Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-334
District Docket No. XIV-2020-0355E

In the Matter of	:
Neil I. Mittin	:
An Attorney at Law	:

Decision

Argued: June 17, 2021

Decided: August 5, 2021

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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 guilty plea and conviction, in the United States District Court for the Eastern District of Pennsylvania, to one count of mail fraud, contrary to 18

U.S.C. § 1341. The OAE asserted that respondent's offense constituted violations of the principles of In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds), RPC 8.4(b) (committing a criminal act that reflects adversely on a 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 permanently barred from future pro hac vice and plenary admission to the New Jersey bar.

Respondent was admitted in New Jersey, pro hac vice, from 2007 through 2009. Therefore, the Court has jurisdiction to discipline respondent pursuant to R. 1:20-1(a), which provides that "[e]very attorney . . . authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding . . . shall be subject to the disciplinary jurisdiction" of the Court.

Respondent earned admission to the Pennsylvania bar in 1979. On June 11, 2020, he was disbarred in that jurisdiction, on consent, retroactive to December 8, 2019.

We now turn to the facts of this matter.

On July 18, 2019, a grand jury in the United States District Court, Eastern District of Pennsylvania, returned an indictment charging respondent with one count of mail fraud, in violation of 18 U.S.C. §1341. On September 11, 2019, respondent appeared before the Honorable Michael M. Baylson, U.S.D.J., and entered a guilty plea to that charge.

Specifically, respondent admitted that he had devised an illegal scheme to "defraud his law firm of fees to which the law firm was entitled by referring cases of the law firm to outside lawyers who resolved the cases and shared the proceeds with [respondent]." Although respondent received an annual salary of $150,000 from Gay & Chacker (the Firm), where he had been employed for thirty-eight years, he also received fifty percent of the financial recoveries in the matters he handled on behalf of the Firm, but only after he generated at least $300,000 in fees for the Firm. Respondent also received other financial benefits as a Firm employee, including health and life insurance; professional liability insurance; a $1,000 monthly stipend to lease a car; and participation in the Firm's profit-sharing pension plan, funded exclusively by the Firm.

At the Firm, respondent enjoyed a position of trust from the partners and, thus, was not subject to significant supervision in his daily work. Respondent and his administrative assistants worked on a separate floor of the Firm's office space, which further removed him from the partners' close

supervision. Additionally, although respondent was an associate, the Firm changed its name to Gay, Chacker & Mittin, which reflected the partners' trust in him.

As an associate, respondent was not permitted to remove a client's matter from the Firm or to refer the client to an attorney outside the Firm. Instead, if a client sought legal assistance from the Firm, respondent or the Firm's other attorneys would be responsible for the client's matter, would attempt to obtain a recovery for the clients, and would, thus, generate fees for the Firm.

During respondent's ten-year-long scheme, after a client retained the Firm, usually in a personal injury matter, the Firm assigned respondent to handle the case on behalf of the Firm. While working on a matter, respondent used Firm resources and funds to cover the costs incurred, such as meeting with the clients; writing letters; hiring experts; hiring investigators; or advocating on behalf of a client with insurance companies and civil defendants involved in the matter.

Unbeknownst to the Firm, and without its authority, respondent referred personal injury matters primarily to attorney Harris C. Legome,[1] and to other attorneys outside the Firm. Respondent did not disclose to Legome or the other outside attorneys that the referred clients and their matters belonged to the Firm. Rather, respondent referred the matters as if he, not the Firm, was entitled to a share of the financial recoveries in those matters. Respondent also fraudulently referred other Firm matters to outside attorneys, including workers' compensation cases; social security cases; employment cases; and criminal matters. The clients whose matters respondent referred to outside attorneys did not request that respondent make such referrals.

After referring the matters to outside attorneys, respondent systematically closed the corresponding files at the Firm, which made it appear in the Firm's records as if there were no settlement or resolution, effectively concealing from the Firm that the matters were, indeed, viable, and that he had fraudulently referred the matters to outside attorneys. Respondent even went so far as to create fake "box numbers" for closed files, removed files and documents from the Firm, and failed to properly record information about the cases in the Firm's computer system. At one point, one of the Firm's partners,

[1] On October 3, 2016, the Court disbarred Legome for unrelated conduct. In re Legome, 226 N.J. 590 (2016).

Edward Chacker, observed respondent carrying boxes from his office, but because he was unaware of respondent's scheme, Chacker simply smiled and waved to respondent.

Legome and the other outside attorneys undertook the representation of the Firm's former clients and attempted to successfully resolve the matters, either by settlement or trial. If they resolved the clients' matters favorably and obtained a settlement, judgment, or other financial resolution on behalf of the Firm's former client, those attorneys received a contingency fee, usually an average of between thirty-three and forty percent of the recovery, plus reimbursement of costs.

Thereafter, the outside attorneys paid respondent a referral fee, averaging about thirty-three to forty percent of the contingency fees obtained by the outside attorneys. The outside attorneys also reimbursed respondent for the costs incurred by the Firm before respondent referred the cases to the outside attorneys.

To reimburse respondent, the outside attorneys mailed checks to respondent at his home address. For example, on January 3, 2017, Legome mailed respondent a $65,148.50 check to respondent's home in Pennsylvania, payable to "Neil Mitten" [sic] on behalf of a client of the Firm. The outside

attorneys also paid respondent a share of any other fees they received, such as retainer fees.

Respondent deposited the checks he received from the outside attorneys in a personal bank account. He neither provided any of the funds to the Firm nor disclosed to the Firm that he collected fees from matters he had improperly removed from the Firm. He did not reimburse funds that the Firm had expended as costs.

During respondent's criminal scheme, the outside attorneys to whom respondent referred the Firm's clients generated approximately $10.8 million in financial recoveries on behalf of the Firm's clients. The Firm would have been entitled to approximately $4.2 million in legal fees, plus the reimbursement of costs for those clients.

At the September 11, 2019 plea hearing, respondent pled guilty to committing mail fraud in connection with his theft of the Firm's funds. When Judge Baylson asked respondent why he wished to plead guilty, respondent testified that he "did something [he] wasn't supposed to do." When Judge Baylson asked respondent if he recognized that he was committing a crime, respondent testified "at the time I did it, no. Now looking back, yes."

At respondent's March 5, 2020 sentencing hearing, Brian Chacker, a partner at the Firm, testified that, based on the reconstruction undertaken by

the Firm, he estimated that respondent referred approximately forty-one to forty-eight Firm clients to outside attorneys. Chacker also testified that respondent's actions did not merely impact the Firm financially. Chacker testified that the Firm relied heavily upon word of mouth to generate business and that the negative publicity the Firm received in the wake of respondent's criminal charges has impacted the Firm's reputation and, thus, ability to attract new clients.

At his sentencing hearing, respondent testified that his scheme was improper and wrong, and that he was ashamed and remorseful. Respondent stated that he was sorry for his mistake and, if given a second chance, would not cause harm to anyone. During the sentencing hearing, four people testified on respondent's behalf regarding his reputation for honesty and trustworthiness.

After hearing from respondent, the victims, and respondent's character witnesses, the court found that respondent was a thief, living a double life. The court further found that, had respondent's scheme not been uncovered, it likely would have continued. The court rejected the character witnesses' assertions that respondent's actions were a one-time mistake, emphasizing that his scheme was "repeated day in and day out" for ten years. The court found that

respondent's actions showed a "high degree of culpability, of criminality, and of a need for punishment."

The court also was concerned that respondent, "who acted as a lawyer and knew what the rules were as a lawyer," required a "substantial sentence." Therefore, the court accepted respondent's guilty plea and sentenced him to sixty months in prison, followed by three years of supervised release. The court also ordered respondent to pay to the Firm $3,419,000 in restitution.

The OAE argued that respondent's conduct constituted the knowing misappropriation of law firm funds, in violation of the principles of Siegel, RPC 8.4(b), and RPC 8.4(c). The OAE further argued that respondent's criminal conviction for fraud mandates his disbarment. Accordingly, the OAE requested that we grant the motion for final discipline and recommend to the Court that respondent be disbarred. During oral argument before us, the OAE urged more specifically that we recommend to the Court that respondent be permanently barred from future pro hac vice admission.

Although respondent did not file a brief for our consideration and waived his appearance before us, he indicated that he did not agree with the conclusions and recommendations of the OAE.

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 conviction for mail fraud derived from his scheme to steal law firm funds and, thus, establishes a violation of RPC 8.4(b). Pursuant to that Rule, 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 professional misconduct for an attorney to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Finally, pursuant to the principles of Siegel, respondent committed the knowing misappropriation of funds that belonged to the Firm. 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." 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."

In sum, we find that respondent's criminal conviction constitutes conclusive evidence that respondent violated the principles of Siegel as well as RPC 8.4(b) and RPC 8.4(c). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

In New Jersey, disbarment is generally imposed for the knowing misappropriation of law firm funds. In In re Sigman, 220 N.J. 141 (2014), the Court stated that it has:

> construed the 'Wilson rule, as described in Siegel,' to mandate the disbarment of lawyers found to have misappropriated firm funds '[in] the absence of

> compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.'
>
> [Sigman, 220 N.J. at 157 (quoting In re Siegel, 133 N.J. at 167-68.]

In In re Siegel, 133 N.J. 162 (1993), the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. During a three-year period, Siegel, a partner at his firm, had converted more than $25,000 in funds from his firm by submitting false disbursement requests to the firm's bookkeeper. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal expenses, including a mortgage service fee for his mother-in-law. While the payees were not fictitious, the stated purposes of the expenses were. Although we did not recommend the attorney's disbarment, the Court agreed with our dissenting public members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline.

In In re Greenberg, 155 N.J. 138 (1998), the Court refined the principle announced in Siegel. Greenberg also was disbarred, after misappropriating

$34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Per his instructions, the client then issued checks for legal fees directly payable to Greenberg. Additionally, the attorney falsified disbursement requests, and used those proceeds to pay personal expenses.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Additionally, he submitted more than 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Determining that Greenberg appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him.

In In re Staropoli, 185 N.J. 401 (2005), the attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli, an associate in a Pennsylvania law firm, was aware that contingent fees were to be divided in certain percentages between the firm and its

associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005). In May 2000, Staropoli settled a personal injury case he had originated, earning a contingent fee. The insurance company issued a check payable to both him and the client. He did not tell the firm of his receipt of the check and deposited it in his personal bank account, rather than the firm's account. He then distributed $6,000 to the client and kept the $3,000 fee for himself.

We issued a divided decision. Four members found that the attorney's single aberrational act should not require "the death penalty on [Staropoli's] New Jersey law career." Those members were convinced that his character was not permanently flawed or unsalvageable.

The four members who voted for disbarment found that the attorney did not have a reasonable belief of entitlement to the funds that he withheld from the firm, and that he had advanced no other valid reason for his misappropriation of law firm funds. The Court agreed and disbarred the attorney.

Finally, in In re Sigman, 220 N.J. 141, 145 (2014), the attorney, an associate at a Pennsylvania law firm, kept legal fees and referral fees, over a four-year period, repeatedly violating the terms of his employment contract. Sigman knew he was prohibited from handling client matters and referrals

independent of the firm, but did so anyway, and instructed clients to issue checks for fees directly to him. In total, he withheld $25,468 from his firm.

After the firm terminated his employment, but prior to the imposition of discipline in Pennsylvania, Sigman successfully sued his prior employer, resulting in the award of $123,942.93 in legal and referral fees that the firm had wrongfully withheld from him. During the disciplinary proceedings, he did not raise the dispute with his prior firm over legal fees as justification for his misappropriation. For his violations of RPC 1.15(a), RPC 1.15(b), RPC 3.4(a), and RPC 8.4(c), the Pennsylvania Supreme Court, citing substantial mitigation, suspended Sigman for thirty months.

The OAE moved for reciprocal discipline, recommending that Sigman be disbarred, and we agreed. The Court, however, imposed a thirty-month suspension, identical to the discipline imposed by Pennsylvania, noting the presence of compelling mitigating factors: respondent had no disciplinary history in Pennsylvania or New Jersey; he submitted character reference letters exhibiting his significant contributions to the bar and underserved communities; he readily admitted his wrongdoing and cooperated with disciplinary authorities; he did not steal funds belonging to a client; his misappropriation occurred in the context of fee payment disputes and a deteriorating relationship with his firm, where he ultimately was vindicated;

and his misconduct was reported only after the conflict over fees had escalated. The Court further noted that the unique nature of the payment and receipt of referral fees in Pennsylvania warranted substantial deference to that jurisdiction's disciplinary decision.

Here, unlike the facts of Sigman, respondent's knowing misappropriation of law firm funds did not arise from a conflict over fees. Rather, respondent embarked on a criminal scheme to steal fees to which the Firm was entitled. There is no evidence that the Firm impermissibly withheld fees from respondent. To the contrary, respondent's employment contract at the time he commenced stealing law firm funds clearly indicated that, after he recovered $300,000 in settlement fees for the Firm, he would receive a fifty-percent share of the future fees he generated, in addition to his $150,000 annual salary. Respondent also enjoyed insurance benefits, a monthly stipend to lease a car, and a profit-sharing pension plan. Nonetheless, respondent decided to refer the Firm's cases to outside attorneys, who then directly paid him a portion of the contingency fees they earned. He, thus, stole nearly $4 million in funds to which the Firm was entitled.

Furthermore, disbarment is warranted for respondent's criminal conviction. As the Court observed in In re Goldberg, 142 N.J. 557 (1995):

> 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.
>
> [In re Goldberg, 142 N.J. at 567 (internal quotations omitted).]

Given respondent's admission that, over the course of ten years, he engaged in a fraudulent scheme to steal nearly $4 million in law firm funds for his personal, pecuniary benefit, disbarment is the only appropriate discipline to impose. However, respondent is not a licensed New Jersey attorney, and, indeed, is no longer licensed to practice law in any jurisdiction.

We, thus, determine that respondent should be permanently barred from future pro hac vice or plenary admission to the New Jersey bar.

Member Rivera 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 Neil I. Mittin
Docket No. DRB 20-334

Argued: June 17, 2021

Decided: August 5, 2021

Disposition: Permanent Bar From Pro Hac Vice or Plenary Admission

Members	Permanent Bar	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera		X
Total:	8	1

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