

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 18-242  
District Docket Nos. XIV-2016-0440E and  
XIV-2017-0396E

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In The Matter Of  
Victor K. Rabbat  
An Attorney At Law

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Decision

Decided: January 3, 2019

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). 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) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation); RPC 3.4(c) (knowingly disobeying a court order); RPC 8.1(b) (failure to cooperate with disciplinary officials); RPC 8.4(b)

(committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine that respondent knowingly misappropriated client funds and recommend his disbarment.

Respondent was admitted to the New Jersey bar in 1984. At the relevant times, he maintained an office for the practice of law in Totowa. On March 22, 2012, he received an admonition for gross neglect and lack of diligence, after he failed to serve a complaint on the defendant within the time prescribed by the court. In the Matter of Victor K. Rabbat, DRB 11-437 (March 22, 2012). Additionally, respondent was suspended for three years, effective April 8, 2017, for the negligent misappropriation of client funds. In re Rabbat, 228 N.J. 274 (2017). Respondent remains suspended to date.

Service of process was proper in this matter. On May 1, 2018, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's home address. The certified mail was returned on May 29, 2018, with the notation "return to sender, unclaimed, unable to forward." The regular mail was not returned. The OAE sent a follow-up letter on June 12, 2018, via certified and

regular mail, informing respondent that, if he failed to file an answer to the complaint, its allegations would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The certified mail return receipt and regular mail were not returned. By letter dated June 17, 2018, respondent represented to the OAE that he would submit his answer by June 28, 2018. Respondent failed to file an answer to the complaint. On July 6, 2018, the OAE certified the record to us.

We now turn to the allegations of the complaint.

On June 4, 2016, Fannie Knight filed a complaint against respondent with the New Jersey Office of the Attorney General, Division of Consumer Affairs (DCA). She alleged that respondent received the settlement funds from her personal injury claim in connection with a January 2013 accident, failed to pay her medical obligations, and kept the entire settlement. On June 17, 2016, the DCA forwarded the complaint to the OAE.

The OAE investigation revealed that respondent represented Knight in a personal injury matter. On March 2, 2016, during Knight's deposition, she agreed to settle with the insurance company for \$12,500. Respondent prepared the closing statement, which indicated that Knight owed \$3,843 in legal fees and

\$971 costs, totaling \$4,814, and that she was entitled to the \$7,686 balance. Respondent believed, based on discussions with one of Knight's medical providers, that the provider would be seeking \$300 for Knight's failure to attend a medical examination. Thus, he included that expense in the closing statement. Respondent had not made an advance payment for this medical obligation.

On April 1, 2016, respondent deposited a \$12,500 check, payable to Knight and his law office, into his trust account. He immediately disbursed \$4,814 to himself, which included the \$300 medical provider fee. Respondent deposited this check into his business account. On June 13, 2016, he disbursed \$7,686 from his trust account to Knight, stating, in the cover letter, "I must still hold the \$300 in the event I am contacted by [the doctor's office] demanding payment of the fee. I will wait until September 1, 2016." On returning the closing statement to respondent, Knight marked what she believed were the proper calculations and disputed respondent's retention of the \$300. By letter dated May 18, 2016, respondent replied that he was obligated to continue to withhold the \$300. Later, in his reply to the grievance, respondent acknowledged that he was holding the \$300 "as a potential disbursement in the event a claim was formally made at a later time." On various dates between May 2016 and May 2017, respondent's business account reflected a negative balance. Ultimately, on May

15, 2017, after the grievance was filed, respondent returned the \$300 to Knight. The complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 and In re Hollendonner, 102 N.J. 21, and RPC 8.4(c).

The Knight matter prompted the OAE to conduct a thorough investigation of respondent's records in other matters. The investigation revealed that respondent represented Karen Ritacco in a workers' compensation matter. Horizon Blue Cross Blue Shield (BCBS) had a pending \$13,450.21 lien against Ritacco for medical treatment. Respondent told Ritacco that this obligation would need to be satisfied before the matter could be closed. After BCBS's claim was reduced, the trial court directed respondent to hold \$12,978.84, pending further compromise. The workers' compensation matter had settled for \$37,655.

On April 11, 2016, respondent received a check made payable to "Trust Acct Victor Rabbat Esq" for \$12,978.84, which he deposited into his attorney trust account. Between May 25 and October 6, 2016, respondent issued five checks totaling \$12,500 to "Rabbat Law Office." Four of the five checks referenced "Ritacco/G-373-09" and all of the checks were deposited into respondent's business account. At each of the times respondent moved money to his business account, the balance in the business account was either low or

negative. Further, one week after each of the deposits to the business account, respondent spent the funds, reducing the balance to less than \$100. The OAE determined that these payments, totaling \$11,609.18, were made from the business account for respondent's "personal or business purposes." Ritacco did not consent to respondent's use of the \$12,500.

On November 7, 2016, respondent deposited a \$12,500 check from his business account into his trust account with the notation in the memo line "Ritacco."

Respondent ultimately resolved the outstanding BCBS \$12,978.84 obligation for \$10,000, which was paid, on February 2, 2017, to First Recovery Group, a health care insurance subrogation company. On that same day, respondent issued a check to Rabbat Law Office for \$2,978.84 with the reference Ritacco/G-373-09 and deposited it into his business account. Within five days, the business account balance was (\$68.06), after respondent paid his personal and business expenses.

On April 28, 2017, Ritacco e-mailed respondent, asking when she would be receiving the \$2,978.84 to which she was entitled. Respondent replied, on May 2, 2018, that payment was made to BCBS and that he planned to wait two weeks before sending a check for the balance to Ritacco. On the date he sent his

reply to Ritacco, the balance in his business account, where he had transferred Ritacco's funds, was only \$2,395.89 or \$582.95 less than the amount he should have been holding for her. On May 16, 2017, respondent issued a business account check to Ritacco for \$2,978.84. Ritacco had not consented to respondent's use of the \$2,978.84.

The complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 and In re Hollendonner, 102 N.J. 21, and RPC 3.4(c) (based on his knowing disregard of the court's order requiring him to hold the amount of \$12,978.84 in trust, pending resolution of BCBS' lien), RPC 8.4(b) (based on respondent's violation of N.J.S.A. 2C:21-15 for his misapplication of entrusted funds), and RPC 8.4(c).

The complaint also charged respondent with failing to cooperate with the OAE's investigation into these matters. On March 23, 2017 and April 13, 2017, the OAE sent a copy of Knight's grievance to respondent, by certified and regular mail, to his home address listed on his attorney registration, requesting that respondent submit a detailed written response to Knight's allegations. However, both the certified and regular mail were returned undelivered. The OAE, therefore, re-sent the grievance to a new address on May 5, 2017, but respondent failed to respond.

On May 24, 2017, the OAE contacted respondent by telephone. Respondent acknowledged having received the OAE's May 5, 2017 letter and represented that he would submit his written reply by the middle of the following week. The OAE set a deadline of June 2, 2017 for respondent to submit his response, which he did. However, on June 6, 2017, the OAE requested additional documents because respondent's June 2, 2017 submission failed to include the documents the OAE had requested in its March 23, 2017 letter. Because respondent did not reply to the OAE's June 6, 2017 letter, the OAE sent a second notice to respondent, on July 7, 2017, requesting documents and records.

On July 7, 2017, respondent wrote to the OAE and "respectfully reject[ed]" its request that he provide the enumerated documents. He then asserted that he believed his prior submission to the OAE had been sufficient and that "[y]ou are fully aware that my professional license is currently suspended . . . out of a matter in which your office attempted, but failed, to get me disbarred. . . . Your demand for the items specified in your said letter is a blatant attempt on your part to harass and intimidate me." He demanded the dismissal of the Knight grievance and threatened to pursue malicious prosecution claims against the OAE.



On July 12, 2017, the OAE informed respondent that he was scheduled to appear at the OAE on July 27, 2017 for a demand audit and interview, which included the production of the documents previously requested. When the OAE contacted respondent on the day before the demand audit, to remind him of his obligation to appear, respondent announced that he was refusing to appear for the audit and would not provide additional documents because "he was not going to cooperate with a fishing expedition." Respondent failed to appear for the demand audit. The OAE filed a motion for respondent's temporary suspension for his failure to cooperate. The Court denied the motion, but ordered that respondent would not be reinstated from his three-year suspension until he complied with the OAE's request for production.

By letter dated January 26, 2018, the OAE notified respondent that he was scheduled to appear at the OAE on February 22, 2018 for a second demand audit. Despite acknowledging receipt of the certified mail, respondent failed to appear.

The complaint, thus, charged respondent with a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

The complaint further charged respondent with a violation of RPC 8.1(b) and RPC 8.4(d), based on his failure to file an affidavit of compliance with R. 1:20-20, following the Court's Order suspending him for three years. On July 26, 2017, the

OAE communicated with respondent's counsel in that prior matter and advised of respondent's responsibility to file the affidavit of compliance. By letter dated August 18, 2017, counsel informed the OAE that it was his understanding that respondent was in the process of doing so and that the affidavit would be forwarded shortly. Respondent never forwarded the affidavit, prompting the OAE, at counsel's suggestion and with his permission, to communicate with respondent directly regarding his obligation. The OAE did so, by letters, dated September 27, 2017 and October 17, 2017, sent by both certified and regular mail. Although the September letters to respondent were returned as undeliverable, respondent received the October letters, as evidenced by his signature on the return receipt. In addition, the regular mail copy of that letter was not returned. Respondent neither responded to the letter nor filed the required affidavit.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Specifically, we determine that the facts recited in the complaint support a finding that respondent knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, and

that he violated RPC 3.4(c), RPC 8.1(b), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

In Wilson, the Court described knowing misappropriation as "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. 451 (1979).

Six years later, the Court elaborated:

The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since Wilson, it has been invariable.

In re Noonan, 102 N.J. 157, 159-60 (1986).

In In re Hollendonner, 102 N.J. 21 (1985), the Court extended the Wilson principle to escrow funds.

Here, respondent represented Knight in a personal injury matter. He prepared the closing statement, reflecting that he was entitled to fees and costs of \$4,814, which included \$300 allegedly owed to a medical provider for Knight's failure to attend an examination. Because respondent had not advanced this fee, it did not constitute reimbursement of a cost. Nevertheless, respondent disbursed \$4,814 to himself and deposited it into his business account. He represented to Knight that he was withholding the \$300 while he resolved the issue of whether she owed the medical provider. Over the course of an entire year, on various dates between May 2016 and May 2017, the balance in respondent's business account fell below \$300. Indeed, his business account repeatedly reflected a negative balance. Finally, on May 15, 2017, after the grievance was filed, and after he already had made use of the funds, respondent returned the \$300 to Knight.

These facts establish that respondent knowingly misappropriated the \$300 he was required to hold intact on behalf of Knight to pay an alleged client obligation. By doing so, respondent violated RPC 1.15(a), as well as the principles set forth in Hollendonner, Wilson, and RPC 8.4(c) for misrepresenting to Knight that the funds were held intact.

In Ritacco, respondent was required, by court order, to hold \$12,978.84 in trust, pending resolution of BCBS' alleged lien.

On April 11, 2016, respondent received a check made payable to "Trust Acct Victor Rabbat Esq" for \$12,978.84 and deposited that check into his attorney trust account that same date. He then proceeded to disburse \$12,500 of those funds, via five checks referencing the Ritacco matter, to his law office, between May 25, 2016 and October 6, 2016. All of the checks were deposited into respondent's business account, which, at the time had a low or negative balance. Shortly after the funds were deposited in his business account, respondent depleted them, using the funds, totaling \$11,609.18, for personal and business expenses. Neither Ritacco nor BCBS had authorized respondent to use the funds. On November 7, 2016, respondent deposited a \$12,500 check from his business account into his trust account with the notation in the memo line "Ritacco," replacing the funds he had improperly removed and used for his own purposes.

On February 2, 2017, respondent paid \$10,000 to satisfy the BCBS obligation. Compounding his earlier misappropriation of the funds, respondent then issued a check to his law office for the remaining \$2,978.84 with a reference to the Ritacco matter and deposited it into his business account. Within five

days, that account had a negative balance. The disbursements that depleted the \$2,978.84 were not made on behalf of, or with the permission of, Ritacco.

On April 28, 2017, Ritacco inquired about the status of the \$2,978.84. Respondent claimed that he had paid BCBS and was planning to wait two weeks to pay her the balance. At the time of his reply, he held only \$2,395.89 in his business account. Thus, again, respondent had not held Ritacco's funds intact. Finally, on May 16, 2017, he issued a \$2,978.84 check to Ritacco from his business account.

There is no question that respondent misappropriated Ritacco's and BCBS's funds. Within six months of the \$12,978.84 deposit, representing funds owed to either Ritacco or BCBS, respondent had improperly transferred and used the vast majority, \$11,609.18, without authorization. In an attempt to give the appearance that the initial transfer and the subsequent disbursements were legitimate, he referenced "Ritacco." However, there was no connection between her case and his use of the funds. Then, after he had returned the funds to his trust account, he, again, improperly moved \$2,978.84 from his trust account to his business account and, within five days, depleted \$2,978.84 on personal or business expenses, unrelated to Ritacco. Therefore, respondent knowingly

misappropriated escrow and client funds in violation of RPC 1.15(a) and the principles set forth in Wilson and Hollendonner.

Respondent also violated RPC 3.4(c) by knowingly disobeying the court's order to hold the funds, pending a resolution of the obligation, and RPC 8.4(c) for deceiving Ritacco by "giving her the impression that he was safeguarding her funds in trust."

The facts alleged in the complaint clearly and convincingly establish that respondent violated RPC 8.4(b) by engaging in a criminal act – the misapplication of entrusted property – a violation of N.J.S.A. 2C:21-15:

[A] person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary . . . in a manner which he knows is unlawful and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted whether or not the actor has derived a pecuniary benefit.

Here, respondent, knowingly transferred Ritacco's and BCBS's funds, which a court had ordered him to hold intact, and used them for his own benefit. He did not have Ritacco's or BCBS's consent to do so and, thus, his conduct was unlawful. A substantial risk of loss existed because respondent spent a significant portion of the funds belonging to BCBS and Ritacco. He knew his

conduct was unlawful and that it posed a substantial risk because he attempted to conceal his deceit by referencing her matter on the unrelated expenses.

Further, the record clearly and convincingly supports a finding that respondent failed to cooperate with the OAE's investigation into these matters, in violation of RPC 8.1(b). He repeatedly failed to timely respond to the grievance, provide the requested documents, or appear for two scheduled demand audits.

Finally, the complaint charged respondent with violating RPC 8.1(b) and RPC 8.4(c) for failing to comply with R. 1:20-20. The complaint set forth sufficient facts to support a finding of these charges.

Respondent's misconduct was serious. However, his most serious misconduct – the knowing misappropriation of trust and escrow funds – requires his disbarment. Thus, we need not address the quantum of discipline for respondent's other violations.


For the reasons set forth above, establishing that respondent knowingly misappropriated escrow and client funds in two matters, we determine to recommend that respondent be disbarred.

Member Joseph 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

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Victor K. Rabbat  
Docket No. DRB 18-242


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Decided: January 3, 2019

Disposition: Disbar

<i>Members</i>	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

  
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Ellen A. Brodsky  
Chief Counsel