Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-390
District Docket Nos. XIV-2014-0535E,
XIV-2015-0162E, and XIV-2015-0179E

In the Matter of	:
Saleemah M. Burns f/k/a Saleemah Malikah Brown	:
An Attorney at Law	:

Decision

Argued: February 21, 2019

Decided: August 12, 2019

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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 disbarment filed by a special master. The formal ethics complaint charged respondent with knowing misappropriation of client or escrow funds, a violation of RPC 1.15(a) (failure to safeguard funds) and the principles set forth in In re Wilson, 81 N.J. 451

(1979), and In re Hollendonner, 102 N.J. 21 (1985); RPC 1.1, presumably (a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 1.5(a) (unreasonable fee); RPC 1.15(a) (negligent misappropriation of client funds; commingling personal funds with client trust funds); RPC 1.15(b) (failure to promptly deliver funds belonging to a third party); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (unauthorized practice of law); RPC 7.1(a) (false or misleading communication about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 7.5(e) (requiring a law firm name to be accurate and descriptive of the firm); RPC 8.1(b) (failure to disclose a fact necessary to correct a misapprehension in connection with a disciplinary matter); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The complaint also charged respondent with having violated R. 1:20-20(b)(10) and (11) (failure to give notice of suspension to clients, adversaries, and courts, and to advise clients to seek counsel elsewhere), and R. 1:21-7(d) (improper calculation of a contingent fee). The complaint did not charge respondent with RPC violations corresponding to these Rules.

Respondent's counsel filed a motion with us to strike certain testimony given at the disciplinary hearing and to expand the record to include a document that purportedly proves that she did not knowingly misappropriate the escrow monies. We granted the motion to expand the record, but denied the motion to strike the testimony.

For the reasons set forth below, we determine to impose a three-month suspension on respondent.

Respondent was admitted to the New Jersey bar in 2008. At the relevant times, she maintained an office for the practice of law in Paterson. Presently, respondent's law office is located in Hackensack.

Effective July 17, 2014, respondent, then known as Saleemah Malikah Brown, was suspended from the practice of law for three months, in a default matter, for her violation of RPC 1.4(b), RPC 1.5(a), RPC 1.15(b), RPC 1.15(c) (failure to segregate disputed funds), RPC 1.15(d), RPC 8.1(a) (false statement of material fact to disciplinary authorities), and RPC 8.1(b). In re Brown, 217 N.J. 614 (2014). She was reinstated on December 10, 2014. In re Brown, 220 N.J. 104 (2014).

On November 17, 2017, in another default matter, the Court imposed a censure on respondent for her violation of RPC 1.3, RPC 1.4(b), RPC 3.4(g) (threatening to present criminal charges to obtain an improper advantage in a

civil matter), RPC 7.1(a)(4) (making a false or misleading communication about the attorney's legal fee), and RPC 8.4(c). In re Brown, 231 N.J. 166 (2017).

In the matter now before us, the parties entered into a stipulation of facts supplemented by testimony at the disciplinary hearing.

Count one of the complaint charged respondent with knowingly misappropriating client or escrow funds, failing to promptly disburse funds, and charging an improper fee.

On July 6, 2010, Tonya Busch retained respondent to represent her in a wrongful employment termination action against Wells Fargo Bank, N.A. (Wells Fargo). The retainer agreement set respondent's fee at one-third of the net recovery.

On December 12, 2013, Global Financial Credit, LLC (Global) issued a notice of assignment and security interest to respondent, informing her that

> YOU MAY NOT DISBURSE ANY FUNDS FROM THE PLAINTIFF'S PORTION OF THE SETTLEMENT, JUDGEMENT OR OTHER [SIC] UNTIL OUR SECURITY INTEREST HAS BEEN SATISFIED.
>
> [Ex.P7.]

The letter instructed respondent to e-mail or fax Global, "[u]pon settlement, judgment or collection," to "RECEIVE THE FINAL AMOUNT DUE." The amount due to Wells Fargo was $1,396.39.

Six days later, on December 18, 2013, respondent settled Busch's matter for $25,000, and the parties signed a Settlement Agreement and General Release (settlement agreement). Respondent acknowledged that she had received Global's notice of the lien prior to the execution of the settlement agreement and her receipt of the settlement funds.

On December 31, 2013, Wells Fargo sent to respondent a $15,876.77 check payable to Busch and a $9,123.23 check payable to respondent's law firm. The payment to Busch represented her proceeds of the settlement. The payment to respondent's law firm represented her $8,325 attorney fee, plus $798.23 in costs.

According to the stipulation, respondent's $8,325 fee calculation was based on one-third of the $25,000 gross settlement amount, rather than the $24,201.77 net recovery, which would have resulted in a fee of $8,066.45. Thus, respondent admitted that she had overdisbursed $258.55 to herself.

On January 10, 2014, respondent deposited the $9,123.23 check into her Bank of America attorney business account ending in the numbers 3043 (BoA Business Account). Three days later, she deposited the $15,876.77 check into her Bank of America attorney trust account ending in the numbers 3205 (BoA Trust Account).

On January 20, 2014, respondent issued a $14,481.38 BoA Trust Account check to Busch, which posted to the account on January 22, 2014, leaving a $1,435.15 balance, which was sufficient to satisfy Global's $1,396.39 lien.[1] Despite respondent's acknowledged receipt of Global's December 2013 notice of lien, she claimed that she did not know that she was prohibited from disbursing funds that she withheld until after Global's lien had been satisfied.

On February 5, 2014, respondent electronically transferred $1,400 from the BoA Trust Account to the BoA Business Account, and used those funds to pay business expenses. She acknowledged that, prior to the transfer, the BoA Business Account balance was -$456.35. After the transfer, the BoA Trust Account balance was $35.15, which was less than the $1,396.39 owed to Global.

Respondent testified that Busch had given her permission to use the $1,400, as long as respondent reimbursed Global, with interest. Respondent acknowledged that she did not have Global's authorization to use the funds, but believed that her client's permission was sufficient. She testified as follows on this issue:

> Q. So when you deposited the check that was made payable to your client into the trust account, you were aware that there was a lien that Global had on the file, right?

[1] The stipulation described the extra dollar paid to Busch as an error.

A. Yes.

Q. And you did not get permission from Global to use those funds for any other purpose than to pay them back, correct?

A. That's correct. I received permission from Miss Bush [sic] herself . . . .

Q. Okay. But the party to whom the funds belonged, Global Finance, did not authorize you to use those funds, correct?

A. I did not get an authorization.

[1T50-9 to 1T51-3.][2]

On February 19, 2014, respondent issued to Global a BoA Trust Account check for $1,441.26, which included interest.

As stated previously, respondent's counsel requested that we expand the record to include a February 20, 2014 letter to respondent from Global Finance Manager Julia Tascome. The letter, which Global sent to respondent the day after she had disbursed the $1,441.26, identified that amount as the payoff figure, informed respondent that the amount was due before March 31, 2014, and provided the per diem figure to be added for any payoff after that date.

Counsel argued that the February 20, 2014 letter should be included in the record because it "strongly corroborat[es]" respondent's belief that Global had

[2] "1T" refers to the transcript of ethics hearing, dated March 6, 2018.

given her permission to use the funds, conditional on respondent's repayment of the funds, with interest. In support of the motion, respondent submitted a certification denying that she had knowingly misappropriated funds and contending that the document supported her belief that both Busch and Global had authorized her to use the funds of $1,396.39.

We granted the motion, to assure a record as complete as possible, given that respondent's license to practice law is at stake.

Counts two and three of the complaint charged respondent with having violated RPC 5.5(a)(1), RPC 8.4(c) and (d), and R. 1:20-20(b)(1), (b)(6), (b)(10), and (b)(11). After the disciplinary hearing, the OAE conceded that it had not met its burden of proving the unauthorized practice of law charges, and, presumably, they were withdrawn.

Prior to July 17, 2014, the effective date of respondent's three-month suspension, she asked Farrah A. Irving, Esq., to represent her clients during the suspension. According to respondent, Irving had been working with her since January 2014 and, thus, respondent believed that, under R. 1:20-20, Irving would be able to cover cases for respondent's clients. Based on respondent's understanding, Irving was able to carry on the business of the firm. When respondent's suspension went into effect, she changed the firm's voice mail

greeting, so that it informed callers to contact Irving if they had any questions regarding their matters.

Respondent's counsel requested that we strike Irving's testimony because the OAE had failed to disclose, at the time of Irving's testimony, that she was subject to a pending, unrelated ethics matter and had signed a stipulation of discipline by consent and an affidavit of consent admitting an ethics violation. Counsel argued that the OAE had a duty to disclose that information.

At the time of Irving's testimony in this matter, the unrelated disciplinary matter against her was confidential, under R. 1:20-9(a), which provides that, until a motion for discipline by consent is approved, the disciplinary matter is confidential. Irving testified, in this matter, on March 9, 2018, but the stipulation in the unrelated matter was not approved until June 12, 2018. Because the OAE was obligated to maintain confidentiality of the motion for discipline by consent until June 12, 2018, the OAE could not have disclosed the pending motion in Irving's case to respondent in this matter. We, thus, denied the motion to strike Irving's testimony.

Prior to respondent's suspension, Irving had covered cases for respondent on a per diem basis. She was never a member of respondent's firm. When respondent asked Irving and her law partner, Samantha Mendenhall, Esq., to assist her during the period of suspension, they reviewed R. 1:20-20 and

concluded that they could answer client questions, inform them of their rights, and, if appropriate, represent them. Irving also understood that respondent's legal assistant/paralegal, Attiyya Barrett, would field calls from clients, answer their questions, and obtain adjournments, as needed.

In respect of respondent's clients and their matters, Irving testified:

> Yes, we encountered a lot of issues regarding clients calling my office, and our receptionist was berated and belittled, she was yelled at, cursed at. I was yelled at, cursed at, and so was my law partner.
>
> Because clients were telling us that they didn't know Saleemah was suspended, they were asking my firm to give them refunds, they were telling us that they -- they had court dates and representation and things happening, but we had no knowledge of those things. And we obviously couldn't give refunds. So there were issues like that.
>
> [2T11-13 to 24.][3]

Irving sent e-mails to respondent and/or Barrett, which demonstrate that, as early as July 28, 2014 -- eleven days after the effective date of respondent's suspension -- three clients complained that they had not been informed "about anything" and that they wanted refunds. Irving explained that she sent the e-mails because she wanted to be sure that respondent's clients were informed of respondent's suspension and could take steps to retain other counsel.

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[3] "2T" refers to the transcript of the ethics hearing, dated March 9, 2018.

Respondent and Barrett insisted that they had sent letters notifying respondent's clients of her suspension. In particular, clients Robert Clyburn and Virgen Milagros Velazquez had been informed of respondent's suspension either verbally or in writing. However, Velazquez denied that respondent had notified her of the suspension or of her right to find another attorney. Further, OAE Disciplinary Auditor Harry Rodriguez testified that his review of respondent's and Irving's client files uncovered no such letters.

Meanwhile, respondent's calendar reflected a court appearance in a criminal matter before the Honorable Robert R. Guida, J.S.C. (ret.) in Bergen County, which was scheduled for a week after the effective date of respondent's suspension. The client was incarcerated, and, because Irving did not know whether the client had received notice of respondent's suspension, she simply appeared on the client's behalf, without first consulting with the client or making a formal arrangement.

Judge Guida expressed appreciation for Irving's concern for the client, but instructed her that she had to consult with the client and be formally retained, or risk violating "the rules." Thereafter, with one exception, Irving did not represent respondent's clients unless she met with them, apprised them of their rights, and was retained, as Judge Guida instructed.

On August 14, 2014, Irving sent an e-mail to Barrett, with a copy to respondent, expressing her continued exasperation because respondent's clients continued to call Irving's office, complaining that they were unaware of respondent's suspension, demanding refunds, or requesting representation by Irving. Irving informed respondent that, until the issue of representation for all clients was resolved, she would not cover any matters that had not yet been assigned to her.

On September 18, 2014, Irving appeared before Judge Sohail Mohammed, J.S.C., on behalf of respondent's client, Ashley Bacote, who had a scheduled mediation with the father of her child. Barrett had informed Irving of the matter only the day before, and told Irving that she was expected to appear. Irving told Barrett that she would not appear on Bacote's behalf because she had not met with her, and she did not know the issues involved in her case.

Irving then reconsidered and appeared with Bacote. When Bacote informed Judge Mohammed that she did not know that respondent had been suspended, he adjourned the matter so that she could find a new lawyer.

Count three pertained to respondent's alleged representation of Robert Clyburn after July 17, 2014, the effective date of her suspension. Clyburn did not testify at the hearing. The parties stipulated that, on June 16, 2014, Clyburn retained respondent to represent him in a Hackensack Municipal Court criminal

case, in which a cross-complaint had been filed. Two days later, respondent entered a plea of not guilty on Clyburn's behalf.

The parties stipulated that respondent had charged Clyburn $3,500, which she testified was the minimum fee "for legal services regardless of the amount actually spent on this case." Clyburn paid $1,600 of the $3,500 fee.

Respondent testified that, although the terms of the retainer agreement excluded representation at trial, the agreement included meeting and consulting with Clyburn, advising him of his rights, and reviewing the case with him. Indeed, she had reviewed discovery with him, "in extensive detail on several occasions." Respondent denied having met with Clyburn after the effective date of her suspension. No other proof that respondent practiced law while suspended was submitted at the ethics hearing.

Count four of the complaint charged respondent with negligent misappropriation of $10.24 in client funds. Respondent stipulated that the bank's deduction of an $18 maintenance fee reduced her BoA Trust account balance, causing a $10.24 invasion of funds belonging to a client whose settlement funds should have remained intact. Thus, respondent admitted that she had failed to maintain sufficient funds in the BoA Trust Account to cover monthly bank charges. Respondent subsequently deposited sufficient funds in her trust account and disbursed the appropriate funds to her client.

Count five charged respondent with gross neglect; lack of diligence; failure to communicate with her client, Virgen Milagros Velazquez; conduct involving dishonesty, fraud, deceit or misrepresentation; and failure to promptly notify Velazquez of her suspension and advise her to seek legal advice elsewhere and hire another attorney.

On September 10, 2012, respondent filed, in the Superior Court of New Jersey, Passaic County, a complaint against the YMCA of Paterson, claiming wrongful employment termination of respondent's client, Virgen Milagros Velazquez. On July 15, 2013, the court referred the matter to mediation, scheduled for October 15, 2013.

On July 22, 2013, Kluger Healy, LLC (Kluger), counsel for the YMCA, sent to respondent interrogatories and a request for the production of documents. In September 2013, respondent met with Velazquez to answer the interrogatories. Yet, she never served Kluger with the answers to interrogatories, despite telling Velazquez that she had. She also ignored Kluger's attempts to seek her compliance. Consequently, on January 17, 2014, the court dismissed the complaint, with prejudice, for failure to provide discovery. Although respondent drafted a motion to vacate the dismissal of the complaint, she did not file it. Respondent did not inform Velazquez of the complaint's dismissal, and Velazquez's lawsuit was never reinstated.

Meanwhile, respondent had agreed to meet with Velazquez a few days before the October 15, 2013 mediation to discuss what it would entail. Despite Velazquez's many phone calls and e-mails inquiring about the process, the meeting never took place. At some point, respondent told Velazquez that the mediation had been canceled and that she was awaiting another mediation date. Respondent attributed the delay in rescheduling to "the summer months," when judges are on vacation.

Thereafter, Velazquez learned of her own accord that her case had been dismissed. She repeatedly called respondent, to no avail. By chance, Velazquez encountered respondent at a shopping mall. Respondent gave Velazquez various excuses for not contacting her and invited her to meet with respondent the next day. At that meeting, respondent represented that she would file the necessary documents, and told Velazquez not to worry about the dismissal of the complaint. Velazquez heard nothing further from respondent, who ignored her e-mails and Facebook messages. In a May 20, 2014 letter to respondent, Velazquez complained that, in the past three months, she had called every day and left messages with respondent's secretaries, yet respondent ignored her calls and e-mails.

Count six charged respondent with failure to comply with various provisions of the recordkeeping rule, as well as commingling personal and trust funds in her trust account.

OAE Disciplinary Auditor Rodriguez testified that, in respect of one of respondent's trust accounts, her law firm was identified as "Brown & Associates, Attys at Law," even though she was a sole practitioner. He also testified that she had failed to deposit sufficient funds in her attorney trust account to cover monthly bank charges, which caused the aforementioned invasion of $10.24 in client funds.

Count seven of the complaint charged respondent with having violated RPC 7.1(a) and RPC 7.5(e), by using the designation "& Associates" on her letterhead, and RPC 8.1(b), by failing to notify the OAE, within one month of the commencement of its investigation, that she had closed one trust account and opened another.

On March 29, 2016, respondent closed the BoA Trust Account. On April 1, 2016, she opened an attorney trust account at TD Bank (TD Trust Account 1), which identified respondent's firm as "Brown & Associates Attys At Law." Respondent testified that, although she did not have associates at the time, the name reflected her intention to hire associate lawyers. When the OAE informed respondent that she could not include "and associates" if she had none, she

changed the designation of her firm. Presently, respondent practices under the name "The Burns Law Firm."

By letter dated May 2, 2016, the OAE requested respondent to provide three-way reconciliations and bank statements for the BoA Trust Account, which had been closed, and three-way reconciliations and bank statements for TD Trust Account 1, which replaced the BoA Trust Account. On May 18, 2016, respondent provided three-way reconciliations and bank statements for the BoA Trust Account and bank statements for TD Trust Account 1.

Meanwhile, unbeknownst to the OAE, respondent had closed TD Trust Account 1 on May 12, 2016, and opened TD Trust Account 2. On the same date, she opened an attorney business account at TD Bank. Prior to May 12, 2016, respondent had not had an attorney business account since November 20, 2014, when she had closed a prior business account.

Respondent acknowledged that she opened TD Trust Account 2 and the TD business account just after the OAE had requested three-way reconciliations. She denied that she had done so because she was under investigation or for the purpose of concealing information from the OAE. Rather, she changed the accounts to obtain better service from the bank.

In mitigation, respondent testified about the events of her personal and professional life in the months leading to her July 2014 suspension. When the

ethics complaint in that matter was filed, she was involved in an unhealthy relationship with her husband. They have since divorced.

When respondent left her husband, in late October 2013, she had financial problems and became homeless. Although she had not yet been diagnosed with Lupus, she suffered from its effects, which included fatigue and muscle weakness, resulting in the loss of feeling in her legs, which, in addition to her arms, would "give out." In April 2014, respondent was the victim of a violent crime. Although the perpetrator was arrested, "they did not complete the prosecution."

Respondent claimed that the trust account shortages were not intentional, but resulted from the chaos in her personal life and the Christmas season, when her law office is closed. According to respondent, her life has improved, and she has focused more attention on her practice and on the Court Rules.

Respondent submitted nine character letters and a certificate of completion of forty-five continuing legal education courses in family mediation. Of the nine letters, six were from individuals who had known respondent for at least twenty years. Four of the writers were aware of the ethics charges, and two had been her clients. In summary, the authors noted respondent's honesty and integrity, her work ethic, and her loyalty and dedication to her clients, family, and community.

In respect of count one, the special master found that respondent was required to satisfy Global's $1,396.39 lien prior to the disbursement of any other settlement funds. He pointed out that, although Busch had granted respondent permission to use the funds, Global had not. Thus, he found that respondent had knowingly misappropriated and failed to promptly disburse escrow funds belonging to Global, a violation of RPC 1.15(b). Respondent also miscalculated her fee, contrary to R. 1:21-7(d).

The special master dismissed count two of the complaint. First, he noted that the OAE had withdrawn the practicing-while-suspended charges. Second, Irving's testimony regarding respondent's failure to notify her clients of the suspension was hearsay, as none of respondent's clients had testified at the hearing. Moreover, given respondent's reinstatement, the special master reasoned that she must have notified her clients of the suspension or she would not have been reinstated.

For similar reasons, the special master dismissed count three. Because Clyburn did not testify, and the evidence was limited to the contents of his grievance, the special master deemed the evidence hearsay, without competent evidence in the record to support it. The special master did not address the RPC 1.5(a) charge.

The special master found respondent guilty of negligent misappropriation, as count four alleged. On December 31, 2013, an $18 bank fee debited from respondent's trust account invaded settlement funds belonging to a client. She, thus, violated RPC 1.15(a).

In respect of count five, the special master found that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c). Specifically, respondent failed to submit timely answers to interrogatories on Velazquez's behalf but told Velazquez that she had done so; permitted Velazquez's complaint to be dismissed with prejudice; failed to file a motion to vacate the dismissal and reinstate the complaint; and misrepresented to Velazquez that the mediation was delayed because the judges were on vacation in the summer.

The special master dismissed count six of the complaint. Although he determined that the OAE had proven, by clear and convincing evidence, that respondent had failed to deposit in her trust account sufficient funds to cover monthly bank charges, he dismissed count six because, with the exception of the improper designation of the firm's name on respondent's bank accounts, which he noted was the basis for the violations charged in count seven, the evidence failed to support "the balance of the allegations," which were "duplicative and/or not proven."

Finally, the special master found that respondent violated RPC 7.1 and RPC 7.5(e), as charged in count seven, when she changed the name of her firm to Brown and Associates and labeled her bank accounts as such, even though she was the only person associated with the firm. The special master dismissed the RPC 8.1(b) charge because he determined that respondent's reason for closing and opening the attorney bank accounts was to obtain better banking services, rather than to mislead the OAE during its investigation.

The special master acknowledged the many character letters that had been submitted in respondent's behalf. He was unconvinced, however, regarding the personal circumstances of respondent's life during the time in question, observing that she had provided no dates or documents to substantiate her claims.

Based on the special master's finding that respondent had knowingly misappropriated $1,396.39 in escrow funds belonging to Global, he recommended her disbarment.

Following a de novo review of the record, with the exception of the knowing misappropriation determination, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Although clear and convincing evidence supports most of the charges brought against respondent, the record falls short in respect of the claim that respondent knowingly misappropriated $1,396.39 in escrow funds. In In re Wilson, 81 N.J. at 455 n.1, the Court described knowing misappropriation 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.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, 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. 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.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

In In re Hollendonner, 102 N.J. 21, the Court held that the Wilson principle also applies to the other funds that an attorney must hold inviolate, such as escrow funds.

The record clearly and convincingly demonstrates that Busch had a contractual obligation to repay Global with the proceeds of the settlement. In our view, however, the record does not establish that respondent had a duty to ensure that Busch complied with her obligation.

Although Global issued a notice of lien to respondent, directing her to satisfy its lien prior to the disbursement of any other funds from Busch's settlement monies, the record does not contain evidence that respondent agreed to serve as an escrow agent for, or to assume a fiduciary duty to, Global. Moreover, the notice of lien notwithstanding, we cannot find, as a matter of law,

that respondent had a duty to ensure that Busch complied with her contractual obligation to Global. Were we to do so, every attorney would be placed in the role of an escrow agent for any party who unilaterally claimed a lien against proceeds due to the client. We, thus, determine that respondent did not knowingly misappropriate funds that Busch owed to Global.

In the Busch matter, we find that respondent miscalculated her contingent fee, in violation of R. 1:21-7(d). However, the complaint did not charge her with a corresponding RPC violation, contrary to R. 1:20-4(b), which requires an ethics complaint to "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated." Although respondent's violation of R. 1:21-7(d) could constitute a violation of RPC 1.5(a) (unreasonable fee), we forego that determination, in this case, because the complaint did not include an RPC 1.5(a) charge in the Busch matter.

Both counts two and three of the complaint charged respondent with having violated R. 1:20-20(b)(6), (10), and (11), which impose certain duties and restrictions on a suspended attorney. R. 1:20-20(b)(6) prohibits an attorney subject to an order of suspension from soliciting or procuring legal business for any other attorney. Similarly, R. 1:20-20(b)(10) prohibits a suspended attorney from recommending to the client another attorney to continue or complete a

matter. By passing her clients off to Irving during the period of her suspension, respondent violated these Rules.

Rule 1:20-20(b)(10) and (11) also require a suspended attorney to notify all clients, in pending litigated and non-litigated matters, of the suspension, and to advise them to seek counsel elsewhere and to find another attorney to continue or complete their matters. Respondent did not comply with these provisions of the Court Rule.

We do not agree with the special master's view that respondent's reinstatement established, as a matter of law, that she had complied with R. 1:20-20(b)(10) and (11). We accept Rodriguez's testimony that respondent's files contained no evidence that, prior to the effective date of her suspension, she notified her clients of the suspension or advised them to obtain new counsel.

In respect of the allegation that respondent practiced law while suspended, as the OAE conceded, the record does not support such a determination because there is no evidence that respondent practiced law during the term of her suspension in 2014. Therefore, we dismiss the charged violation of RPC 5.5(a), R. 1:20-20(b)(1), and R. 1:20-20(b)(6).

We find, however, that respondent violated R. 1:20-20(b)(10) and (11), by failing to give notice of her suspension to her clients. Previously, we have found that violations of R. 1:20-20(b)(10) and (11) are contrary to RPC 8.1(b)

and RPC 8.4(d).[4] See, e.g., In re Stolz, 229 N.J. 223 (2017) (although the attorney filed an affidavit of compliance with R. 1:20-20, after his suspension, he violated R. 1:20-20(b)(5), by continuing to use the firm's pre-suspension name on his financial records, including trust and business account records, and by issuing business account checks containing the firm's pre-suspension name; he also failed to notify the courts and opposing counsel of his suspension a violation of R. 1:20-20(b)(11); the failure to comply with R. 1:20-20 was deemed a violation of RPC 8.1(b) and RPC 8.4(d); the attorney also violated RPC 8.4(c), by retaining his surname in the firm's post-suspension name for the purpose of keeping the firm on certain insurance companies' lists of approved attorneys, which permitted cases to continue to be referred to him; the censure was based on the "mercenary" and "egregious" nature of the attorney's deceitful conduct), and In re Powell, 219 N.J. 128 (2014) (attorney filed an affidavit of compliance with R. 1:20-20 but, among other violations of the Rule, failed to comply with the client notification requirements of R. 1:20-20(b)(10) and (11)).

[4] Although the complaint did not charge a violation of RPC 8.1(b), R. 1:20-20(c) provides, in pertinent part, that the failure of a suspended attorney to comply with the obligations of R. 1:20-20 shall constitute a violation of RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(d). Therefore, respondent had ample notice that RPC 8.1(b) also was implicated in this matter. See In the Matter of Wayne Powell, DRB 13-404 (May 9, 2014) (slip op. at 2 n.1).

Thus, we find that, by failing to comply with the above subparagraphs of R. 1:20-20, respondent violated RPC 8.1(b) and RPC 8.4(d).

Additionally, the record lacks clear and convincing evidence that respondent's conduct vis-á-vis her clients violated RPC 8.4(c). In our view, nothing in the record suggests that she acted dishonestly by referring her cases to Irving or by failing to inform her clients that she could not represent them during her suspension. Respondent's failure to notify clients of her suspension did not violate RPC 8.4(c) because nothing in the record suggests that she had acted deceitfully in doing so.

We also find that the record lacked clear and convincing evidence that respondent charged Clyburn an unreasonable fee, in violation of RPC 1.5(a), as alleged in count three of the complaint. Respondent testified that her fee encompassed only pre-trial work, all of which she provided to Clyburn prior to her suspension. Clyburn did not testify and, thus, respondent's testimony was unrebutted. We, therefore, determine to dismiss the RPC 1.5(a) charge.

As to count four of the complaint, respondent admitted that she negligently misappropriated $10.24 from BoA Trust Account, when an $18 bank fee invaded the $4,736 that respondent should have been holding in trust for her client. She, thus, failed to safeguard his funds, a violation of RPC 1.15(a).

In respect of count five, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c) in the Velazquez matter. As the special master observed, contrary to respondent's representation to her client, she failed to serve answers to interrogatories on the client's behalf; permitted Velazquez's complaint to be dismissed with prejudice, based on her failure to serve the answers; failed to tell her client of the dismissal; failed to file a motion to vacate the dismissal, but misrepresented to her client that she would; and misrepresented to her client that the mediation had been delayed due to the judges' vacation season.

As to the charged violations of RPC 1.15(a) and (d), respondent failed to deposit in the BoA Trust Account an amount of funds sufficient to cover bank charges. This was a clear violation of RPC 1.15(a). Further, respondent's trust and business accounts contained improper designations of the account holder, a violation of R. 1:21-6(a) (requiring attorney business and trust accounts to be in the name of the attorney, partnership, or professional corporation) and, thus, RPC 1.15(d). Given the evidence, we find that respondent violated RPC 1.15(a) and (d).

Finally, in respect of count seven of the complaint, we agree with the special master that respondent violated RPC 7.1(a) and RPC 7.5(e), but did not violate RPC 8.1(b).

RPC 7.1(a) prohibits a lawyer from making false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks professional involvement. Under the Rule, a communication is false or misleading if it "contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." By designating her bank accounts in the name of Brown "& Associates," respondent misrepresented that she practiced law with more than one attorney. Moreover, RPC 7.5(e), permits a law firm to identify itself as including "& Associates" if the words are "accurate and descriptive of the firm." Such was not the case here. Respondent admitted that the name "Brown & Associates" was used based on her intention to hire additional attorneys.

In respect of RPC 8.1(b), although respondent did not timely notify the OAE that she had changed bank accounts, she testified that she did not withhold the information for the purpose of misleading the OAE. Moreover, she changed accounts due to a customer service issue.

Thus, respondent violated RPC 7.1(a) and RPC 7.5(e). She did not violate RPC 8.1(b), as alleged in this count of the complaint.

To conclude, we find that the clear and convincing evidence established that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.15(a)

(negligent misappropriation) and (d), RPC 7.1(a), RPC 7.5(e), RPC 8.1(b), and RPC 8.4(c) and (d). We next address the appropriate quantum of discipline to impose on respondent.

Standing alone, none of respondent's ethics infractions warrants more than a reprimand. A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may be imposed, even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also failed to communicate with his client: the attorney never informed his client that a motion to compel had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failing to serve the interrogatory answers and to comply with the court's order), and In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, failing to work on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its

reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that the client should expect a monetary award in the near future were false, thereby violating RPC 8.4(c)).

A reprimand typically is imposed for commingling, recordkeeping deficiencies, and negligent misappropriation of client funds. See, e.g., In re Bucci, ___ N.J. ___ (2019) (attorney violated a number of provisions of R. 1:21-6, including maintaining negative trust account balances, which she improperly offset by commingled attorney fees), and In re Christoffersen, 220 N.J. 2 (2014) (attorney negligently misappropriated funds destined for the satisfaction of a lien, failed to segregate funds that were subject to a dispute between the lawyer and his clients, commingled personal and trust funds, and failed to comply with recordkeeping requirements; violations of RPC 1.15(a), (c), and (d)).

Likewise, the threshold measure of discipline to impose on an attorney who violates RPC 8.1(b) and 8.4(d), based on the failure to comply with certain provisions of R. 1:20-20, is a reprimand. In re Stolz, 229 N.J. 223 (2017).

Finally, the use of a misleading letterhead ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May

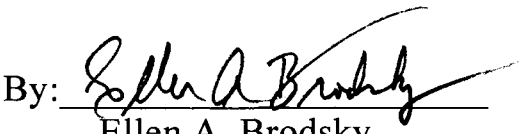
24, 2010) (admonition imposed on attorney who used letterhead that identified three attorneys as "of counsel," despite his having had no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which could easily have created a perception that he had improper influence with the judiciary; other improprieties were found).

Here, respondent's ethics infractions do not stand alone, however. She committed numerous ethics infractions in many client matters. Her conduct left her clients confused, angry, and without counsel. In some cases, the clients had court appearances with no attorney to represent them. Based on the totality of respondent's misconduct and her disciplinary record, we voted to impose a three-month suspension.

Members Rivera and Zmirich voted to disbar respondent for the knowing misappropriation of $1,396.39 in escrow funds. Members Gallipoli and 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 Saleemah M. Burns
Docket No. DRB 18-390

Argued: February 21, 2019

Decided: August 12, 2019

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Disbar	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli				X
Hoberman	X			
Joseph				X
Rivera		X		
Singer	X			
Zmirich		X		
Total:	5	2	0	2

Ellen A. Brodsky
Chief Counsel