

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

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In the Matter of  
Karina Pia Lucid  
An Attorney at Law

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Dissent

Decided: July 9, 2021

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

We write separately because imposing disbarment in this case, as the majority recommends, would be seriously disproportionate to the conduct underlying the ethics violation. It would also be unnecessary for preserving public confidence in the profession. We are mindful that disbarment is the “almost invariable” discipline for knowing and unauthorized use of client funds. In re Wilson, 81 N.J. 451, 461 (1979). However, when the Supreme Court says that disbarment will “almost” always be the discipline imposed, it plainly

envisions the possibility of reasoned exceptions.

In our view, there is a world of difference between conduct showing bad character or wanton indifference and conduct that exhibits an isolated lapse of judgment unlikely to result in actual harm. Our ethics system, at its best, ought to take into account such meaningful distinctions in culpability in determining discipline – even for charges of knowing misappropriation. The unique confluence of facts in this case should make it an exception to the rule.

The facts are detailed in the majority decision and need not be repeated here. Suffice it to say that respondent's conduct is the most "technical violation" of Wilson we have seen. In ways, respondent's conduct was more an oversight, closer on the scale to a negligent misappropriation. After a large snowstorm and her husband's medical emergency kept respondent out of her office for three days, she returned to find a letter from her adversary threatening to abruptly void a recent settlement if the agreed payment was not received in three days. To protect her client, respondent cut a check. Respondent was not conscious of any meaningful risk that writing a settlement check from her trust account would jeopardize the funds of other clients. It did not cross her mind. That is not surprising, given that there was no real-world risk to other clients.

Five days before she wrote the check, she had instructed her client to "immediately" send funds to cover the settlement, which she understood he

would do. Because her client had a consistent track record of making payments promptly, she expected the same on this occasion. Under these circumstances, it was reasonable to expect that the settlement funds from respondent's client would be received before the settlement check drawn on her trust account was even deposited.<sup>1</sup> Unfortunately, her client's money to fund the settlement arrived a few days later. Respondent had enough funds available in her business account to cover any shortfall. Moreover, the bulk of the money in respondent's trust account was held as a deposit relating to a pending sale of her sister's home, which was expected to later be used by the sister to buy their mother's home. Respondent in turn expected to and did eventually share in the proceeds once their mother's estate was settled.

Any risk to funds entrusted to respondent by other clients was remote, theoretical, and negligibly brief. There was no motive other than to protect her client's settlement; no self-interest; no dishonesty; no premeditation or plot; no obfuscation; no recurrence; no harm; and no grievance by any client. After later realizing her incomplete knowledge of proper recordkeeping, respondent responsibly took a course to increase her awareness of trust fund management.

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<sup>1</sup> At her hearing, respondent testified that she "had fully expected that [her] clients' funds would come in and clear [her] trust account before the check that [she] had issued on his behalf cleared the account." (Tr.62-63). Because "nothing happened," she always assumed that in fact is what had occurred. It was not "until more than 18 months later that [she] realized that, in fact [she] had been wrong and that [she] had made a mistake." (Tr.63-64).

She also self-reported the incident by highlighting it to the Office of Attorney Ethics, which had not previously known of this lapse. Respondent thereafter fully and truthfully cooperated with the OAE investigation.

Nothing about this incident suggests that respondent lacks professional integrity. In our view, disbaring a lawyer with an unblemished record and an admirable reputation after nearly twenty years of practice based on a fleeting, isolated oversight would be far too harsh a sanction. It is worth noting that the District Ethics Committee below found negligent misappropriation only and recommended a censure.

What respondent did was wrong and deserves discipline. Of course she should have been more conscious of what she was doing and that what she was doing was an ethics violation. Yet the same can be said of lawyers who should have known they were mistakenly writing a check drawn on their trust accounts rather than on their business accounts. The conduct of those lawyers results in a trust account shortfall and a theoretical risk to clients' funds equal to or greater than that created by respondent here. But we consistently treat such a mistake as less reprehensible, typically resulting in a reprimand.

Nothing about the goals of our ethics system convinces us that we should universally be required to impose the same level of discipline here as would be applied to a dishonest lawyer who actively schemes to pilfer his clients' money

for his own use. We cannot agree that conduct so lacking in moral equivalence should always, without fail, trigger the same severe discipline of lifetime disbarment. A concurrence in a District of Columbia ethics decision aptly criticizes the notion

that a lawyer who, awaiting receipt of a government check on Tuesday, borrows \$100 on Monday from a client's account and returns that sum on Tuesday, should be subject to the same sanction as a practitioner who steals \$50,000, spends it to support an extravagant lifestyle, and thereafter covers his tracks.

[In re Adams, 579 A.2d 190, 192 (D.C.1990) (Ferren, J., concurring).]

Our ethics system should be able to consider and weigh the nuanced causes and effects of a misappropriation and judge whether discipline less severe than disbarment might be appropriate.

The Supreme Court has acknowledged that imposing “almost invariable” disbarment for knowing misappropriation can lead to inequitable results. “We realize the harshness and inflexibility of the Wilson rule.” Matter of Lennan, 102 N.J. 518, 523 (1986); Matter of Barlow, 140 N.J. 191, 195 (1995) (“The Wilson rule is harsh”). It need not always be so. Any unnecessary harshness can be reasonably moderated by taking into consideration individualized facts and factors other than the act of using client funds alone. After all, “[e]ach disciplinary case is fact sensitive.” Matter of Kinnear, 105 N.J.

391, 395 (1987). As usual, the devil is in the details. The Court has repeatedly instructed us, in our review of ethics cases, “to examine the totality of circumstances” of both the offense and the respondent “in reaching an appropriate decision that gives due consideration to the interests of the attorney involved and to the protection of the public.” Matter of Spina, 121 N.J. 378, 389 (1990). This sensible and settled approach cannot be reconciled with an automatic disbarment that disregards almost all surrounding circumstances as irrelevant.

More to the point, in his concurring opinion in In re Konopka, 126 N.J. 225 (1991), Justice Stein (joined by Justices O’Hern and Garibaldi) raised the same concern:

[A]lthough the Wilson rule is the right rule for the vast majority of misappropriation cases, the inflexibility with which it can be applied runs the risk of creating within our attorney-discipline system an almost reflexive approach to such cases, obscuring and ignoring the individual circumstances to an intolerable degree.

Id. at 241 (Stein, J., concurring).

Justice Stein concluded that the Court’s dispositions in misappropriation cases “would in my view better reflect the collective wisdom of the Court and better serve the interests of the bar and the public if they were tempered by a

recognition that under special circumstances discipline short of disbarment may occasionally be appropriate in knowing misappropriation cases.” Id. at 259.

Even the Board’s majority opinion here pointedly encourages greater flexibility: “we believe that this case provides an important opportunity for the Court to re-examine the holding in Wilson.” (slip op. at 36). In the meantime, the majority recommends respondent’s disbarment seemingly because it believes its hands are tied by precedent, saying “we are required to recommend to the Court that she be disbarred.” (slip op. at 20).

No one disputes that the public needs to be assured that they can have unwavering trust and confidence in New Jersey lawyers. But we encourage the Court to question any assumption that the best way to reassure the public is by disbarring every attorney who engages in even a technical “knowing” misappropriation of client funds, regardless of the circumstances. We do not see the public being unable to distinguish between this respondent’s mistake in judgment in making a briefly premature disbursement and cases involving a lawyer’s outright dishonesty in managing trust money.

There is also little risk that, by not disbarring the respondent, the Court would be signaling that knowing misappropriations will henceforth be treated more leniently. The firm presumption remains that the “almost invariable” result of a knowing misappropriation will be disbarment. This all but certain discipline

would continue to deter lawyers from knowing misappropriation of client funds.

We suggest that this case is unique because of the combination of these factors:

- (1) respondent showed no premeditation or corrupt intent;
- (2) her conduct was solely to protect a client, not to benefit herself;
- (3) she reasonably believed that the client's funds would arrive to cover the disbursement before the check was deposited, so that other client's money would not be invaded;
- (4) the risk, if any, to other clients' funds was theoretical and brief;
- (5) there was no harm to any client;
- (6) respondent had sufficient business and personal funds to cover any shortfall;
- (7) respondent did nothing underhanded or surreptitious;
- (8) it was a single, isolated incident in an otherwise spotless ethics history; and
- (9) importantly, respondent self-reported the incident to the OAE.

This would not open the floodgates by adding defenses to knowing misappropriation charges. Far from it, it is hard to imagine all these factors appearing together in another case.<sup>2</sup> Consistent with the Court's precedent, no one or few of these narrow factors would alone be enough to rebut the

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<sup>2</sup> The concurring opinion by Member Boyer properly expresses concern about implying a "no harm, no foul" exception to disbarment for knowing misappropriation. We agree that the lack of harm to clients should not alone be a defense. That is just one factor among the many we have cited that, in combination, warrant discipline less severe than disbarment here. It is not just that other clients were not harmed.



presumption that disbarment is the correct level of discipline for a knowing misappropriation. But taken together here, in combination, they should compel discipline short of disbarment.

We do not believe that reasonable members of the public who were apprised of all the relevant facts would have less confidence in the profession, or in the Supreme Court's supervision of it, if respondent were not disbarred. There is no evidence that respondent is likely to ever repeat this ethics violation or that she cannot be trusted to practice law in the future in full compliance with the Rules of Professional Conduct. The evidence shows the opposite.

The majority asserts that it is "settled law that Wilson is a per se disbarment rule." (slip op. at 25). That may appear to be so based on the consistent outcome of past cases, but that is not what the Supreme Court has said. If the Court is ever to recognize a reasoned exception, it must be because the totality of circumstances show that a respondent's conduct, based on factors we have listed here, is materially less reprehensible than are other misappropriation cases where the lawyer has been disbarred.


Disbarment is the most severe punishment, reserved for circumstances in which "the misconduct of [the] attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession."

[In re Templeton, 99 N.J. 365, 376 (1985).]

That does not come close to describing respondent or her conduct. Imposing on this respondent the most extreme discipline of disbarment, under the totality of these unique circumstances, would not be fair, balanced, or just.

Chair Clark and Members Hoberman and Petrou recommend a three-month suspension. Member Singer recommends discipline of a reprimand or a censure.

Disciplinary Review Board  
Bruce W. Clark, Chair  
Anne C. Singer, Esq.  
Thomas J. Hoberman  
Peter Petrou, Esq.

By:   
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Johanna Barba Jones  
Chief Counsel