Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-216
District Docket No. XIV-2017-0351E

In the Matter of

Karina Pia Lucid

An Attorney at Law

Decision

Argued: January 21, 2021

Decided: July 9, 2021

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

Kim D. Ringler 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 censure filed by the District XIII Ethics Committee (DEC). The formal ethics complaint charged respondent with knowing misappropriation of client and escrow 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).

For the reasons set forth below, we recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 2002 and to the District of Columbia bar in 2005. At the relevant times, she maintained an office for the practice of law in Liberty Corner, New Jersey. Respondent has no disciplinary history.

On June 6, 2017, Wells Fargo Bank informed the Office of Attorney Ethics (OAE) that, on that same date, respondent's attorney trust account check number 1022, in the amount of $42,875, was presented against insufficient funds, causing a $386.89 overdraft. Wells Fargo honored the check but assessed a $35 fee to respondent's attorney trust account.

On June 16, 2017, the OAE sent a copy of the Wells Fargo overdraft notice to respondent and requested a written explanation and certain documents by June 29, 2017. By letter dated June 27, 2017, respondent replied to the OAE that, as far as she could ascertain, the overdraft resulted from bank fees that she understood would be charged to the firm's attorney business account, not the firm's attorney trust account. Nevertheless, when respondent learned of the overdraft, she immediately replenished her trust account with funds from her business account, closed her Wells Fargo attorney accounts, and opened new accounts at a local bank.

On August 23, 2017, the OAE conducted a demand audit of respondent's trust and business account records, which uncovered numerous recordkeeping violations, including the absence of (i) trust receipts and disbursements journals, (ii) individual client ledger cards, and (iii) monthly three-way reconciliations, which the OAE directed respondent to provide, within forty-five days, for the period comprising January 1, 2016 through August 2017. Respondent did not know how to perform those tasks. She, thus, completed a continuing legal education (CLE) class on recordkeeping, after which she prepared the required documents.

As respondent constructed her records, she realized that, eighteen months earlier, in January 2016, she had advanced unrelated client trust funds to pay a debt owed by her client, John Petrelli, "while awaiting reimbursement of the [trust funds] by Petrelli." On October 5, 2017, respondent reported this information to the OAE.

The history of the Petrelli matter is as follows. As of January 5, 2016, respondent's trust account balance was $48,575, comprising funds for three matters: a $42,875 deposit in respect of the Reilly-to-Gaither real estate matter, $5,000 for LuAnne Jones, and $700 for Cathy Scansaroli. On Thursday, January 21, 2016, respondent reached a $5,500 settlement on Petrelli's behalf with MS Services LLC (MS Services). That same date, respondent instructed Petrelli to

"immediately" send funds to cover the settlement, which she understood he would do.

Beginning two days later, on Saturday, January 23, 2016, a blizzard confined respondent to her house, without power, for three days. During the same timeframe, respondent's husband, who was awaiting authorization for knee replacement surgery, injured his leg and back while shoveling snow. Respondent, thus, took him to a local urgent care center for treatment.

On Tuesday, January 26, 2016, when respondent was able to return to her office, the accumulated mail included a letter from MS Services, which warned that, unless MS Services received $5,500 from Petrelli by Friday, January 29, 2016, the settlement agreement would be revoked. Thus, on January 26, 2016, respondent issued a $5,500 trust account check, payable to MS Services. Respondent knew, at the time, that her trust account held no funds on account of Petrelli. Because Petrelli had been a good client who always paid his bills in a timely fashion, respondent had "full anticipation" that she would receive his check, and that it would clear the account before the check issued to MS Services was negotiated.

Respondent claimed that, when she issued the $5,500 trust account check, she did not know that she was doing anything improper:

> [I]t never even crossed my mind that what I was doing was wrongful in any way or could be construed as

> invading other client's funds, let alone misappropriation. I never even imagined that that construction of my actions could occur because that was not my intent, and you know, I have to say, when I didn't even know that this happened until over 18 months later. I don't see how it can be construed as something that I did intentionally or knowingly when, at the time, I didn't know that it happened and I didn't even find out that the shortfall occurred until over 18 months later. I don't see how that can be intentional or knowing. Was it negligent? Was it stupid? Should I have been more careful? Yes, I acknowledge that, I own that. But it was most certainly not intentional.
>
> [T70-T71.][1]

Respondent acknowledged that, when she issued the $5,500 check, she had more than $10,000 in her attorney business account, and her personal savings were "quite healthy." Yet, it did not occur to her to use those sources of funds to pay the settlement on Petrelli's behalf.

Respondent conceded that she was not entitled to use any of the funds in her trust account to satisfy Petrelli's debt. She also admitted that this was not a situation in which she mistakenly disbursed the funds from her trust account when she had intended to issue the $5,500 check from her business account.

Respondent believed that the funds in her trust account were not placed at risk by the $5,500 disbursement to MS Services, because she could have covered the disbursement with her personal funds. She would not have covered a Petrelli

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[1] "T" refers to the transcript of hearing, dated December 17, 2019.

defalcation with "somebody else's money, whether or not there were trust accounting rules at issue." If necessary, she would have contacted Petrelli to reimburse the money that she had advanced, because it was her "understanding that Lucid Law was responsible for the advance, not the client[s] whose funds were in the IOLTA account."

On January 29, 2016, MS Services presented the $5,500 trust account check for payment. On February 3, 2016, Petrelli finally issued a $5,500 check, payable to respondent. Two days later, she deposited Petrelli's check in the trust account, returning the balance to $48,575.

When respondent submitted the supplemental documents to the OAE, in October 2017, she pointed out the error that she had made in February 2016 and apologized for the mistake:

> [o]n or about January 29, 2016, our office reached a settlement on behalf of another client, Petrelli, J., with regard to a deficiency claim on a vehicle that had been surrendered. Mr. Petrelli was a good client that had always paid his bills on time, so when we obtained the settlement, we sent out the $5,500.00 on his behalf to settle the account and then asked him to reimburse the trust account, which he did on [sic] week later, on February 5, 2016. Of course, at the time, we did not understand that we were actually improperly using funds from the Reilly Trust Deposit to advance the payment on Petrelli's account. We did intend, and fully believed it was proper, at all times that if for any reason Petrelli did not pay his settlement it would be the responsibility of our office to reimburse the IOLTA account from our operating funds.

[Ex.P6,p.2.]

Thereafter, respondent continued to cooperate with the OAE in its investigation, "endeavor[ing] in every way, every step to be fully cooperative and forthright."

At respondent's May 17, 2018 OAE interview, the OAE asked whether her trust account held personal funds that would have covered the $5,500 Petrelli settlement payment. At this point, respondent disclosed that she was the executrix of the Estate of Elsa Brunori (the Estate), her mother, who had died in October 2014.

Respondent's sister, Ana Reilly, and Ana's husband, Joseph, owned a Freehold, New Jersey residence, which they agreed to sell to buyers Ross Gaither and Kimberly Crudele. On January 5, 2016, respondent deposited in her trust account a $42,875 check, which represented the buyers' deposit. The closing took place on February 29, 2016.

After the Reillys sold their Freehold home to Gaither, respondent agreed to retain the $42,875 in her trust account so that the Reillys could apply the funds to the purchase of Brunori's Toms River, New Jersey home from the Estate. According to respondent, as a one-fourth beneficiary of the Brunori Estate, she was due approximately $11,000 from the sale of the Brunori residence.

On the one hand, respondent acknowledged that, when she issued the $5,500 trust account check to MS Services, she was not entitled to any of Gaither's deposit. On the other hand, she claimed that, if Gaither had reneged on the real estate purchase, he would have forfeited the deposit.

The deed evidencing the Reillys' purchase of the Toms River property was dated March 1, 2017. On May 31, 2017, respondent issued a $42,875 trust account check to the Estate, which concluded the Reillys' purchase of the Brunori residence.

A year later, on May 13, 2018, the Estate issued an $82,500 check to respondent, which sum included respondent's share of the proceeds from the sale of the Brunori home. Although respondent admitted that the presence of the $42,875 in her trust account when she issued the check to MS Services did not exculpate her, she believed it to be a mitigating factor, given her interest in the funds.

Respondent testified that she had very little experience performing trust accounting because her practice did not often require her to hold funds in her trust account. Although respondent opened attorney trust and business accounts when she started her firm, for the first five years, her trust account balance was very low, because the bulk of her practice was flat-fee bankruptcy work. On occasion, a client would pay a filing fee in advance, which respondent would

maintain in her trust account until the case was filed, at which point the funds were used to reimburse the business account. In any event, respondent accepted responsibility for the Petrelli mistake, but characterized her actions as "just that . . . a mistake," born of "a timing error" and "poor judgment."

In respondent's view, she had committed "a tiny error," in her "honest truthful assessment." Stated another way, it was not an "intentional violation," but rather a "technical violation," caused by the hasty, premature distribution of funds on behalf of a client to preserve his settlement. When she sent the check to MS Services, respondent "fully anticipated" that she would have Petrelli's funds and that they would have cleared the trust account before MS Services negotiated the check.

Respondent acknowledged, however, that, as escrow agent for the Freehold real estate transaction, she did not have Gaither's permission to disburse funds against his escrowed real estate deposit. Moreover, she did not obtain permission from Jones or Scansaroli, whose funds also were in her trust account, because she "was not aware and did not understand that that's what [she] was doing."

Respondent also acknowledged the fact that, during her May 2017 OAE interview, she conceded that she had not mistakenly issued the check against the trust account instead of another account. She, thus, admitted that, when she

issued the January 26, 2016 trust account check to MS Services, she knew that it was a trust account check, and it was her intention to pay the settlement from the trust account.

As it turned out, the $5,500 Petrelli check was not the first trust account check that respondent had issued without corresponding funds on deposit. The client ledger for Luanne Jones, submitted with respondent's October 5, 2017 letter to the OAE, reflected three disbursements, one in April and two in May 2016, which exceeded the funds on deposit for Jones. The trust account was replenished within a month of the April 2016 disbursement, and the May disbursements were replenished within days. Although respondent's letter mentioned excess funds held in Jones's behalf after the representation had concluded, she did not mention the improper disbursements. These disbursements were not a part of the knowing misappropriation charge, and they were not the subject of the complaint, the stipulation, or the hearing.

At the hearing, respondent testified that, upon graduation from law school, she clerked for former Appellate Division Judge Barbara Byrd Wecker, followed by a clerkship with the Honorable Rosemary Gambardella, who was then Chief Judge of the United States Bankruptcy Court for the District of New Jersey. After respondent's clerkships, she worked for Lowenstein Sandler for almost six years, followed by almost two years at Norris McLaughlin.

In April 2011, respondent opened her solo practice. She left work every day by three o'clock so that she could participate in after-school activities with her daughter. When her daughter entered first grade, respondent learned about Montessori Model UN, which she worked diligently to bring to her daughter's elementary school, including undergoing training and certification so that she could run the program, along with her friend, Margaret Majkowski. As detailed below, Majkowski served as a character witness for respondent at the ethics hearing.

Respondent also was very active in her church, where she had been a member of the parish pastoral council and served in various ministries, including the women's ministry, which she had created. She also volunteered often.

According to respondent, her prior positions as a law clerk and as an associate attorney had not included responsibility for "anything that would have to do with account management or trust accounting." Thus, when she opened her own practice, she employed a general accountant. It was not until the 2017 demand audit that respondent learned that she had not undertaken proper trust accounting measures, such as three-way reconciliations. She promptly attended a CLE course on the subject and hired a bookkeeper, who claimed to be a law firm specialist.

As respondent became more knowledgeable of the accounting requirements for lawyers, she replaced her bookkeeper three times until she was satisfied. Her current bookkeeper recommended that respondent use CosmoLex office management software, which performs contemporaneous reconciliations, compliant with the recordkeeping Rules. Respondent's bookkeeper generates weekly reports, which respondent reviews to ensure accuracy.

Several character witnesses testified on respondent's behalf. John Scansaroli, a former investor who, for the prior twelve years, had served as a church deacon, testified that he met respondent fifteen years earlier through the church. At some point, he considered respondent for a position on the parish pastoral council. Before respondent was selected, however, Scansaroli contacted some attorneys at Norris McLaughlin, where respondent had worked previously, and asked their opinion of her. All of them "had good things to say," and, thus, considering those recommendations, Scansaroli invited respondent to join the council. Scansaroli described respondent as an engaged council member who "spoke out" even when her position was against that of the pastor. She also worked toward achieving consensus on important matters.

Scansaroli also testified about his limited experience with respondent as a lawyer, through her representation of his wife Cathy in respect of a small

contract dispute.[2] He noted that respondent had recommended handling the matter in an expeditious and cost-effective manner, without losing sight of the small amount of money at issue.

In respect of the disciplinary matter, Scansaroli testified that, given respondent's reputation within the parish and her trustworthiness and high moral standards, he believed that she had made a mistake and hoped that the result would not have a draconian effect. In Scansaroli's opinion, respondent is a "very honest person, very trustworthy, and one that was forthright," who "never tried to cover up something or suggest to someone that they didn't have it right."

Margaret Majkowski, an electrical engineer, testified that she met respondent about six years earlier through their children's school, where they worked together to start two projects: a Lego League junior robotics team, which was Majkowski's idea, and Montessori Model UN, which was respondent's idea. According to Majkowski, one of the first things that respondent did in respect of Montessori Model UN was to open a separate bank account and establish a system for making sure that "the things that we needed to do [were] not only correct, but correct beyond reproach or appearance of anything that we did wrong."

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[2] When respondent issued the $5,500 trust account check to MS Services, her trust account held $700 on Cathy Scansaroli's behalf.

Although Majkowski had many acquaintances, she had willingly brought very few into her "inner circle." Not only was respondent a member of Majkowski's inner circle, but respondent also was the first person whom Majkowski called when her husband had a heart attack at the same time that the Majkowskis' son broke his wrist. According to Majkowski, respondent's reputation for honesty and integrity within the community was completely beyond reproach. She concluded her testimony by saying that respondent was a perfect example of the kind of person she would like her son to be.

Edward J. Zohn, Esq., who met respondent through church, testified that, within both the legal and faith communities, respondent had a reputation for being straightforward, honest, and trustworthy. According to Zohn, respondent would not have been permitted to serve as a CLE instructor if she were not trustworthy, skillful, and honest.

Zohn testified that he had referred clients to respondent, and "never, never, ever heard a bad word come back . . . about [respondent's] work." Indeed, the clients always thanked him for recommending respondent and praised her work. Zohn also called respondent for advice, and she has referred matrimonial cases to him. The ethics charges against respondent did not change Zohn's opinion regarding her character. In his view, "it's not something I would think is in her character."

In addition to the testimony of Scansaroli, Majkowski, and Zohn, respondent presented thirteen letters from family members; friends; attorneys; her pastor; and the chief executive officer of a martial arts school. Most, if not all, of the witnesses were aware of the charges that have been brought against respondent. In general, the letters expressed the view that respondent's disbarment would represent a loss to the community because she was a compassionate, empathetic, honest lawyer, who dutifully served the best interests of her clients, regardless of their ability to pay for her services.

In its post-hearing written summation, the OAE argued that respondent's actions represented a clear and convincing case of knowing misappropriation of trust funds. According to the OAE, pursuant to Hollendonner, until the closing for the Freehold property transaction took place, the $42,875 remained Gaither's property. Further, respondent, as escrow agent, could not release any portion of the funds without the authorization of all the parties to the transaction. Finally, the OAE asserted that, prior to disbursing the funds to MS Services, respondent had not obtained the consent of clients Jones and Scansaroli to use their trust funds.

The OAE also argued that the Jones disbursements against insufficient funds held in that client's behalf represented additional instances of respondent's improper practice of using trust account funds to pay off client

debts prior to the receipt of funds from the client. According to the OAE, it did not charge respondent with knowing misappropriation in respect of the Jones disbursements because they took place after the closing in the Freehold transaction and, thus, respondent, who, by that point now had a colorable claim to those funds, as a beneficiary of the Estate, was commingling the monies in the trust account.

Finally, the OAE argued that mitigation, including evidence of respondent's character, is irrelevant in determining whether respondent had knowingly misappropriated trust funds.

Respondent, through counsel, argued that she had "merely made an error, and thereby inadvertently violated the court rules requiring preservation of client and trust funds." In other words, she made a premature disbursement against uncollected funds, representing a "momentary lapse in appreciating that she should have delayed sending a check . . . until she had the funds in hand from [Petrelli]," which counsel characterized as a negligent misappropriation of trust account funds, citing In re Ambrosio, 200 N.J. 434 (2009), and In re Torre, 229 N.J. 224 (2017). Given the mitigation, counsel argued that, at most, respondent should receive a reprimand.

Counsel also objected to the OAE's assertions, in its brief, regarding the Jones disbursements. According to counsel, the disbursements post-dated the

Freehold transaction and, thus, “at most a temporary commingling occurred.” In addition, those actions were not the subject of the ethics complaint or the hearing. Counsel, thus, argued that the DEC should disregard references to those uncharged actions.

In its hearing panel report, the DEC found that respondent had issued the $5,500 trust account to MS Services against uncollected funds because, when she issued the check, she believed that she would receive Petrelli’s check in an equal amount before the check to MS Services was negotiated. Thus, the record lacked clear and convincing evidence that respondent used client monies knowing that she had no authority to do so. In the DEC’s view, respondent’s conduct “seem[ed] more the product of inadvertence than knowing misappropriation” and, thus, amounted to a negligent misappropriation of trust account funds.

The DEC did not consider the OAE’s claim in respect of the Jones disbursements, which were raised for the first time in the post-hearing brief. In addition, the DEC noted, the claim was not a part of the complaint, and no supporting evidence was offered at the hearing.

In determining the appropriate measure of discipline for what it concluded was respondent’s negligent misappropriation, the DEC took into consideration the following mitigating factors: (1) respondent’s unblemished disciplinary

history; (2) the absence of financial harm; (3) at all times, respondent held sufficient funds in her business account to cover the disbursement; (4) the corrective actions taken by respondent, such as the CLE course attendance and changes in her recordkeeping practices and office management; (5) the passage of time, without further incident, since the infraction; (6) her cooperation with the OAE; and (7) the evidence of her good character.

In aggravation, the DEC noted that, prior to the OAE's investigation, respondent was unfamiliar with the recordkeeping requirements, despite having practiced law in New Jersey for approximately fifteen years. The DEC, thus, recommended a censure.

On December 24, 2020, the Office of Board Counsel (the OBC) received from respondent's counsel a letter brief seeking an admonition for what she described as respondent's "self-reported regrettably premature writing of a single check." Counsel emphasized the DEC's finding that respondent "mistakenly issued a trust account check against uncollected funds to preserve and settle a claim against her client," which, thus, "'seems more the product of inadvertence than knowing misappropriation.'" She described respondent's action as "a temporary technical violation of RPC 1.15."

Respondent's counsel characterized the DEC's recommended censure as "unduly harsh;" analogized respondent's conduct to negligent misappropriation;

and, based on the mitigation offered at the hearing, asserted that an admonition was more appropriate discipline.

On December 29, 2020, OBC received from the OAE a letter brief, dated December 28, 2020, in which the OAE argued against the DEC's conclusion that respondent did not knowingly misappropriate attorney trust account funds. In support of its position, the OAE relied on the record below and its written summation.

In addition, the OAE pointed out specific statements that respondent had made during the investigation, such as her admission that the $42,875 represented a buyers' deposit, which she had "improperly us[ed] . . . to advance the payment on Petrelli's account." Further, respondent denied having mistakenly issued the $5,500 check on behalf of Petrelli against the trust account rather than the business account. Finally, respondent had no interest in the $42,875 deposit, at the time she wrote the $5,500 check, because the closing for that transaction did not take place until almost a month later. Thus, the OAE asserted, disbarment was warranted for respondent's knowing misappropriation of client and escrow funds.

During oral argument before us, the parties reiterated their opposing arguments.

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

We accept, however, neither the DEC's finding that respondent's misappropriation of client and escrow funds was negligent nor its recommendation that a censure is the appropriate quantum of discipline. Rather, given the facts of this case, we are bound by the bright line rule of Wilson regarding the unauthorized use of client funds, as well as the rule of Hollendonner regarding the unauthorized use of escrow funds. Accordingly, we are compelled to find that respondent knowingly misappropriated $5,500 in entrusted funds. Consequently, we are required to recommend to the Court that she be disbarred.

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

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). Specifically, 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.

Pre-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.[3]
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> [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:

> 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

[3] 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.

> 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.
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> [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, subsequent cases unambiguously state that Wilson mandates disbarment:

> Disbarment is mandated for the knowing misappropriation of clients' funds . . . . [Emphasis added].
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> [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].
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> [In re Greenberg, 155 N.J. 138, 149 (1998).] [4]

To the inexperienced observer who may be tempted to point out perceived inconsistencies in the Court's application of the Wilson rule, the ready reply is that, notwithstanding the "almost invariable" language, it is universally accepted that disbarment in New Jersey is invariable for attorneys who knowingly misappropriate clients' funds. Ethics authorities, respondents, and counsel well-acquainted with attorney ethics law understand that Wilson mandates disbarment for the offense of knowing misappropriation. More importantly, the

[4] 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.

Court does. In the 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 "repeatedly rejected opportunities to create exceptions to the Wilson rule," which underscores the existence of the settled law that Wilson is a per se disbarment rule. In re Greenberg, 155 N.J. at 149.

Over the years, our colleagues, respondents, and even some Justices of the Court have attempted to persuade the rest of the Court that, in special situations, it should carve out an exception to the Wilson rule. 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 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 determined to impose 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.]

In this case, the operative facts are clear and undisputed. Respondent issued the $5,500 trust account check to MS Services on Petrelli's behalf, despite knowing that her trust account did not hold any funds for the benefit of Petrelli, and without the authorization of the Reillys, Gaither, Jones, or Scansaroli, whose entrusted client funds were invaded by the disbursement. As Noonan holds, it matters not that respondent reimbursed the funds; that life circumstances impaired her ability to think clearly; that her actions were without guile; or that her character is otherwise unassailable. Wilson and Hollendonner mandate her disbarment.

Moreover, respondent's proffered defenses cannot save her from the ultimate sanction in this case. "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).

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.]

First, 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). We, thus, cannot excuse respondent because she did not know that she could not disburse trust account funds on Petrelli's behalf when the account held no funds for his benefit. Although she claimed an inchoate interest in the Gaither deposit, prior to the closing on the Freehold transaction, respondent was duty-

bound to obtain permission from Gaither, the Reillys, and any lender involved prior to using the deposit for any purpose other than the sale of the Freehold property. See, e.g., In re Catania, 231 N.J. 160 (2017) (disbarment for attorney who knowingly misappropriated escrow funds, in violation of Hollendonner, despite his claimed belief that he did not know that he was required to obtain authorization from all parties interested in the funds); In re Gifis, 156 N.J. 323 (1998) (attorney who, in a residential real estate matter, took the buyers' deposit prior to the closing of the transactions, without the sellers' consent, was disbarred, despite his claimed erroneous belief that their consent was not required and his ignorance of the Hollendonner decision; the attorney also knowingly misappropriated escrow funds in two other matters); and In re Eisenberg, 75 N.J. 454 (1978) (observing that ignorance of the law does not exonerate an attorney from responsibility for the knowing misuse of escrow funds).

Next, respondent's actions did not, as her counsel argued, and the DEC found, constitute a disbursement against uncollected funds, a practice prohibited by Advisory Committee on Professional Ethics Opinion 454, 105 N.J.L.J. 441 (May 15, 1980), as amended by 114 N.J.L.J. 110 (August 2, 1984) (Opinion 454), and disciplinary precedent.

A disbursement against uncollected funds requires that the disbursement be made against an actual deposit that has not yet cleared the trust account. See, e.g., In re Clausen, 231 N.J. 193 (2017) (the attorney deposited checks in his trust account and, on the same day, disbursed the funds before the deposit had cleared the account; violations of Opinion 454 and RPC 1.15(a) and (d)); In re Bardis, 220 N.J. 340 (2014) (the attorney deposited $5,000 in the trust account and, on the same day, disbursed the funds even though the deposit had not yet cleared the account; violation of Opinion 454); In re Franco, 212 N.J. 471 (2012); In the Matters of Randi Kern Franco and Robert Achille Franco, DRB 12-053, 12-054, 12-055, and 12-056 (August 7, 2012) (slip op. at 45-48 & n.9, 79-80) (on the same date that attorney Randi Kern Franco deposited in the attorney trust account two $7,000 checks, representing a $14,000 loan from a client, she issued a $13,000 trust account check to a mortgage company; four days later, the bank paid the $13,000 check, before the $7,000 checks had cleared the trust account; one of the $7,000 checks was returned for insufficient funds; Randi Kern Franco, thus, negligently misappropriated trust account funds and commingled personal funds with trust account funds); In re Ambrosio, 200 N.J. 434 (2009) (attorney negligently misappropriated $2,340 from her attorney trust account, by issuing a trust account check in that amount against two client checks that were returned); In re Broder, 184 N.J. 294 (2005) (attorney accepted

a check from his client's company's business account at a real estate closing and disbursed funds from his trust account prior to verifying that the company's account maintained the funds; the check was returned; violation of RPC 1.15(a)); and In re Kessler, 157 N.J. 73 (1999) (among other violations, the attorney's practice was to treat funds deposited in the trust account as immediately available rather than uncollected until they cleared the account; violations of Opinion 454 and RPC 1.15(a)).

In two cases, the disbursement of trust account funds prior to the deposit of the underlying checks nevertheless was considered a disbursement against uncollected funds because, although the attorneys had not deposited the checks, they had them in their possession. Compare In the Matters of Randi Kern Franco and Robert Achille Franco, DRB 12-053, 12-054, 12-055, and 12-056 (August 7, 2012) (slip op. at 80-82) with In re Franco, 212 N.J. 471 (the Court disagreed with our determination that Randi Kern Franco had knowingly misappropriated funds by electronically transferring legal fees from the trust account before the corresponding checks were deposited). See also In re Gertner, 205 N.J. 468 (2011) (instead of using certified bank checks to purchase properties through sheriff sales, the attorney issued trust account checks and, if the bid was successful, immediately deposited personal funds in the trust account to cover the check; on four occasions, the trust account checks cleared the account before

the corresponding funds had been deposited by his secretary, thus invading client trust funds; violations of RPC 1.15(a)). In this case, respondent disbursed $5,500 to MS Services eight days before Petrelli had even issued his check.

Moreover, respondent's counsel's reliance on In re Ambrosio, 200 N.J. 434, and In re Torre, 229 N.J. 224, do not spare her client. In Ambrosio, the attorney issued a trust account check against two client checks that had been deposited but subsequently were returned. In Torre, the uncollected funds represented "uncleared deposits," meaning that the attorney had deposited the checks corresponding to the disbursements. In short, as a matter of law, we cannot find that respondent issued the $5,500 check to MS Services against uncollected funds. Petrelli had not issued, and respondent had not received, let alone deposited, the $5,500 check.

Third, the Court's precedent is clear that neither restitution nor the availability of other funds can shield respondent from the consequences of her actions. See, e.g., In re Livingston, 217 N.J. 591 (2014) (attorney disbarred for using trust account funds to pay household expenses and to avoid overdrafts in his business account; we rejected the attorney's defense that, because he could cover the improper withdrawals from the trust account with funds in his various personal accounts, he did not knowingly misappropriate the monies); In re Blumenstyk, 152 N.J. 158, 161 (1997) (attorney disbarred for using trust funds

for personal expenses, such as a family vacation and his son's Bar Mitzvah, and to avoid overdrafts in his business account; although he replenished the trust account with personal monies in order to make restitution, the Court noted that "restitution does not alter the character of knowing misappropriation and misuse of clients' funds"); In re Barlow, 140 N.J. 191, 198-99 (1995) (intent to repay funds or otherwise make restitution is not a defense to knowing misappropriation); and In re Noonan, 102 N.J. at 160 (noting that, under Wilson, it makes no difference that the lawyer "intended to return the money when he took it").

Fourth, the distraction caused by respondent's personal issues was insufficient to eliminate the scienter of her actions. She did not mistakenly issue the $5,500 check from the trust account rather than the business account. Rather, she intended to issue the trust account check to MS Services, regardless of the lack of Petrelli funds in the account. Cf. In the Matter of Bruce H. Roesler, DRB 13-313 (January 21, 2014) (admonition imposed on attorney who maintained his attorney trust, attorney business, and personal accounts at the same bank; he mistakenly transferred $1,500 from his attorney trust account to his attorney business account, causing an invasion of $686 in client funds; the attorney then inadvertently transferred the funds not to the intended trust account but to an account for his personal mortgage loan, which was unnecessary as the business

account held more than $10,000 of his own funds, which could have been used to pay the mortgage; violation of RPC 1.15(a); the overdraft was not detected due to the attorney's failure to reconcile his accounts, a violation of RPC 1.15(d)).

Finally, as Noonan made clear, respondent's "good character and fitness" and the absence of "dishonesty, venality or immorality" on her part are irrelevant to the outcome. In re Noonan, 102 N.J. at 159-60.

The clear and convincing evidence established that respondent issued a $5,500 trust account check to MS Services, on behalf of Petrelli, without having any corresponding funds in her trust account. Thus, the disbursement invaded funds belonging to other clients and third parties, from whom respondent did not seek, let alone obtain, authorization to use their monies. Accordingly, respondent knowingly misappropriated $5,500 in funds entrusted to her care and, hence, must be disbarred.

We recognize that Wilson and Hollendonner have been interpreted as espousing a bright-line rule mandating disbarment for the knowing misappropriation of client and escrow funds. See, e.g., In re Lawrence, 185 N.J. 282 (2005); In the Matter of Tanya Lawrence, DRB 05-105 (July 27, 2005) (slip op. at 11) (we cited Wilson for the proposition that, in that case, "the Court announced the bright-line rule that knowing misappropriation of client funds

will, almost invariably, result in disbarment;" Lawrence was disbarred) and In re Grzenda, 231 N.J. 450 (2018); In the Matter of Paul Walter Grzenda, DRB 17-133 (October 26, 2017) (slip op. at 32-33) (attorney disbarred for the knowing misappropriation of client and escrow funds; the attorney claimed that his knowing misappropriation of escrow funds was an "inadvertent misappropriation," as he was unaware of the "bright-line rule" of Hollendonner). However, we believe that this case provides an important opportunity for the Court to re-examine the holding in Wilson.

We accept the Court's reasoning that more important than any mitigation or excuse is "the continued confidence of the public in the integrity of the bar and the judiciary;" and, thus, "maintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases." Id. at 460-61. Id. at 460. As the Court observed:

> That confidence is so important that mitigating factors will rarely override the requirement of disbarment. If public confidence is destroyed, the bench and bar will be crippled institutions. Functioning properly, however, in the best traditions of each and with full public confidence, they are the very institutions most likely to develop required reform in the public interest.
>
> [Id. at 461.]

As we view this case through the lens of Wilson, we discern no basis for concluding that, in this instance, considering the unique facts of this case, public

confidence will be destroyed if respondent is permitted to continue practicing law.

Following the overdraft, respondent, acting in good faith, took immediate remedial measures to replenish her trust account; educated herself on the recordkeeping requirements of R. 1:21-6; corrected all recordkeeping deficiencies, as directed by the OAE, including the three-way reconciliations for the period requested; and retained a competent bookkeeper. In the process of doing so, respondent uncovered the misappropriation of client and escrow funds in the Petrelli matter.

Upon discovery of the misappropriation, respondent replenished her trust account and reported her misconduct to the OAE. When the OAE inquired whether she had mistakenly issued the check from the trust account instead of the business account, rather than seize the opportunity for a way out, respondent remained forthright.

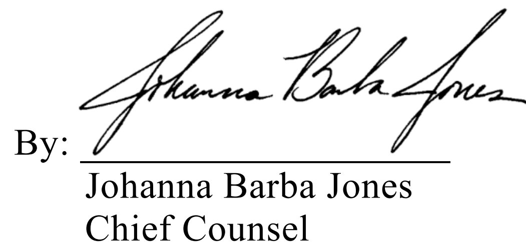
New Jersey's disciplinary precedent is clear. Disbarment is almost invariable in order to maintain public confidence in the integrity of the bench and bar. Yet, in this case, respondent faces disbarment because of her honesty and integrity. In our view, she faces disbarment even though she poses no danger to the public and is far from unsalvageable.

Vice-Chair Gallipoli and Members Joseph and Zmirich concur with the majority determination to recommend to the Court that respondent be disbarred for her knowing misappropriation of client and escrow funds, but observe no distinction between respondent's misconduct and that of other attorneys who have been disbarred pursuant to the principles set forth in Wilson and Hollendonner.

Chair Clark and Members Hoberman and Petrou voted to impose a three-month suspension. Member Singer voted to impose a reprimand or censure. Chair Clark and Members Hoberman, Petrou, and Singer filed a separate dissent.

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: ____________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Karina Pia Lucid
Docket No. DRB 20-216

Argued: January 21, 2021

Decided: July 9, 2021

Disposition: Disbar

Members	Disbar	Three-month suspension	Reprimand or censure
Clark		X	
Gallipoli	X		
Boyer	X		
Hoberman		X	
Joseph	X		
Petrou		X	
Rivera	X		
Singer			X
Zmirich	X		
Total:	5	3	1

Johanna Barba Jones
Chief Counsel