Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-031
District Docket No. XIV-2019-0269E

In the Matter of	:
Michael Francis Bradley	:
An Attorney at Law	:

Decision

Argued: July 16, 2020

Decided: December 14, 2020

Hillary K. Horton appeared in behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's resignation by consent before the Disciplinary Board of the Supreme Court of Pennsylvania, and the Supreme Court of Pennsylvania's corresponding order disbarring him from the practice of law. The OAE asserted

that respondent was found guilty of knowing misappropriation of client funds, in violation of New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979); RPC 1.15(b) (failing to promptly deliver funds to the client); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to grant the OAE's motion and recommend respondent's disbarment to the Court.

Respondent earned admission to the New Jersey bar in 1997 and to the Pennsylvania bar in 1996. He maintained an office for the practice of law in Warrington, Pennsylvania. Respondent has no disciplinary history in New Jersey.

Since July 22, 2019, respondent has been ineligible to practice law in New Jersey for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Additionally, since November 4, 2019, he has been ineligible to practice law for failure to comply with continuing legal education requirements.

This case arises from respondent's resignation from the Pennsylvania bar, following his admission that he knowingly misappropriated a portion of his client's $1.2 million in settlement proceeds.

On September 9, 2012, Charles Haney was driving his vehicle while intoxicated by alcohol and struck respondent's client, Branden Thornton. As a result, Thornton suffered a traumatic brain injury and will require lifelong care. Tammy Howard, Thornton's mother, retained respondent to represent Thornton and entered into an agreement providing for a 25% contingent fee of any recovery in his behalf.

Law enforcement authorities criminally charged Haney for striking Thornton with his vehicle. In furtherance of resolving the criminal matter, Haney agreed to pay $200,000 in restitution to Thornton, payable by a lump sum payment of $100,000, followed by monthly, $1,000 installments for 100 months. In connection with the criminal proceedings, respondent agreed that he would not take a fee from the $200,000 in restitution to be paid by Haney, but he failed to inform Howard that he had waived any right to those funds.

In early May 2014, respondent, Haney, and Howard met at Howard's church. Haney gave respondent a $25,000 check payable to him, but intended as a portion of the $200,000 in restitution toward Thornton's care. Thereafter, respondent disbursed to Howard only $5,000 from those funds.

On May 8, 2014, Haney pleaded guilty in the criminal matter, and the trial court sentenced him to eleven months of incarceration. The trial court authorized

Haney to serve his term of incarceration on weekends so that he could continue to work and to pay installments toward the restitution.

On the same day that Haney pleaded guilty, he gave respondent a $75,000 check, payable to respondent, toward the restitution. Thereafter, respondent disbursed to Howard only $70,000 from those funds. Consequently, despite his agreement to refrain from taking a fee from Haney's restitution payments, respondent took $25,000 in fees from the first $100,000 that Haney had paid.

Between June 2014 and January 2017, Haney sent monthly $1,000 checks to respondent. At various times in 2015 and 2016, respondent failed to promptly disburse Haney's restitution installments to Howard.

In September 2014, respondent negotiated, in behalf of Thornton, a $990,000 settlement with Nationwide Mutual Insurance Company, Haney's automobile insurance carrier. From these funds, respondent took $247,500, representing 25% of the settlement proceeds, despite previously having taken $25,000 in fees from the restitution funds. Respondent, however, failed to disburse the remaining $742,500 to Howard in behalf of Thornton. Respondent also failed to provide a written settlement statement identifying the funds he had received; the bills he had paid; the fees he had taken; or any subrogation amounts he had paid.

Over the next several years, respondent issued checks to Howard, and made deposits in her checking account, in behalf of Thornton. Specifically, in the summer of 2015, respondent issued a check to Howard for the renovation of the family pool for Thornton's therapeutic needs; in January 2016, respondent bought a van for Thornton; and, in March 2017, respondent made a payment to Howard. The record does not set forth the specific amounts of the deposits, purchases, or payments that respondent sent to Howard.

Between fall 2014 and May 2017, Howard repeatedly asked respondent to provide her documentation about Thornton's legal matter, and she sought copies of Thornton's hospital bills, his medical bills, and documents from his health insurance provider. Respondent failed to provide Howard with those documents. During this same period, Howard repeatedly asked respondent about Thornton's share of the $990,000 settlement and, in response, respondent misrepresented that he was working with Thornton's insurance carrier toward payment of Thornton's medical bills.

During a period not identified in the record, Howard repeatedly called respondent seeking information about the $990,000 settlement. On May 2, 2017, respondent misrepresented to Howard that he no longer had any portion of the settlement proceeds, because Thornton's health insurance carrier had removed the remaining funds from his attorney escrow account. Howard asked

respondent to provide her copies of the file and all canceled checks that had been drawn against the settlement funds, but he failed to do so.

By letter dated May 12, 2017, Edwin Dashevsky, Esq., in behalf of Thornton, informed respondent that his firm had been retained, and asked respondent to send a copy of the "schedule of distribution," and a full accounting of the settlement funds. By letter dated June 1, 2017, Dashevsky asked respondent to comply with his prior requests. On June 7, 2017, respondent called Dashevsky, and represented that he would provide the schedule of distribution no later than June 16, 2017.

By letter dated June 15, 2017, respondent informed Dashevsky that his office had received $95,000 directly from Haney, and that Thornton had received $5,000 directly from Haney via check on the day that Haney pleaded guilty. Additionally, respondent denied having taken any money from the $1,000 monthly installments from Haney. Respondent represented that his office had received the $990,000 settlement and managed a total of $1,100,000 in settlement funds. He further falsely claimed that his office had made a payment of $550,000 to cover a subrogation lien. From this settlement, respondent alleged that he received a contingent fee of $270,921.12, which, he claimed, was less than the amount to which he was entitled. Finally, he claimed that his office had paid $279,078.88 to Thornton and his family for their benefit, and that this

amount included his expenses. Respondent included a list of disbursement amounts taken from the settlement; however, he failed to indicate the amount of the settlements proceeds that was used to satisfy expenses; failed to identify the parties respondent paid to satisfy the subrogation lien or third parties who may have received a portion of the settlement proceeds; and failed to list the total amount paid to Thornton and his family.

By letter dated February 15, 2018, Brad S. Tabakin, Esq., notified respondent that he had been retained to represent Thornton and his family, and requested that, within fourteen days of the date of his letter, respondent provide copies of all distributions made from the settlement funds, bank statements evidencing the deposits, and records showing the disbursements. Additionally, Tabakin warned respondent that, if he refused to provide the requested documents, Tabakin would advise Thornton and his family to report respondent to the Lower Providence Police Department, the Montgomery County District Attorney's Office, and the Disciplinary Board of the Pennsylvania Supreme Court.

On March 4, 2018, respondent left Tabakin a voicemail stating that he was out of town because of a medical issue, and he needed more time to respond to his letter. Respondent, however, failed to provide the documents to Tabakin.

On January 25, 2019, respondent executed a verified resignation by consent before the Disciplinary Board of the Supreme Court of Pennsylvania. In his resignation he admitted that he "knowingly misappropriated a portion of the share of the settlement proceeds that his client . . . was entitled to receive from the $990,000" settlement, and by doing so, violated Pennsylvania RPC 1.15(b), RPC 1.15(e), and RPC 8.4(c). Additionally, he acknowledged that all the material factual allegations contained in the Disciplinary Board of the Supreme Court of Pennsylvania's letter to him were true. Further, he acknowledged that he submitted his resignation because he knew "that he could not successfully defend himself against the allegations of professional misconduct." On February 8, 2019, the Supreme Court of Pennsylvania issued an order disbarring respondent from the practice of law in Pennsylvania.

The OAE argued that respondent's unethical conduct equates to knowing misappropriation, in violation of New Jersey RPC 1.15(a) and the principles set forth in Wilson, as well as violations of RPC 1.15(b) and RPC 8.4(c). Citing R. 1:20-14(a)(4), the OAE asserted that respondent's conduct in Pennsylvania warrants the identical discipline in New Jersey. The OAE contended that respondent must be disbarred for his misappropriation of client funds.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in

another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A. 2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted). We note that, in Pennsylvania, respondent stipulated to his violations of the RPCs and voluntarily resigned.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;

> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). We, thus, determine that respondent should be disbarred for his equivalent violations of New Jersey RPC 1.15(a) and the principles set forth in Wilson, as well as his violations of RPC 1.15(b) and RPC 8.4(c).

Specifically, respondent used, for his own benefit, funds that he was required to provide to Howard for Thornton's care. In respondent's resignation, he admitted that he knowingly misappropriated a portion of the $990,000 in settlement proceeds that Thornton was entitled to receive. Although the record does not identify the exact amount respondent misappropriated, his admission proves that his conduct was intentional, unauthorized, and to the detriment of his client. Therefore, based on his theft of Thornton's funds, respondent knowingly misappropriated funds entrusted to his care in violation of RPC

1.15(a) and the principles of Wilson. Moreover, respondent failed to promptly disburse to Howard and Thornton portions of the monthly restitution payments made by Haney, in violation of RPC 1.15(b).

Respondent also violated RPC 8.4(c) by his misrepresentations to Howard, and Thornton's other attorneys, concerning the amount and use of the settlement funds. Respondent misled Howard, and others, by failing to disclose his misappropriation of a portion of these funds.

In sum, we find that respondent violated RPC 1.15(a) and the principles set forth in Wilson, RPC 1.15(b), and RPC 8.4(c). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Respondent's most serious misconduct is his knowing misappropriation of client settlement funds. After stealing from his client, who had suffered a brain injury, respondent brazenly prolonged, for years, the discovery of his theft by making representations that he was working with an insurance carrier in behalf of Thornton to pay his medical expenses. It appears that respondent did everything he could to conceal his theft. His audacity trumps his dishonesty.

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, there must be 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.

Accordingly, because respondent knowingly misappropriated a portion of Thornton's $990,000 in settlement funds, disbarment is the only appropriate sanction, pursuant to RPC 1.15(a) and the principles of Wilson. Therefore, 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: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Francis Bradley
Docket No. DRB 20-031

Argued: July 16, 2020

Decided: December 14, 2020

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

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