speck
Docket No. DRB 17-336

Argued: November 16, 2017

Decided: March 15, 2018

Disposition: Reprimand

Members	Reprimand	Disbar	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel