

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-463
District Docket No. XIV-2017-0254E

In the Matter of
Genia C. Philip
An Attorney at Law

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Decision

Decided: November 18, 2020

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 1.5(b) (failure to set forth in writing the basis or rate of the fee); 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 of client and escrow funds) (four counts); RPC 1.15(b) (failure to promptly disburse funds); RPC 1.15(d) and R. 1:21-6 (recordkeeping violations); RPC 5.5(a)(1) and R. 1:28A (practicing law while ineligible); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).¹

For the reasons set forth below, we find that respondent knowingly misappropriated client and escrow funds and, thus, recommend her disbarment.

Respondent earned admission to the New Jersey bar in 2000. She formerly maintained an office for the practice of law in Irvington, New Jersey.

In 2016, respondent received an admonition for lack of diligence and failure to communicate with the client in a divorce case. In the Matter of Genia C. Philip, DRB 16-307 (November 21, 2016).

On September 8, 2017, the Court temporarily suspended respondent from the practice of law for failure to cooperate with disciplinary authorities in the investigation underlying this matter. In re Philip, ___ N.J. ___ (2017).

On January 17, 2020, respondent was censured for her failure to file the required R. 1:20-20 affidavit following her September 8, 2017

¹ In the December 10, 2019 certification of the record and in the complaint, the headings for counts one through three allege criminal conduct. The complaint, however, did not charge respondent with having violated RPC 8.4(b).

temporary suspension. In re Philip, 240 N.J. 434 (2020). Respondent remains temporarily suspended to date.

Service of process was proper. On October 31, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. Thereafter, in reply to an OAE address inquiry, the United States Postal Service (USPS) Postmaster confirmed that respondent had moved, without leaving a forwarding address.

On November 9 and November 11, 2019, the OAE published disciplinary notices in the Star-Ledger and the New Jersey Law Journal, respectively, stating that a formal ethics complaint had been filed against respondent. Those notices informed respondent that, unless she filed an answer to the complaint within twenty-one days of the date of publication of the notices, her failure to answer would be deemed an admission of the allegations of the complaint.

On November 22, 2019, the OAE confirmed with the USPS that its certified mailing had been returned, on November 5, 2019, because the forwarding order for respondent's home address had expired. On November 26, 2019, the regular mail was returned with the word "Vacant" handwritten on the envelope. On December 9, 2019, the OAE received the original certified mailing with the letters "UTF" (unable to forward) handwritten on the envelope.

As of December 10, 2019, respondent had not filed an answer to the complaint, and the time within which she was required to do so had expired. Accordingly, the OAE certified the matter to us as a default.

We now turn to the allegations of the complaint.

In connection with the matters below, respondent maintained the following bank accounts at Wells Fargo Bank: Attorney Trust Account (ATA); Attorney Business Account (ABA); Business Savings Account (BSA); Personal Checking Account; and Personal Savings Account (PSA).

The Naar/Gold Matter – Count One

In August 2016, respondent represented Garth Naar in the sale of a Jersey City, New Jersey property to Mordechai Gold, who was represented by Ofeck & Heinze, LLP. On August 8, 2016, the parties executed a contract of sale. On September 15, 2016, Ofeck & Heinze wire-transferred \$25,000, representing Gold's earnest money deposit, to respondent's ATA. Respondent was obligated to hold those funds in trust, pending the closing of the real estate transaction, which originally was scheduled for October 28, 2016, and then was rescheduled to November 7, 2016.

The closing never took place, and Naar ultimately sold the property to another buyer. Thereafter, respondent failed to promptly return the \$25,000

deposit to Gold or to his counsel. Indeed, in December 2016, Gold was compelled to file a chancery action against Naar, respondent, and others, to obtain the return of his deposit. Respondent failed to return the \$25,000 deposit to Gold's counsel until March 10, 2017.

Moreover, from September 16, 2016 to March 10, 2017, respondent failed to hold the escrow funds, inviolate, in her ATA. Rather, respondent used the escrow funds for purposes unrelated to the Naar/Gold transaction. The first invasion of the escrow funds occurred on September 22, 2016, after a \$791 wire transfer and \$30 wire transfer fee reduced the balance in respondent's ATA to \$24,239.32. On October 7, 2016, respondent further invaded the escrow funds by making a \$2,484 disbursement from her ATA to Liberty Mutual Insurance (LMI). None of these three disbursements (\$791 + \$30 + \$2,484) related to the Naar/Gold matter, yet all of them invaded the escrow funds. The \$2,484 disbursement to LMI reduced the balance in respondent's ATA to \$21,755.32. On March 2, 2017, respondent made a payment of \$1,668 in the Phillips matter, discussed in count three, below, once again improperly using the escrow funds.²

² The Board's review of the monetary figures set forth in the complaint revealed some mathematical discrepancies, which, in the Board's view, were not material and did not affect the facts as alleged.

On March 10, 2017, respondent transferred \$1,600 from her ABA to her ATA, increasing her ATA balance to \$25,034.11. Only then did respondent return the \$25,000 in escrow funds to Gold's counsel at Of Eck & Heinze.

Based on these facts, count one of the complaint charged respondent with the knowing misappropriation of the escrow funds that Gold advanced, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, and RPC 8.4(c).

The Hall Matter – Count Two

In October 2016, Bridgette Simone Hall retained respondent to represent her in the purchase of real estate in Maplewood, New Jersey. On October 7, 2016, she gave respondent two personal checks, totaling \$7,300: one for \$500, representing a retainer fee, and a second for \$6,800, representing Hall's earnest money deposit for the purchase. Because the \$6,800 constituted escrow funds, respondent was obligated to deposit and safeguard those funds in her ATA. Yet, upon receipt, respondent deposited both checks in her ABA, via a \$7,300 ATM transaction. Thereafter, she used the \$500 retainer and most of the \$6,800 in escrow funds for purposes unrelated to Hall's transaction.

Specifically, on October 5, 2016, the balance in respondent's ABA was \$2,445.84. The October 7, 2016 deposit of Hall's \$7,300 increased her ABA

balance to \$9,745.84. That same date, respondent withdrew \$500 from her ABA, presumably Hall's retainer fee, leaving an account balance of \$9,245.84. Thereafter, respondent repeatedly invaded the escrow funds that Hall advanced. On October 31, 2016, the balance in respondent's ABA decreased to \$4,317.40, representing a shortage of \$2,482.60 in the \$6,800 in escrow funds. On November 30, 2016, the balance fell to \$1,277.95, representing a shortage of \$5,522.05 in the escrow funds. On December 31, 2016, the balance in the account fell to \$286.55, or \$6,513.45 less than the amount of the escrow funds she was obligated to hold, inviolate. Respondent's ABA bank statements revealed that she used the escrow funds that Hall advanced for personal purposes, including Uber charges and purchases at Wal-Mart, Home Depot, and restaurants.

After Hall's purchase was canceled, she retained respondent for the purchase of a different property in Springfield, New Jersey. On January 25, 2017, Hall gave respondent a check for \$1,445, representing additional escrow funds for the Springfield property, and a \$500 retainer check. Respondent was required to deposit the escrow funds in her ATA, to supplement Hall's initial \$6,800 in escrow funds. Yet, respondent again deposited both checks in her ABA. In respect of the combined real estate matters for Hall, respondent was obligated to safeguard \$8,245 for her client, yet, failed to do so.

On January 31, 2017, the balance in respondent's ABA was just \$7,491.45, representing a shortage of \$753.55 on account of the \$8,245 in escrow funds that Hall had advanced. By February 28, 2017, respondent's ABA balance decreased to \$4,853.78, representing a shortage of \$3,391.22 in the escrow funds. On March 10, 2017, just one week prior to Hall's closing, the balance in respondent's ATA was \$4.11.

On March 16, 2017, respondent served as settlement agent at the closing for Hall's purchase of the Springfield property. At the closing, Hall provided respondent with an additional \$1,356.95 in borrower funds. Yet again, respondent improperly deposited those funds in her ABA, rather than her ATA.

In total, Hall gave respondent \$9,610.95 in escrow funds in connection with the real estate transactions. Yet, on the March 16, 2017 closing date, respondent's ABA held just \$2,656.31, representing a shortage of \$6,954.64. On that date, respondent's ATA received a wire transfer of \$175,136.85 from Hall's lender. The next day, respondent's ATA received a wire transfer of \$21,035.30, in seller funds, increasing the balance to \$196,172.15.

On March 21, 2017, the seller's realtor disbursed to respondent Hall's additional \$1,000 earnest money deposit, which it had neglected to forward prior to the closing. The next day, respondent deposited that check in her ATA, increasing the balance of funds on deposit for the Hall purchase to \$197,172.15.

Respondent deposited a total of \$206,783.10 in behalf of Hall for the transaction (\$175,136.85 + \$21,035.30 + \$1,000 + \$9,610.95). Because she had invaded the \$9,610.95 in escrow funds that Hall advanced, however, only \$197,172.15 was available in respondent's ATA for necessary closing disbursements totaling \$205,498.45. The difference of \$1,284.65 (\$206,783.10 - \$205,498.45) should have been returned to Hall or the seller. Respondent failed to disburse the \$1,284.65 remaining in trust.

In order to fully fund the Springfield transaction, respondent deposited funds from her ABA (\$7,000, on March 22, 2017) and her BSA (\$1,500 on April 11, 2017). On April 13, 2017, the final disbursement check for Hall's closing cleared respondent's ATA.

Hall confirmed to the OAE that she never authorized respondent to use the escrow funds for any purpose other than for her transaction.

Based on these facts, count two charged respondent with knowing misappropriation of the escrow funds that Hall advanced, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner; failure to promptly deliver funds to a client or third person, in violation of RPC 1.15(b); failure to deposit trust funds in an attorney trust account, in violation of RPC 1.15(d) and R. 1:21-6(a)(1); and conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c).

The Phillips Matter – Count Three

In December 2016, Lorie Ann Phillips retained respondent to represent her in the purchase of real estate in West Orange, New Jersey, from an estate, for \$265,000. Although respondent had not regularly represented Phillips, respondent failed to provide her with a writing setting forth the basis or rate of her fee. According to Phillips, respondent's fee was \$1,500.

On December 21, 2016, Phillips provided respondent with a \$25,500 check, representing a \$25,000 earnest money deposit and \$500 toward respondent's fee. On December 23, 2016, respondent improperly deposited the check in her BSA, not her ATA. The day before that deposit, her BSA held \$1,400.86. With the infusion of Phillips's funds, the balance in the account increased to \$26,900.86.

On January 25, 2017, Phillips gave respondent an additional \$1,000 check toward her fee, which respondent deposited in her ABA that same date. Respondent, thus, received her total \$1,500 fee.

Almost immediately upon receipt of the \$25,000 in escrow funds that Phillips advanced, respondent began to invade them for purposes other than Phillips's purchase, including electronic withdrawals of funds, online transfers to a personal savings account, ATM withdrawals, and overdraft protection of her ABA. On December 27, 2016, the balance in respondent's BSA was reduced

to \$23,600.86. On January 4, 2017, it decreased to a low of \$18,957.55, or \$6,042.45 short of the escrow funds that Phillips advanced. Respondent cured the shortage on March 13, 2017, when she deposited \$24,524.59 from the Township of Hillside, representing legal fees in an unrelated matter.

According to Phillips, respondent represented to her that her \$25,000 deposit would be held in respondent's ATA. Phillips denied that she had authorized respondent to use the escrow funds for a purpose other than for her real estate purchase.

On February 8, 2017, respondent served as settlement agent for Phillips's real estate closing. Because her BSA held just \$19,308.55, respondent could not have transferred the full \$25,000 in escrow funds from her BSA to her ATA prior to disbursing funds from the ATA for the February 8, 2017 closing. The estate, however, required additional time to obtain an estate tax waiver. Therefore, respondent was able to conduct the closing on February 8, 2017 without disbursing the entire \$25,000 escrow to the seller.

After making numerous disbursements from her ATA in connection with the Phillips purchase, respondent held just \$1,678.79 in the escrow funds that Phillips advanced. As mentioned above, in the Naar/Gold matter, respondent used \$1,678.79 of Phillips's funds, plus \$1,600 from her ABA, to cure the

shortage in Gold's matter, so that she could refund a similar, \$25,000 escrow to Gold.

Thus, the complaint alleged that, on March 10, 2017, respondent knowingly misappropriated \$1,678.79 that remained in her ATA after Phillips's real estate purchase, in order to fund the Naar/Gold matter, specifically, the return of the \$25,000 in escrow funds that Gold had advanced.

On April 4, 2017, almost two months after the Phillips closing, respondent paid the first quarter taxes of \$2,933.75 for the Phillips property, with a memo of "replacement check for 1st QTR Taxes." Because her ATA held only \$2,451.30 for Phillips's transaction, respondent transferred \$3,000 from her BSA to her ATA, increasing the balance to \$5,451.30.

Therefore, the \$1,678.79 that respondent used to refund Gold's escrow, on March 2, 2017, actually represented proceeds required for Phillips's real estate taxes of \$2,933.75, not proceeds due to the seller or Phillips. Had the \$1,678.79 remained intact, respondent would have required just \$1,254.96 ($\$2,933.75 - \$1,678.79$) of the original \$25,000 escrow in BSA to cover Phillips's real estate taxes. That would have reduced the balance of the \$25,000 escrow to \$23,745.04. Respondent, however, failed to account for the \$1,678.79, already having misappropriated those funds for the Naar/Gold escrow.

On April 27, 2017, respondent returned to Phillips a \$180 “insurance balance,” via ABA check number 1232. That payment should have further reduced the remaining escrow held in BSA to \$23,565.04 (\$23,745.04 - \$180).

The true balance of the escrow for the Naar/Gold matter, thus, was \$23,565.04. As previously noted, respondent made Phillips’s \$25,000 escrow whole by depositing a \$24,524.59 legal fee from the Township of Hillside in her BSA, on March 13, 2017, thereby increasing the balance to \$44,008.08.

Between March 13 and April 30, 2017, the balance in respondent’s BSA decreased to \$29,913.78. By letter dated May 16, 2017, counsel for the estate requested the release of the escrow. On May 17, 2017, respondent disbursed to the estate \$25,000 from her ABA (not from her BSA, the account into which she had deposited Phillips’s \$25,000 escrow), as the “balance of the seller’s proceeds held until the filing of the inheritance wax [sic] waiver.” When respondent issued that check, her ABA held just \$650.60. However, her BSA held \$27,088.78.

On June 2, 2017, the estate negotiated the \$25,000 ABA check, which should have created an overdraft of \$24,253.82. Because, however, respondent had linked her BSA to provide overdraft protection for her ABA, the bank transferred \$24,305.39 from her BSA to her ABA to cover the shortage. After a

\$12.50 overdraft fee, the balance in respondent's ABA was reduced to \$39.07. As of June 5, 2017, her BSA held just \$2,784.09.

Based on these facts, count three charged respondent with the knowing misappropriation of the \$25,000 in escrow funds that Phillips advanced, and \$1,678.79 of the settlement proceeds earmarked for taxes, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. The complaint further charged respondent with failure to set forth in writing the basis or rate of her fee, in violation of RPC 1.5(b); failure to deposit client funds in an attorney trust account, in violation of RPC 1.15(d) and R. 1:21-6(a)(1); and conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c).

Respondent's Unauthorized Practice of Law – Count Four

Effective October 21, 2016, and again on October 20, 2017, the Court ordered respondent administratively ineligible to practice law for her failure to register with the Interest on Lawyers Trust Account (IOLTA) program. On November 2, 2017, respondent became IOLTA-compliant and eligible to resume the practice of law.

Nevertheless, during her period of ineligibility, respondent engaged in the unauthorized practice of law in both the Naar/Gold and Phillips matters, in violation of RPC 5.5(a)(1).

The Disciplinary Costs Matter – Count Five

By letter dated April 6, 2017, the Office of Board Counsel (OBC) reported to the OAE that respondent had submitted a \$1,090 ATA check toward her disciplinary costs that had been assessed in an unrelated matter. The OBC returned the check to respondent, reminding her that R. 1:21-6 prohibits an attorney from maintaining personal funds in an attorney trust account.

The OAE's subsequent review of respondent's ABA banking records revealed that, between January and March 2017, she properly had made three payments toward disciplinary costs from her ABA.

On December 13, 2017, the OAE conducted a demand audit interview during which respondent denied having intentionally used her ATA to pay for personal matters. Rather, respondent claimed to have been involved in the Hall closing when she mistakenly issued an ATA check for disciplinary costs. She maintained that she did so, despite the words "IOLTA ATTORNEY TRUST ACCOUNT" having been displayed under the law firm's name on her ATA checks.

The complaint charged that, although respondent "may have made a mistake in issuing ATA check number 1209 to the [Board]," she knowingly misappropriated the escrow funds that Hall advanced, as follows. Specifically, respondent improperly deposited the escrow funds, totaling \$8,245, in her ABA,

instead of her ATA. On February 14, 2017, respondent issued a \$1,090 ABA check for disciplinary costs. After that check was negotiated on March 7, 2017, the balance in her ABA fell to \$3,345.48, thus increasing the shortage in the \$8,245 in escrow funds that Hall advanced from \$3,809.52 to \$4,899.52. Hall did not authorize respondent to use the escrow funds for a purpose other than Hall's real estate closing.

Based on these facts, the complaint charged respondent with having knowingly misappropriated a portion of the \$8,245 in escrow funds that Hall advanced to pay unrelated disciplinary costs, constituting a violation of RPC 1.15(a), the principles of Wilson and Hollendonner, and RPC 8.4(c).

* * *

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In respect of the three real estate matters and the disciplinary costs matter, respondent knowingly misappropriated client and escrow funds, as follows. In the Naar/Gold matter, respondent represented Naar, the seller. On September 15, 2016, as settlement agent for the transaction, respondent

accepted a \$25,000 wire transfer to her ATA, representing Gold's earnest money deposit for his purchase of Naar's Jersey City property.

Respondent was obligated to hold the escrow funds that Gold advanced, inviolate, in her ATA, pending a November 7, 2016 closing. Naar ultimately sold the property to another buyer, and Gold was forced to initiate litigation to obtain the return of the escrow funds. On March 10, 2017, respondent returned \$25,000 to Gold's attorneys, Ofeck & Heinze. However, during the time that respondent held the escrow funds, from September 15, 2016 to March 10, 2017, she converted them for her own use.

Specifically, respondent made the following the disbursements, from the escrow funds that Gold advanced, for purposes unrelated to Gold's purchase: (1) a September 22, 2016 wire transfer of \$791 to Capital One and a \$30 wire transfer fee; (2) an October 7, 2016 payment to LMI for \$2,484; and (3) a March 2, 2017 payment of \$1,668 to Essex County in the Phillips matter.

The balance in respondent's ATA on account of the escrow funds that Gold advanced reached its lowest point on October 7, 2016, when respondent held just \$21,755.32 of the \$25,000 escrow, representing a shortage of \$3,244.68. For respondent's unauthorized use of the escrow funds that Gold advanced, she is guilty of knowing misappropriation.

In the Hall matter, respondent represented Hall, the buyer of real estate in Maplewood. On October 7, 2016, Hall gave respondent a \$6,800 earnest money deposit toward the purchase, which respondent, as settlement agent, was obligated to deposit in her ATA, pending the closing. However, respondent deposited the funds in her ABA, and then used most of them for purposes unrelated to Hall's transaction.

Between October 31 and December 31, 2016, the balance in respondent's ABA fluctuated, creating shortages in the \$6,800 in escrow funds that Hall advanced. On December 31, 2016, the balance fell to \$286.55, representing a shortage of \$6,513.45 in the escrow funds. Bank records revealed that respondent used the escrow funds that Hall advanced for personal purposes, including Uber charges and purchases from Wal-Mart, Home Depot, and restaurants. Hall had not authorized any of those expenditures.

After the Maplewood purchase was canceled, Hall retained respondent for the purchase of real estate in Springfield, New Jersey. On January 25, 2017, Hall gave respondent a check for \$1,445, representing an additional deposit toward the Springfield property, to be combined with her prior, \$6,800 earnest money deposit. A separate \$500 check represented legal fees. Respondent was required to deposit the \$1,445 check into her ATA. Yet, she deposited that check in her

ABA. In respect of the combined real estate matters for Hall, respondent was obligated to safeguard \$8,245 in escrow funds.

On January 31, 2017, however, the balance in respondent's ABA was just \$7,491.45, a shortage of \$753.55 in the escrow funds. On February 28, 2017, the balance in her ABA fell to only \$4,853.78, a shortage of \$3,391.22.

For the March 16, 2017 closing, Hall gave respondent additional buyer's funds of \$1,356.95. Once again, respondent improperly deposited those funds in her ABA, instead of her ATA. The escrow funds that Hall advanced, which respondent was required to hold, inviolate, now totaled \$9,610.95. Yet, on the closing date, respondent's ABA held just \$2,656.31, a shortage of \$6,954.64 in the escrow funds.

Respondent collected funds of \$206,783.10 for Hall's real estate closing. Because she had invaded the escrow funds that Hall advanced, only \$197,172.15 was available in her ATA for required disbursements totaling \$205,498.45. In March and April 2017, respondent transferred funds from her ABA (\$7,000) and BSA (\$1,500) to her ATA to cure that shortage and fully fund Hall's transaction. On April 13, 2017, the final disbursement check from the Hall closing cleared respondent's ATA, leaving a balance in the account of \$124.06.

Thus, between October 31, 2016 and the March 16, 2017 closing date, respondent used the escrow funds that Hall advanced for her own purposes,

creating a shortage of \$6,954.64 on the closing date. Hall had not authorized respondent to use the escrow funds for any purpose besides the real estate transaction. Making matters worse, following the closing, respondent also failed to return the \$1,284.65 escrow balance to Hall. Respondent's unauthorized use of the escrow funds that Hall advanced for her own purposes constituted the knowing misappropriation of client and escrow funds.

In the Phillips matter, respondent was retained for Phillips's purchase of property in West Orange, New Jersey. On December 21, 2016, Phillips gave respondent a \$25,000 earnest money deposit toward the purchase. Although respondent was required to deposit the funds in her ATA, she deposited them in her BSA instead.

Respondent received another \$1,500 from Phillips toward her legal fee, but failed to provide her client with a writing setting forth the basis or rate of the fee, for which respondent is guilty of having violated RPC 1.5(b).

Upon receipt of the escrow funds that Phillips advanced, respondent immediately began to make unauthorized use of them. She made electronic withdrawals of funds, online transfers to a personal savings account, and ATM withdrawals, and further used the funds to provide overdraft protection for her PSA. On January 4, 2017, the balance in respondent's BSA decreased to a low of \$18,957.55, representing a shortage of \$6,042.45 in the escrow funds.

When respondent conducted the February 8, 2017 closing, she did so without disbursing the \$25,000 escrow to the seller estate. After disbursements, proceeds of \$1,678.79 remained for the payment of Phillips's taxes. As stated previously, respondent knowingly misappropriated those funds when she returned \$25,000 in escrow funds in the Naar/Gold matter. When respondent disbursed the \$25,000 escrow to the estate, she did not use her BSA, the account into which she had deposited the escrow funds that Gold advanced. Rather, she issued an ABA check for \$25,000, although the balance in her ABA was \$650.60. When the check was negotiated, it should have created an overdraft. Respondent, however, had designated her BSA to serve as overdraft protection for her ABA, and it held \$27,088.78 at the time. Therefore, the bank transferred \$24,305.39 from respondent's BSA to her ABA, and honored the check. On June 2, 2017, respondent's ABA held just \$39.07.

Phillips told the OAE that she had not authorized respondent to use the escrow funds for any purpose other than her real estate purchase. For respondent's unauthorized use of the \$25,000 in escrow funds that Phillips advanced and the \$1,678.79 earmarked to pay taxes, she is guilty of knowing misappropriation of client and escrow funds. She also failed to deposit trust funds into an attorney trust account, a violation of RPC 1.15(d) and R. 1:21-6(a)(1).

In the Disciplinary Costs matter, in March 2017, respondent paid disciplinary costs of \$1,090 from the escrow funds that Hall advanced, via an ABA check. After that check was negotiated, on March 7, 2017, the balance in respondent's ABA was reduced to \$3,345.52, further contributing to a shortage of \$4,899.52 in the \$8,245 in escrow funds that Hall advanced. Respondent, thus, knowingly misappropriated an additional \$1,090 of the escrow funds.

Finally, in respect of the charge that respondent engaged in the unauthorized practice of law, from October 21, 2016 to November 2, 2017, she was administratively ineligible to practice law for her failure to register with IOLTA. During her period of ineligibility, respondent engaged in the unauthorized practice of law in both the Naar/Gold and Phillips matters, in violation of RPC 5.5(a)(1).

In sum, we find that in the Naar/Gold, Hall, Phillips, and Disciplinary Costs matters, respondent knowingly misappropriated client and escrow funds. In Hall, she also failed to promptly disburse funds, in violation of RPC 1.15(b); in Hall and Phillips, she failed to deposit escrow funds in an attorney trust account, in violation of RPC 1.15(d) and R. 1:21-6; in Phillips, she failed to set forth in writing the basis or rate of her fee, in violation of RPC 1.5(b); and in Naar/Gold and Phillips, she practiced law while ineligible, in violation of RPC

5.5(a). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Respondent knowingly misappropriated client and escrow funds. In Wilson, the Court described knowing misappropriation of client trust funds as follows:

Unless the context indicates otherwise, 'misappropriation' as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

[In re Wilson, 81 N.J. 455 n.1.]

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' . . . 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.

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

Thus, to establish knowing misappropriation, the presenter must produce clear and convincing evidence that the attorney used trust funds, knowing that they belonged to the client and knowing that the client had not authorized him or her to do so.

This principle also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985). In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the “obvious parallel” between client funds and escrow funds, holding that “[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule” In re Hollendonner, 102 N.J. at 28-29.

We determine that, pursuant to Wilson and Hollendonner, respondent must be disbarred for her repeated knowing misappropriation of client and escrow funds. Accordingly, we need not consider the appropriate quantum of discipline for respondent’s other infractions.

Member Joseph was recused.

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: /s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Genia C. Philip
Docket No. DRB 19-463

Decided: November 18, 2020

Disposition: Disbar

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

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel