Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-010
District Docket No. XIV-2020-0325E

In the Matter of	:
Anthony S. Rachuba, IV	:
An Attorney at Law	:

Decision

Argued: June 17, 2021

Decided: August 17, 2021

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

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), based on respondent's disbarment in Pennsylvania for knowing misappropriation of estate funds. The OAE asserted that respondent's misconduct constituted the knowing

misappropriation of entrusted funds, in violation of the principles of In re Wilson, 81 N.J. 451 (1979).

For the reasons set forth below, we determine to grant the OAE's motion for reciprocal discipline and recommend to the Court that respondent be disbarred for his knowing misappropriation of entrusted funds.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2001. He has no prior discipline in New Jersey.

The following facts are taken from the Report and Recommendations of the Disciplinary Board of the Supreme Court of Pennsylvania. On March 14, 2019, the Pennsylvania Office of Disciplinary Counsel (the ODC) filed a Petition for Discipline alleging that respondent knowingly misappropriated $4,000 in entrusted funds by forging his client's signature on four checks.

Specifically, from February 11, 2008 through December 31, 2014, respondent was employed by Fitzpatrick Lentz & Bubba, P.C. (FLB) as an associate. On January 1, 2015, he was promoted to a non-voting shareholder of FLB.

On August 25, 2009, Peggy M. Conway passed away at Lehigh Valley Hospital in Pennsylvania. On April 16, 2010, Jack W. Conway, Jr. (Conway),[1]

[1] Although all three co-executor siblings share a last name, only Jack W. Conway, Jr. was directly involved in respondent's misconduct described herein and, thus, he will be referred to as Conway.

Patty J. Conway, and Brenda L. Conway, the executors of Peggy Conway's will and successor co-trustees of the Conway Family Revocable Living Trust, engaged FLB to assist in the administration of Peggy Conway's estate and trust. FLB assigned the matter to respondent as the "responsible attorney" and the "billing attorney." Erica Wellington, who worked at FLB from January 1996 through January 2002, and again from April 2007 through January 2011, was assigned as respondent's paralegal on the Conway case. When Wellington left FLB in 2011, Karen Allender assumed paralegal duties on the Conway matter.

In May 2010, respondent commenced work on the matter and filed with the Lehigh County Register of Wills the death certificate; the will; an estimated value of the estate; and a petition for grant of letters of administration of the Estate of Peggy M. Conway. Respondent continued work on the matter and, by February 16, 2011, a non-interest-bearing business checking account was opened at Wells Fargo Bank (the Conway Trust Account). Monthly statements for the Conway Trust Account were directed to FLB's office address and the physical checkbook for the trust account was maintained in FLB's office. The only individuals authorized to sign checks drawn on the Conway Trust Account were Conway, Patty J. Conway, and Brenda L. Conway; respondent was not a signatory to the account.

On September 13, 2011, respondent met with the successor co-trustees at FLB's office. During the meeting, each co-trustee signed receipt, release, and indemnification agreements indicating their wishes to receive distributions of real estate as beneficiaries; signed an inheritance tax return respondent prepared reflecting the estate's $1,969,797.38 in assets and total personal representatives' commissions of $30,000; and agreed to the distribution of $52,500 in attorney's fees to FLB. The co-executors signed a $52,500 check for attorney's fees payable to FLB and the next day, respondent deposited the $52,500 check into FLB's general operating account.

As of May 18, 2016, the Conway Trust Account contained $86,097.35 and there was no activity in the account through December 22, 2016.

Between December 23, 2016 and January 6, 2017, however, respondent prepared and negotiated four checks drawn against the Conway Trust Account – check numbers 1060-1063, all payable to "Anthony S. Rachuba." Those checks totaled $4,000.

Then, on January 6, 2017, at a Wells Fargo Bank branch in Coopersburg, Pennsylvania, respondent presented a $3,800 check drawn against the Conway Trust Account made payable to "Anthony S. Rachuba." The bank teller assisting respondent contacted Conway; informed him that respondent was attempting to cash the check; described respondent as "very jittery and nervous;" and asked

Conway if he had authorized the $3,800 check. Conway informed the bank teller that he had not authorized the check and instructed her to lock the account. Consequently, Wells Fargo refused payment to respondent and retained the $3,800 check.

Subsequently, respondent sent an e-mail to Conway apologizing for "any confusion." Respondent claimed that his paralegal, but "not Karen," had five signed checks in the file which did not include a payee. Respondent represented that his paralegal then mistakenly wrote out the five checks to pay outstanding separate monthly invoices that were due to FLB. Respondent prepared and attached to his e-mail a schedule of distribution, which indicated that the total amount the trustees owed FLB was $17,000. Respondent stated that he "figured [he] would take [the five checks] to [the] bank then transfer to firm [sic] as payment for a portion of the outstanding legal fees." Respondent informed Conway that he would return the funds to the Conway Trust Account the next morning and send one of the trustees a new, unsigned check to pay the remaining legal fees. The e-mail was returned to respondent as "undeliverable" because he had utilized an erroneous e-mail address for Conway.

Later that night, respondent sent Conway a series of text messages, which was unusual, because respondent previously had not texted Conway. In the text messages, respondent reiterated his paralegal's purported mistake and claimed

a belief that Conway had sent the checks to FLB as payment for the legal fees reflected in the schedule of distribution he had prepared. Respondent informed Conway that he would return the $4,000 to the Conway Trust Account since he had not yet transferred the funds to FLB, which he claimed he had planned to do the following week. Respondent sent another text to Conway claiming that "typically at the beginning of an estate administration, we have the executor(s) sign checks without inserting the name of the payee. This may be the case but I will have to find out on Monday when I speak to Karen and my assistant." However, respondent's assertions to Conway were misrepresentations because respondent knew that he had made the checks payable to himself and knew it was not FLB's practice to have a client pre-sign a blank check. In fact, Edward J. Lentz, a partner at FLB, testified that it was "absolutely not" FLB's practice to have a client pre-sign a check, and that it would have been unheard of to do so.

On January 9, 2017, respondent prepared a purported "Statement of Legal Fees Due" and placed it in the case file. The statement reflected total fees payable of $17,000, referred to the five checks respondent had made payable to himself, and represented with respect to those checks:

> The above checks were mailed to ASR [Anthony S. Rachuba] by one of the three co-executors/co-trustees, unfortunately, the checks were mistakenly made payable to ASR and not FLB. Instead of mailing new

> checks, ASR took to bank to obtain funds for the purpose of turning over to FLB. When taking the fifth check to the bank on January 6, 2017, the teller said something didn't look right with the checks. Therefore, the teller held onto the check in the amount of $3,800 but did not explain.

Unbeknownst to respondent, on January 11, 2017, Conway met with Wells Fargo Bank regarding the bank's investigation into the checks drawn on the Conway Trust Account without the co-trustees' consent or knowledge. When Conway met with Wells Fargo, the bank promised to provide him with an update to its investigation.

On April 3 or 4, 2017, FLB received a letter from Wells Fargo containing information related to the results of its investigation. Allender opened the correspondence and read it. Upon reading about the funds withdrawn from the Conway Trust Account, Allender immediately investigated, which included looking through the physical file, examining FLB's document management system, and obtaining bank statements from Wells Fargo.

Allender also placed a copy of the Wells Fargo letter on respondent's desk since he was not in his office. When he saw the letter, respondent asked Allender if she had contacted Wells Fargo. When she informed respondent that she had not done so, respondent ordered her "not to do anything about [the fraud investigation], he was going to handle it."

Following her investigation, Allender concluded that respondent had forged Conway's signature and had stolen funds from the Conway Trust Account. Allender immediately reported her suspicions to Lentz.

FLB then investigated the matter and confirmed that respondent had illicitly negotiated at least four Conway Trust Account checks, totaling $4,000, and unsuccessfully had attempted to negotiate the fifth check, for $3,800. Consequently, on April 4, 2017, FLB's co-managing shareholders had a meeting with respondent, during which he admitted that he had negotiated the Conway Trust Account checks, withdrew funds from the account, and did not transfer the funds to FLB. FLB immediately terminated respondent's employment. Shortly thereafter, FLB notified the ODC of respondent's misconduct.

On April 6, 2017, respondent sent a letter to an attorney at FLB expressing his regret for what he characterized as his "momentary lapse in judgment." On April 7, 2017, FLB reimbursed the $4,000 that respondent had misappropriated from the Conway Trust Account and notified the co-trustees of the circumstances surrounding respondent's misconduct.

On April 12, 2017, FLB sent respondent a letter demanding that he reimburse the firm $1,529.16, which represented the balance of what respondent owed after FLB redeemed and retained respondent's share of non-voting FLB stock, valued at $2,470.84. On April 15, 2017, respondent sent an e-mail to FLB

apologizing for his conduct and stating that, if he could go back in time, he would have "done things differently" and "would not let the mistake happen again." Respondent also reimbursed FLB the $1,529.16.

In his verified answer to the ODC's petition for discipline, respondent admitted that, between December 23, 2016 and January 4, 2017, he withdrew $4,000 from the Conway Trust Account by negotiating four separate checks made payable to "Anthony S. Rachuba." He denied, however, forging Conway's signature, and claimed that Conway had pre-signed the checks in the presence of Wellington.

Respondent again asserted that it was "FLB's occasional practice to have such checks pre-signed and maintained by the [sic] FLB for future use as authorized by the executor(s)." Respondent also denied preparing the Statement of Legal Fees Due and represented that he had never seen the document.

At the August 8, 2019, ethics hearing, because respondent had admitted to knowingly misappropriating the $4,000 in entrusted funds, the ODC focused its case on establishing that respondent had forged Conway's signature on the five checks in question. Despite filing a verified answer and receiving proper notice, respondent did not appear at the ethics hearing.

At the hearing, Wellington testified that she did not witness Conway pre-sign any checks and that it would have been highly irregular for a trustee or

executor to do so, since that was not FLB's practice. She explained that, instead, when a bill needed to be paid, she would prepare a check for Conway to sign and provide him with instructions, or he would send the prepared check back to FLB signed. Wellington emphasized that Conway had never signed a blank check.

Allender confirmed that it was not FLB's policy to have clients pre-sign checks. Allender testified that she was very familiar with the case and the physical file and, since beginning work on the case in 2011, had never seen a pre-signed check in the file. Indeed, Allender testified that it was not possible for Conway to have pre-signed check numbers 1060 through 1063 in front of Wellington because the checks were not ordered until three years after Wellington left FLB; moreover, Allender testified that she had not witnessed Conway pre-sign any checks. Conway also confirmed that he had never pre-signed any blank checks for FLB and testified that it was not his signature on check numbers 1060 through 1063.

The ODC also presented a handwriting expert, Khody Detwiler, who testified that, based on his analysis of Conway's signature on known documents and the signature on check numbers 1060-1063, Conway did not sign the checks. However, because Detwiler was not provided with known documents containing

respondent's signature, he was unable to offer an opinion as to whether respondent had forged Conway's signature on the checks.

The Disciplinary Board of the Supreme Court of Pennsylvania affirmed and adopted the findings of the hearing committee – that respondent had violated Pennsylvania RPC 1.15(b) (a lawyer shall hold all Rule 1.15 funds and property separate from the lawyer's property), RPC 8.4(b) (commission of 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) (conduct involving dishonesty, fraud, deceit, or misrepresentation) – and recommended that respondent be disbarred for his misappropriation of client funds through forgery. The Pennsylvania board found that, after respondent's theft was uncovered by the Wells Fargo bank teller, he "immediately formulated a plan to hide his thievery," beginning with the unsuccessful e-mail and subsequent text messages to Conway. The Pennsylvania board found that respondent blatantly lied to Conway by stating that FLB "typically" had an executor sign blank checks and that the checks "mistakenly" had been made payable to him.

Respondent's lies continued via his preparation of the Statement of Legal Fees Due and in his verified answer, wherein he alleged that Wellington had witnessed Conway pre-sign the blank checks. The Pennsylvania board found that respondent's "reprehensible conduct is exacerbated by his submission of a

falsely verified response to the DB-7 Request and a falsely verified Answer to the Petition for Discipline, as well as his ultimate failure to appear at the disciplinary hearing." The Pennsylvania board found, in aggravation, that respondent demonstrated "no remorse and no acceptance of full responsibility, and in fact demonstrated quite the opposite by staunchly clinging to the falsity that the checks were pre-signed by Mr. Conway." The Pennsylvania board accepted respondent's admission that he misappropriated client funds by inserting his name as payee on the four checks and negotiated them but rejected his assertion that it was a "momentary lapse of judgment," because his misconduct was not a single, isolated incident.

On June 3, 2020, the Supreme Court of Pennsylvania issued an order disbarring respondent for his misconduct. On September 8, 2020, it also denied respondent's untimely motion for reconsideration. In that motion, respondent falsely claimed that he had no notice of the August 8, 2019 ethics proceeding and had never received any of the ODC's documents or the decisions in the matter.

The OAE argued before us that respondent forged Conway's signature on checks 1060-1063, made the checks payable to himself, and attempted to cover up his theft via the deceptive e-mail and text messages to Conway. Thus, the

OAE asserted that, under the Wilson rule, respondent should be disbarred for his knowing misappropriation of estate funds.

Respondent did not report his Pennsylvania disbarment to the OAE as required by R. 1:20-14(a)(1), did not provide us with a submission for consideration, and did not appear for oral argument.

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

None of the above subsections apply to this case. Respondent's admission that he knowingly misappropriated $4,000 in Conway trust funds mandates the imposition of identical discipline – his disbarment in New Jersey.

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 of 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).]

Additionally, intent to permanently deprive is not required, nor is an intent to "steal funds" from a client. In re Mininsohn, 162 N.J. 62, 72 (1999).

Thus, to establish knowing misappropriation, there must be clear and convincing evidence that the attorney used client funds, knowing that they

belonged to the client and knowing that the client had not authorized him or her to do so.

The Court has held that an attorney-client relationship between an attorney and the beneficiaries of a trust is not a prerequisite for a finding of knowing misappropriation. In In re McCue, 153 N.J. 365 (1998), the attorney was appointed trustee of a trust valued at over one million dollars. Throughout his term as trustee, McCue neither gave the beneficiaries an accounting of the trust assets nor filed the fiduciary income tax returns for the trust, and he breached his fiduciary duties. In the Matter of William T. McCue, DRB 97-086 (February 17, 1998) (slip op. at 3-4). The beneficiaries petitioned a court in Virginia to remove McCue as trustee. That court determined that the trust suffered a loss of $655,000 because of McCue's fraud and misappropriation.

McCue subverted the OAE's investigation by refusing to provide his records, but the OAE established that, at a minimum, McCue had misused more than $500,000 of trust funds. McCue transferred most of those funds by issuing forty-three checks payable to a separate trust, unrelated to the first. Id. The matter was before us by way of default and McCue did not appear for the Order to Show Cause issued by the Court. In re McCue, 153 N.J. 365.

Similarly, an attorney appointed as the administrator of an estate, where the sole beneficiary was confined to a nursing home, was disbarred when he

"misappropriated and wasted more than $308,000 in estate funds." In re Meenen, 156 N.J. 401 (1998). Meenen made a series of improper loans from the estate without security or documentation, invested $205,580 in limited partnerships and speculative companies that were either defunct at the time of the investment or went out of business shortly thereafter, and improperly advanced to himself $39,000 in fees. In the Matter of Robert D. Meenen, DRB 97-406 (June 29, 1998) (slip op. at 3). Meenen was unable to substantiate his entitlement to the fees taken. He also failed to file appropriate tax returns on behalf of the estate until March 1996, during a tax amnesty period established by the State of New Jersey.

We determined that, even though Meenen had served as administrator, rather than attorney, the appropriate discipline, in that client matter alone, was disbarment. Accordingly, for his theft from the estate, we recommended Meenen's disbarment.

Here, there is no question that respondent committed knowing misappropriation of entrusted funds. He admitted that, without authorization, he negotiated four checks, totaling $4,000, drawn on the Conway Trust Account and payable to himself. To make matters worse, respondent forged Conway's signature, negotiated those checks, and planned to keep the funds for himself.

Additionally, respondent attempted to negotiate a fifth check for $3,800, but was caught by an alert bank teller. Once exposed, respondent embarked on a contemptible course of deceit to cover up his theft. Respondent communicated lies to Conway in an effort to convince him that it was "typical" practice to have FLB clients pre-sign blank checks, when in fact, Conway had not pre-signed any checks at all; he prepared a false invoice for legal fees owed and placed it in the file; he prepared a false narrative for the file that indicated the checks were issued by a co-executor, mistakenly made payable to respondent instead of FLB, despite claiming in his verified answer that the pre-signed checks were already in the file, having been signed by Conway; and in yet another attempt to cover up his theft, he told Allender that he would handle the Wells Fargo investigation, knowing the bank was investigating his misconduct.

Based upon the foregoing, we determine respondent must be disbarred for his knowing misappropriation of entrusted funds.

Member Rivera was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative cost 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 Anthony S. Rachuba, IV
Docket No. DRB 21-010

Argued: June 17, 2021

Decided: August 17, 2021

Disposition: Disbar

Members	Disbar	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