Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-286
District Docket No. XIV-2019-0271E

In the Matter of	:
John Kelvin Conner	:
An Attorney at Law	:

Decision

Decided: July 20, 2021

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's convictions, in the United States District Court for the Eastern District of Pennsylvania (the EDP), of nineteen counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of making false, fictitious, and fraudulent statements to federal officers, in violation of 18 U.S.C. § 1001. The OAE asserted that these offenses constitute violations of 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) (knowingly misappropriating client or escrow funds); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1991 and to the Pennsylvania bar in 1992. At the time of the relevant events, he maintained a law office in Jenkintown, Pennsylvania.

On October 31, 2007, respondent received a reprimand for his violation of RPC 1.15(a) (negligent misappropriation of client funds), RPC 1.15(b) (failure to promptly deliver funds to client), and RPC 1.15(d) (recordkeeping violations). In re Conner, 193 N.J. 25 (2007).

On June 20, 2019, the Supreme Court of Pennsylvania disbarred respondent in connection with the criminal conduct described below.

On July 26, 2019, the Court temporarily suspended respondent from the practice of law in New Jersey in connection with his criminal conduct underlying this matter; he remains suspended to date. In re Conner, 239 N.J. 87 (2019).

The following facts are gleaned from the opinion of the United States Court of Appeals for the Third Circuit (the Third Circuit), following respondent's appeal from the EDP. See United States v. Conner, 811 Fed. Appx 787 (3d Cir. 2020).

In 2015, S.F., who was in her mid-eighties, suffered a stroke and required full-time care; her ninety-six-year-old brother introduced her to respondent to help her manage her finances. In March 2016, S.F. executed a power of attorney (the POA) which authorized respondent to manage her money and pay her bills. The POA required respondent to "exercise the power of attorney 'for the benefit' of [S.F.], to keep his assets separate from [S.F.]'s, and to 'exercise reasonable caution and prudence.'" Respondent then "promptly violated each of these terms."

After consolidating S.F.'s assets in Wells Fargo savings and checking accounts, and making himself a signatory to both accounts, respondent improperly obtained a Wells Fargo rewards card. Respondent also assumed control of S.F.'s Delaware Life Insurance Company annuity, valued at $112,794.58, and transferred the annuity funds to the Wells Fargo savings account. Respondent then promptly used S.F.'s money to fund his gambling habit.

Over approximately eight months, respondent made at least 176 withdrawals from S.F.'s Wells Fargo accounts at four different casinos in Pennsylvania and New Jersey. On January 25, 2017, respondent made his final transfer between S.F.'s checking and savings accounts, reducing her savings account balance to $261.30. In total, respondent improperly debited $105,632.01 from S.F.'s Wells Fargo accounts.

Respondent also deposited funds in S.F.'s Wells Fargo accounts. On December 28, 2016, after having withdrawn $65,976.35 at casinos, respondent deposited $2,000 into S.F.'s Wells Fargo checking account. In total, prior to the discovery of his illicit activities, respondent deposited $23,000 in S.F.'s Wells Fargo accounts.

Respondent's actions caused demonstrable harm to S.F. Her financial situation "withered significantly;" checks to her caretaker bounced; her electricity was turned off; and her water supply nearly was suspended. By April 24, 2017, respondent had reduced S.F.'s Wells Fargo checking account balance to $15.07, and he had emptied her savings account. Following her discovery of respondent's depletion of her bank accounts, S.F., with the assistance of her caretaker and family, removed respondent as her POA and signatory on her accounts, and refused further contact with him. Thereafter, respondent borrowed funds from his spouse and sent S.F. a certified check for $67,708.15.

On August 24, 2018, two agents from the Federal Bureau of Investigation (the FBI) interviewed respondent at his home. Subsequently, respondent participated in a conference call with an Assistant United States Attorney and the two FBI agents, during which respondent claimed that he and S.F. had an oral agreement authorizing him to borrow money from her accounts to gamble at casinos. Respondent further alleged that his agreement with S.F. was made "numerous times," both in person and over the telephone, but that the conversations were conducted in private and were not known by others.

On November 29, 2018, a grand jury indicted respondent on nineteen counts of wire fraud, contrary to 18 U.S.C. § 1343, and one count of making false statements to FBI agents, contrary to 18 U.S.C. § 1001.[1] On January 29, 2019, respondent was tried by jury in the EDP, before the Honorable Gerald A. McHugh, U.S.D.J., and, on February 1, 2019, was found guilty of all counts of

[1] 18 U.S.C. § 1343 states, in relevant part, "[w]hoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

18 U.S.C. § 1001 states, in relevant part, "(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years . . . ."

the indictment. On May 23, 2019, Judge McHugh sentenced respondent to a forty-six-month term of imprisonment, followed by a three-year term of supervised release. Judge McHugh also ordered that respondent forfeit $14,923.86.

The Third Circuit affirmed respondent's convictions, but remanded his case for resentencing, with instructions that the trial court credit him with the $23,000 he had deposited into S.F.'s account. However, the Third Circuit declined to credit respondent with the $67,708.15 he subsequently had sent to S.F., finding that, under the federal sentencing guidelines, respondent could only be credited with money returned to the victim before his crimes had been detected. On June 10, 2020, Judge McHugh re-sentenced respondent to a thirty-three-month term of imprisonment, followed by a three-year term of supervised release.

On September 30, 2017, S.F. filed an ethics grievance against respondent with the Office of Disciplinary Counsel for the Disciplinary Board of the Supreme Court of Pennsylvania. Respondent replied to the grievance and admitted that he made the withdrawals from S.F.'s bank accounts but claimed that he had S.F.'s permission to do so.

On June 21, 2018, respondent appeared, pro se, at a disciplinary hearing, where, despite S.F.'s brief direct testimony, he spent considerable time cross-

examining her. S.F.'s testimony was read into the record at the EDP trial. S.F. testified on direct examination as follows:

> Q: [S.F.], has Mr. Conner ever asked for your permission to use the money in your Wells Fargo account at a casino?
>
> A: No.
>
> Q: Have [sic] he done so, would you have given him such permission?
>
> A: No.
>
> Q: Did Mr. Conner ever tell you that he was going to be using the money in your Wells Fargo account at a casino?
>
> A: No, he did not.
>
> Q: [S.F.], have you ever told Mr. Conner that he could use the money in your Wells Fargo account at a casino?
>
> A: No, I did not.
>
> Q: Did Mr. Conner ever ask you to sign a document that authorized him to use the money in your Wells Fargo account at a casino?
>
> A: No.
>
> Q: Have you ever signed such a document?
>
> A: No.
>
> Q: [S.F.], are you aware of any document that authorized Mr. Conner to use the money in your Wells Fargo account at a casino?

A: No, I did [sic] not.

[T201-T202.] [2]

S.F. further testified on direct examination that she had not been to the casinos herself, and that she would be surprised to learn that Conner admitted to spending $100,000 of her Wells Fargo funds at casinos, because she "[didn't] know where it would have come from. All I had is my pension." Further, S.F. testified that she did not authorize Conner to pay himself $9,500 in exchange for legal services.

On April 2, 2019, prior to respondent's sentencing in the EDP, the Pennsylvania Disciplinary Board (the PDB) found that respondent had violated Pennsylvania RPC 8.4(b). In aggravation, the PDB found that respondent failed to express remorse, refused to acknowledge his misconduct, and made the partial reimbursement to S.F. only after his crimes had been discovered. The PDB also noted respondent's disciplinary history of financial misconduct in two separate Pennsylvania matters, his "fiscal irresponsibility," and his incredible testimony. The PDB found no mitigating factors. Due to respondent's "egregious misconduct and the danger to the public and profession," the PDB recommended

[2] "T" refers to the January 29, 2019 trial transcript, attached to the OAE's motion as Exhibit B.

that respondent be disbarred. Effective June 20, 2019, the Supreme Court of Pennsylvania disbarred respondent.

In its brief in support of this motion for final discipline, the OAE argued that "[r]espondent's conduct in this case, although also establishing the criminal offenses of wire fraud and fictitious statement, equates to the knowing misappropriation of client funds." As such, the OAE argued, respondent must be disbarred, pursuant to the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), among other theories.

Respondent is currently incarcerated and did submit a reply to the OAE's motion.

Following a review of the record, we determine to grant the OAE's motion for final discipline. In New Jersey, R. 1:20-13(c) governs final discipline proceedings. Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's convictions for wire fraud, contrary to 18 U.S.C. § 1343, and for making false, fictitious, and fraudulent statements to federal officers, contrary to 18 U.S.C. § 1001, thus, establish violations of RPC 1.15(a) and the principles of Wilson and Hollendonner; RPC 8.4(b); and RPC 8.4(c).

Pursuant to RPC 8.4(b), it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Moreover, pursuant to RPC 8.4(c), it is misconduct for an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of

respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

Here, respondent was convicted of nineteen counts of wire fraud, after a jury found that he knowingly devised a scheme to defraud S.F., and that his acts of wire fraud involved interstate commerce. He was also convicted of making a false statement of material fact to federal officers by lying to FBI agents that he had S.F.'s permission to borrow her money to fund his gambling habit.

Multiple lines of New Jersey disciplinary precedent beckon respondent's disbarment. First, the OAE correctly argued that respondent's knowing misappropriation of entrusted funds should result in his disbarment. Citing In re Torre, 223 N.J. 538 (2015), the OAE argued that respondent, like Torre, victimized a vulnerable, elderly client, and exhibited limited remorse, and that his misconduct should result in disbarment. The OAE further argued that automatic disbarment is triggered under both the Wilson and Hollendonner rules. Although respondent claimed that he had S.F.'s permission to use her funds, the PDB specifically rejected his claim as incredible and, to the contrary, accepted S.F.'s testimony that she gave no such consent to respondent. The OAE

asserted that respondent, therefore, knowingly misappropriated the funds and must 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.
>
> [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.

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.

Second, based on respondent's convictions, we further find that he violated RPC 8.4(b) and RPC 8.4(c). The quantum of discipline for an attorney convicted of a serious criminal offense ranges from lengthy suspensions to disbarment. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year suspension); In re Goldberg, 142 N.J. 557 (1995) (disbarment). In Goldberg, the Court

enumerated aggravating factors that normally lead to disbarment in criminal cases:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences "continuing and prolonged rather than episodic, involvement in crime," is "motivated by personal greed," and involved the use of the lawyer's skills "to assist in the engineering of the criminal scheme," the offense merits disbarment. (citations omitted).

In In re Klein, 231 N.J. 123 (2017) (disbarment), the attorney knowingly and intentionally participated in an "advanced fee scheme" that lasted approximately eight years and defrauded twenty-one victims of more than $819,000. In the Matter of Eric Alan Klein, DRB 17-039 (July 21, 2017) (slip op. at 19). He and his co-conspirator, a previously convicted federal felon, used bogus companies to dupe clients into paying thousands of dollars in "advanced fees" in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions. Id. at 3-6. Instead of collateral, however, the clients received worthless documents called "Notices of Availability," which were not legitimate financial instruments, and were never accepted by banks as collateral for financing. Id. at 4. Klein and his co-

conspirator accepted the advanced fees, despite knowing that they would never provide the service promised to the clients. Ibid.

The attorney continued the scheme, undeterred, when federal law enforcement authorities arrested his co-conspirator. Id. at 11. His participation was motivated by personal greed. As he conceded during his federal criminal trial, he had twice filed for bankruptcy before meeting his co-conspirator, who then lined his pockets with approximately $2 million over eight years, representing roughly half of his law firm's revenue during the period of their joint criminal enterprise. Id. at 26.

Finally, Klein actively and knowingly engineered the fraud, leveraging his status as an attorney to provide "a veneer of respectability and legality" to the criminal scheme; drafting specious legal opinions that were included in false marketing materials; meeting with clients and identifying himself as a "legal advisor" and "escrow agent" to the bogus companies; and providing false assurances to clients that their advanced fees would remain, inviolate, in his escrow account until their financing transactions closed. Id. at 26-27. For his crimes, the attorney was sentenced to fifty-one months' imprisonment, followed by three years of supervised release, and ordered to pay $819,779 in restitution. Id. at 18.

In In re Marino, 217 N.J. 351 (2014) (disbarment), the attorney participated in a fraud that resulted in a loss of over $309 million to 288 investors. He affirmatively assisted his brother and another co-conspirator in the fraud, which involved, among other things, the creation of a false financial history for a failing hedge fund to induce contributions from potential investors. Marino's participation in the fraud included assisting in the concealment of the fraud perpetrated on investors by creating a fraudulent accounting firm that hid the fund's significant losses, obscuring the fund's true financial information, and drafting versions of a phony purchase and sale agreement of the non-existent accounting firm. In the Matter of Matthew A. Marino, DRB 13-135 (December 10, 2013) (slip op. at 3-8).

The sentencing judge found that Marino was aware of the fraud as it was being perpetrated on the investors, that he helped conceal it rather than report it to the authorities, and that the losses could have been either avoided or significantly limited if he had reported the fraudulent activity to law enforcement. Id. at 12-13. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'" Id. at 13. Marino was sentenced to twenty-one months' imprisonment, followed by one year of supervised release, and ordered to make restitution of $60 million, jointly and severally with the other defendants involved in the fraud. That amount was

the sum that investors had been induced to contribute to the failing hedge fund during the period that Marino admitted knowing about and concealing the fraud. Id. at 13-14.

In In re Ellis, 208 N.J. 350 (2011) (disbarment), the attorney was employed as a real estate attorney responsible for handling closings and distributing the proceeds of real estate transactions. In the Matter of Daniel Ellis, DRB 11-075 (August 16, 2011) (slip op. at 3). Ellis knowingly and intentionally falsely inflated purchase prices, resulting in loan amounts that greatly exceeded the actual sale price of the properties. Id. at 3-4. After the sale price was paid to the seller, the attorney distributed the remaining monies to several others. Ibid. For his part, Ellis pocketed $80,400, and received a $30,000 Volkswagen Passat. Id. at 4. We determined disbarment was appropriate because the loss was substantial and the attorney used his status as a lawyer to facilitate the fraud, was motivated by greed, and had an extensive disciplinary history. Id. 11-13. For his crime, the attorney pleaded guilty to conspiracy to commit bank fraud, was sentenced to prison for twenty-four months, and was ordered to pay $12,487,227.51 in restitution. Id. at 4.

Finally, the Court has found that attorneys who commit serious crimes or crimes that evidence a total lack of "moral fiber" must be disbarred to protect the public, the integrity of the bar, and the confidence of the public in the legal

profession. See, e.g., In re Quatrella, 237 N.J. 402 (2019) (attorney convicted of conspiracy to commit wire fraud after taking part in a scheme to defraud life insurance providers via three stranger-originated life insurance policies; the victims affected by the crimes lost $2.7 and the intended loss to the insurance providers would have been more than $14 million); In re Seltzer, 169 N.J. 590 (2001) (attorney working as a public adjuster committed insurance fraud by taking bribes for submitting falsely inflated claims to insurance companies and failed to report the payments as income on his tax returns; attorney guilty of conspiracy to commit mail fraud, mail fraud, and conspiracy to defraud the Internal Revenue Service); In re Lurie, 163 N.J. 83 (2000) (attorney convicted of eight counts of scheming to commit fraud, nine counts of intentional real estate securities fraud, six counts of grand larceny, and one count of offering a false statement for filing); In re Chucas, 156 N.J. 542 (1999) (attorney convicted of wire fraud, unlawful monetary transactions, and conspiracy to commit wire fraud; attorney and co-defendant used for their own purposes $238,000 collected from numerous victims for the false purpose of buying stock); In re Hasbrouck, 152 N.J. 366 (1998) (attorney pleaded guilty to several counts of burglary and theft by unlawful taking, which she had committed to support her addiction to pain-killing drugs); In re Goldberg, 142 N.J. 557 (1995) (two separate convictions for mail fraud and conspiracy to defraud the United States); In re

Messinger, 133 N.J. 173 (1993) (attorney convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions to generate tax losses, aiding in the filing of false tax returns for various partnerships, and filing a false personal tax return; the attorney was involved in the conspiracy for three years, directly benefited from the false tax deductions, and was motivated by personal gain); and In re Mallon, 118 N.J. 663 (1990) (attorney convicted of conspiracy to defraud the United States and aiding and abetting the submission of false tax returns; attorney directly participated in the laundering of funds to fabricate two transactions reported on two tax returns in 1983 and 1984).

Here, respondent was found guilty, beyond a reasonable doubt, of committing wire fraud to steal his elderly client's money and gamble it away. Further, he was convicted of lying to FBI agents in an attempt to cover up his crimes. By gambling away a vulnerable client's money that he was entrusted to hold inviolate pursuant to the POA, and then lying to federal officers about it, respondent violated RPC 8.4(b) and RPC 8.4(c). Respondent's misconduct evidenced a total lack of "moral fiber" and we, to protect the public and preserve confidence in the bar, determine to recommend to the Court that respondent be disbarred.

As we are acutely aware, the Court has signaled harsher discipline for attorneys who victimize the elderly. In re Torre, 223 N.J. 538 (2015). In Torre,

the Court suspended the attorney for one year, based on the egregious harm caused to a vulnerable, eighty-six-year-old victim. Id. at 546-47. Torre borrowed $89,250 from an elderly, unsophisticated client he had known for many years, repaid only a fraction of it during the client's lifetime, and barely reimbursed her estate. Ibid. Citing the protection of the public as a laudable goal of the attorney disciplinary system, the Court suspended Torre for one year. Id. at 548-50. It warned, however, that "misconduct of this nature will result in serious consequences going forward." Id. at 546-47.

Respondent's misconduct post-dates the Court's decision in Torre.

For the above reasons, we determine to grant the OAE's motion for final discipline and recommend to the Court that respondent be disbarred.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Kelvin Conner
Docket No. DRB 20-286

Decided: July 20, 2021

Disposition: Disbar

Members	Disbar	Recused	Absent
Gallipoli	X		
Singer	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	8	0	1

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