Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-472
District Docket Nos. XIV-2017-0427E and
XIV-2017-0493E

In the Matter of	:
Ronald H. Carlin	:
An Attorney at Law	:

Decision

Argued: June 18, 2020

Decided: November 18, 2020

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky 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 a three-month suspension filed by the District IX Ethics Committee (DEC). In the matter docketed as XIV-2017-0427E, the formal ethics complaint charged respondent

with having violated RPC 1.15(b) (failure to promptly deliver funds to a third party).

In the matter docketed as XIV-2017-0493E, the formal ethics complaint charged respondent with knowing misappropriation of funds entrusted to his care, in violation of RPC 1.15(a) and the principles set forth in In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1999. At the relevant times, he maintained an office for the practice of law in Colts Neck, New Jersey. Presently, respondent is of counsel to LaRocca Hornik Rosen Greenberg & Crupi, LLC, in Freehold, New Jersey.

In District Docket No. XIV-2017-0427E, the complaint's RPC 1.15(b) charge was based on respondent's failure to remit certain payroll taxes in behalf of a secretarial employee. From March 2011 through the end of August 2016, he employed the secretary at an annual salary of $41,600. Every two weeks, the secretary received a gross salary of $1,600. Respondent closed his office in

August 2016 to seek treatment for opioid addiction. In October 2016, the LaRocca firm hired him.

Respondent had used a payroll service, which deducted taxes and issued to the secretary a net paycheck of approximately $1,200. From October 2014 through August 2016, when "money was really tight," respondent directly provided to the secretary paychecks reflecting her net pay only, rather than her gross and net pay. By doing so, he avoided using the payroll service, which would have required him to fund the payroll taxes. Consequently, respondent fell behind in the payment of payroll taxes. He denied that he had taken the unpaid payroll tax funds from an account and used them. Respondent failed to provide the secretary with a W-2 form for tax years 2015 and 2016.

At some point after August 2016, the secretary retained a certified public accountant (CPA) to assist her with her tax obligations. The CPA filed with the Internal Revenue Service (IRS) substitute W-2 forms for tax years 2015 and 2016, which the secretary provided to the Office of Attorney Ethics (OAE) when she filed the underlying grievance against respondent. Beginning on July 25, 2018, the OAE made multiple requests of respondent to provide an update in respect of his payment of payroll taxes. Respondent replied that a service, Intuit, had handled his payroll at that time and that Intuit's records had been archived and were being retrieved.

When respondent learned that the secretary was having problems with the IRS, he contacted an accountant. Because respondent had resumed working at that time, he did not have the $5,000 fee that the accountant required, causing a delay. Thereafter, an organization agreed to resolve the matter for respondent, contacted the IRS in respondent's behalf, obtained a detailed report, but, ultimately, did nothing to assist respondent. Subsequently, Frank LaRocca, Esq., of the LaRocca firm, referred respondent to someone to resolve the issue.

Respondent hired that person, who, as of July 29, 2019, was handling the matter. Respondent still had not provided the requested information to the OAE, however, because "the process was still ongoing."

In respect of the District Docket No. XIV-2017-0493E matter, on an unidentified date, Joseph Varriello retained respondent, whose practice was limited to family law, to represent him in a contested matrimonial action against his wife, Denise Varriello. Respondent believed that Joseph had paid a $3,500 retainer.

As part of the divorce process, Vincent DeLuca, Esq. conducted at least two mediation sessions. He met with the parties, both with and without their attorneys. As a result, DeLuca was familiar with the case, and the parties liked him. Thus, at their request, the court entered an order withdrawing the litigation

and ordering an arbitration, with DeLuca serving as arbitrator. The parties were to equally pay DeLuca's $5,000 retainer.

Joseph believed that Denise would not or could not pay her share of the $5,000 fee and he did not want to pay his share if she did not pay hers.[1] Accordingly, Joseph elected to pay his half of DeLuca's retainer to respondent instead of DeLuca.

On April 14, 2016, Joseph's girlfriend, Phyllis Rugolo, gave respondent a $2,500 check, payable to respondent and containing the notation "a[r]bitration" on the memo line. Respondent testified that, if and when Denise paid $2,500 to DeLuca, he would disburse Joseph's $2,500 to DeLuca.

On April 14, 2016, respondent sent the following e-mail to Denise's lawyer, G. John Germann, Esq.:

> I met with my client today who gave me a check for Vinny [DeLuca] but he said he has talked to your client who has advised him in no uncertain terms that she cannot afford the arbitration and she will not be paying her share of the retainer.
>
> Please speak to her and get right back to me regarding her intentions.
>
> [S¶10.][2]

[1] Respondent believed that, at some point, Denise paid DeLuca $1,000 toward his services.

[2] "S" refers to the parties' stipulation of facts, dated July 29, 2019.

Respondent testified that, in addition to retainer fees, he deposited advance payments of expenses, such as filing fees and qualified domestic relations order consultant fees, in his business account. Thus, on April 15, 2016, respondent deposited Rugolo's $2,500 check in his business account. Respondent intended to disburse the funds to DeLuca when needed and denied that he was hiding the funds.

Just before the $2,500 deposit, respondent's attorney business account balance was $23.53. That same date, after the $2,500 was deposited, and an unrelated $250 check was posted to the account, the account balance was reduced to $2,273.53, which was $226.47 less than the $2,500 that Rugolo had tendered in Joseph's behalf.

On April 18, 2016, $2,081 was withdrawn from respondent's business account via an automated teller machine (ATM), and $84.60 in purchases were made, reducing the balance to -$71.06. A $36 overdraft fee reduced the account balance to -$101.06. However, on that date, respondent deposited a $3,000 check, which was simultaneously credited to the account, resulting in a daily balance of $2,898.94. By April 22, 2016, after another series of purchases and ATM withdrawals, the business account balance was -$18.54.

After respondent had deposited and disbursed the $2,500, he sent a number of communications to Germann and DeLuca regarding DeLuca's $5,000

retainer. By letter dated April 29, 2016, respondent informed Germann that he had received Joseph's share of the arbitrator's retainer and asked about the status of Denise's payment.

On June 18, 2016, respondent sent an e-mail to DeLuca and Germann, noting that he had "previously requested that [DeLuca] accept $5,000.00 as an initial retainer and [that Joseph] had immediately brought [respondent] $2,500.00." Respondent asked DeLuca, if he had not done so already, to send a retainer agreement for the parties to sign so that payment could be made. He also asked Germann to confirm that Denise planned to pay her share of the retainer and to proceed with the arbitration.

The arbitration never took place. Rather, according to respondent, in August 2016, when he closed his office, a mediation, not an arbitration, had taken place. Respondent testified that it was not clear whether DeLuca had earned a portion of his fee, because the parties had retained him as an arbitrator, not as a mediator. Although there was a formal retainer agreement for DeLuca's arbitration services, respondent did not know whether the parties had reached an understanding of how DeLuca would be paid for his mediation services, the first two hours of which were complimentary. Respondent, thus, described the issue as "somewhat gray."

According to respondent, regardless of whether DeLuca served as a mediator or an arbitrator, Joseph understood that DeLuca would have to be paid, except for the first two hours of mediation. If respondent had received a bill for DeLuca's mediation services, he would have discussed payment with Joseph, as the $2,500 was intended for the arbitration.

Respondent neither discussed his use of the $2,500 with Joseph in April 2016 nor informed Joseph that he had used those funds. Respondent could not remember whether he had informed Joseph that the funds had not been paid to DeLuca. Joseph never asked respondent about the status of the funds.

On August 10, 2017, a District Fee Arbitration Committee panel awarded an $11,850 refund to Joseph, which included the $2,500 earmarked for DeLuca. Respondent testified that the LaRocca firm paid the fee award, and that he has since repaid the firm.

Respondent neither replied to Joseph's fee arbitration demand nor attended the hearing. Respondent considered the issue of Joseph's $2,500 share of DeLuca's retainer to be between DeLuca and respondent, not Joseph, whom he continued to represent at that time.

At the disciplinary hearing, respondent disputed that Joseph had paid him $11,200. To the contrary, respondent maintained that Joseph owed him more than $7,500, but that he had been patient with Joseph, because Joseph was

receiving cancer treatment and, thus, "didn't have a lot of money." Yet, respondent had no time or billing records to support his position, and he never billed Joseph for the amount he claimed was owed. According to respondent, he "was dealing with the issue he was dealing with" and, consequently, "got extremely behind on [his] billing."

The fee arbitration determination summarized Joseph's testimony that, on one of the mediation days, respondent had informed DeLuca's office that he would have a check with him when he arrived; that he arrived without a check; and that, after a private meeting with DeLuca, the mediation proceeded nevertheless. Respondent did not recall that incident. At some point, however, when he was at DeLuca's office, he assured DeLuca that he would be paid.

The fee arbitration panel referred the matter to the OAE. OAE disciplinary auditor Alan Fogel asserted that respondent knowingly misappropriated the $2,500, because the funds belonged to Joseph, who had given them to respondent for Joseph's needs and benefit.

During the ethics hearing, Fogel acknowledged that attorneys may deposit in their business account the advance payment of costs or expenses, and that the $2,500 represented the advance payment of an expense, namely, DeLuca's fee. According to Fogel, however, the advance payment of expenses must be held intact when there is an agreement to hold the funds in trust. Although such funds

should be maintained in an escrow account, if they are deposited in a business account, but safeguarded, "it's a violation, but at least it's still being safeguarded."

Fogel contended that, in this case, the funds had been earmarked for disbursement to a third party "at some point in time." Thus, in the OAE's view, the third party – DeLuca – had a claim to the funds, rendering the monies escrow funds, which respondent failed to keep intact.

Respondent did not use the $2,500 for payment of his client's expenses. Rather, he used the funds for himself, as the April 2016 bank statement demonstrated. Thus, Fogel claimed, DeLuca never received the funds, even though he had provided the services that the funds were intended to cover.

Respondent had difficulty understanding the OAE's claim that he was not entitled to use Joseph's $2,500 for any purpose other than payment of DeLuca's retainer. During an OAE interview, he stated that he did not deposit the $2,500 in the trust account because the check was payable to him, individually, not to the trust account. Moreover, as stated above, respondent considered the $2,500 to be an advance payment of an expense, and, thus, deposited the check in the business account.

At the hearing, respondent acknowledged that, although Joseph owed him "a lot of money, . . . the intent of that check was for the mediator." Nevertheless,

respondent continued, "[i]f that check never had to go to the mediator the, you know, my thought was it should have gone to my fee." Although respondent denied that Joseph would have had to approve the application of the $2,500 to outstanding legal fees, he testified that he would have discussed the matter with Joseph. Again, however, respondent conceded that he had not discussed the matter with Joseph.

Respondent testified that, although the funds had been dissipated as of the date of his June 18, 2016 e-mail, he "did not look at it as [he] spent it down" by then. He explained: "I understand you do, and you keep saying I spent his money. That's not how I looked at it."

When respondent was asked whether he would have had to return the $2,500 to Joseph, if Joseph had fired him the day after Rugolo issued the check, respondent answered "I don't know." He explained:

> And the reason is because the way -- again, the way I looked at it was no different if he would have given me a check for $75 payable to Guaranteed Subpoena. It would have went [sic] into my business account, my bookkeeper, when reconciling my books, would have given him credit in his account for $75, and that's how it would have been addressed.
>
> The reason -- the only reason I say I don't know is because notwithstanding the Fee Arbitration Committee's award, Mr. Varriello owed me a lot of money, and I think that that is evidenced by one of your exhibits where you talked about how he said I kept on text messaging him regarding the balance he owed me.

> So should any of that 2,500, which was now in his account, be been [sic] paid -- been paid toward my fee because it was owed to me? I don't know. Like I said, I wouldn't have just accepted it as a fee because that wasn't the initial -- but may I have had a claim to it? Yes.
>
> [T163-T164.][3]

Respondent would not agree that, under his hypothetical, if the subpoena never issued, he would owe $75 to the client. According to respondent, if the subpoena were not served, a $75 credit would remain on the client's account.

In mitigation, in both matters, respondent testified that he had an unblemished disciplinary record; that he had cooperated with the OAE in the investigations; that, when he first became employed by the LaRocca firm, LaRocca had heavily supervised him for some time; and, that, since he has worked at the LaRocca firm, he does not handle business or trust accounts.

In addition, although not expressly submitted in mitigation, respondent testified that, during the relevant time, he was addicted to opioids; that, during his career, he has served as a panelist on Early Settlement Panels and Intensive Settlement Panels; that, for several years, he served as a judge for a mock trial competition; that, from 2010 to 2014, he served on the District IX Ethics

[3] "T" refers to the July 29, 2019 transcript of the hearing before the DEC.

Committee; and that, in November 2018, he served as a continuing legal education instructor for family law.

In the employee payroll tax matter, the DEC found that respondent had failed to pay withholding taxes in the secretary's behalf for the fourth quarter of 2014 and for all quarters in 2015. He also failed to issue W-2 forms to her in 2015 and 2016. Further, although respondent had been working with an accountant to resolve the outstanding payments due to taxing authorities, as of the July 29, 2019 hearing, respondent had not completed making the payments. He, thus, violated RPC 1.15(b).

In the Varriello matrimonial matter, the DEC found that the undisputed evidence established that respondent knew that the $2,500 was intended for DeLuca and that disbursement of the funds to DeLuca "was contingent on [Denise] paying her share of his fee." The record lacked clear and convincing evidence that that contingency ever occurred. Thus, the DEC determined that the record lacked clear and convincing evidence that the funds that Rugolo paid in Joseph's behalf were escrow funds.

Instead, the DEC found that the $2,500 represented client funds, which respondent knew were earmarked for the purpose of paying one-half of DeLuca's $5,000 retainer. The DEC, thus, concluded that respondent knowingly misappropriated the funds by using them for his personal benefit, rather than the

purpose for which they were intended, that is, payment to DeLuca for his arbitration services, which the DEC characterized as a violation of RPC 1.15(b).

Although the DEC found that the record lacked clear and convincing evidence that respondent violated RPC 8.4(b), the panel found sufficient evidence that he violated RPC 8.4(c), as "dishonesty [had] occurred." Inasmuch as knowing misappropriation of client funds is the product of dishonesty, we note that the DEC pointed out that the fee arbitration determination stated that, during the fee arbitration proceeding, Joseph had claimed that, while respondent was on his way to a meeting at DeLuca's office, he told a representative that he had a check with him. Yet, that was not true, as respondent had no check when he arrived.

The DEC acknowledged respondent's testimony, during the disciplinary hearing, that, although he did not recall having made that representation to DeLuca's representative, when he arrived at DeLuca's office, he told DeLuca that he would send him a check and that DeLuca would get paid. Yet, DeLuca was not paid. The panel speculated that "[s]uch evidence could possibly have gone to Respondent's mental state and whether he possessed the requisite intent for there to be a knowing misappropriation."

Despite the DEC's knowing misappropriation finding, the panel did not recommend respondent's disbarment. In the DEC's view, "more recent case law

suggest that disbarment is not always warranted in situations similar to the matter sub judice." The DEC did not cite recent cases, but, rather, relied on In re Banas, 144 N.J. 75 (1996). According to the DEC, in that case, the Court "determined that a reprimand was appropriate for a violation of knowing misappropriation of funds, RPC 1.15(b)." As we explain below, however, the DEC's interpretation of Banas is incorrect.

For respondent's violation of RPC 1.15(b) in the employee payroll tax matter, and his knowing misappropriation of client funds in the Varriello matrimonial matter, and in consideration of the evidence in mitigation, the DEC recommended a three-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In the employee payroll tax matter, respondent admittedly failed to withhold and remit his secretary's Social Security taxes, a well-settled violation of RPC 1.15(b). Those funds represented wages the secretary had earned, which respondent, as her employer, had agreed to withhold and disburse to the entity entitled to receive them, the IRS. Respondent's inaction violated RPC 1.15(b), which requires a lawyer, who receives funds in which a third person (in this case the IRS) has an interest, to promptly deliver the funds to that third person.

In the Varriello matrimonial matter, however, the record lacks clear and convincing evidence that respondent knowingly misappropriated $2,500. 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.

In In re Hollendonner, 102 N.J. 21 (1985), 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.

The DEC's analysis in respect of Wilson and Hollendonner is flawed in important respects. First, although respondent agreed that he said he would send DeLuca a check and that DeLuca would get paid, the fact that he failed to follow through is not, in and of itself, evidence of dishonesty or intent. See, e.g., In re Carlin, 208 N.J. 592 (2012) (attorney's failure to follow through on a representation that he or she would take a certain action does not render the representation false, unless the representation was untrue at the time it was made).

Second, attorneys who take client funds on the reasonable belief of entitlement to the monies are not disbarred. See, e.g., In re Frost, 156 N.J. 416 (1998) (two-year suspension imposed on attorney who, among other serious improprieties, took his fee from the proceeds of his client's refinance, based on the erroneous belief that he had reached an agreement with one of the client's creditors to settle an outstanding judgment). See also In re Kim, 222 N.J. 3 (2015); In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 60-61).

Moreover, In re Banas, 144 N.J. 75, the case on which the DEC relied, is completely distinguishable. In that case, the complaint did not charge the attorney with knowing misappropriation of trust funds, and neither our decision nor the Court's opinion discussed knowing misappropriation at all. In Banas, the client's mother gave $5,000 to the attorney for the purpose of seeking bail for her son. Id. at 76-77. The attorney gave her a receipt that stated, in part, "to be held for bail application" and to be returned to the mother "if bail not obtained." Id. at 77. The mother's understanding and intent was that her money would be refunded if her son were not released on bail.

Although bail was set, the client could not fund the full amount due and, therefore, remained incarcerated. Ibid. At the client's specific instruction, the attorney applied the $5,000 to his outstanding attorney fees. Ibid. When the

attorney refused to refund the $5,000 to the client's mother, she filed a grievance.

The Court rejected the attorney's assertion that he was entitled to the funds on the ground that the application for bail had been granted. Id. at 79. The Court upheld our finding that the attorney had agreed to return the $5,000 to his client's mother if the client were not released from prison. Id. at 80. The Court also agreed with our determination that, "[i]f respondent's understanding of the agreement was different [from the mother's], he had an obligation to word the receipt carefully and clearly so as to eliminate any possible misunderstanding" on her part. Id. at 79.

Here, unlike the facts in Banas, there was no written agreement regarding the application of the $2,500. The OAE's theory in support of knowing misappropriation is that the $2,500 was given to respondent for the purpose of paying Joseph's share of DeLuca's $5,000 retainer fee. Thus, Joseph and DeLuca had an interest in the monies and, therefore, respondent was required to hold the funds intact. The OAE's argument fails.

First, the $2,500 were not escrow funds. Escrow funds are funds held by an attorney in which a third party also has an interest. See In re Hollendonner, 102 N.J. 21, 26; In re Leiner, 232 N.J. 35 (2018); In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017) (slip op. at 21). Escrow funds include, for

example, real estate deposits (in which both the buyer and the seller have an interest) and personal injury action settlement proceeds that are to be disbursed in payment of bills owed by the client to medical providers. Ibid. In such cases, the third party has an established interest in the funds.

Citing Leiner, the OAE argued below, and argues now, that the $2,500 represented escrow funds, but that reliance is misplaced. In Leiner, the attorney's clients gave him two checks, totaling $4,500, representing unpaid condominium fees, which the attorney was to deposit in his "escrow account" and forward to the condominium association. In the Matter of Robert H. Leiner, DRB 16-410 (slip op. at 13-14). Instead, he deposited one check in his business account and cashed the other. Id. at 13. He spent the monies on himself. Ibid.

The funds were considered escrow monies because the clients' interest was to see the monies turned over to the condominium association to satisfy an existing debt, and the association's interest was to receive them. Id. at 21-22. In other words, the association – the third party – had an established interest in the funds, which represented an established debt that was owed to the association.

Here, the record lacks any evidence that DeLuca had an established interest in the $2,500 that respondent received. There is no evidence that DeLuca performed any services as an arbitrator, that he billed for any services, or that he expected payment for any services. Perhaps DeLuca could have shed light on

the issue of payment, but he, like Joseph, did not testify. Thus, the record lacks clear and convincing evidence that respondent knowingly misappropriated the $2,500 received in Joseph's behalf.

In sum, we find that respondent violated RPC 1.15(b) in the employee payroll tax matter. We determine to dismiss all charges in the Varriello matrimonial matter, as the record lacks clear and convincing evidence that respondent knowingly misappropriated funds entrusted to his care, contrary to the principles set forth in Wilson and Hollendonner, and in violation of RPC 1.15(a) and RPC 8.4(b) and (c).

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

In the few cases involving the failure to remit payroll taxes in behalf of an employee, attorneys have received either a reprimand or a censure. See, e.g., In re Pemberton, 181 N.J. 551 (2004) (reprimand imposed on attorney who, for an eight-year period, failed to pay quarterly federal withholding taxes on behalf of his employees, yet issued W-2 forms reflecting the payment of those taxes; violations of RPC 1.15(b) and RPC 8.4(c)); In re Frohling, 153 N.J. 27 (1998) (reprimand imposed on attorney who did not pay all or part of federal withholding taxes for five years and state unemployment compensation taxes for two years, yet issued W-2 forms reflecting that certain sums had been deducted

from his employees' gross salaries and either had been or would be paid to the government; violations of RPC 1.15(b) and RPC 8.4(c)); and In re Bhalla, 233 N.J. 464 (2018) (attorney censured for failing to remit an employee's Social Security withholding payments, a violation of RPC 1.15(b); he also negligently misappropriated and failed to remit the employee's contributions to his retirement account, a violation of RPC 1.15(a) and (b); further, the attorney violated RPC 8.4(c), by misrepresenting payment of the unpaid taxes on the employee's W-2 form and by making multiple misrepresentations to the employee regarding the status of the unremitted retirement contributions).

Unlike the attorneys in the above cases, respondent did not provide his employee with false W-2 forms for the years that he failed to remit the payroll taxes. Moreover, the complaint did not charge him with having violated RPC 8.4(c) in connection with the employee payroll tax matter. In our view, however, respondent's refrainment from providing his employee with false W-2 forms for the years that he did not remit payroll taxes in her behalf does not save him from a reprimand. Respondent's issuance of net paychecks directly to his employee, which did not reflect her gross pay or payroll deductions, was an act of dishonesty, undoubtedly committed for the purpose of concealing from her his failure to remit payroll taxes in her behalf. We consider this concealment in aggravation and, thus, determine to impose a reprimand for respondent's

violation of RPC 1.15(b). We further determine that the mitigating factors are insufficient to justify an admonition.

Members Hoberman, Petrou, and Zmirich voted to impose a censure.

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 Ronald H. Carlin
Docket No. DRB 19-472

Argued: June 18, 2020

Decided: November 18, 2020

Disposition: Reprimand

Members	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman		X		
Joseph	X			
Petrou		X		
Rivera	X			
Singer	X			
Zmirich		X		
Total:	6	3	0	0

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