SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-084
District Docket No. XIV-2016-0726E

IN THE MATTER OF

ANTOINETTE M. WOOTEN

AN ATTORNEY AT LAW

Decision

Argued: May 17, 2018

Decided: June 27, 2018

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

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's disbarment in the United States District Court for the Eastern District of New York (EDNY). As set forth below, respondent's conduct violated the equivalents of New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J.

451 (1979) (knowing misappropriation of client funds), among other ethics violations.

The OAE recommends respondent's disbarment. Respondent requests that "this matter be dismissed and that [she be] given another opportunity and [be] permitted to continue to practice law."

For the reasons set forth below, we find that respondent knowingly misappropriated client funds and, thus, we determine to grant the OAE's motion for reciprocal discipline and recommend her disbarment.

Respondent earned admission to the New Jersey bar in 1991, and, subsequently, earned admission to the bars of the United States District Courts for the District of New Jersey, the EDNY, and the Southern District of New York. She has no history of discipline in New Jersey.

We glean the facts of this case from the September 19, 2016 written decision issued by United States Magistrate Judge Robert M. Levy. At the conclusion of respondent's disciplinary hearing in the EDNY, Judge Levy found that respondent had "intentionally converted" her client's settlement funds that respondent had received, in trust, in connection with an action litigated in the EDNY. Judge Levy determined that respondent had violated the New York State Rules of Professional Conduct 1.15(a) through

(e). Judge Levy, thus, recommended that respondent be disbarred for her misconduct, and the Committee on Grievances for the EDNY adopted and enforced that recommendation.

In so determining, the Committee on Grievances also relied on the following facts found by Judge Levy. In March 2012, plaintiff Dolores R. Edkins retained respondent to prosecute an employment discrimination action, filed in the EDNY, against the City of New York and other defendants. Respondent was introduced to Edkins by her uncle, Edward Armstrong, who was an attorney and respondent's law school classmate. Pursuant to the retainer agreement between respondent and Edkins, respondent's legal fee was one-third of any award, plus expenses.

In March 2014, the discrimination action was dismissed, with prejudice, pursuant to a settlement agreement, whereby the City of New York agreed to pay Edkins $85,000. During her ethics hearing, respondent testified that Edkins had authorized both respondent's initial settlement demand of $90,000, and respondent's acceptance of the defendants' counteroffer of $85,000. Respondent also testified that she believed that Edkins was competent and, thus, able to make such decisions in respect of the litigation - a fact relevant to respondent's misconduct in this matter.

At a March 6, 2014 meeting, respondent and Edkins signed a Stipulation of Settlement, which provided that the City of New York would (i) pay Edkins $85,000 to settle the action; (ii) issue a check for $85,000 payable to respondent's firm; and (iii) send the check to respondent's office. During that meeting, respondent explained to Edkins that she would deduct her contingent fee and expenses from the settlement proceeds, and agreed to send Edkins a check payable to her, at her home address, for the remainder of the funds. Subsequent to that meeting, during a telephone conversation, Edkins instructed respondent to send Edkins' portion of the settlement proceeds, via check, to her fiancé's home address.

On March 7, 2014, the City of New York issued a check for $85,000, payable to respondent's firm, in accordance with the Stipulation of Settlement. According to respondent, around that same date, she began to receive telephone calls from both Armstrong and Edkins' fiancé, inquiring into the status of Edkins' settlement proceeds. Despite her testimony that Edkins was competent, respondent claimed that these telephone calls caused her concern as to whether Armstrong and the fiancé were seeking to "manipulate" Edkins or "had designs" on the settlement proceeds.

According to respondent's financial records and her admissions, on May 20, 2014, the $85,000 settlement check was deposited into a Capital One account she controlled. On May 19, the day before the deposit, the balance of that account was only $.60. On May 21, 2014, respondent transferred $22,000 of the settlement proceeds to a different Capital One account, characterized as her "operating account," which, she testified, she used for business expenses and infrequent personal expenses, but never to hold clients' funds. Respondent also testified that she had calculated her portion of the settlement funds, plus expenses, to be $29,500, leaving a balance of $55,500 earmarked for Edkins. The $22,000 initial transfer, thus, represented a portion of respondent's fee.

By late May 2014, respondent had informed Edkins of the receipt of the settlement proceeds, and had represented that she would send a check for Edkins' portion to her fiancé's home address. A similar conversation occurred in June 2014, during which Edkins informed respondent that she could send the check to either her home address or her fiancé's home address.

Between June and October 2014, respondent made over thirty transfers from Edkins' settlement proceeds into her "operating account," ultimately disbursing the entirety of the settlement proceeds, despite her prior determination that $55,500 belonged

solely to Edkins. By October 2014, the balance of the Capital One account in which she had deposited the $85,000 in settlement funds was reduced to only $.60, the exact pre-settlement balance. By the end of October, the balance had fallen into negative status.

Based on a review of her financial records, Judge Levy determined that respondent used the $85,000 in settlement proceeds to pay for business and personal expenses, including pharmacies, hotels, restaurants, clothing purchases, and cash withdrawals. Indeed, during oral argument before us, respondent admitted that she had used Edkins' funds for business and personal expenses.

Respondent testified that she spoke with Edkins in November 2014, and that Edkins was "clear" that she wanted her portion of the settlement proceeds, and had instructed respondent to send a check to her uncle, Armstrong. Despite respondent's knowledge that she had already spent the entirety of the settlement proceeds, she advised Edkins that she would not disburse Edkins' portion of the settlement proceeds to Armstrong without written authorization from Edkins. Respondent admitted that she had no communication with Edkins after December 9, 2014, the date on which she sent a text message to Edkins, falsely representing

that a "check was mailed to your Uncle Edward's office last Wednesday."

During the ethics hearing, respondent further claimed that, based on her purported concerns over Armstrong's and Edkins' fiancé's "designs," she had consulted with disciplinary authorities and other attorneys, who had purportedly recommended that she "secure" the settlement funds; yet, she admitted that Edkins' funds were not kept on deposit with any financial institution. Rather, she maintained that she had "set aside for Ms. Edkins a portion of [respondent's] collection of gold and silver coins which she stores in a coin box at a relative's home in Pennsylvania," and that the portion was worth $55,500 - the amount of Edkins' portion of the settlement proceeds. Respondent provided no evidence of either the existence or the value of the coins.

On December 12, 2014, Armstrong wrote to the EDNY, informing the trial judge in Edkins' discrimination action that respondent had not disbursed any of the settlement funds to Edkins, despite her multiple representations that she would do so. The court attempted to forward that letter to respondent, but it was returned as undeliverable. Respondent admitted that she ultimately received and read the court's letter, but took no remedial action. Consequently, on May 26, 2015, Armstrong

initiated an ethics grievance, in behalf of Edkins, with the EDNY.

After the ethics hearing concluded, Judge Levy rejected respondent's claim regarding the gold and silver coins, determining, instead, that respondent had "misappropriated her client's funds by spending the entire amount due to Ms. Edkins on various business or personal transactions," and, thus, violated New York RPC 1.15(a) (misappropriation of client funds).

Judge Levy further determined that respondent had not properly designated her attorney trust account or attorney business account, and had not maintained Edkins' settlement proceeds in a banking institution, and, thus, violated New York RPC 1.15(b); that respondent had failed to remit Edkins' portion of the settlement proceeds to her, despite repeated requests, and, thus, violated New York RPC 1.15(c) (failure to promptly deliver client funds); that respondent had not maintained required financial records, as she had conceded during an ethics deposition, and, thus, violated New York RPC 1.15(d) (failure to segregate client funds and maintain required financial records); and that respondent improperly had withdrawn and transferred client funds without Edkins' knowledge or consent, and, thus,

violated New York RPC 1.15(e) (prohibited cash withdrawals from trust account).

Given respondent's "intentional conversion" of her client's funds, Judge Levy recommended respondent's disbarment, citing the New York disciplinary precedent of In re Katz, 960 N.Y.S.2d 8, 10 (1st Dep't 2013). He wrote:

> "The 'venal intent' necessary to support intentional conversion [under the predecessor to Rule 1.15] is established where, as here, the evidence shows that the attorney knowingly withdrew client funds without permission or authority and used said funds for his own personal purposes" and "it is well settled within this Department that absent "exceptional mitigating circumstances" the intentional conversion of escrow funds requires disbarment . . . ." (citations omitted).
>
> [OAEEx.Ap16.][1]

In determining that disbarment was warranted, Judge Levy rejected respondent's purported defenses and proffered mitigation that she was "motivated by a concern for safeguarding Ms. Edkins' funds, and that [she] faced personal challenges during the relevant time period." Judge Levy concluded that respondent had provided no explanation that would "either justify her conduct or demonstrate her fitness to practice law" (OAEEx.App16-17).

[1] "OAEEx" refers to the exhibits to the OAE's February 28, 2018 brief and appendix in support of the motion for reciprocal discipline.

Respondent admitted that, as of August 3, 2016, the date of the EDNY ethics hearing, she had not remitted any portion of the settlement proceeds to Edkins. Further, during oral argument before us, respondent admitted that she still had not remitted any portion of the settlement proceeds to Edkins, but, rather, was waiting for the New Jersey Lawyers' Fund for Client Protection (the Fund) to compensate Edkins. Upon further questioning from us, she acknowledged her obligation to reimburse the Fund if such a payment were made to Edkins.

* * *

In its brief to us, and during oral argument, the OAE asserted that respondent's "intentional conversion" of Edkins' funds constitutes the knowing misappropriation of client funds prohibited by In re Wilson, 81 N.J. 451 (1979), and, thus, disbarment must result. The OAE emphasized Judge Levy's determination that respondent's misappropriation of Edkins' funds was intentional; that she did not have authorization from Edkins to use her funds; and that she spent the money on personal expenses, eventually overdrawing the Capital One account in which the settlement proceeds had been deposited.

In her brief to us, and during oral argument, respondent requested that "this matter be dismissed and that [she be] given another opportunity and [be] permitted to continue to practice

law." In support of her position, respondent asserted that she has no prior discipline, despite her extensive practice of law; that she has implemented measures to ensure that future clients receive their funds; that she was undergoing personal problems during the relevant time period, including a home fire and her mother's diagnosis with Alzheimer's disease; that other New Jersey attorneys and judges had been given second chances, despite egregious misconduct; and that "Donald Trump . . . was permitted to run for office in spite of his being investigated for treason [and] several claims of sexual misconduct."

Respondent also noted that she had settled cases for more money than she had received in behalf of Edkins, and did not steal those funds. Notably, respondent did not argue that she was authorized to use Edkins' funds, and, further, admitted that she had undertaken no efforts to pay Edkins the $55,500 owed to her. Alarmingly, during oral argument, respondent admitted that she was unaware of the Wilson rule, and had not reviewed the case, despite having received the OAE's motion and brief in support of discipline.

* * *

Following a review of the full 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 in pertinent part:

> 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; or
>
> (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 (E).

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal

discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

We adopt the findings set forth in Judge Levy's decision, upon which the Committee on Grievances for the EDNY relied, and determine that respondent's conduct violated New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds). Specifically, after an ethics hearing, the Committee on Grievances for the EDNY found respondent guilty of the knowing misappropriation of client funds, which is characterized as "intentional conversion" under New York disciplinary precedent.

In Wilson, the Court 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, there must be 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.

As detailed above, the record clearly establishes that, in 2014, respondent represented Edkins in an employment discrimination action in the EDNY, settled the case for $85,000, and received a check for the full amount of the settlement proceeds, payable to her firm. Rather than disburse her contingent legal fee plus expenses and promptly remit the remainder of the settlement proceeds to her client, respondent eventually used the entire $85,000, without her client's consent

or authorization, to pay business and personal expenses. Indeed, respondent ignored her client's repeated requests that she disburse the client's portion of the settlement proceeds; made efforts to delay the inevitable discovery of her misconduct; and made affirmative misrepresentations to her client that she had sent a check for the full amount of the client's settlement proceeds.

Respondent has neither denied her misappropriation of Edkins' funds, nor asserted that her use of those client funds was authorized. To the contrary, she admits that she had earmarked $55,500 to be held, inviolate, in behalf of Edkins, but conceded that, by October 2014, she had spent every dime of the $85,000 in settlement funds, as proven by her financial records.

Respondent's claim that her actions were taken out of concern that her client would be bilked by her fiancé and her uncle is disingenuous, at best. Respondent herself determined that her client was competent and able to make her own decisions in respect of the settlement demand and offer. No evidence supports respondent's perception that Edkins would be swindled by her family or that her competence had waned in the months following respondent's receipt and use of her funds. Indeed, had respondent's concern been genuine, she easily and properly could

have protected her client's funds by simply leaving them intact in her trust account, where they belonged, until a proper determination could be made. Instead, respondent helped herself to every penny of her client's funds, knowing that they did not belong to her and knowing that she did not have her client's authorization to use them. Then, she sought to justify her clearly improper conduct by claiming to have set aside valuable coins, the existence and value of which were not documented, to "collateralize" her client's interest. We shudder to think of the consequences that would flow if all attorneys approached their fiduciary duties in such a casual fashion. Moreover, if respondent truly had her client's interests at heart, respondent would have safeguarded the settlement funds and sold her coins to provide the funds she so obviously needed.

We share Judge Levy's grave concerns regarding respondent's fitness to practice law. Indeed, we are alarmed by respondent's claim that she has complied with her solemn duty to safeguard her client's funds by her unilateral determination to substitute an undocumented and unvalued collection of coins for the hard cash Edkins was entitled to receive. Respondent has demonstrated her noncompliance with her fiduciary responsibilities, which actions were fully documented in Judge Levy's written decision and admitted to by respondent before us. Accordingly, she is a

danger to the unsuspecting members of the public, who continue to use her services and who continue to trust her with their funds.

For these reasons, based on her knowing misappropriation of her client's funds, in violation of RPC 1.15(a), and pursuant to the principles of Wilson, respondent must be disbarred. We so recommend.

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 Antoinette M. Wooten
Docket No. DRB 18-084

Argued: May 17, 2018

Decided: June 27, 2018

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Ellen A. Brodsky
Chief Counsel