Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-032
District Docket No. XIV-2019-0532E

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| In the Matter of | : |
| Angelo M. Perrucci | : |
| An Attorney at Law | : |

Decision

Argued: June 17, 2021

Decided: August 25, 2021

Lauren Martinez 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 final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's conviction, in the United States District Court for the Eastern District of Pennsylvania (the EDP), of five counts of wire fraud, a felony, in

violation of 18 U.S.C. § 1343. The OAE asserted that this offense constituted a violation 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 1.15(b) (failing to promptly deliver funds to the client or a third party); RPC 1.15(c) (failing to keep separate funds in which the attorney and a third party claim an interest); 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 1990 and to the Pennsylvania bar in 1989. At the time of the relevant events, he maintained a law office in Easton, Pennsylvania. On April 29, 2020, the Court temporarily suspended him from the practice of law in connection with his criminal conduct underlying this matter. He remains suspended to date. In re Perrucci, 241 N.J. 529 (2020).

On October 28, 2020, the Supreme Court of Pennsylvania disbarred respondent on consent, retroactive to July 8, 2020, in response to his criminal conduct described below.

On March 11, 2020, respondent entered a guilty plea in the EDP to five counts of felony wire fraud, in violation of 18 U.S.C. § 1343. Specifically, in October 2015, respondent was retained by N.G. and S.R. (the heirs), to provide legal services to their father, P.D. On January 4, 2016, P.D. died intestate. Thereafter, in March 2016, respondent filed a motion in the Bergen County Surrogate's Court to be appointed as administrator of P.D.'s estate. The Court granted the motion and, on March 21, 2016, respondent established a bank account in the name of the P.D. estate (the estate account).

The estate account initially was funded with the sum of $54,814.65, derived from P.D.'s investments. Within two weeks of opening the estate account, respondent disbursed five checks from the estate account, totaling $36,500, and deposited them in his law firm's operating account for his own use. In January 2017, he disbursed to himself $5,000, via a check payable to his law firm's operating account.

In February 2017, respondent deposited an additional $611,000 in the estate account, which was transferred from two Swiss bank accounts held by P.D.. He then proceeded to disburse additional funds to himself. By January

2019, respondent had virtually depleted the estate account. From February 2017 to April 12, 2019, respondent disbursed to himself $386,749.66, via checks payable to his law firm operating account, his attorney trust account (ATA), and a personal account.

By early 2019, the estate's only remaining cash was $170,000, derived from the proceeds of the sale of P.D.'s home in Beachwood, New Jersey. The property had been sold on April 18, 2016, and respondent held the proceeds in an ATA that he maintained at OceanFirst Bank in New Jersey, until February 26, 2019, when he transferred the funds to a different New Jersey trust account.

In February 2019, respondent spoke to the heirs, via telephone, regarding the status of the estate. When the heirs asked respondent how much he had taken in fees and expenses, respondent misrepresented that, when the first $500,000 was deposited in the estate account, he disbursed to himself approximately $30,000. However, by that time, respondent had disbursed $344,250, much more than the amount he had provided to the heirs. Respondent informed the heirs that he estimated that he would be entitled to another $30,000 by the time the estate was fully resolved, and that he would notify them before he disbursed any additional estate funds to himself.

During his conversation with the heirs, respondent expressed his understanding that New Jersey set statutory limits on the amount of money he was entitled to take as the estate administrator – approximately $60,000.[1]

Although respondent had represented to the heirs that he would notify them prior to disbursing additional estate funds to himself, in the ten weeks following their telephone conference, he disbursed to himself an additional $42,500, via seven checks issued from the estate account, without informing the heirs.

On April 18, 2019, respondent again spoke to the heirs via telephone and made two additional misrepresentations. Specifically, respondent falsely claimed that (1) the proceeds from the Beachwood property were in his ATA and (2) that he was forbidden from depositing those funds in the estate account without clearance from the Internal Revenue Service. As detailed above, in February 2019, those proceeds already had been deposited in the estate account. Between February 28 and April 12, 2019, the date of the second

[1] N.J.S.A. 3B:18-14 provides that an estate administrator may charge a 5% commission on the first $200,000 of all corpus received by the fiduciary, 3.5% on amounts worth between $200,000 and $1,000,000, and 2% on any amount over $1,000,000. N.J.S.A. 3B:18-6 provides that, if any attorney serves as an administrator of an estate and performs "professional services in addition to his fiduciary duties," the attorney may apply to the court for a "just counsel fee."

telephone conference with the heirs, respondent disbursed to himself $32,500 from the proceeds of the Beachwood property sale.

During that second telephone conference, the heirs requested that respondent provide them with an interim accounting of the estate. In response, respondent produced an accounting that contained material falsehoods. First, respondent claimed that the Beachwood property sales proceeds were in his ATA. Next, respondent claimed to be entitled to an estate administrator's fee of $46,000, in addition to attorney's fees of $102,150. However, billing records demonstrated that respondent worked on the estate for 10.7 hours between June 18, 2017 and June 20, 2018, yet, he had issued to himself forty-five checks totaling $190,750. Finally, respondent indicated that he had paid $60,210 in New Jersey estate taxes. Although that was an accurate assessment of the amount of estate taxes due, respondent never made the tax payments.[2]

In connection with his guilty plea, respondent admitted that he committed five instances of wire fraud. Specifically, respondent admitted to all facts as summarized by the United States Attorney, including that he had been

[2] The OAE also referenced a charge in the indictment that was not included in the plea allocution, which charged that, on May 20, 2019, respondent opened a second estate account on which he had sole signatory authority. On that same date, respondent issued a check for $107,000 drawn on the estate account and deposited that check in the new account. Respondent failed to disburse any of the funds from the new account to the heirs.

hired by the heirs to provide legal services for their father, P.D., and that he had disbursed to himself funds from the estate account to which he was not entitled.

On September 9, 2020, the Honorable Joseph F. Leeson, Jr., U.S.D.J., sentenced respondent to three years of imprisonment to be followed by three years of supervised release. Respondent also was ordered to pay $301,248.56 in restitution.

At his sentencing hearing, respondent asserted that the amount of loss to the victims (for sentencing guidelines purposes) should be more than $150,000 but less than $250,000. Judge Leeson determined, however, that the amount of actual loss was more than $250,000 but less than $550,000. Judge Leeson further stated

> [a]s to the nature and circumstances of the offenses, the Defendant's theft and deceit began within the first two weeks after the estate account was opened, and continued for more than three years. He issued more than 80 checks to himself from the estate for approximately $400,000 which he used to pay his own bills and for luxury items.
>
> The Defendant lied and took steps to cover up his crimes. He not only took advantage of his role as an

> attorney, but also as a trusted neighbor and friend to one of the heirs of the estate.
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> [OAEb4;Ex.G at pp108-09.][3]

As to mitigation, Judge Leeson found that respondent was "an educated man with no criminal history and no history of substance abuse or mental health issues." Judge Leeson also acknowledged respondent's charitable works and contributions.

In its brief in support of this motion for final discipline, and during oral argument before us, the OAE argued that there was no justification for respondent's use of his clients' estate funds as a personal line of credit, and that his actions clearly constituted knowing misappropriation. Accordingly, the OAE argued that, pursuant to the principles of Wilson and Hollendonner, respondent must be disbarred.

Further, the OAE noted that respondent failed to report his criminal charges to the OAE, as required by R. 1:20-13(a)(1). Respondent is incarcerated and submitted nothing for our consideration.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in

[3] "OAEb" refers to the OAE's February 9, 2021 brief and appendix in support of its motion for final discipline. "Ex." refers to the exhibits to the brief.

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 felony wire fraud, contrary to 18 U.S.C. § 1343, thus, establishes a violation of RPC 8.4(b). Moreover, respondent's crimes violated RPC 1.15(a), the principles of Wilson, and RPC 8.4(c). 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." In re 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, multiple lines of New Jersey disciplinary precedent beckon respondent's disbarment.

First, the OAE correctly argued that respondent's knowing misappropriation of entrusted funds triggers automatic disbarment under the Wilson rule.

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.

Moreover, 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 re McCue, 153 N.J. 365 (1998). Thus, 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 fees of $39,000. 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. Id. at 4.

We determined that, even though Meenen had served as administrator, rather than attorney, the appropriate discipline, in that client matter alone, was disbarment. Id. at 5. Accordingly, for his theft from the estate, we recommended Meenen's disbarment. Id. at. 6. The Meenen matter was before us by way of default and Meenen failed to appear for the Order to Show Cause issued by the Court. In re Meenen, 156 N.J. 401.

Here, respondent did, in fact, have an attorney-client relationship with the beneficiaries of the estate, and admitted the criminal conduct constituting the federal wire fraud charges, including disbursing to himself funds from the estate to which he was not entitled. Thus, respondent knowingly

misappropriated client funds, in violation of RPC 1.15(a) and the Wilson rule, and must be disbarred. Because respondent stole client funds, the rule in Hollendonner is not implicated and we, thus, dismiss that additional allegation.

Second, based on respondent's conviction, 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.
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> [citations omitted.]

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 million 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 pled guilty to committing acts constituting wire fraud by which he knowingly misappropriated his clients' funds for his own purposes. As Judge Leeson found, respondent issued eighty checks to himself, totaling approximately $400,000, via unauthorized disbursements from the estate account. It is clear that respondent's conduct 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 noted above, the OAE further asserted that respondent's criminal conduct violated RPC 1.15(b) and RPC 1.15(c). We agree and find that

respondent violated those Rules. However, considering the above analysis, any additional findings as to RPC 1.15(b) and (c) do not serve to alter the recommended quantum of discipline. Accordingly, we grant the OAE's motion for final discipline and recommend to the Court that respondent be disbarred.

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 Angelo M. Perrucci
Docket No. DRB 21-032

Argued: June 17, 2021

Decided: August 25, 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