Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-043
District Docket No. XIV-2017-0474E

In the Matter of	
James D. Brady	
An Attorney at Law	

Decision

Decided: September 13, 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 knowing misappropriation of "funds entrusted to his care," 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); RPC 1.15(b) (failure to promptly deliver funds that the client is entitled to receive); RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty,

trustworthiness, or fitness to practice in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The complaint also charged respondent with having violated RPC 1.5(c) (upon conclusion of a contingent fee matter, failure to provide the client with a written statement of the outcome of the matter and, if there was a recovery, showing the remittance to the client and the method of its determination) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we recommend respondent's disbarment for the knowing misappropriation of $8,999.67 in client funds.

Respondent was admitted to the Pennsylvania bar in 1980 and to the New Jersey bar in 1982. At the relevant times, he maintained an office for the practice of law in Merchantville.

In 2003, respondent was admonished for misconduct in two client matters, including lack of diligence, failure to surrender his client's file to subsequent counsel, and recordkeeping violations. In the Matter of James D. Brady, DRB 03-176 (September 26, 2003).

In 2009, respondent received a censure, in a default matter, for his violation of RPC 1.15(a) (commingling personal and trust funds), RPC 1.15(d) (failure to comply with the recordkeeping requirements set forth in R. 1:21-6), and RPC 8.1(b). In re Brady, 198 N.J. 5 (2009).

On October 26, 2018, in another default matter, the Court imposed a three-month suspension on respondent for his violation of RPC 1.4(b) (failure to communicate with the client), RPC 1.5(c), RPC 1.15(a) (commingling), RPC 7.3(d) (giving something of value to a person for recommending the lawyer's services), and RPC 8.1(b). In re Brady, 235 N.J. 221 (2018). Respondent has not sought reinstatement.

Service of process was proper. On October 23, 2018, the OAE sent a copy of the formal ethics complaint to respondent's Merchantville address, by regular and certified mail, return receipt requested. The certified mail was returned to the OAE, marked "unclaimed." The regular mail was not returned.

On December 11, 2018, the OAE sent a letter to respondent, at the same address, by regular and certified mail, return receipt requested. The letter informed respondent that, if he failed to file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The certified letter was returned to the OAE, marked "return to sender insufficient address unable to forward." The letter sent by regular mail was not returned.

As of January 28, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On November 16, 2009, grievant Carol Ann Wiest was injured in a car accident. On November 23, 2009, she and respondent entered into a contingent fee agreement, which provided that respondent's fee would be one-third of the net recovery (calculated as the total recovery minus costs and expenses).

On March 21, 2014, the Superior Court of New Jersey Trust Fund issued a $100,000 check to Carol A. Wiest, Arthur W. Wiest, Sr., and James D. Brady, Esq., which represented the recovery that respondent obtained in Carol Wiest's personal injury matter. Five days later, respondent deposited the check in his attorney trust account, which increased the balance to $333,573.34.

Between May 6, 2014 and November 25, 2015, respondent issued to the Wiests three trust account checks, totaling $51,000. The checks contained the following notations: partial payment, second payment, and third payment for an "11/16/09 mva."

Although respondent had disbursed $51,000 of the $100,000 to the Wiests, he neither provided them with a settlement statement, nor told them that they had incurred costs and expenses in connection with the matter. Thus, according

to the complaint, respondent's one-third contingent fee would have been $33,333.33, leaving his clients with $66,666.67 in proceeds. As respondent had disbursed only $51,000 to the Wiests, they were still owed $15,666.67.

On June 20, 2016, respondent transferred $145,545.92 from the trust account to a personal account, leaving an $85,000 balance in the trust account. On July 22, 2016, during the OAE's investigation of the Debra Rodriguez matter, which led to respondent's 2018 suspension, the OAE physically located respondent at one of his properties and confronted him about the status of his attorney trust account and funds belonging to Rodriguez. Respondent told the OAE that Rodriguez's funds and those of "another client" were in the trust account. That other client was Carol Wiest. Thus, of the $85,000 in respondent's trust account, $15,666.67 belonged to the Wiests.

On February 10, 2017, Sun National Bank issued to Rodriguez and others a $58,333 cashier's check, drawn on funds in respondent's trust account. The trust account balance was now $26,667, leaving the Wiest funds intact.

On August 25, 2017, the OAE provided respondent with a copy of the Wiest grievance and requested that he submit a written reply by September 11, 2017. The reply was to include an explanation for his failure to disburse the full amount due to the Wiests. The OAE's letter was sent by regular and certified mail, return receipt requested. The certified letter was returned to the OAE,

marked "unclaimed." The letter sent by regular mail was not returned. Respondent ignored the letter.

On September 12, 2017, one day after respondent's written reply to the grievance was due to the OAE, he disbursed $20,000 to himself, reducing the trust account balance to $6,667.

By letter dated October 4, 2017, sent by regular and certified mail, the OAE provided respondent with a copy of its August 25, 2017 letter and extended his deadline for complying with its directives to October 18, 2017. The certified letter was returned "unclaimed." The letter sent by regular mail was not returned. Respondent failed to reply to this letter.

As of October 22, 2018, the date of the ethics complaint, respondent still had not communicated with the OAE.

We find that the facts recited in the complaint support most of 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). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

RPC 1.5(c) requires a lawyer, upon conclusion of a contingent fee matter, to provide the client with "a written statement stating the outcome of the matter

and, if there is a recovery, showing the remittance to the client and the method of its determination." Respondent failed to provide the Wiests with the required statement. He, thus, violated RPC 1.5(c).

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).]

As of February 10, 2017, respondent's trust account balance was $26,667, including $15,666.67 that belonged to the Wiests. On September 12, 2017, respondent took $20,000 from the trust account, thereby invading $8,999.67 of the Wiests' funds, without their authority. He, thus, knowingly misappropriated those monies, a violation of RPC 1.15(a), the principles set forth in In re Wilson, 81 N.J. 451, and RPC 8.4(c). Although the OAE also charged respondent with having violated RPC 1.15(b) (failure to promptly disburse funds), that violation is subsumed by the knowing misappropriation charge and, therefore, we dismissed the charge.

Further, RPC 8.4(b) prohibits a lawyer from committing "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." By knowingly misappropriating the Wiests' funds,

respondent essentially stole their money. N.J.S.A. 2C:21-15 provides, in relevant part, that "[a] person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary." Here, respondent's knowing misappropriation of the Wiests' $8,999.67 violated N.J.S.A. 2C:21-15, which, in turn, constituted a violation of RPC 8.4(b).

Although, on the face of the complaint, it does not appear that respondent was charged with a crime based on his theft of the Wiests' funds, this is not fatal to a finding that he violated RPC 8.4(b). A violation of the Rule may be found even in the absence of a criminal conviction or guilty plea. See, e.g., In re McEnroe, 172 N.J. 324 (2002) (after we declined to find a violation of RPC 8.4(b), because the attorney was never charged with the commission of a criminal offense, the Court reinstated the charge, finding that the attorney had violated the Rule).

Finally, R. 1:20-3(g)(3) requires a lawyer to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. RPC 8.1(b), in turn, prohibits a lawyer from knowingly failing to reply to a lawful demand for information from a disciplinary authority. By ignoring the OAE's requests that he file a written reply to the grievance, respondent violated RPC 8.1(b).

To conclude, respondent violated RPC 1.5(c), RPC 1.15(a), the principles set forth in In re Wilson, 81 N.J. 451, RPC 8.1(b), and RPC 8.4(b) and (c). We, thus, recommend his disbarment. Accordingly, we need not consider the appropriate level of discipline for his other infractions.

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
Bruce W. Clark, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Disbar

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

Ellen A. Brodsky
Chief Counsel