Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-329
District Docket No. XIV-2018-0501E

In The Matter Of	:
Neal Jonathan Blaher	:
An Attorney At Law	:

Decision

Argued: November 15, 2018

Decided: March 21, 2019

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion is

based on respondent's disbarment in Florida,[1] for the New Jersey equivalents of RPC 1.7(a) (concurrent conflict of interest), RPC 1.15(a) (failure to safeguard funds – knowing misappropriation of trust funds), RPC 1.15(d) (recordkeeping improprieties), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE recommends respondent's disbarment. For the reasons expressed below, we agree with the OAE's recommendation.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986, and the Florida bar in 1987. At the relevant time, he practiced law in Florida. He has no history of discipline in New Jersey, but has been administratively ineligible to practice law in this state since 2015.

On November 17, 2014, the Florida Bar (Bar) filed a Petition for Emergency Suspension (petition) against respondent. According to the petition, on April 24, 2014, the Bar received notification from PNC Bank (PNC) of a $448.99 overdraft in respondent's trust account. The overdraft resulted in an audit of respondent's PNC trust account and his prior trust account at Fifth Third Bank. The Bar's investigation into respondent's practices

[1] Disbarment in Florida is not necessarily permanent. Except as the rules otherwise provide, "no application for readmission may be tendered within five years after the date of disbarment or such longer period as the court might determine in the disbarment order." Rule Regulating the Florida Bar 3-5.1(f).

revealed that he had misappropriated client trust funds. From the audit period of April 1 through July 31, 2014, his trust account shortages ranged from $400 to $9,730.59. The shortages resulted from respondent's disbursing trust account funds to himself, to which he was not yet entitled. Respondent described those funds as "advanced attorney fees." Each such improper disbursement impacted funds belonging to other clients. He took the funds in anticipation of his receipt of future payments from clients. Respondent calculated the amounts of anticipated fee payments and removed almost equivalent amounts from his trust account for his personal use. In order to conceal the shortages that he created by improperly advancing the fees, respondent inaccurately reflected the status of the funds in his attorney records. The Bar's auditor prepared an affidavit, certifying that respondent was not in compliance with the Florida bar rules during the audit period and that he had "misappropriated" client funds from the trust account for personal expenses.

In his October 15, 2014 deposition, respondent admitted his practice of taking advances of anticipated fees before his clients paid him. He conceded that he needed the funds and took the advances, hoping that it would be a "short-term situation." He maintained that his conduct was in keeping with the "spirit" of the Florida rules.

Respondent used the fee advances to pay personal and business expenses, such as payroll, rent, life insurance, health insurance, cellular service, credit card bills, and the Internal Revenue Service. He also transferred trust account funds to his personal bank account. At the deposition, respondent acknowledged that he intentionally engaged in this conduct. Although he had funds in a personal retirement account, he admitted that he chose not to use them to pay for office expenses "because it would permanently deprive him of money that he could not put back in savings."

The petition listed seven examples of respondent's taking of advanced fees:

1. On May 23, 2013, in the Madhyani 11024 matter, respondent transferred $1,500, as fees, from his trust account to his operating account, even though the client's credit card payment in the same amount did not clear until May 30, 2013, which caused a trust account shortage for seven days.

2. On January 13, 2014, in the Cortex USA matter, respondent transferred $4,400, as fees, from his trust account to his operating account, although the client had not yet wired the funds. Eight days later, on January 21, 2014, the client wired $3,700 to respondent's trust account. As of June 27, 2014, after additional disbursements to respondent and to the U.S. Patent and Trademark Office, the Cortex client ledger card had a negative $1,845.10

balance. On July 7, 2014, respondent cured the shortage by depositing $1,950 into the account. The improper fee disbursement caused a six-month trust account shortage.

3. On January 14, 2014, in the Andrew DeStefano matter, respondent transferred $2,150, as fees, from his trust account to his operating account. He did not deposit a portion of the client's funds until January 27, 2014, and the account was not fully funded until February 10, 2014, causing a twenty-seven day trust account shortage.

4. In the Manny's Original Chophouse 14001 matter, on January 31 and February 14, 2014, respondent disbursed $812.50 and $2,600, respectively, as fees, from his trust account to his operating account, for a total of $3,412.50. Respondent did not deposit the client's funds until March 10, 2014, causing a thirty-eight day trust account shortage.

5. On February 3, 2014, in the Brian Thorton matter, respondent disbursed $1,000 as fees for "annual processing" from his trust account to his operating account, even though the deposit associated with the fees did not clear until February 11, 2014, which caused an eight-day trust account shortage.

6. From January 2 through April 15, 2014, in the Go Waiter 14002 matter, respondent made several fee disbursements before collecting sufficient

funds from the client. The disbursements resulted in recurring negative balances.

7. On April 18, 2014 in the Madhyani 11020 and Madhyani 11024 matters, respondent disbursed $3,000 as fees from his trust account to his operating account. The client's $3,000 payment for the matters did not clear until May 7, 2014, causing a nineteen-day trust account shortage.

During respondent's deposition, he admitted that his ledger cards did not accurately reflect the activity in his trust account. He did not correctly identify the dates or amounts of disbursements that resulted in shortages in his trust account when he made improper fee disbursements. He did not record his fee advances until he received payments from his clients. More specifically, to force the reconciled bank statements to match the journal balance, respondent inflated the bank balance on his reconciliations by the amount of the fees he improperly advanced to his operating account, thereby concealing the shortages he caused by advancing fees. Respondent also failed to provide the Bar with copies of canceled checks for the Fifth Third trust account, admitting that he did not maintain the copies. Respondent's practices thereby violated the Florida recordkeeping rules.

On November 18, 2014, respondent filed an Emergency Response to Petition for Emergency Suspension, asserting that he cooperated fully with the

Bar and produced the requested documentation. He requested that the matter proceed through "a more appropriate route, rather than the granting of the emergency suspension." Respondent alleged that the petition was replete with misstatements, mischaracterizations, and omissions of material facts.

Respondent contended that, because of his changing practice, the substantially lesser legal fees he received impacted his "fee revenue flow," exacerbated by the fact that he was being paid at a slower pace for services rendered. He admitted "[u]ltimately, there were instances during this time period when fees were disbursed from trust for steady work being done on specifically identified and current projects I was handling for an established client, even though the funds had not yet been received or deposited into the trust account." Respondent admitted further that he even submitted documentation to the Bar showing these "limited fee advances."

According to respondent, "at no time was money disbursed indiscriminately." Rather, "only when a specific project for an existing client had been agreed to, and work begun on that project, were anticipated fees calculated and withdrawn."

Respondent also accused the Bar of mischaracterizing his deposition testimony. He asserted that he had a source for repayment "in the event of even the most unexpected failure of the anticipated fees coming in, namely funds

held in a personal retirement account that significantly exceeded the amount of any fee advances and that could be retrieved at any time on short notice." Respondent maintained that he had taken funds from his retirement account during the time and incurred the penalty for early disbursement, which demonstrated his ability and willingness to use the funds "to protect his clients if necessary."

Respondent asked the court to deny the Bar's request for an emergency suspension and, if it found probable cause to proceed, that the proceedings "follow a route more appropriately fitting the complete facts and circumstances."

On November 25, 2014, the Supreme Court of Florida granted the Bar's Petition for Emergency Suspension.

On December 5, 2014, the appointed referee, Circuit Judge Lawrence Mirman, conducted a hearing on behalf of the Supreme Court of Florida, which respondent failed to attend.

According to the referee's report, on December 2, 2014, respondent had filed a motion, which was deemed a motion to dissolve his suspension. Prior to the hearing, respondent e-mailed the court that

> because he perceives the Bar is unjustifiably persecuting him, he decided not to attend or participate in the hearing. He wrote, 'I do not deserve to be treated, nor will I tolerate being treated, like a

> common criminal by being put on trial as such. Accordingly, I will not be appearing at today's hearing. Instead, I will now move forward with the process not of entering suspension mode, but of closing my practice altogether. Once I have the opportunity to finalize these actions, I will submit a more formal filing to the Supreme Court attesting to completion, thereby satisfying the Bar's efforts to shut me down and 'protect' the public from the great harm of having a truly good and honorable lawyer within the ranks of The Florida Bar. This will be accomplished before the end of this month.'
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> [OAEb,Ex.E].[2]

The referee reviewed the parties' pleadings and the affidavit of the Bar's forensic auditor, whom the referee deemed to be a credible witness. The referee observed that respondent's improper activities were summarized in his deposition: "he was improperly moving clients' funds from trust accounts into his operating account, for purposes unrelated to their cases." The referee found that the testimony and affidavit of the auditor, combined with respondent's admissions in his pleading and deposition, were compelling evidence of respondent's violation of Fla. 4-1.7 (conflict of interest as to concurrent clients because of the substantial risk that the representation of one or more clients was materially limited by the lawyer's responsibilities to another client), and based on the "admissions of misappropriation of trust accounts that affect

[2] OAEb refers to the OAE's brief and appendix in support of its motion for reciprocal discipline, dated September 19, 2018.

different client accounts"); Fla. 4-1.15 (failure to safekeep property with regard to trust accounts), Fla. 5-1.1 and 5-1.3 (recordkeeping improprieties in the trust account), and Fla. 4-8.4(c) (conduct involving dishonesty and fraud).

The referee found that the emergency suspension was appropriate and justified, and underscored respondent's failure to comprehend the severity of his violations when he argued that the lack of a showing of actual harm to clients negated the Supreme Court of Florida's finding of imminent danger to the public.

On December 16, 2014, the Supreme Court of Florida issued an order directing respondent to show cause why the referee's recommendation should not be approved. On December 24, 2014, the referee conducted a telephonic case management conference, in which respondent did not participate. Based on respondent's "failure to appear" for the conference, despite proper notice, the referee deemed that respondent had waived venue, and scheduled the final hearing for February 10, 2015.

On December 31, 2014, respondent filed a Notice of Closure of Law Office, stating:

> After assessing the extraordinary nature of the relief sought by the organized bar association of the State of Florida, the Florida Supreme Court's apparent endorsement of that action, and the overall conduct of this proceeding, it quickly became clear that the rightness of my position and my candidly disclosed

> actions would not be properly considered. I therefore could not justify the expenditure of further time and energy on futile attempts at defending myself, nor did I deserve being put on trial like a common criminal. Instead, I acceded to the will of The Florida Bar and of the Supreme Court of Florida that I exit the practice of law.
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> [OAEb,Ex.H].

Respondent added that, in order "to set the record straight" because of the change of the nature of his law practice over the past several years, he received "less and less for the same time and effort expended" and found that he, at times, had to

> wait to get paid. As a result, there were instances where I drew advances from my trust account equal to the amount of fees due me for past or current services. When a client payment came in, those funds were placed into the trust account, since I already received the compensation by then. At no time were indiscriminate amounts disbursed, nor were client funds ever unavailable to pay or cover any obligations of that (or any) client.
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> [OAEb,Ex.H].

On February 6, 2015, respondent filed a Supplement to Notice of Closure of Law Office. On February 10, 2015, the Supreme Court of Florida held a final hearing before the referee, which respondent did not attend, despite proper notice.

The referee found clear and convincing evidence that respondent "improperly accessed client funds to pay his personal and business expenses when he had insufficient funds in his operating account to do so, despite the fact he had sufficient funds in his personal retirement account to cover such expenses." In addition, respondent made entries in his trust account records to give the appearance that the funds from which he took improper advances already had been received. "[I]n other words, respondent 'doctored' his records to make it look like he had received payment from his clients prior to removing funds from his trust account which was, in fact, not the case." He falsified his trust records to convey the impression that he had withdrawn funds much later than he actually had, by post-dating entries in his journal and ledgers to conceal his disbursement of funds to himself before receipt of payment from his clients. The improper withdrawals created shortages in his trust account by as little as $400 and as much as $9,730.59.

According to the referee, respondent admitted taking fee advances from his trust account before his clients paid him and, in so doing, took funds belonging to one or more of his other clients to cover the obligations of the clients who had not yet paid him. The referee noted that, during the audit period, funds were placed in jeopardy for periods as short as one day to as many as fifty-seven days.

The referee found that respondent's misappropriation of client funds to pay personal and business expenses, and his fraudulent entries in his trust records to artificially show compliance with the Bar's rules were particularly egregious, in light of his admission during his deposition that he would have been harmed if he had used his retirement funds to cover personal and business expenses. The referee viewed this conduct to be a conflict of interest - protecting his own economic interests rather than his clients'.

Although the referee noted that "respondent has maintained that his acts of misappropriation were done under the misguided belief that the conduct was permissible," the referee found that respondent used his clients' funds without their permission and his misappropriation was "knowing and intentional and in clear contravention of the rules."

In all, the referee found respondent guilty of representing adverse interests; failing to safekeep property; engaging in the misapplication of trust funds by making disbursements against uncollected funds; violating trust accounting rules; and engaging in conduct involving dishonesty and fraud.

According to the referee, Florida Standard 4.11 provides that disbarment is appropriate when a lawyer intentionally or knowingly converts client property, regardless of injury or potential injury to the client, and that, by

paying himself advances, respondent engaged in misappropriation that was "knowing, deliberate, and intentional" for which disbarment was appropriate.

The referee cited the following aggravating factors: respondent's motive was dishonest or selfish; he engaged in a pattern of misconduct from at least early April 2013 to the date of the audit;[3] he committed multiple offenses; he refused to acknowledge his wrongdoing; the victims were vulnerable because he took their funds without their knowledge or consent; and, at the time, he was a substantially experienced lawyer. The mitigating factors considered were the absence of a disciplinary history; respondent's full cooperation with the investigation; and his character and reputation in the community.

Based on the above, the referee recommended "disbarment for a five-year period." On June 4, 2015, the Supreme Court of Florida approved the referee's report and issued an order disbarring respondent.

According to the OAE, respondent's disbarment in Florida was "chiefly" the consequence of his knowing misappropriation of existing clients' trust funds in anticipation of replenishing his unauthorized taking of the funds with future payments he calculated he would obtain from "incoming" clients who had yet to pay him. He also fraudulently "doctored" his books in an attempt to cover up his invasion of trust funds. The OAE asserts that respondent's

[3] The date the audit commenced is not readily apparent in the record.

conduct equated to violations of New Jersey's RPC 1.7(a)(2) (conflict of interest); RPC 1.15(a) (failure to safeguard funds - knowing misappropriation of client funds), and the principles of In re Wilson, 81 N.J. 451 (1979); RPC 1.15(d) (recordkeeping improprieties); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE argued that, under R. 1:20-14(a)(4), respondent's conduct in Florida warrants the identical discipline in New Jersey. In reaching this conclusion, the OAE relied on, among other cases, In re Wilson, 81 N.J. 451; In re Noonan, 102 N.J. 157 (1986); In re Lennan, 102 N.J. 518 (1986) (attorney disbarred for a pattern of taking trust funds held as deposits on real estate closings and replacing them before the closing occurred); and In re Blumenstyk, 152 N.J. 158 (1997) (attorney disbarred for knowing misappropriation of trust account funds to pay for a vacation, his son's Bar Mitzvah, and taxes, even though he made full restitution prior to an OAE random audit).

The OAE distinguished this case from those cases where attorneys failed to safeguard earned legal fees in their trust accounts. According to the OAE, despite respondent's characterization that he had taken "advanced fees," he was taking money from his trust account without the client's authorization, with the

expectation that future fee payments from "incoming client matters" would replenish the shortages he had created.

The OAE likened respondent's conduct to the attorney's conduct in In re Gloeser, 209 N.J. 415 (2012). That attorney was disbarred for knowingly misappropriating trust funds by transferring them to his business account to meet payroll expenses. He anticipated that his firm would soon receive a settlement check from a workers' compensation matter in the same amount. Here, respondent used client trust funds to pay business expenses, rent, and salaries, without his clients' knowledge. The OAE observed that respondent used the entrusted client funds, even though he had access to his own retirement funds, and that the improper withdrawals were to benefit himself alone. In addition, although respondent asserted that he misappropriated the funds under the "misguided belief" that it was permissible under the Florida rules, his act of post-dating his trust account entries evidences his attempt to conceal his wrongdoing.

The OAE maintained that, for respondent's misappropriation of client funds, he must be disbarred, noting that the discipline for respondent's other violations warranted discipline less than disbarment.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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." 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). In Florida, the standard of proof in attorney disciplinary matters is clear and convincing evidence. Florida Bar v. Forrester, 916 So.2d 647 (Fla. 2005).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign 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). Thus, identical discipline is warranted under R. 1:20-14(a)(4). Clearly, respondent misappropriated clients' trust funds when he advanced fees to himself prior to collecting the fees from his clients. As the OAE aptly pointed out, the fact that he "doctored" his records to avoid detection contradicts his claimed belief that the conduct was permissible under Florida rules.

In In re Warhaftig, 106 N.J. 529 (1987), the attorney was disbarred for routinely advancing fees to himself in real estate matters, before the closings took place. The sums he took corresponded exactly to the amount of the anticipated fees. The Court stated:

> [i]t is clear that respondent's conduct constituted knowing misappropriation as contemplated by *Wilson*. Through the use of the advance-fee mechanism, he took funds from his trust account before he had any legal right to those monies. These "fees" were taken by respondent before he received any deposits in connection with the relevant real-estate closings. Thus, he was effectively borrowing monies from one group of clients in order to compensate himself, in advance, for matters being handled for other clients. Respondent made these withdrawals with full recognition that his actions had not been authorized by his clients, and that he was therefore violating the rules governing attorney conduct. Respondent's unauthorized misappropriation of clients' trust funds

> for his personal needs cannot be distinguished from the conduct condemned in *Wilson, supra.*
>
> [Id. at 533-34].

The OAE correctly likened this matter to Gloeser, where the attorney directed his bookkeeper to transfer funds from his trust account to his business account to meet his firm's payroll obligations, knowing that settlement funds from a workers' compensation matter were due, but not yet received. In the Matter of Arthur R. Gloeser, DRB 11-094 (October 7, 2011) (slip op. at 46). No other earned fees were in the trust account at the time. Id. at 47. We determined that the attorney intentionally took the trust account funds, knowing that he had no right to use them. His acts were deliberate and intentional. Id. at 49.

Similarly, in Lennan, 102 N.J. at 525, the attorney was disbarred following an OAE random audit that disclosed that he had engaged in a pattern of taking trust funds held as deposits on real estate transactions. He replaced the funds prior to the closing of title. Over a two-year period, the attorney knowingly misappropriated $13,000 in trust funds from four clients.

The Court in Lennan, was not swayed by the attorney's proffered mitigation: (1) he was suffering from the extreme financial pressure of providing for his family, specifically, the college education of his two daughters; (2) no clients had complained or suffered any loss or a delay in

receipt of funds due; (3) three of the clients submitted affidavits indicating that they would have authorized his actions had they known of his economic difficulties, and they were satisfied with his services; (4) he made no attempt to disguise or mischaracterize his actions, which he fully disclosed to the OAE; and (5) he expressed "severe regret" for his actions. Id. at 523.

Likewise, in In re Untracht, 174 N.J. 344 (2002), the attorney was disbarred for the knowing misappropriation of trust and escrow funds, where, in fourteen client matters, he took fees and costs from his trust account before depositing the corresponding settlement funds, thereby invading other clients' funds. In one instance, he took funds only three days after settling a case, before sending the release to the insurance company. In the Matter of Gary H. Untracht, DRB 01-367 (April 12, 2002) (slip op. at 6).

Also, in In re Goldstein, 167 N.J. 279 (2001), the attorney was disbarred for knowingly misappropriating funds. In three personal injury cases, he advanced fees to himself before receiving the settlement proceeds, thereby invading other clients' funds. He also used real estate deposits without the consent of the parties, and took excessive fees in two matters, which invaded other clients' funds.

Misappropriation is defined 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.
>
> [Wilson, 81 N.J. at 455 n.1.]

As noted by the Court in Noonan:

> [t]he misappropriation that will trigger automatic disbarment under [In re Wilson], disbarment that is 'almost invariable,' [citation omitted] consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality, or immorality' -- all are irrelevant.
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> [Noonan, 102 N.J. at 160]

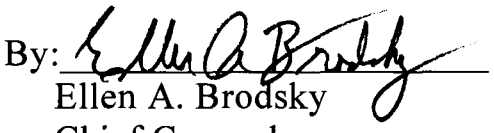
Respondent's conduct violated the principles of In re Wilson, RPC 1.15(a), RPC 1.15(d), and RPC 8.4(c). The referee viewed respondent's use of trust account funds instead of his own retirement funds as a conflict of interest because he protected his own economic interests rather than those of his

clients. We have never found such conduct to be a violation of RPC 1.7(a)(2) and do not do so in this case. Rather, respondent's conduct amounted to the knowing and intentional misappropriation of client trust funds. Thus, clearly, respondent's practice of taking trust account funds for fees, which he had not yet collected, is an offense in New Jersey for which disbarment is mandated. We, therefore, recommend respondent's disbarment.

Member Rivera 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 Neal Jonathan Blaher
Docket No. DRB 18-329

Argued: November 15, 2018

Decided: March 21, 2019

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:	8	0	1

Ellen A. Brodsky
Chief Counsel