Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-274
District Docket No. XIV-2017-0494E

In the Matter of	:
Dionne Larrel Wade	:
An Attorney at Law	:

Decision

Argued: March 18, 2021

Decided: June 28, 2021

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Donald M. Lomurro 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 disbarment filed by Special Master Robert L. Grundlock, Jr. The formal ethics complaint charged respondent with having violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985) (multiple

instances – knowingly misappropriating client and escrow funds); RPC 1.15(a) (failing to safeguard property belonging to a client or third party); RPC 1.15(b) (failing to promptly disburse funds); RPC 1.15(d) (committing recordkeeping violations); RPC 8.1(a) (making a false statement in connection with a disciplinary matter); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer – misapplication of entrusted property, contrary to N.J.S.A. 2C:21-15); and RPC 8.4(c) (two instances) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation – utilizing entrusted funds without permission).[1]

For the reasons set forth below, we determine that respondent knowingly misappropriated client and escrow funds and recommend to the Court that she be disbarred.

Respondent earned admission to the New Jersey bar in 2002 and has no prior discipline. During the relevant timeframe, she maintained a practice of law in Clifton, New Jersey.

In this case, prior to the filing of the formal ethics complaint, respondent repeatedly admitted to the Office of Attorney Ethics (the OAE) that she had engaged in the knowing and systematic invasion of client and escrow funds

[1] At the conclusion of the ethics hearing, the OAE withdrew the RPC 8.1(a) charge and one of the two RPC 8.4(c) charges.

entrusted to her, which she characterized as "borrowing" funds to "cover" personal and practice-related expenses. Following the filing of the formal ethics complaint, respondent attempted to disavow her prior admissions as naïve and inaccurate and, in the alternative, affirmatively sought an exception to the "almost invariable" rule of disbarment pronounced by the Court in Wilson. In support of that request, she cited her unique personal history and claimed "ignorance" of recordkeeping Rules and the principles of Wilson and Hollendonner.

For her entire legal career, respondent has been a solo practitioner. During the relevant timeframe, she maintained an attorney trust account at Provident Bank, which she opened on June 10, 2003 and closed on June 22, 2017 (ATA1); an attorney trust account at Provident Bank, which she opened on June 22, 2017 (ATA2); an attorney business account at Provident Bank, which she opened on June 10, 2003 and closed on September 1, 2017 (ABA1); an attorney business account at Provident Bank, which she opened on June 22, 2017 (ABA2); a payroll account at Provident Bank, which she opened on June 29, 2007 and closed on August 5, 2016 (the Payroll Account); and an Estate of Anderson Account at TD Bank (the Anderson Estate Account). Respondent was the sole authorized signatory to these accounts.

This disciplinary matter arose from the OAE's June 15, 2017 random audit of respondent's financial records. During the random audit, respondent produced her ATA1 and ABA1 financial records for the period from June 2015 through May 2017 and admitted to the OAE auditor that she had repeatedly borrowed funds entrusted to her, without the permission of the relevant parties.

On July 5, 2017, the OAE sent respondent a letter enumerating all the recordkeeping deficiencies that had been revealed by the audit. Respondent was required to address each deficiency, in writing, and to produce to the OAE certain financial records. Included among respondent's deficiencies were rampant commingling and shortages in client trust funds, totaling as much as $11,226.53, from November 2016 through June 2017, which the OAE informed respondent were being investigated as the potential knowing misappropriation of entrusted funds.

Respondent provided the OAE with an August 14, 2017 reply to the identified recordkeeping deficiencies, in which she admitted having created client trust fund shortages in the Eason client matter and represented that she had taken corrective action to cure the deficiencies. Moreover, respondent admitted having borrowed client and escrow funds, in two specific client matters, "without the knowledge or permission" of her clients. Specifically, respondent wrote

As your office is aware, Rev. Milena Eason entrusted [$21,000] in my care. Upon doing so, I placed the funds in my trust account. Though I did not immediately begin to borrow the funds, as money became low in my business, I transferred funds from my [ATA1] to my [ABA1]. At no time did I ever intend to keep or steal Rev. Eason's money. Not only did I intend to return the funds; but, [sic] the funds were actually returned to the account. I had no idea that my actions would spark disciplinary proceedings.

In addition, I borrowed money from my client, the Estate of Felix Anderson. In August 2016, I borrowed approximately [$5,000] from the Estate account . . . .

As stated previously, I had no idea my actions were wrong or that they would spark disciplinary proceedings. I never intended to steal or keep these funds. Not only did I intend to return the funds; but, here too the funds were actually returned to the account . . . .

I work earnestly to run what I believe is a law firm of integrity based on my Christian values. I strive to give my clients good value for their dollar and the best service. This comes at a cost because my clients are sometimes slow to pay. Unfortunately, there was no-one [sic] I could turn to for a loan . . . . My point is . . . there was no one else to turn to, so I borrowed the funds. I had no idea that I could be disciplined for my actions or that what I was doing was wrong.

Once the [OAE] auditor told me the effect of my actions, I had to deal with the guilt, embarrassment, and shame. I spent many sleepless nights crying and praying . . . .

I also had to bear the embarrassment and shame of telling my clients, Rev. Milena Eason and Mr. Dallas

> Smith, about my actions. They were understanding, compassionate and unexpectedly supportive . . . .
>
> I am now aware that I broke faith with my clients, family, the bar and most importantly with God . . . . I was placed in a position of trust and I violated said trust . . . . I have learned from my mistakes. Chiefly, I am not alone and I don't have to borrow from client funds . . . . In the end, I am held accountable and required to answer for my mistakes . . . .
>
> I request that [the OAE] take the aforementioned into consideration in taking any possible disciplinary action at the completion of this random audit.
>
> [Ex.P-7A.][2]

In the Eason matter, respondent had represented both Reverend Eason and the Grace of God Church, in Paterson, New Jersey. The goal of the representation was to change the tax status of church properties to exempt and to resolve open property tax liabilities.

After securing a personal pension loan, Reverend Eason provided a $21,000 personal check to respondent, payable to her ATA1, which funds were earmarked to pay down the church's $40,000 property tax liability to the City of Paterson. In return, respondent provided Reverend Eason with a December 27, 2016 receipt stating "[m]oney held in escrow for the [C]ity of Paterson . . . sum held: $21,000." On January 5, 2017, respondent deposited the $21,000 check in

[2] "ExP" refers to the OAE's exhibits admitted during the ethics hearing.

her ATA1. Within two days of that deposit, respondent began invading Eason's trust funds.

Regarding the Felix Anderson estate matter (the Anderson Estate matter), respondent admitted having borrowed $5,000 in entrusted estate funds without permission. In that matter, respondent served as administratrix and attorney for the estate and maintained the estate's funds in the Anderson Estate Account. On August 7, 2015, respondent withdrew $2,000 from the Anderson Estate Account and deposited the funds in her ABA1. Next, on August 10, 2015, respondent withdrew $3,000 cash from the Anderson Estate Account. Almost two years later, on July 3, 2017, respondent deposited $3,100 in the Anderson Estate Account; those funds came from a source unknown to the OAE.

The OAE further alleged that its investigation revealed that respondent had borrowed escrow funds, without permission, in the Vivian Clayton real estate matter. Respondent represented Clayton, the seller of property in Paterson, and had been entrusted, as escrow agent, with $4,000 of the buyer's $5,000 earnest money deposit. Respondent deposited that $4,000 in her ATA1 on June 17, 2014, and was required to hold the funds, inviolate, until the July 14, 2014 closing. Between June 14 and June 30, 2014, however, respondent's ATA balance was reduced, at its lowest point, to $3,910; on June 30, respondent made a transfer to her ATA that raised the balance to exactly $4,000. On July

11, 2014, respondent once again reduced her ATA balance below the required $4,000, to $3,750, and, thus, invaded $250 of the escrow funds. Prior to the closing, respondent once again replenished the escrow funds to exactly $4,000. Respondent did not have permission to use the escrow funds. The real estate transaction closed on July 14, 2014.

During a pre-complaint OAE interview, respondent admitted that she understood the fiduciary duties required of an escrow agent and confirmed that she had served in that role numerous times. She related, however, that her personal practice was simply to keep law firm revenue coming in and to make the relevant parties whole, as needed. She also conceded that, in her mind, she could use a client's funds as a "line of credit," without permission, until the client's funds had to be disbursed, at which point, it was her duty to make the client whole. Respondent admitted that she never asked permission of her clients to use their funds in this manner, but that she "put the client's money in [her] trust account, and [she] was just using it."

In a September 11, 2017 letter to respondent, the OAE enclosed a disbarment by consent form, explained the R. 1:20-10 disbarment by consent process to her, and scheduled the September 20, 2017 OAE interview first mentioned above.

During the September 20, 2017 OAE interview, respondent again admitted that she had borrowed trust funds in the Eason and Anderson Estate matters, without the consent or authorization of the clients. Indeed, she directly asked the OAE staff present, "[t]hat's why we're here, aren't we?"

Specifically, in connection with the Anderson Estate matter, respondent admitted that she had borrowed $5,000 in entrusted funds to "pay bills." In connection with the Eason matter, respondent admitted she also had borrowed Eason's funds to pay personal bills, stating that, at the time she did so, she was "broke," but acknowledging that she should not have done so. Respondent emphasized that she "didn't do anything that wasn't traceable," because she "wasn't trying to hide."

In connection with the Eason matter, respondent admitted that, as of May 31, 2017, she should have been holding $21,000 in her ATA1, inviolate, on behalf of the client, but had reduced the balance of that client's funds by more than $11,000. Respondent conceded that she had agreed to hold the Eason funds in escrow for the church's City of Paterson property tax liabilities. On June 14, 2017, the day before an OAE audit, respondent deposited $12,000 in borrowed funds in her ATA1, thereby replenishing the Eason funds she had invaded and bringing ATA1 back into trust. During the OAE interview, respondent initially claimed that the $12,000 constituted an earned fee, before promptly apologizing

for lying and admitting that it was a loan from "Mr. Robert Belmont," a friend. Respondent reiterated that she did not have Eason's consent or authorization to use her entrusted funds.

Respondent summarized that she was using her clients' funds "to pretty much just kind of get by . . . . [She] wasn't trying to steal the money. At all times [she] intended to put the money back." Respondent admitted that she paid rent obligations using client funds in her ATA1. She further claimed that she "didn't know it was wrong" to borrow client funds without permission until the OAE investigator told her, at the random audit, that it was unethical.

In response to OAE questioning, respondent acknowledged that she understood "the danger" in thinking she could borrow her clients' funds. She then cited $123,000 in client estate funds that had passed through her ATA that she had not invaded, stating "I know I can handle some things, and some things I know I can't. Like the $123,000, I was not messing with that money. Because I know I can't pay that back." Respondent continued, "[b]ut if I need maybe $2,000 or something like that, okay . . . . There's a line." Respondent then asserted that her "limit" in borrowing client funds was $12,000 – the amount of a fee she was expecting in the unrelated, Honus client matter.

Respondent chose not to consent to disbarment and the OAE continued its audit of her financial records, extending the audit period from two to seven years

– from October 2010 through September 2017. In connection with the audit, the OAE subpoenaed respondent's Provident Bank records for that seven-year period.

On April 11, 2018, the OAE again interviewed respondent, who answered questions while represented by her then counsel, Miles Feinstein, Esq. During that interview, respondent's counsel promptly conceded that respondent had borrowed client and escrow funds without permission, in both the Eason matter and the Anderson Estate matter, stating there was "no contest about certain matters." Yet, Feinstein expressed the desire to pursue an opportunity that the Court might make an exception to the rules set forth in Wilson and Hollendonner, rather than advise respondent to consent to disbarment.

During that interview, respondent further admitted that, in the 2008 Tyson Harris matter, she had issued a $60,000 ATA check to a third party, Tonya Peele. That ATA check was dishonored because respondent's ATA balance was only $48,000 when Peele attempted to negotiate the check, in 2010. Respondent conceded that she "was horrible" with her recordkeeping, "just going through the motions," but was having no other ATA "mishaps." Respondent claimed that, to resolve that issue with Peele, she agreed to issue a new, $50,000 cashier's check to Peele, and Peele agreed to loan her the additional $10,000, payable whenever Peele wanted money. Respondent stated that she "thought" all the

funds she ultimately sent to Peele comprised funds from the Harris matter, but again conceded that she had "horrible" financial records.

Respondent acknowledged that, based on this 2010 incident, she had become acutely aware that her method of handling client and escrow funds was insufficient. She maintained, however, that Peele ultimately was paid the full $60,000, and that her client, Harris, was not harmed.

Respondent then summarized her attorney trust and business account practices, stating, "I was using the accounts interchangeably . . . . I wasn't really even paying attention to what went where or how it went . . . . it was a balancing act I guess." Respondent admitted however, that she was repeatedly recognizing shortfalls in her ATA1 and transferring required funds to that account from either her ABA1 or a personal account, which practice she described as "covering" the relevant ATA1 check. Respondent summarized that, as long as she made the client whole, she did not think she could get "into trouble." Yet, despite prolonged questioning, respondent could not express to the OAE any basis for such a belief. Further, she admitted that her practice of systematically borrowing client funds, from 2002 through the 2017 random audit, was "absolutely" wrong, and was, at best, a product of "ignorance."

On May 16, 2018, the OAE continued its audit of respondent's financial books and records and its questioning of respondent, during which interview she

was represented by Mr. Feinstein's co-counsel, Debby Klugler Irwin, Esq. During that interview, respondent again admitted to multiple instances of her lapping of client trust funds, in numerous uncharged client matters, claiming that she did not know it was unethical. She reiterated that her goal was to make her clients whole as their needs arose, either through depositing her earned fees in her ATA1, or by using another party's trust funds. Respondent again conceded that she did not have her clients' permission to use their entrusted funds in this manner.

Following the filing of the formal ethics complaint, respondent attempted to distance herself from her prior admissions that she systematically had borrowed entrusted funds without permission. Specifically, in her verified answer to the formal ethics complaint, respondent admitted having violated RPC 1.15(d) due to her numerous recordkeeping deficiencies but denied having committed knowing misappropriation of client or escrow funds. Specifically, respondent claimed that her repeated admissions to the OAE – that she had invaded funds entrusted to her – were mistaken; that she lacked the mens rea associated with the knowing misappropriation of entrusted funds; and that she "denied that what [she previously had] stated is actually what occurred."

In the concluding pages of her verified answer, respondent summarized her personal history and her extensive history of church, public, and pro bono

services. She also asserted the following in defense of the charges against her: she has always been a solo practitioner and, thus, was not trained to maintain records as required by Court Rules; she often left earned legal fees in her ATA1 and, thus, thought she had a surplus of funds in that account; she only reviewed her financial records for income tax purposes; she had no system to keep her ATA1 in trust; she never intended to invade funds entrusted to her; and no clients were harmed by her actions.

During the ethics hearing, on direct examination, respondent claimed that, during the random audit, the OAE auditor warned her that her rampant commingling and ATA1 shortages were going to get her "in a lot of trouble," at which point respondent claimed she asked the auditor "well, can't I just say I borrowed" the trust funds. Respondent continued, testifying that, at that point in time, she "didn't know [she] was using clients' funds, but [she] ended up using clients' funds." Respondent continued "I knew I was putting a lot of money in [ATA1] . . . . I couldn't track anything. I was just putting money in, taking money out, putting money in, taking money out. But all the time I was using money, I thought I was using my own money." Respondent testified that, following the random audit, she closed ATA1 and ABA1, opened ATA2 and ABA2 for a fresh start, took two recordkeeping classes, and has been fully compliant with the recordkeeping Rules ever since.

Regarding the Eason matter, respondent testified that, in December 2016, months prior to the OAE random audit, she realized that she had failed to properly safeguard Eason's $21,000 in trust funds, so she replenished ATA1 with the borrowed $12,000. Respondent's testimony regarding the timing of the $12,000 deposit was not accurate, however, as exhibited by her own, prior testimony, and her financial records. She further testified that "[a]ll I was trying to do is make it right," and that she knew she had to "cover" the shortage in the Eason funds.

During the ethics hearing, the OAE auditor described respondent's deposit of the $12,000 as an "anomaly," since respondent usually replenished borrowed trust funds just before she was required to return such entrusted funds to a client or third party. The OAE auditor opined that respondent's deposit of the $12,000 was in direct relation to the random audit occurring the next day and, thus, was proof that respondent not only knew she had invaded Eason's funds, but also knew exactly how much she needed to replenish her ATA1, since she had improperly used $11,800 of Eason's funds.

Regarding the Anderson Estate matter, respondent claimed that the $3,000 cash withdrawal she had made was to hire a private detective to find an heir to the estate, whom she ultimately discovered had died without any heirs. She claimed that the $2,000 withdrawal was her fee for serving as attorney to the

estate. She further claimed that notations she had made to the re-created Anderson Estate client ledger card, whereby she wrote that she "borrowed" the $5,000 in trust funds, were made because she was "feeling guilty" for some reason, and not because she actually borrowed those funds. Respondent claimed that, since she never actually hired a detective, she eventually deposited $3,100 in her ATA1, credited toward the Anderson Estate matter. She further claimed to have overpaid two of the beneficiaries, by approximately $1,000 each, to have shorted one beneficiary by $25, and to have shorted her own fee by $2,700.

Regarding the Clayton matter, respondent admitted that she had agreed to serve as escrow agent for $4,000 of the buyer's earnest money deposit, which funds she deposited in her ATA1, on June 17, 2014. Although respondent admitted that she failed to hold those funds, inviolate, until the real estate transaction closed, she denied having knowingly invaded the escrow funds, despite her admission of same in her verified answer.

Regarding the Harris matter, respondent testified that, following the dishonored check, she paid Peele the entire $60,000 due to her, without harming the client.

During the ethics hearing, respondent called multiple character witnesses to testify on her behalf. Vivian Clayton, the client in the Clayton matter, has known respondent since they met at church, in 2001. Clayton discussed

respondent's fulsome dedication and extensive activity within their congregation, including her provision of free legal clinics to the church and the community and her involvement in shelters, church school programs, and camps. Clayton recalled that respondent represented her, in 2014, in the sale of Clayton's home, and had drafted Clayton's will. She described respondent as having a "servant's heart," and as intelligent and truthful, despite the allegations of the complaint regarding her own client matter. On cross-examination, Clayton acknowledged that she was unaware whether respondent had improperly used Clayton's entrusted funds.

Whitney Gordon, respondent's younger cousin, testified that respondent has served as her personal mentor and that, as a teenager, Gordon had spent her summers with respondent. At the time of her testimony, Gordon was pursuing her nursing degree and license, and described being inspired by watching respondent complete her schooling and become a lawyer. Gordon described the extensive volunteer work that respondent had engaged in, including the Eagle Flight aviation school, which teaches aviation skills to underprivileged youth, and the legal services that respondent provides to the underserved community, including the Spanish-speaking population, given respondent's fluency in Spanish. Gordon described awards that respondent has received, and the summers she spent working for respondent, at her law office, doing

administrative tasks and interacting with clients. Overall, Gordon described respondent as an honest person with great character – a true role model.

Respondent's mother, Jacalyn McCombs, testified that she gave birth to respondent at the age of sixteen, and that she and respondent's father separated when respondent was two and respondent's younger brother, Hakiem McCombs, was one. McCombs recounted that, before the relationship ended, respondent's father was physically and verbally abusive toward the family. Respondent grew up in Passaic and Newark, and the family moved more than eleven times before she graduated high school. McCombs testified regarding her own struggles with substance abuse, and that she went to rehabilitation for a month, during which time respondent went to live with her uncle and cousins.

McCombs then recovered and became a licensed nurse. McCombs described respondent as a good student and athlete, and recounted that she had encouraged respondent to attend college in Tennessee. Following college, respondent attended law school in Ohio, and everyone in Passaic was proud of her. Respondent returned to New Jersey and dedicated her law practice to her community and to the underserved. McCombs described her daughter as honest, devout, and wonderful.

Todd Murphy, a performing arts teacher at Teaneck High School, testified that he first met respondent decades ago, when she was a student at Fisk

University, but was taking classes at Passaic County Community College. Murphy observed respondent's enthusiastic involvement in student government, the black student union, and her extensive volunteerism; he regarded respondent as a young leader. They have stayed in touch and have remained friends ever since, and he has watched her basically raise her nephew, who ultimately went to Columbia University. Murphy recounted that his family, including his mother, has retained respondent for legal services. Overall, Murphy described respondent as selfless, authentic, and truthful.

Attorney and friend Theresa Richardson testified that she has known respondent for more than a decade, and that the two developed a friendship strongly based on their similarities as minority, solo practitioners in Paterson. In addition to their friendship, they have consulted and worked on cases together. Richardson described respondent as diligent, good natured, and devout to Christianity. She also recounted respondent's extensive pro bono and community endeavors.

Richardson also described the "disarray" of respondent's law office and financial records, including observing "a hundred plus" unopened envelopes containing financial records, which records Richardson finally helped respondent generally organize into binders. Richardson described respondent as relentless in her work, and honest and honorable. Richardson maintained that

she never spoke with respondent about the propriety of borrowing client funds but had observed that respondent conducted no recordkeeping.

Attorney and friend Richard Herman testified regarding respondent's extensive work with Northeast New Jersey Legal Services, an organization for which he is both a trustee and the treasurer. In summary, respondent has been an active provider of pro bono services for the organization's clients and, in 2017, she was recognized with an award for her outstanding contributions. Herman further recounted that, following the commencement of these disciplinary proceedings against her, respondent came to him for mentoring and training in recordkeeping.

Angela Boykins, a Colorado attorney, attended law school with respondent, at Ohio Northern, and they have known each other since 1997. She described respondent as honest, kind, and giving, and lauded respondent's dedication to her community. Boykins described respondent's leadership qualities demonstrated during law school, and her selflessness in helping other students. She described respondent's relationship with her own family as close-knit, and recounted respondent sending money home while a law student. The two women have stayed in touch and visit each other, discussing both cases and their personal lives. In conclusion, Boykins described respondent as selfless.

Respondent's brother, Hakiem McCombs, testified regarding his and respondent's difficult upbringing, and their mother's substance abuse issues. McCombs dropped out of high school at sixteen and went "into the streets," while respondent remained home and acted as a stable force in his life. McCombs admired his sister's focus and work ethic, and described how she became a wonderful, heavily involved aunt in his children's lives. When McCombs went to federal prison for drug distribution, in 2007, respondent stepped in and took care of his children, and assisted McCombs in maintaining his relationship with them. Respondent also had represented McCombs in connection with his federal criminal case and had "eliminated a ten-year mandatory sentence" that he was initially facing. McCombs also described respondent's extensive volunteer work, community involvement, and pro bono legal services. McCombs concluded by describing respondent's "deeply rooted" spirituality, compassion, and truthfulness, and their shared lack of financial and recordkeeping acumen, which he attributed to their upbringing.

Linton Gaines, a Passaic County real estate broker, testified that he has known respondent, from both church and business, since 2008. He has referred real estate matters to respondent, citing her willingness to take on less lucrative matters but still treat the clients well. Gaines recounted respondent's extensive

work with their church, including free legal seminars, and described her as an honest, competent attorney.

Respondent's uncle, Brian Wade, testified that he has been around for respondent's entire life, that he basically raised her, and that they are very close. He recounted that he became very ill a few years prior, and respondent had offered him a kidney, but his own kidneys eventually regained their function. Wade described respondent's extensive representation of an underserved community, her recent pro bono award, and her church involvement. He concluded by describing respondent as very honest.

Respondent testified that, despite growing up in chaos, she focused on her goal to become an attorney, and her religion became her foundation. Between graduating law school and taking the bar, respondent worked for the Juvenile Department of the Passaic County Probation Department. Once she passed the bar, she opened her solo practice, from her mother's dining room, and focused on representing the underserved population of Paterson and pro bono projects and legal services.

Respondent claimed that, until the OAE's random audit occurred, she had no knowledge of the difference between an attorney trust account and an attorney business account, or even how to balance a checkbook.

Respondent recounted her volunteer work. She represented that, from 2014 through 2017, she resided in her rented office. To conclude her direct examination, respondent testified that she never knowingly invaded entrusted funds. In proffered mitigation, respondent submitted voluminous exhibits regarding her life history, career achievements and awards, and her character, including character letters. Respondent also submitted her relevant client files into evidence.

During the ethics hearing, respondent also offered the expert testimony of Arthur J. Addeo, CPA. Addeo's expert opinion was based solely on the OAE's complaint and associated records, supplemented by two telephone conversations with respondent. In summary, Addeo concluded that respondent's misappropriation of funds was merely negligent, because she had failed to maintain any financial records but, rather, accounted for entrusted funds in her head. Addeo did not opine on how respondent was able to repeatedly replenish entrusted funds in time to issue required ATA1 checks or to otherwise satisfy the financial needs of clients and third parties. He did, however, acknowledge that she repeatedly "would move money or find the money to move to the [ATA1] knowing she was going to have to either reimburse or pay for something" from her ATA1. Addeo confirmed that, in the Anderson Estate matter, respondent had both shorted herself and overpaid certain beneficiaries.

On cross-examination, respondent acknowledged her duty to tell the truth during the OAE investigation, including during the three interviews conducted in conjunction with the demand audit, at least one of which was conducted under oath. Respondent was confronted with her confessions, in her August 14, 2017 response to the OAE audit deficiency letter and in her numerous OAE interviews, wherein she repeatedly admitted borrowing, without permission, entrusted funds in the Eason and Anderson Estate matters; subsequently replenishing those borrowed funds; stating that "there was no one else to turn to so I borrowed the funds;" admitting that she had been placed in a position of trust and had violated that trust; stating that she had learned from her mistakes, is no longer alone, and no longer needs to borrow from client funds; admitting that she was "broke" and used client funds to pay bills; admitting that she had used the Eason and the Anderson Estate funds for personal expenses, including to pay three months' rent for her law office; admitting she was borrowing client funds until she got a "little more stable;" and admitting she had a self-imposed "limit" of $12,000 regarding her borrowing of client funds.

The Parties' Post-Hearing Submissions

In respondent's January 7, 2020 post-hearing submission to the special master, she denied having committed knowing misappropriation, asserting that

the OAE had failed to prove that she had intended to repeatedly invade entrusted funds and that, rather, the charges stemmed from "her lack of training relating to the attorney trust account." Respondent maintained that the OAE had failed to illustrate that a single client had been harmed by respondent's conduct.

Respondent cited her practice of commingling earned fees in her ATA1 as further evidence that she did not intend to invade entrusted funds, claiming that she believed her ATA1 contained surplus earned fees that allowed her to transfer funds between her ATA1 and ABA1.

Respondent discussed her upbringing, her faith, and her lack of training prior to beginning her solo practice, claiming she always put herself last and, thus, did not seek to "better understand her trust and business accounting responsibilities," but, rather, "had a complete ignorance of the simplest of accounting principles."

Despite her multiple, prior confessions to the contrary, including while under oath, respondent asserted that, although she clearly violated the recordkeeping Rules, she did not commit knowing misappropriation of funds entrusted to her. She claimed that her misappropriation in the Eason, Anderson Estate, and Clayton matters constituted negligent, not knowing misappropriation.

Regarding the Clayton matter, respondent claimed that her repeated reduction of the $4,000 in escrow funds was due to poor bookkeeping and, thus, was not intentional. Respondent maintained that she did not need Clayton's escrow funds and never understood that she was invading the escrow funds through her numerous bank disbursements and transfers.

Regarding the Anderson Estate matter, respondent recanted her prior confessions that she had borrowed $5,000 in entrusted funds and asserted that, rather, her use of the estate's funds occurred due to her bookkeeping failures. She maintained that the $2,000 withdrawal constituted her legal fee, and that the $3,000, which she eventually returned to the estate account, was intended for private detective work to find an heir. Respondent maintained that any misappropriation of the estate's funds was negligent, not knowing. Finally, she again claimed that her handwritten notations on the re-created Anderson Estate client ledger, where she wrote she had "borrowed" the $5,000, were inaccurate.

Regarding the Eason matter, respondent once again claimed that her misappropriation of entrusted funds was merely negligent and was caused exclusively by respondent's lack of even a "basic understanding of checking accounting principles." Despite her prior confessions to the contrary, respondent claimed that she believed she was taking earned legal fees from her ATA1, which invaded Eason's funds, and further claimed that she failed to appreciate

the concept of holding funds, inviolate, in her trust account. Respondent asserted that, "because the Eason monies were held for longer than just one month, it would be hard for a person to remember the amounts unless there was a ledger." Regarding her just-in-time replenishment of Eason's trust funds, the day before the OAE random audit, respondent claimed that the replenishment evidenced respondent's "character for truthfulness upon her realization of the error."

Respondent maintained that her repeated confessions to the OAE – that she systematically had "borrowed" funds entrusted to her – was her simplistic attempt to describe what had been occurring with her attorney accounts, considering her complete lack of recordkeeping. Respondent argued that the fact that she misappropriated entrusted funds and had "shoddy bookkeeping" does not prove knowing misappropriation and, thus, the OAE had failed to meet its burden of proof. Respondent compared her misconduct to that of the attorneys in In re Gallo, 117 N.J. 365 (1989); In re Konopka, 126 N.J. 225 (1991); In re Perez, 104 N.J. 316 (1986); In re Librizzi, 117 N.J. 481 (1990); and In re James, 112 N.J. 580 (1988) (all discussed below), noting that none of these attorneys were disbarred despite their egregious recordkeeping and repeated invasion of trust funds.

Respondent further denied that she was knowingly lapping funds entrusted to her but, rather, claimed that she always thought she was utilizing excess

earned fees she improperly maintained in her ATA1. Respondent maintained that her ignorance of the recordkeeping rules was not selective (See In re Downer, 144 N.J. 1, 10 (1996)), but, rather, was "complete ignorance," as illustrated by the fact that many of her transfers between her ATA1 and ABA1 were "haphazard and even unnecessary."

In the alternative, respondent argued that, even if she committed the knowing misappropriation of funds entrusted to her, she should not be disbarred, which is "too harsh of a remedy," because she was unaware of her duty to maintain and reconcile her attorney trust accounts. She stated that she is "asking that the Wilson Rule be re-evaluated in instances where a client is not harmed," and noted that former Justice Stein and the State Bar Association previously had argued that there should be exceptions to the Wilson rule.

In respondent's February 19, 2021 brief to us, she reiterated an identical, but condensed version of the arguments made in her summation brief to the special master.

In its January 7, 2020 post-hearing submission to the special master, the OAE asserted that it had proven every charge against respondent by clear and convincing evidence. Regarding respondent's asserted defense of no recordkeeping, the OAE noted that the Court has held that, although poor accounting alone does not establish knowing misappropriation, poor accounting

also is not a complete defense to Wilson and Hollendonner (citing In re Fleischer, 102 N.J. 440, 447 (1986); In re Freimark, 152 N.J. 45 (1997); and In re Devlin, 109 N.J. 135 (1988)).

The OAE argued that the record clearly illustrated respondent's "deliberate and repeated borrowing of client funds," which evidence was supported by "[r]espondent repeatedly – both verbally and in writing – admitting the knowing character of her invasion and her knowledge that she lacked any entitlement to the funds." The OAE emphasized that, during her demand audit interviews, respondent repeatedly admitted knowing that she needed to replenish ATA1 funds to "cover" the sums she had borrowed.

The OAE argued that respondent's position during the ethics hearing – that she had no recordkeeping system and, thus, was unaware that she was invading trust funds – was "wholly inconsistent with the records obtained by the OAE and is undercut by respondent's own admissions" prior to the filing of the formal ethics complaint. The OAE asserted that, in New Jersey, attorneys are duty-bound to ensure that their accounting practices preclude their misappropriation of trust funds. The OAE also emphasized the Court's decision in In re Pomerantz, 155 N.J. 122 (1998), whereby it disbarred an attorney for the knowing misappropriation of trust funds for her own purposes. In Pomerantz, the Court stated that the attorney's "juggling of funds between her personal,

business, and trust account belies her claimed lack of knowledge that she was out-of-trust. Respondent's behavior demonstrates that she was aware of shortfalls in her account." In re Pomerantz, 155 N.J. at 133. The Court disbarred Pomerantz despite accepting, as fact, that she may not have been aware of the "precise balance" of entrusted funds at all times. Id. at 135. The Court concluded that, "even if we accept respondent's contentions that she was unaware that she was out-of-trust, her 'willful blindness' satisfies us that she knowingly misappropriated client funds" Id.

The OAE criticized respondent's attempts to disavow her repeated confessions to knowingly borrowing trust funds without permission. Moreover, the OAE asserted that neither respondent's background nor prior good works could insulate her from disbarment.

In the OAE's February 23, 2021 letter brief to us, it expressed its agreement with most of the special master's findings and asserted that it had proven each charge against respondent by clear and convincing evidence. The OAE, thus, urged respondent's disbarment.

At oral argument before us, respondent, through counsel, continued to assert that she did not knowingly misappropriate client or escrow funds. In the alternative, she requested that she be spared from disbarment, citing her ignorance of her professional obligations and her stellar reputation as both a

lawyer and person.

* * *

The special master concluded that the OAE had proven, by clear and convincing evidence, that respondent had knowingly misappropriated entrusted funds in the Eason, Anderson Estate, and Clayton matters, in violation of Wilson and Hollendonner. Consequently, he concluded that she must be disbarred.

In reaching his conclusions, the special master accepted, as fact, respondent's claim of a lack of "any experience in basic financial management," prior abandonment of a "one-write" recordkeeping system, and self-proclaimed "ignorance" of her duties regarding entrusted funds. The special master emphasized respondent's systematic practice of commingling personal and trust funds, and her repeated admissions that she believed that, if she made up shortages as needed, she was not committing misconduct. He emphasized, however, that her repeated, just in time replenishment of entrusted funds clearly evidenced that she knew she was using client funds, which she described as "borrowing," with a $12,000 limit. As further evidence of respondent's mens rea, he emphasized her deposit of $12,000 in her ATA1, in connection with the shortage in the Eason matter, the day before the OAE's random audit.

The special master disregarded respondent's expert witness testimony that her misappropriations were merely negligent, again emphasizing that

respondent's own conduct proved that she knew that she was using entrusted funds, "regardless of whether she understood her professional obligations." The special master also noted that respondent had "changed her testimony" pre-complaint versus post-complaint, but found that she clearly knew, and had admitted knowing, that she had improperly used entrusted funds.

Considering his factual findings, the special master concluded that respondent's "serial admissions" invoked the "bright line" application of Wilson. The special master then distinguished respondent's conduct from lines of negligent misappropriation, non-disbarment cases. Although the special master roundly criticized what he described as "semantical inconsistencies" displayed, over the past forty years, in the application of Wilson, he rejected respondent's proffered defense of ignorance of her obligation to hold entrusted funds inviolate. Therefore, the special master concluded that he was "constrained by the overwhelming" precedent requiring disbarment for her repeated, knowing invasion of client and escrow funds.

* * *

Following our de novo review of the record, we determine that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

We feel compelled to first acknowledge that it is beyond dispute that respondent is a remarkable person who has overcome tremendous personal obstacles, through diligence and perseverance, to become a pillar of her church and local community and what appeared to be an excellent member of the New Jersey bar. However, despite the record being replete with evidence of respondent's demonstrably stellar personal reputation, the record is equally replete with overwhelming evidence that she repeatedly and knowingly misappropriated client and escrow funds, from 2002 through 2017, through her systematic "lapping" of funds entrusted to her by clients and third parties. Indeed, prior to the filing of the formal ethics complaint, respondent openly admitted having done so, claiming only that her conduct was "ignorant," versus knowing, and seeking mercy.

Moreover, respondent admitted, without reservation, having borrowed client and escrow funds, for the entirety of her career, and specifically in the Eason and Anderson Estate matters, "without the knowledge or permission" of her clients. The OAE's investigation also revealed a third such instance, the Clayton matter.

In our view, following the filing of the formal ethics complaint, respondent shifted tactics.

Respondent's asserted defenses to the charges of knowing misappropriation are of no moment, and constitute, at best, willful blindness, as described below. Simply put, respondent used her attorney trust account as she saw fit, with no regard to the bright-line ethics rules governing attorney trust accounts.

The random audit and the OAE's subsequent investigation revealed respondent's systematic and knowing misappropriation of client and escrow funds. For fifteen years, respondent routinely withdrew funds from her attorney trust account for personal or business use, invading client and escrow funds and creating shortages in her trust account. Pursuant to disciplinary precedent, respondent's behavior constituted textbook "lapping," that is, taking one client's funds to pay trust obligations owed to another client. Stated differently, she was constantly "robbing Peter to pay Paul," but always making certain that "Peter's funds" were replenished when it was time to repay "Peter." See In re Brown, 102 N.J. 512, 515 (1986).

Respondent admittedly made either just-in-time deposits or transfers of funds back to her attorney trust account to – in her words – "cover" trust shortages, negative client balances, and obligations as they became due. Her financial records further demonstrated this practice. Those shortages were

caused by respondent's prolonged and systematic invasion – in her words, "borrowing" – of entrusted funds, from 2002 through 2017.

Indeed, respondent's own words cement her disbarment. Those words bear repeating. Regarding the Eason and Anderson Estate matters, on August 14, 2017, respondent confessed to the OAE, in writing:

> As your office is aware, Rev. Milena Eason entrusted [$21,000] in my care. Upon doing so, I placed the funds in my trust account. Though I did not immediately begin to borrow the funds, as money became low in my business, I transferred funds from my [ATA1] to my [ABA1]. At no time did I ever intend to keep or steal Rev. Eason's money. Not only did I intend to return the funds; but, [sic] the funds were actually returned to the account. I had no idea that my actions would spark disciplinary proceedings.
>
> In addition, I borrowed money from my client, the Estate of Felix Anderson. In August 2016, I borrowed approximately [$5,000] from the Estate account . . . .
>
> I work earnestly to run what I believe is a law firm of integrity based on my Christian values. I strive to give my clients good value for their dollar and the best service. This comes at a cost because my clients are sometimes slow to pay. Unfortunately, there was no-one [sic] I could turn to for a loan . . . . My point is . . . there was no one else to turn to, so I borrowed the funds. I had no idea that I could be disciplined for my actions or that what I was doing was wrong.
>
> I am now aware that I broke faith with my clients, family, the bar and most importantly with God . . . . I was placed in a position of trust and I violated said trust . . . . I have learned from my mistakes. Chiefly, I am not alone and I don't have to borrow from client funds

> . . . . In the end, I am held accountable and required to answer for my mistakes . . . .
>
> I request that [the OAE] take the aforementioned into consideration in taking any possible disciplinary action at the completion of this random audit.

During a pre-complaint OAE interview, respondent openly acknowledged that she understood the fiduciary obligations of an escrow agent, confirming that she had served in that role numerous times. In fact, she conceded that, in her view, she could use entrusted funds as a "line of credit," without permission, until the funds had to be disbursed, at which point, it was her duty to make the relevant parties whole.

During the September 20, 2017 OAE interview, respondent again admitted that she had borrowed trust funds in the Eason and Anderson Estate matters, without the consent or authorization of the clients. At the beginning of the interview, she bluntly asked the OAE staff present, "[t]hat's why we're here, aren't we?"

Specifically, in connection with the Anderson Estate matter, respondent admitted that she had borrowed $5,000 in entrusted funds to "pay bills." Regarding the Eason matter, respondent admitted she also had borrowed entrusted funds to pay personal bills, because she was "broke." Respondent emphasized that she "didn't do anything that wasn't traceable," because she "wasn't trying to hide" her behavior.

In connection with the Eason matter, respondent admitted that, as of May 31, 2017, she should have been holding $21,000 in her ATA1, inviolate, on behalf of the client, but had reduced the balance of that client's funds by more than $11,000. Respondent conceded that she had agreed to hold the Eason funds in escrow for a church's City of Paterson property tax liabilities. On June 14, 2017, the day before an OAE audit, respondent deposited $12,000 in borrowed funds in her ATA, thereby replenishing the Eason funds she had invaded and bringing ATA1 back into trust. During the OAE interview, respondent initially claimed that the $12,000 constituted an earned fee, before promptly apologizing for lying and admitting it was a loan from "Mr. Robert Belmont," a friend. Respondent reiterated that she did not have Eason's consent or authorization to use her entrusted funds.

Respondent summarized that she was using her clients' funds "to pretty much just kind of get by . . . . [She] wasn't trying to steal the money. At all times [she] intended to put the money back." In response to OAE questioning, respondent acknowledged that she understood "the danger" in thinking she could borrow her client's funds. In that vein, she cited $123,000 in client estate funds that had passed through her ATA that she had not invaded, stating "I know I can handle some things, and some things I know I can't. Like the $123,000, I was not messing with that money. Because I know I can't pay that back."

Respondent continued, "[b]ut if I need maybe $2,000 or something like that, okay . . . . There's a line." Respondent then asserted that her "limit" in borrowing client funds was $12,000 – the amount of a fee she was expecting in the unrelated, Honus client matter.

Despite the overwhelming evidence of her knowing misappropriations, respondent rejected the option of consenting to disbarment and the OAE continued its audit of her financial records, extending the audit period from two to seven years into the past – from October 2010 through September 2017.[3]

On April 11, 2018, the OAE again interviewed respondent, who answered questions while represented by her then counsel, Miles Feinstein, Esq. During that interview, Feinstein promptly conceded that respondent had borrowed client and escrow funds without permission, in both the Eason matter and the Anderson Estate matter, stating there was "no contest about certain matters." Yet, rather than advise respondent to consent to disbarment, he expressed the desire to pursue an opportunity that the Court might make an exception to the principles set forth in Wilson and Hollendonner.

[3] We address these discussions regarding potential consent to disbarment because the parties made those discussions part of the record below, without objection by either the OAE or respondent. Indeed, those discussions are contextually integral to respondent's proffered defenses.

During that interview, respondent further admitted that, in the 2008 Tyson Harris matter, she had issued a $60,000 ATA check to a third party, Tonya Peele, that was dishonored because her ATA balance was only $48,000 when Peele attempted to negotiate the check, in 2010. Respondent conceded that she "was horrible" with her recordkeeping, "just going through the motions," but was having no other ATA "mishaps." Respondent claimed that, to resolve that issue with Peele, she agreed to issue a new $50,000 cashier's check to Peele, and Peele agreed to loan her the additional $10,000, payable whenever Peele wanted money. Respondent stated that she "thought" all the funds she ultimately sent to Peele comprised funds from the Harris matter, but again conceded that she had "horrible" financial records.

Respondent acknowledged that, based on this 2010 incident, she had become acutely aware that her method of handling client and escrow funds was insufficient. She maintained, however, that Peele ultimately was paid the full $60,000, and that her client, Harris, was not harmed. Despite her awareness of her mishandling of entrusted funds, respondent continued her same unethical practices.

Respondent summarized her attorney trust and business account practices prior to 2017, stating, "I was using the accounts interchangeably . . . . I wasn't really even paying attention to what went where or how it went . . . . it was a

balancing act I guess." Respondent admitted however, that she was repeatedly recognizing shortfalls in her ATA1 and transferring required funds to that account, which practice she described as "covering" the relevant ATA1 check. Respondent summarized that, in her view, so long as she made the client whole, she did not think she could get "into trouble." Yet, despite prolonged questioning, she could not express to the OAE any basis for such a belief and admitted that her practice of systematically borrowing client funds, from 2002 through the 2017 random audit, "absolutely" was wrong and, at best, was a product of "ignorance."

As we noted above, following the filing of the formal ethics complaint, respondent attempted to distance herself from her prior admissions that she had borrowed entrusted funds without permission. We view that sea change with skepticism.

Despite her repeated, prior admissions of her invasion of entrusted funds, as limited by her self-imposed $12,000 credit limit, in her answer and during the ethics hearing, respondent attempted to disavow those confessions as a product of her claimed naiveté, maintaining that she actually "wasn't aware it was happening," because she was wholly ignorant of her recordkeeping obligations and the fundamental obligation of holding entrusted funds inviolate in her attorney trust account. As the record reflects, each time respondent improperly

borrowed entrusted funds, including in the Clayton, Anderson Estate, and Eason matters, she neither sought nor had the prior authorization of the interested parties.

During the ethics hearing, despite the overwhelming evidence of her knowing misappropriation, respondent asserted that, at most, her misappropriation was negligent. In the alternative, she affirmatively seeks to become the first exception to the "almost invariable" rule of disbarment pronounced by the Court in Wilson, based on her unique personal history and claimed "ignorance" of recordkeeping Rules and the principles of Wilson and Hollendonner.

More than forty years ago, the Court instituted what became known as the Wilson rule. 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).

The Court's decision in Hollendonner 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.

Despite the evidence of her misconduct, respondent seeks to become the first exception to Wilson and Hollendonner, citing her background, stellar reputation for good character, and proffered mitigation as the reason for such exclusive treatment.

Prior to Wilson, attorneys who knowingly misappropriated clients' funds were not always disbarred. If special circumstances were present, a sanction lesser than disbarment was imposed. As the Court remarked in Wilson,

> results in misappropriation cases have varied because of circumstances which the Court has regarded as mitigating: the economic and emotional pressures on the attorney which caused and explained his misdeed; his subsequent compliance with client trust account requirements; his candor and cooperation with the ethics committee; and, most of all, restitution. The presence of a combination of these has occasionally resulted in suspension, ranging from six months to three years, rather than disbarment.[4]
>
> [Id. at 455-56.]

The Wilson rule is rooted in the need to maintain the confidence of the public in the integrity of the bar and the judiciary:

[4] In In re Smock, 86 N.J. 426, 427 (1981), the Court determined that, given the severity and inflexibility of the Wilson rule, it should not be applied retroactively.

> The considerations that must deeply trouble any court which decrees disbarment are the pressures on the attorney that forced him to steal, and the very real possibility of reformation, which would result in the creation of a new person of true integrity, an outstanding member of the bar [citation omitted]. There can be no satisfactory answer to this problem. An attorney, beset by financial problems, may steal to save his family, his children, his wife or his home. After the fact, he may conduct so exemplary a life as to prove beyond doubt that he is as well equipped to serve the public as any judge sitting in any court. To disbar despite the circumstances that led to the misappropriation, and despite the possibility that . . . reformation may occur is so terribly harsh as to require the most compelling reasons to justify it. As far as we are concerned, the only reason that disbarment may be necessary is that any other result risks something even more important, the continued confidence of the public in the integrity of the bar and the judiciary.
>
> [Id. at 460.]

Although, today, it is understood that Wilson announced a bright-line rule of disbarment for knowing misappropriation of client trust funds, the following language in the opinion left some room for an argument to the contrary, including by respondent: "Generally, all [knowing misappropriation cases] shall result in disbarment. We foresee no significant exceptions to this rule and expect the result to be almost invariable." Id. at 453 (emphasis added). "Mitigating factors will rarely override the requirement of disbarment." Id. at 461 (emphasis added).

By contrast, other cases unambiguously state that Wilson mandates disbarment:

> Disbarment is mandated for the knowing misappropriation of clients' funds . . . . [Emphasis added].
>
> [In re Orlando, 104 N.J. 344, 350 (1986).]

And again:

> Since this Court announced the bright-line Wilson rule in 1979, "we have not retreated one bit from the principle that knowing misappropriation . . . will warrant the Wilson sanction of disbarment . . . ." In re Konopka, 126 N.J. 225, 228 . . . (1991), and have repeatedly rejected opportunities "to create exceptions to the Wilson rule, even where the misappropriation was the product of severe personal and financial hardship" [citation omitted]. Although we have recognized that "[t]he Wilson rule is harsh" [citation omitted], we remain "convinced that nothing less will be consistent with our view of the devastating effect of misappropriation on the public's confidence in the bar and in this Court" [citation omitted]. [Emphasis added].
>
> [In re Greenberg, 155 N.J. 138, 149 (1998).] [5]

Accordingly, it is universally accepted that, in New Jersey, disbarment is invariable for attorneys who knowingly misappropriate clients' funds. In the

[5] Despite its reference to a bright-line rule, Greenberg itself states that attorneys who knowingly misappropriate client's funds will rarely escape disbarment ("We accept as an inevitable consequence of the application of this rule that rarely will an attorney evade disbarment in such cases . . . .") [Emphasis added]. In re Greenberg, 155 N.J. at 151.

more than forty years since Wilson, hundreds of attorneys have been disbarred for their knowing misappropriation of client and escrow funds. In some instances, the circumstances that led to the misappropriation generated considerable human sympathy. In others, disciplinary authorities saw the possibility of redemption. The result, nevertheless, has been invariable: no attorney guilty of knowing misappropriation has evaded disbarment. Indeed, the Court has said that it has "repeatedly rejected opportunities to create exceptions to the Wilson rule." In re Greenberg, 155 N.J. at 149.

Over the years, respondents, our own colleagues, and even some Justices have attempted to persuade the rest of the Court that, in special situations, it should carve out an exception to the Wilson rule.[6] The Court, however, has consistently declined. See, e.g., In re Breslow, 124 N.J. 386 (1991) (attorney who admitted knowing misappropriation urged the Court to permit him to resume practice with conditions, including a proctorship, arguing that such restraints would in no way undermine public confidence in the legal system; the attorney cited his irreproachable conduct since his ethics infractions eight years before; the Court denied the request and ordered the attorney's disbarment); In re Bell, 126 N.J. 261 (1991) (three Court justices voiced their opinion that the

[6] Indeed, in a decision we are issuing contemporaneous to this decision, dissenting Members of our Board are once again urging that the Court consider a limited exception to Wilson. See In the Matter of Karina Pia Lucid, DRB 20-216 (2021).

inflexible application of the Wilson rule runs the risk of creating an "almost reflexive approach to [knowing misappropriation] cases, obscuring and ignoring the individual circumstances to an intolerable degree [citation omitted]." Id. at 267; the dissenting members would temper the Court's dispositions in knowing misappropriation cases by a recognition that, under special circumstances, discipline short of disbarment might sometimes be suitable); In re Houston, 130 N.J. 382 (1992) (three Court members believed that "under special circumstances discipline short of disbarment may occasionally be appropriate in knowing misappropriation cases"); and In re Hall, 181 N.J. 339 (2004) (we voted for the imposition of an indeterminate suspension on the attorney, who, instead of asking a client for the payment of an already earned $3,500 legal fee, asked the client for $3,500 to be used as a down payment on real estate that the client wished to buy and then knowingly misappropriated the funds; the client confirmed that the attorney was owed $3,500 in fees and asked disciplinary authorities to treat the attorney with leniency; the attorney also borrowed money from three clients without observing the safeguards of RPC 1.8 and made misrepresentations to one client and to the OAE; in voting against disbarment, we considered that, although the attorney had obtained the funds by false pretenses, he did not understand the significance and the gravity of his actions, future clients' funds would not be at risk, his misconduct was the product of

poor judgment prompted by panic, and there was no evidence of venality or ill motive; the Court nevertheless disbarred the attorney on the basis of his "unethical conduct and his failure to appear on the Court's Order to Show Cause").

As it stands today, the Wilson rule allows for no exceptions: attorneys who knowingly misappropriate clients' funds invariably suffer the disbarment penalty. Not even the need for life-saving medical treatment spared from disbarment an attorney who misappropriated client trust funds for that purpose. In re Manning, 134 N.J. 523 (1993).

Similarly, attorneys whose financial hardship prompted their intentional invasion of client's funds have not avoided disbarment. As the Court stated in In re Hughes, 90 N.J. 32 (1982):

> Human beings sometimes find it difficult to resist doing anything to help their family. We recognize the nobility of those sentiments. Yet we impose limits on what people can do in that regard. We do not applaud, for example, individuals who steal for their families. Many misappropriation cases come before this Court. In most of those cases, the respondent is not a vicious person at all but rather one who is the victim of difficult circumstances. Attorneys steal from their clients, often not to become rich, but simply to make ends meet. Would it be farfetched to imagine that they do it for the sake of their families? Perhaps they seek to prevent their families from being evicted; perhaps the funds are necessary to care for their husbands or wives or children. Yet we have not hesitated, in such cases, to disbar the attorney who steals from the client. We do

> not condemn the individual who faces exigent circumstances. We do protect the public.
>
> [Id. at 37-38.]

A commonly asserted defense to knowing misappropriation is shoddy recordkeeping. Attorneys charged with the intentional invasion of entrusted funds frequently allege that their failure to properly maintain their trust account records prevented them from knowing that they were using entrusted funds for the benefit of themselves or another. They also often allege that their failure to promptly remove earned legal fees from their trust account (commingling), coupled with their failure to reconcile their trust account records, led them to believe that they had sufficient personal funds of their own in the account to cover personal withdrawals. Because the line between knowing misappropriation and negligent misappropriation is a thin one and because of the grave consequences that befall attorneys found guilty of the former, the standard of proof – clear and convincing evidence – must be fully satisfied.

For instance, in In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. 440 (1986), the attorneys commingled personal and trust funds and, ultimately, invaded clients' funds by exceeding the disbursements against their funds. The Court rejected the attorneys' defense that poor accounting procedures prevented them from knowing the amount of their own funds in the trust account:

> It is no defense for lawyers to design an accounting system that prevents them from knowing whether they are using clients' trust funds. Lawyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds.
>
> [Id. at 447.]

Finding overwhelming evidence that the attorneys had knowingly misappropriated clients' funds, the Court ordered their disbarment.

Six months later, the Court decided In re Skevin, 104 N.J. 476 (1986). In Skevin, the attorney was out of trust in amounts ranging from $12,000 to $133,000. The attorney admitted the shortages but pointed out that he had deposited $1 million of his own funds in the trust account to cover personal withdrawals. The Court found that, because the attorney did not maintain an accounting or running balance of his personal funds in the account, each time he made withdrawals for himself and for clients before the receipt of corresponding settlement funds, there was a "realistic likelihood of invading the accounts of another client since respondent had no way of knowing what the balances were." Id. at 485. The Court, thus, equated "willful blindness" to knowledge:

> The concept arises in a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist. Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases [citations omitted].

[Id. at 486.]

The attorney was disbarred. Skevin is considered the seminal willful blindness case.

Another willful blindness decision is applicable to the facts of the instant case. In In re Pomerantz, 155 N.J. 122 (1998), the Court found that the attorney "had used her client's funds for her own purposes without authorization." Id. at 133. The Court explained:

> Her juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. Respondent's behavior demonstrates that she was aware of shortfalls in her accounts. For example, respondent paid D'Esposito from the trust account rather than the business account when the business account did not contain enough money to cover the amount due D'Esposito. We have previously observed that when an attorney makes a loan to a deficient trust account, it indicates that the attorney may be "personally aware on that date that his handling of the trust account had produced the deficit result."
>
> [Ibid.]

Further, the Court noted that, even though Pomerantz "may not have intended to permanently deprive [the client] of her money," and that she "intended to replace the funds," her intentions were irrelevant, citing In re Irizarry, 141 N.J. 189, 192 (1995), and In re Noonan, 102 N.J. at 160. Id. at 134. As a corollary, the Court rejected the importance of the claimed ability to make

restitution, nothing that the restitution funds may fail to materialize. Id. at 134-35.

The attorney's defenses constituted willful blindness, in the Court's eyes, because knowledge that the invasion of client funds is likely as a result of an attorney's conduct constitutes "a state of mind consistent with the definition of knowledge in our statute law." Ibid. In other words, even if the Court had accepted Pomerantz's contentions that "she was unaware that she was out-of-trust, her 'willful blindness' satisfie[d the Court] that she knowingly misappropriated client funds." Ibid.

On the other hand, "[a]lthough an attorney's records may reveal repeated and frequent instances of being out of trust, that circumstance does not necessarily constitute knowing misappropriation." In re Davis, 127 N.J. 118, 127 (1992). Indeed, the Court did not disbar an attorney who admitted that he had misused clients' funds but contended that the misuse was entirely unknown because he was inexcusably inattentive to his recordkeeping responsibilities. In re Johnson, 105 N.J. at 249. The attorney claimed that he was so busy building a law practice, working more than ninety hours a week, that he lost control of his office, improperly relying on his staff to maintain his attorney records. Noting that "not a word of respondent's recitation [was] contradicted," the Court

concluded that his misappropriation was negligent, rather than knowing. Id. at 258.

The Court rejected the OAE's argument that the attorney had to know that he was out of trust and that he was invading clients' funds. The Court found that the attorney's "calamitous method of doing business [was] just as reasonable an explanation of the situation . . . as the one the OAE would have us accept . . ." and that "[t]he evidence about respondent's state of mind [was] no more compelling in the direction of knowledge than it is in the direction of unhealthy ignorance." Id. at 258. The Court concluded that this case showed much more than shoddy bookkeeping, in that the attorney was "spectacularly misguided in his all-consuming effort to build a practice at the expense of other considerations . . . ." Id. at 259. The Court found no evidence of "defensive ignorance" or "intentional and purposeful avoidance of knowing what is going on in one's trust account." Id. at 260. The attorney was suspended for four years (time-served).

In In re James, 112 N.J. at 580, the Court also found no clear and convincing evidence of knowing misappropriation. There, the attorney was out of trust on at least twenty occasions but blamed his derelictions on an accounting system inherited from his legal mentors, a system that he had been using for twenty-four years, without incident. The Court found insufficient proof that the attorney had deliberately designed or perpetuated a system that prevented him

from knowing that he was misusing clients' funds. The attorney was suspended for three months for his negligent misappropriation and seriously inadequate accounting practices.

See also In re Ichel, 126 N.J. 217 (1991) (attorney's credible belief that he had a substantial "cushion" of his own funds in his trust account saved him from a finding of knowing misappropriation; the attorney believed that his personal funds kept in the account were sufficient to back up withdrawals unrelated to a particular client matter; the attorney received a six-month suspension, which was suspended because of the passage of nine years between the attorney's misconduct and the imposition of discipline); In re Stern, 118 N.J. 592 (1990), and In re Weiss, 118 N.J. 577 (1990) (law partners suspended for six months for negligent misappropriation resulting from poor recordkeeping, misplaced reliance on their CPA, and automatic overdraft protection; the attorneys claimed that their CPA did not inform them of negative balances in their trust account and that their bank's overdraft protection plan prevented them from knowing about the misappropriations; we harbored a strong suspicion that the attorneys were aware of their invasion of client's funds (the attorneys were well-versed in business matters, as owners of mortgage companies; also, their answer to the ethics complaint contained certain admissions against interest that were later contradicted by the testimony of one of the attorneys); we found,

however, that the evidence fell short of the standard of clear and convincing; the Court agreed); In re Librizzi, 117 N.J. 481 (1990) (six-month suspension for attorney whose negligent recordkeeping practices caused a $25,000 shortage in his trust account; for a period of twelve years, the attorney did not reconcile his trust account records; the attorney did not even open the bank envelopes containing the trust account statements; once aware of the trust account deficiency, the attorney took two years to replenish it; despite the OAE's urging of a finding of knowing misappropriation, the Court concluded that the attorney's problems stemmed from his inadequate accounting practices); and In re Gallo, 117 N.J. 365 (1989) (three-month suspension for attorney who negligently misappropriated clients' funds caused by improper bookkeeping learned from a prior employer; in deciding to reject the charge of knowing misappropriation, the Court was particularly influenced by the attorney's "obvious lack of knowledge about the rudimentary principles of an attorney's recordkeeping responsibilities and the unfortunate example of egregiously-improper bookkeeping practiced by respondent's first professional employer.").

In In re Warhaftig, 106 N.J. 529 (1987), the attorney routinely advanced fees to himself in real estate matters before the closings took place. The sums taken corresponded exactly to the amount of the anticipated fees. We agreed with the district ethics committee and recommended a reprimand, seeing a

distinction between the attorney's conduct and the knowing misappropriation described in Wilson. We and the committee noted that the attorney did not perceive his premature withdrawal of fees as a misappropriation of clients' funds, advancing to himself only monies to which he would ultimately be entitled.

The Court disagreed with the distinction drawn by both disciplinary tribunals, remarking that the attorney had borrowed monies from certain clients in order to receive advance compensation from other clients. Although the Court acknowledged the harshness of the Wilson rule, particularly because, prior to these incidents, the attorney had always conducted himself in an exemplary fashion, the Court refused to carve out an exception to the Wilson rule, citing the overriding need to "preserve the confidence of the public in the integrity and trustworthiness of lawyers." Id. at 535.

"The burden of proof in proceedings seeking discipline . . . is on the presenter. The burden of going forward regarding defenses . . . relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

Consequently, the burden of proof is on the attorney to establish the reasonableness of the belief regarding such "cushion" defenses:

> Respondent also testified that whenever he withdrew escrow fees in advance of a closing, the withdrawal was based on his assumption that he had an equivalent "cushion" in his trust account. However, respondent did

> not attempt to offer any specific factual basis for that assumption, and respondent's own expert testified that when he performed a reconciliation of the trust account he determined that "there weren't always sufficient funds on hand, and he was always indeed out of trust." Respondent's erroneous belief that he had an equity cushion was unfounded, and respondent failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justifiable.
>
> [In re Mininsohn, 162 N.J. 62, 73-74 (1999).]

To be clear, there must be clear and convincing proof of an attorney's knowing misappropriation in order to apply the ultimate sanction of disbarment. As the Court stated in In re Konopka, 126 N.J. 225 (1991),

> [w]e insist, in every Wilson case, on clear and convincing proof that the attorney knew he or she was misappropriating. . . . If all we have is proof from the records or elsewhere that trust funds were invaded without proof that the lawyer intended it, knew it, and did it, there will be no disbarment, no matter how strong the suspicions are that flow from that proof.
>
> [Id. at 234.]

The clear and convincing standard was described in In re James, 112 N.J. 580 (1988), as

> [t]hat which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

[Id. at 585.]

Proving a state of mind, in the absence of an outright admission, may pose difficulties. However, "an inculpatory statement is not an indispensable ingredient of proof of knowledge . . . . Circumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." In re Johnson, 105 N.J. 249, 258 (1987).

In the instant matter, despite respondent's asserted defenses and sworn testimony, ignorance of the law is no excuse for an attorney's failure to abide by the RPCs. See In re Berkowitz, 136 N.J. 134, 147 (1994) ("Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct") and In re Goldstein, 116 N.J. 1, 5 (1989) (holding that "[i]gnorance of ethics rules and case law does not diminish responsibility for an ethics violation") (citations omitted).

Following our review of the record, we determine that the OAE proved, by clear and convincing evidence, that respondent repeatedly engaged in the knowing misappropriation of entrusted funds, in violation of Wilson and Hollendonner. Specifically, she systematically lapped funds entrusted to her, over a prolonged period, and stopped her unethical practice only because of the

OAE's random audit. None of respondent's proffered defenses rescue her from the ultimate sanction of disbarment.

Indeed, her main defense constitutes the very "defensive ignorance" argument that the Court has repeatedly rejected over the past four decades. As the Court stated in In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. at 447 (1986), "[l]awyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds." Moreover, respondent's dearth of any accounting practice constituted willful blindness. As the Court summarized in In re Pomerantz, 155 N.J. at 133, respondent's systematic "juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. Respondent's behavior demonstrates that she was aware of shortfalls in her accounts."

Respondent's comparison of her misconduct to that of the attorneys in Gallo, Konopka, Perez, Librizzi, and James rings hollow. In addition to other distinguishing characteristics presented by her case, those attorneys did not repeatedly confess to having intentionally invaded entrusted funds, and the record did not demonstrate their prolonged, intentional lapping. Moreover, none of those attorneys attempted to recant their prior admissions, and none of those attorneys made conflicting statements while under oath.

Finally, none of the evidence or arguments that respondent presented in her case in chief move us to recommend that the Court consider carving out an exception to her disbarment. The Court has consistently declined to spare attorneys from the harsh rule of Wilson when considering facts just as compelling, or even more dire than respondent's proffered circumstances. Forty years of stare decisis, since the announcement of the Wilson rule, mandates respondent's disbarment.

We further find that respondent violated RPC 1.15(a) (failing to safeguard property belonging to a client or third party) by repeatedly invading client and escrow funds entrusted to her; RPC 1.15(b) (failing to promptly disburse funds) in connection with the Harris matter; RPC 1.15(d) (recordkeeping violations) by wholly failing to perform her recordkeeping duties; RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer – misapplication of entrusted property, contrary to N.J.S.A. 2C:21-15) for her prolonged, systematic invasion of entrusted funds; and RPC 8.4(c) (two instances) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), also for her prolonged, systematic invasion of entrusted funds.

As we noted above, despite the record being replete with evidence of respondent's demonstrably stellar personal reputation, the record is equally

replete with overwhelming evidence that she repeatedly and knowingly misappropriated client and escrow funds, from 2002 through 2017, through her systematic "lapping" of funds entrusted to her by clients and third parties. Accordingly, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for her additional ethics violations.

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 Dionne Larrel Wade
Docket No. DRB 20-274

Argued: March 18, 2021

Decided: June 28, 2021

Disposition: Disbarment

Members	Disbarment
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