Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-253
District Docket No. XIV-2009-0144E

In the Matter of	:
John B. Sogliuzzo	:
An Attorney at Law	:

Decision

Argued: February 18, 2021

Decided: June 11, 2021

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

Robert E. Ramsey 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 six-month suspension filed by Special Master Edwin H. Stern, P.J.A.D. (ret.). The formal ethics complaint charged respondent with knowing misappropriation of client funds, 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 1.15(b)

(failing to promptly deliver to a third party any funds or other property that the third party is entitled to receive); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects – theft, contrary to N.J.S.A. 2C:20-9); and RPC 8.4(c) (three instances) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we find that respondent knowingly misappropriated entrusted funds and recommend to the Court that he be disbarred.

Respondent gained admission to the New Jersey and Pennsylvania bars in 1981 and has no prior discipline. He currently maintains an office for the practice of law in Maplewood, New Jersey. During the relevant timeframe, he maintained law offices in Newark and West Orange, New Jersey.

Respondent's alleged misconduct stemmed from his involvement as executor of the estate of a deceased family member, Mary Grimley (Grimley). On October 17, 2019, the Office of Attorney Ethics (the OAE) and respondent entered into a stipulation of facts, wherein respondent admitted that he violated RPC 1.15(b) and RPC 8.4(c) (two instances). The special master presided over a two-day hearing on November 13 and December 10, 2019.

The facts of the case are as follows.

Respondent, Jane Adkins (Adkins), and Walter Gerard Sogliuzzo are the children of Jane P. Grimes (Jane) and Walter Sogliuzzo. Walter Sogliuzzo, respondent's father, died in 1999, and Walter Gerard Sogliuzzo, respondent's brother, died in 2003. The decedent, Grimley, was Jane's cousin.

Prior to her death, in 2002, Grimley fell in her home, where she lay for two days until she was discovered. In February 2004, respondent prepared a power of attorney (POA) for Grimley, naming himself as her attorney-in-fact. On February 12, 2004, respondent took the "executed" POA to his office, where it was acknowledged outside of Grimley's presence by respondent's legal assistant, a notary public.

Between December 27, 2004 and September 28, 2006, twenty-four checks from Grimley's bank account, totaling $139,750, were issued to and negotiated by respondent. Between February 14, 2005 and July 11, 2006, five more checks from Grimley's account, totaling $41,000, were issued to and negotiated by respondent's wife, L. Gaye Torrance.

On October 16, 2006, at the age of ninety-one, Grimley died. Her death certificate listed dementia as a significant condition contributing to her death, but not her immediate cause of death. That same month, respondent, as executor of Grimley's estate, opened a Haven Savings Bank account in the name of The

Estate of Mary T. Grimley (the Grimley Estate Account). Between October 9, 2006 and April 10, 2009, deposits to the Grimley Estate Account totaled $338,656.18, including earned interest totaling $569.61.

Grimley's will provided for an equal split between seven beneficiaries – Jane, Walter (deceased), Walter Gerard (deceased), respondent, Adkins, Melita Braun, and Our Lady of Grace Church (the Church). Pursuant to Grimley's will, because Walter and Walter Gerard predeceased her, their combined shares were to be divided equally amongst Jane, respondent, and Adkins.

As detailed below, as a beneficiary of both Grimley's will and Jane's will, respondent ultimately was entitled to an aggregate beneficiary disbursement of $69,611.68 from the Grimley Estate Account ($48,074.45 pursuant to Grimley's will, plus $21,537.23 of Jane's funds from the Grimley estate, pursuant to Jane's will). Respondent stipulated that he disbursed to himself $140,350 (not including an additional, $15,000 executor's commission), which was $70,738.32 more than he was entitled to receive. As detailed below, respondent ultimately replenished the Grimley Estate Account with $30,000 of his personal funds. Thus, taking that $30,000 reimbursement into account, respondent disbursed to himself $40,738.32 more from the Grimley Estate Account than he was entitled to receive.

Specifically, by December 18, 2007, respondent had deposited $314,735.68 in the Grimley Estate Account, and had disbursed $91,016.14 for legitimate expenses, which are not in dispute in this matter.

Between November 21, 2006 and December 18, 2007, respondent disbursed $125,000 from the Grimley Estate Account to himself. As of December 18, 2007, respondent had disbursed $2,500 to his mother, Jane, from the Grimley Estate Account, but had made no distributions to the other beneficiaries (Adkins, Braun, and the Church).

By letters dated December 19, 2007, thirteen months after respondent began making disbursements to himself from the Grimley Estate Account, respondent made the first and only disbursements to the other beneficiaries, including $28,750 each to Adkins, Braun, and the Church. That same day, respondent disbursed an additional $7,500 to himself from the Grimley Estate Account, for a total of $132,500 disbursed to himself to date.

On January 9, 2008, respondent disbursed an additional $15,000 to himself from the Grimley Estate Account, as an executor's commission.

Including the executor's commission, between January 4 and February 21, 2008, respondent disbursed an additional $22,850 to himself from the Grimley Estate Account and, on January 24, 2008, disbursed to Jane an additional $2,500 from the Grimley Estate Account.

Between June 16, 2008 and April 10, 2009, respondent disbursed $30,727.50 from the Grimley Estate Account toward additional, legitimate expenses, bringing the total amount of paid expenses to $121,743.54.[1]

By June 2008, the Grimley Estate Account balance had been reduced to $268.73. Therefore, to have the funds to disburse a required tax payment to the United States Treasury, respondent replenished the account with $30,000 from his personal accounts. Thereafter, on June 16, 2008, respondent wrote two checks from the Grimley Estate Account: $27,575 to the United States Treasury, and $700 to an estate tax accountant, Victor Goldblat & Co., LLC, whom respondent had retained to prepare the inheritance tax return.

Thus, the net estate was $201,912.64. According to Grimley's will, the estate should have been divided seven ways: $201,912.64 / 7 = $28,844.67 per each beneficiary. Pursuant to her will, the two deceased beneficiaries' shares were to be divided equally between Jane, respondent, and Adkins, for an additional $19,229.78 each.

Thus, the distributions from Grimley's estate should have been as follows: Braun $28,844.67; the Church $28,844.67; Jane $48,074.45; respondent $48,074.45; and Adkins $48,074.45. As noted, Jane received $5,000 and was,

[1] A chart detailing the legitimate expenses paid from the Grimley Estate Account is included in the complaint and the stipulation.

thus, due $43,074.45; respondent failed to distribute to Jane her full share of the estate.

Jane died on February 29, 2008, and according to her will, her share of Grimley's estate was to be split between respondent and Adkins, so that each would receive $21,537.23. Therefore, respondent and Adkins should each have received, in total from both estates, $69,611.68. However, respondent disbursed to Adkins only $28,750, well short of the $69,611.68 she should have received pursuant to Grimley's and Jane's wills.

In total, respondent disbursed to himself, as beneficiary distributions, $140,350, plus the $15,000 executor's commission, $70,738.32 more than he was entitled to receive. Considering respondent's June 13, 2008 replenishment of the account by his personal funds of $30,000, respondent received $40,738.32 more than he was entitled.

In November 2006, respondent prepared a POA for his mother, Jane, naming himself as her attorney-in-fact. On November 20, 2006, respondent took the "executed" POA to his office, where it was acknowledged outside of Jane's presence by respondent's legal assistant, a notary public.

Between August 30, 2000 and July 10, 2007, twenty-two checks from Jane's bank account, totaling $103,800, were issued to and negotiated by respondent.

During the summer of 2007, Jane suffered from glaucoma, an eye infection, and inflammation of her eyelids. On September 23, 2007, Jane was admitted to the hospital where she remained, until October 1, 2007, for acute exacerbation of COPD; restrictive lung disease; chronic respiratory failure; chronic atrial fibrillation; and osteoporosis.

In the fall of 2007, respondent called his broker, Tom Rodman, to set up a meeting between Rodman and Jane, then ninety-two-years-old, concerning an investment account Jane had opened, in order to execute a "Transfer on Death Agreement" (TOD), naming respondent as the beneficiary of the account.

On October 17, 2007, two weeks after her hospital discharge, Jane and respondent met with Rodman to execute the TOD. The agreement comprised five pages of single-spaced type, ranging from one-tenth of a centimeter for lowercase letters, to two-tenths of a centimeter for uppercase letters. Besides Jane's signature, everything in the document reflecting Jane's consent to convert her account to a TOD account, including the designation of respondent as her beneficiary, was handwritten by Rodman.

A little over four months later, on February 29, 2008, Jane died at ninety-three-years-old.

During the disciplinary hearing, an OAE investigator, respondent, and Robert L. Workman, CPA, testified. At respondent's request, Workman had

audited financial documents provided by respondent, and confirmed that respondent had distributed to himself $40,738.32 more than he was entitled to receive. Workman testified that, as a beneficiary and executor of the Grimley estate, respondent "didn't have a proper accounting system set up." He classified respondent's recordkeeping as "incompetent, unsophisticated, and not even up to a minimal standard of bookkeeping and accounting." In his letter report, Workman asserted that respondent's "lack of proper controls led to the sloppy bookkeeping in this matter. There was no willful intent to defraud the other beneficiaries. [Respondent] lost track of the amount he had distributed." When questioned by the OAE, Workman stated that he was not knowledgeable about the legal standards for knowing misappropriation or theft, or the New Jersey Rules of Professional Conduct. He admitted that he had no background in psychology. When asked how he concluded that respondent had no willful intent to defraud the other beneficiaries, Workman stated that he "came to the opinion that [respondent] couldn't willfully steal without proper accounting and bookkeeping."

The crux of respondent's defense to the knowing misappropriation charge was that he was not acting as an attorney for Grimley's estate. He testified that there was no attorney for the administration of the Grimley estate, and admitted he "did the probate in terms of getting the designation as the executor," but that

he viewed his administration of the Grimley estate "as a family matter," and not as a legal matter.

When asked why he did not keep track of the money he spent in making distributions from the estate, respondent testified: "In hindsight, I wish I had done a better job," and that, because it was a family matter, he "didn't think it was necessary to keep as good records as I would if this was a trust account for a client or something."

When asked by the presenter about his fiduciary duty as an executor, respondent testified as follows:

> Q. You didn't think you had a fiduciary duty to the rest of the beneficiaries to accurately disburse the funds?
>
> A. I certainly had a duty to do something but I didn't certainly have a duty to in my opinion to have to reconcile it on a monthly bases [sic] as you would do with a trust account that you would maintain as an attorney.
>
> Q. Do you think that you had a fiduciary duty to distribute the funds as the will said they should be distributed?
>
> A. I should have definitely done that. Sure.
>
> [1T49-1T50.][2]

[2] "1T" refers to the November 13, 2019 hearing transcript.

Moreover, when respondent's counsel, Ramsey, questioned respondent at the hearing, respondent testified:

> Q. Okay. So when you undertook the estate of Grimley did you consider this to be the functional equivalent of an attorney trust account?
>
> A. No, I did not.
>
> Q. Why?
>
> A. It's a family matter.
>
> Q. What do you mean by it was a family matter?
>
> A. It's a family matter. I've only—in estate work—as I said, I've done two estates. I did my brother[']s which considered [sic] a family matter and I did Mary [Grimley]'s. I considered that a family matter. It wasn't that I was putting monies into a trust account where I have to keep my ledgers and all of that. These were just—this was a family matter that I did not believe I had to meet the standard that was necessary on a trust account. In hindsight maybe I should have done that but I didn't.
>
> Q. Okay. You understand, though, if this were a trust account you would have had to have removed any money that belonged to you and not comingle it in with the money that went to the other beneficiaries. Right?
>
> A. Right. I was a beneficiary under this estate as well. So it wasn't that kind of situation.
>
> Q. That's exactly the point I'm trying to make. That you didn't look at this as a trust account because, first of all, this something [sic] that doesn't require you to be an attorney to do. Correct?

> A. No. I assume anyone could be an executor if they're named by the testator that I want that person to be my executor.
>
> Q. And you were certainly aware that a certain unspecified amount of the money belonged to you and you were ultimately going to receive it as a distribution. Is that correct?
>
> A. Certainly after Mary [Grimley]'s death I was aware what my percentage was—or I was aware that it was a seventh depending if [sic] who died and things of that sort, yes.
>
> [1T103-1T105.]

Despite his claim that he was not acting as an attorney in administering the Grimley estate, the OAE asked respondent about specific documents entered into evidence that the OAE asserted proved otherwise. First, the New Jersey Inheritance Tax Return listed respondent as receiving counsel fees of $7,500. When asked about the counsel fee listed on the tax return, respondent stated, "Yeah, I see that. And I see that checked as an estimate. But again, I did not consider this to be a legal matter. Nor did I view this as taking any fees for the estate matter. I mean this was a family matter." Respondent conceded that he was the only person who provided the tax preparer, Goldblat, with information, and confirmed that he had received the $7,500 fee. Respondent also admitted

that a separate executor's commission of $14,500, payable to himself, was indicated, and that he also took a $15,000 executor commission.[3]

Likewise, the federal tax return of the Grimley estate listed a $7,500 attorney fee, and a separate $14,500 executor fee, each payable to respondent. Respondent testified that he was "sure there's a $7,500 check in there but [he] did not view this as an attorney fee." When asked if he filed a false document with the IRS by taking a deduction for the fee, respondent stated, "Well, we may have and I don't know," reiterating that he "did not view this as doing legal work whatsoever. This was a family matter."

Additionally, respondent sent letters to the three beneficiaries of the Grimley estate on his law firm letterhead. Each of the letters, to Adkins, Braun, and the Church were identical, and stated:

> Enclosed please find check no. [ ] in the amount of $28,750.00 representing the distribution to you from the Estate of Mary T. Grimley. With this distribution, I am also enclosing two (2) originals and one (1) copy of the Refunding Bond and Release. I would ask that you sign the two (2) originals in the presence of a notary public, who will also sign where indicated on the last page, and return the originals to me in the enclosed self addressed stamped envelope, retaining the copy for your records. Should you have any questions please do not hesitate to contact my office. Thank you.

[3] The stipulation stated that the executor commission was $15,000, but the tax return listed a commission of $14,500.

[OAEEx.21-OAEEx.23.][4]

In the letters, respondent does not state that he is executor of the estate, and directs that questions be sent to his law office. The enclosed Refunding Bond and Release documents list "John B. Sogliuzzo, Esq." as the attorney, along with his law firm address, and note in the text that respondent is the executor of the estate. Further, the enclosed checks were issued from the Grimley Estate Account, and listed respondent as the executor, with respondent's home address on the checks.

When asked why he used his firm's letterhead to distribute the checks and releases, respondent testified, "when I sent those letters out that was the easiest way for me to make those letters and to send those out to the beneficiaries of the estate. I was not going to put my home address on those." The special master noted that the checks listed respondent's home address on them, and respondent testified, "the checks are all - the estate checks are all with my home address . . . . When I made those distributions to the beneficiaries it was easier just put [sic] it on my letterhead because I was in the office." The special master also noted that the office address was used in the releases, which respondent acknowledged, without explanation.

[4] "OAEEx." refers to the OAE's exhibits to the formal ethics complaint.

Adkins (respondent's sister) filed a lawsuit against respondent, in the New Jersey Superior Court, Chancery Division, Hudson County, to have him removed as executor of the estate. On September 8, 2011, the Honorable Thomas P. Olivieri, P.J. Ch., ruled that respondent had not properly distributed the estate's funds, removed him as executor, and named Adkins the new executor.[5]

At the December 10, 2019 hearing, the special master asked the parties to submit summations and to address "whether it makes a difference if the Respondent thought that what he was doing was a family matter and not practicing law," and "assuming that he knowingly took money being held for others, would that be a knowing misappropriation if he felt he was doing it as a family member or in any event other than as an attorney."

Respondent, through counsel, submitted a summation brief, arguing that several exhibits entered during the hearing violated N.J.R.E. 401 and N.J.R.E. 403, because they were irrelevant, and any probative value of the evidence was outweighed by the risk of undue prejudice, confusion, or would be misleading.

Regarding the knowing misappropriation charge, respondent argued that "[a] family estate in which the respondent is a substantial beneficiary does not

[5] In 2012, Judge Olivieri found that respondent had exerted undue influence over Jane and Grimley and had misappropriated funds from the Grimley estate. The court, thus, awarded Adkins $520,414, plus $191,815 in attorneys' fees and expenses. Respondent invoked his Fifth Amendment right against self-incrimination and did not testify. See In re Estate of Sogliuzzo, 2013 N.J. Super. Unpub. LEXIS 2895 (App. Div. December 9, 2013).

qualify as an attorney trust account for purposes of a knowing misappropriation." Moreover, respondent asserted that, "to the extent there was a misappropriation in this case, it was caused by Respondent's gross negligence, lack of experience in estate matters and lack of diligence as opposed to knowing misconduct." Referencing Workman's report, respondent argued that "a misappropriation that was a result of attorney negligence or even recklessness is not a Wilson violation." Respondent cited In re Konopka, 126 N.J. 225 (1991), and In re Simeone, 108 N.J. 515, 521-22 (1987), for the principles in determining whether a case is shoddy bookkeeping, or whether it rises to the level of a knowing misappropriation.

Regarding the theft charge, respondent contended that, in order to be guilty of violating RPC 8.4(b) for theft, his acts must be "purposeful," and that in this matter, his wrongful taking of funds was the result of negligent accounting, poor recordkeeping, and inexperience with estate administration.

Finally, respondent argued that he was not guilty of violating RPC 8.4(c) because there is "no evidence in this case that Respondent told lies or affirmatively sought to deceive anyone," as required, in his view, by the case law disciplining attorneys under that Rule.

The OAE argued that the exhibits entered in evidence, without objection, were relevant to demonstrate respondent's "pattern of taking funds from elderly,

dependent women as a matter of course and his sense of entitlement that carried through to his administration of the Estate of Grimley, to the detriment of his mother, [Jane] and his sister, [Adkins]." In particular, the OAE argued that it was "not at all clear" that Jane and Grimley "voluntarily gave so much of their life savings to Respondent." The OAE contended that respondent signed checks made out to himself from his mother's account, despite his testimony that he did not forge names on the checks, and that his testimony that his mother was "very generous." Further, the OAE argued that respondent's efforts to have Jane sign the TOD, sixteen days after Jane's release from the hospital, presenting her with a document in small typeface after she'd been riddled with eye problems, demonstrated respondent's pattern of taking funds from elderly, dependent women. The OAE also pointed to respondent's testimony that, in the year before Grimley's death, checks totaling $117,500 were issued to and negotiated by respondent and his wife, while Grimley suffered from dementia, a contributing factor to her death.

In support of the knowing misappropriation charge, the OAE argued that there is no "family matter exception" to the requirement of distributing an estate in accordance with a decedent's will. The OAE further asserted that respondent furnished legal services as the attorney for the Grimley estate. Specifically, he prepared and filed the Refunding Bond and Release with the Hudson County

Surrogate, in which he identified himself as the attorney for the estate. Moreover, he provided necessary information to the estate's accountant, Victor Goldblat, and Goldblat prepared the estate tax returns, which claimed a deduction for respondent's $7,500 fee and his $14,500 executor's commission. Next, respondent reported a $7,500 attorney fee to the Internal Revenue Service. Finally, he sent letters to the beneficiaries of the Grimley estate, on his firm's letterhead, and listed himself as "Executor, John B. Sogliuzzo," when he was acting in a non-legal capacity, but as "John B. Sogliuzzo, Esq.," when he was acting as an attorney for the estate and using his firm's letterhead.

The OAE argued that the above facts constituted clear and convincing evidence that respondent was the attorney for the Grimley estate, and that he had a duty to maintain the estate's funds inviolate, which he stipulated that he failed to do. Nonetheless, citing In re Silvia, 152 N.J. 243 (1998), the OAE asserted that respondent's denial of the existence of an attorney-client relationship "does not prevent the finding of such a relationship or the knowing misappropriation of funds." The OAE noted that, in Silvia, the Court found that the actions of Silvia necessitated a finding that he was in an attorney-client relationship, and that he must be disbarred for knowingly misappropriating funds. Thus, the OAE argued that, in this matter, respondent should be disbarred,

pursuant to the principles of Wilson and Hollendonner, because he knowingly misappropriated estate funds, in violation of RPC 1.15(a).

In the alternative, the OAE, citing In re Meenen, 156 N.J. 401 (1998), argued that it had proven theft, by clear and convincing evidence, for which respondent must be disbarred. The OAE asserted that respondent took funds that he knew did not belong to him, and treated them as his own, because he considered himself a "substantial beneficiary" of the Grimley estate, and his sister, Adkins, a lesser beneficiary. By failing to disburse the estate funds according to the will, respondent treated Adkins' funds as his own, in violation of N.J.S.A. 2C:20-9 and RPC 8.4(b).

The OAE also filed a supplemental letter brief in reply to respondent's summation brief, renewing its request for respondent's disbarment for either knowing misappropriation of client funds, theft, or both. Concerning the evidence presented at the hearing, the OAE cited Model Jury Charge 1.12, which states that circumstantial evidence is to be given the same weight as direct evidence, and argued that the OAE had produced "several pieces of circumstantial evidence of an attorney client relationship . . . as well as evidence of taking client funds without permission of the client."

Reasserting its argument, the OAE stated that respondent "knew he was an equal beneficiary with his sister Jane Adkins (Adkins);" "knew he was only

disbursing checks to himself and not to Adkins;" "knew he disbursed the same amount of funds to Adkins as he did to the lesser beneficiaries: Braun and the church;" "disbursed Adkins [sic] funds on the same day as the lesser beneficiaries;" and "knew that he did not have Adkins [sic] permission to use her funds." The OAE argued that those facts constitute "clear and convincing evidence of knowing misappropriation of client funds."

The special master determined that "the OAE has not sustained the requisite burden of clear and convincing evidence with respect to the contested charges of knowing misappropriation and theft, but has done so with respect to negligent misappropriation and the contested allegation of deceit and dishonesty."

Specifically, the special master distinguished Silvia and Meenen, as the attorneys in those matters were not beneficiaries of the estates and were acting solely as attorneys. Here, the special master found that:

> Respondent was a significant beneficiary under the estate who was entitled to a distribution (unlike an attorney who had no personal or financial interest), did not keep records, and acted recklessly and negligently. But as a family member who was a beneficiary, I accept his testimony that he felt he was not performing his fiduciary duties in the capacity of an attorney and was accelerating the distribution of his share of the estate, and so long as that is so, the OAE did not prove the requisite culpability by the requisite burden of proof. I cannot conclude that Respondent did anything but try

> to help himself in taking distributions, some to which he would not become entitled.
>
> [SMR10.][6]

The special master noted that, because respondent was acting as a family member, he did not keep records or make appropriate disbursements, and "did not believe that his duties as an executor related to the practice of law." As such, the special master concluded that he could not find sufficient proof of a knowing misappropriation.

Additionally, the special master concluded that the theft charge had not been proven by clear and convincing evidence. In particular, the special master failed to find "any evidence or legitimate inferences that, at the time he took distributions to himself, he was doing it with the required culpability to 'purposely' 'retain' or 'deprive' anyone else of their property . . . within the meaning of N.J.S.A. 2C:20-1." Despite finding respondent's conduct "inappropriate," and grossly negligent, the special master noted that Grimley and Jane were close and lived together, and that respondent was the caretaker to both, and the evidence "may show endeavors to benefit himself in doing so," but did not rise to the level of theft.[7]

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[6] "SMR" refers to the May 19, 2020 Special Master's Report.

[7] The special master determined that the OAE had proven, by "a standard well beyond clear and convincing evidence," that "there is sufficient conduct related to Respondent's practice

However, the special master found that respondent violated RPC 8.4(c) in his handling of the estate money. The special master found that respondent "knew that his sister and he were equal beneficiaries and also equally entitled to the shares of their father and brother, but on December 19, 2007, he sent his sister only $28,750 while he had received $125,000 by then." Moreover, the special master determined that respondent used office letterhead in sending Adkins her distribution, and listed himself as attorney therein and on the estate tax returns, and that the Court "has imposed discipline for dishonest statements to third parties."

Regarding the quantum of discipline for respondent's violation of RPC 1.15(b) and RPC 8.4(c), the special master concluded that respondent should be suspended for six months and, citing the passage of time since the misconduct took place and the lack of impropriety in recordkeeping with respect to respondent's law practice, determined that monitoring or supervision of respondent, once reinstated, was not warranted.

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

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of law to warrant a finding of a negligent misappropriation under RPC 1.15(a). But… [he did] not believe that the negligent misappropriation in the context of the matter as a whole would affect [his] recommendation of discipline in the aggregate."

Respondent stipulated to having violated RPC 1.15(b) by failing to promptly turn over funds due to the beneficiaries of the Grimley estate. He also stipulated that he violated RPC 8.4(c), on two occasions, by directing that both Grimley's and Jane's POAs be improperly notarized. The record clearly and convincingly supports these admissions.

In dispute are the charges of knowing misappropriation, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, theft of estate funds, in violation of RPC 8.4(b), and deceit and dishonesty in respondent's handling of the distribution of Grimley's assets, in violation of RPC 8.4(c). Contrary to the special master's finding that respondent did not knowingly misappropriate funds from the Grimley Estate Account, and did not commit a theft of funds, we determine that the record clearly and convincingly supports the finding that respondent is guilty of those violations.

Specifically, we determine that, by disbursing $140,350 to himself (not including his executor's fee of $15,000 and his attorney's fee of $7,500) from the Grimley Estate Account, which was $40,738.32 more than he was entitled to receive (taking into consideration the $30,000 from his own funds that he used to reimburse the account), without the consent or authorization of the additional beneficiaries, respondent knowingly misappropriated funds entrusted

to him, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

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.

Pursuant to Grimley's will, respondent, Adkins, Jane, Braun, and the Church were entitled to estate distributions, in their respective shares. Respondent knew that he and Adkins were equal beneficiaries under the will, yet he knowingly disbursed significantly less money to her than he did to himself. Indeed, he over disbursed $40,738.32 in estate funds to himself.

Respondent, as executor, owed a fiduciary duty to the beneficiaries of the Grimley estate. See In re Estate of Folcher, 224 N.J. 496, 511 (2016) (holding that "[t]hose who hold the legal title of executor or trustee plainly owe a fiduciary duty to the beneficiaries of the estate or trust respectively"). We find that respondent's argument, that he was acting in a family matter as opposed to that of an attorney, does not absolve him from a violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Further, we find that, poor accounting practices aside, respondent knowingly disbursed to himself more than his share of the Grimley Estate Account. Since his misappropriation was intentional and not negligent, disbarment is warranted.

First, despite respondent's assertion that he was not acting in his capacity as an attorney during his handling of the Grimley estate, the evidence in the record proves otherwise. Respondent took a legal fee of $7,500, as documented on the Grimley estate's state and federal tax returns. He also communicated with Grimley estate beneficiaries via letters on his firm's letterhead and listed himself as the attorney on the Refunding Bond and Release documents.

In support of its knowing misappropriation charge against respondent, the OAE cited In re Silvia, 152 N.J. 243. In that case, the Court found that Silvia mishandled four trust accounts which named his wife's incompetent cousin as beneficiary. Silvia claimed that he did not have an attorney-client relationship

with the beneficiary, and that the beneficiary was not incompetent. See Silvia, 152 N.J. at 248. In disbarring Silvia, the Court found that he had held himself out as the beneficiary's attorney, and held that "[k]nowing misappropriation of funds from a family member incapable of self-care by a lawyer-relative entrusted with the safekeeping of those funds for the family member's benefit constitutes a flagrant abdication of the lawyer's professional responsibilities." Id. at 250-51.

In this case, respondent held himself out as an attorney by using his attorney letterhead to deal with the business of the estate, by disbursing a legal fee of $7,500 to himself and claiming the legal fee as a deduction in the estate's taxes, and by listing himself as an attorney and using his firm's address in the releases to the beneficiaries.

However, regardless of whether respondent held himself out as the Grimley estate's attorney, New Jersey disciplinary precedent clearly provides that the existence of an attorney-client relationship is not a prerequisite to a finding of knowing misappropriation.

For example, the Court has held that an attorney-client relationship between an attorney and the beneficiaries of a trust is not a prerequisite for a finding of knowing misappropriation. In In re McCue, 153 N.J. 365 (1998), the attorney was appointed trustee of a trust valued at over one million dollars.

Throughout his term as trustee, McCue neither gave the beneficiaries an accounting of the trust assets nor filed the fiduciary income tax returns for the trust. Moreover, he breached his fiduciary duties. In the Matter of William T. McCue, DRB 97-086 (February 17, 1998) (slip op. at 3-4). The beneficiaries petitioned a court in Virginia to remove McCue as trustee. Id. at 3. The court determined that the trust suffered a loss of $655,000 because of McCue's fraud and misappropriation. Id. at 4.

McCue subverted the OAE's investigation by refusing to provide his records, but the OAE established that, at a minimum, McCue had misused more than $500,000 of trust funds. Ibid. McCue disbursed most of those funds by issuing forty-three checks payable to a separate trust, unrelated to the first. Id. at 3. The matter was before us by way of default and McCue did not appear for the Order to Show Cause issued by the Court. In re McCue, 153 N.J. 365.

Similarly, an attorney appointed as the administrator of an estate, where the sole beneficiary was confined to a nursing home, was disbarred when he "misappropriated and wasted more than $308,000 in estate funds." In re Meenen, 156 N.J. 401 (1998). Meenen made a series of improper loans from the estate without security or documentation, invested $205,580 in limited partnerships and speculative companies that were either defunct at the time of the investment or went out of business shortly thereafter, and improperly advanced to himself

fees of $39,000. In the Matter of Robert D. Meenen, DRB 97-406 (June 29, 1998) (slip op. at 3). Meenen was unable to substantiate his entitlement to the fees taken. He also failed to file appropriate tax returns on behalf of the estate until March 1996, during a tax amnesty period established by the State of New Jersey. Id. at 4.

We determined that, even though Meenen had served as administrator, rather than attorney, the appropriate discipline, in that matter alone, was disbarment. Id. at 5. Accordingly, for his theft from the estate, we recommended Meenen's disbarment. Id. at. 6. As in McCue, the matter was before us by way of default and Meenen did not appear for the Order to Show Cause issued by the Court. In re Meenen, 156 N.J. 401.

Comparably, in In re Guido, 240 N.J. 477 (2020), respondent served as trustee for his mother-in-law's life insurance trust and performed legal work on behalf of the trust. In the Matter of Michael Peter Guido, DRB 19-110 (October 29, 2019) (slip op. 3). In his deposition, respondent denied having provided legal services to the trust, asserting that he served only as trustee. Id. When the beneficiaries of the trust noticed discrepancies, they requested a full accounting from the trust company, which revealed that respondent had improperly issued four checks, totaling $35,748.33, to himself. Id. at 4. Respondent noted on these checks that they were for fees and administrative costs. Id. at 5. The

beneficiaries had been unaware of these distributions, despite their repeated requests for information and an accounting. Id.

In finding knowing misappropriation and recommending Guido's disbarment, we found that it "matters not whether respondent was the trustee, or had an attorney-client relationship with the trust or its beneficiaries. He was entrusted with safeguarding the corpus of the trust and failed to do so when he improperly advanced $35,748.33 in costs or fees to himself without a scintilla of documentation to substantiate his entitlement." Id. at 16. The Court agreed and disbarred him.

Here, respondent's unauthorized disbursement of Grimley estate's funds to himself violated RPC 1.15(a) and the principles of Wilson and Hollendonner. Although we find that respondent was acting as an attorney in representing the Grimley estate, even if he were not, there is simply no law or case that supports a "family matter" exception to excuse him, either as an attorney or executor, from his fiduciary duties to the beneficiaries. Because respondent knowingly disbursed to himself funds from the Grimley Estate Account that should have been distributed to the other beneficiaries, respondent knowingly misappropriated funds.

Respondent argued that the "problems" he encountered in administering the Grimley Estate Account were due to negligent bookkeeping. Respondent

elicited the expert testimony of Workman to support his argument. Although Workman testified that respondent's practices in administering the estate were "sloppy bookkeeping," he also testified that his stated opinion that there was "no willful intent to defraud the other beneficiaries" was not based on any knowledge of the Rules or law.

Respondent correctly noted that misappropriation that is the result of attorney negligence or even recklessness does not implicate Wilson. See In re Konopka, 126 N.J. 225, 228 (1991). However, although abominable recordkeeping practices may remove a case from the realm of knowing misappropriation, the Court has rejected the notion that an attorney "who just walks away from his fiduciary obligation as safekeeper of client funds can expect . . . an indulgent view of any misappropriation." In re Johnson, 105 N.J. 249, 260 (1987). In other words, the Court "will view 'defensive ignorance' with a jaundiced eye." Ibid. Consequently, "[t]he intentional and purposeful avoidance of knowing what is going on in one's trust account will not be deemed a shield against proof of what would otherwise be a 'knowing misappropriation'." Ibid. In so ruling, the Court was confident that, "within our ethics system, there is sufficient sophistication to detect the difference between intentional ignorance and legitimate lack of knowledge." Ibid.

Here, respondent was acutely aware of the terms of Jane and Grimley's wills. Most importantly, he was aware that he was an equal beneficiary with his sister, Adkins. Despite that knowledge, he repeatedly disbursed funds to himself from the Grimley Estate Account, and not to Adkins. This is not a case where respondent negligently erred by disbursing an incorrect amount of funds to Adkins, or by mistakenly calculating her share. Rather, respondent failed to provide Adkins any of the funds until he disbursed funds to the additional, lesser beneficiaries. Then, he disbursed to her the same amount as those lesser beneficiaries. Indeed, Adkins received $28,750 from respondent, well short of the $69,611.68 she was entitled to receive. Moreover, respondent failed to disburse funds to Adkins until more than a year after he began disbursing funds to himself.

Adkins had not given permission to respondent to withhold or to use her funds. Thus, we determine that the misappropriation by respondent was committed knowingly, despite any shoddy bookkeeping practices in relation to the Grimley Estate Account.

Furthermore, like the attorney in Meenan, respondent's misappropriation constituted theft, in violation of RPC 8.4(b). Although the special master did not find that respondent acted purposefully to deprive another of property, in determining that respondent violated RPC 8.4(c), the special master made

findings of fact that respondent knew that he and Adkins were equal beneficiaries, listed himself as attorney on the tax returns, and provided Adkins less money than she was due. Based on the very same rationale, we determine that the record supports a finding of purposeful theft of estate funds.

Consequently, respondent must be disbarred for his knowing misappropriation of funds entrusted to him. 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/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John B. Sogliuzzo
Docket No. DRB 20-253

Argued: February 18, 2021

Decided: June 11, 2021

Disposition: Disbar

Members	Disbar
Clark	X
Gallipoli	X
Boyer	X
Hoberman	X
Joseph	X
Petrou	X
Rivera	X
Singer	X
Zmirich	X
Total:	9

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel