Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-038
District Docket No. XIV-2018-0405E

In the Matter of	:
Edwyn D. Macelus	:
An Attorney at Law	:

Decision

Argued: June 16, 2022

Decided: September 12, 2022

Ryan Moriarty appeared on behalf of the Office of Attorney Ethics.

Duran L. Keller appeared on behalf of respondent.

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

This matter was before us on a recommendation for an alternative quantum of discipline, filed by a Special Master, specifically: respondent's continued temporary suspension until (1) he successfully completes an OAE-approved trust and business accounting course; (2) an OAE-approved

psychiatrist "certifies" that "[r]espondent is competent to resume the practice of law; and (3) "[u]pon completion of the [foregoing] conditions, [r]espondent shall practice law under the supervision of a practicing attorney approved by the [OAE] until further Order of the Court."

The formal ethics complaint charged respondent with having violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (two instances – knowing misappropriation of client funds), and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds); RPC 1.15(b) failing to promptly deliver funds to a third party); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine that respondent knowingly misappropriated escrow funds and recommend to the Court that he be disbarred.

Respondent was admitted to the New Jersey bar in 2013 and to the New York bar in 2014. He has no disciplinary history in New Jersey. At the relevant times, he maintained a practice of law in Edgewater, New Jersey.

Effective July 18, 2019, the Court temporarily suspended respondent, pursuant to R. 1:20-11, in connection with his misconduct underlying this matter. In re Macelus, 238 N.J. 516 (2019).

Turning to the facts of this matter, in February 2017, Atlandtis Everett retained respondent in connection with an $11,493.43 medical bill he owed to South Orange Chiropractic Center (SOCC), due to which garnishment of Everett's bank account had commenced. On February 24, 2017, Everett's health insurance company issued two checks, made payable to SOCC and totaling $8,476.36, and sent them to respondent. Everett instructed respondent to deposit SOCC's funds in his attorney trust account (ATA) and to attempt to negotiate a reduction of SOCC's $11,493.43 medical bill to an amount below $8,476.36, in the hopes that Everett could apply any remaining funds toward his "other debts."[1]

On March 8, 2017, respondent deposited SOCC's $8,476.36 in his ATA. He claimed that he had the verbal permission of a paralegal employed by SOCC's law firm to do so, despite the checks having been made payable to SOCC. As a result of the deposit, respondent's ATA balance increased from $2.26 to $8,478.62. During his testimony at the ethics hearing, respondent conceded that, as of March 8, 2017, "almost every penny" in his ATA belonged to SOCC.

[1] Although the record is unclear whether Everett would have been entitled to SOCC's excess insurance proceeds, during respondent's September 29, 2018 interview with the OAE, he maintained that "that [is] how [. . .] the medical debt collection process works."

On the very next day, March 9, 2017, respondent withdrew $500 from his ATA. Although the bank withdrawal slip did not set forth the purpose of the transaction, respondent claimed, during his testimony at the ethics hearing, that the paralegal employed by SOCC's law firm also had authorized him to issue those funds to Everett, because SOCC already had collected $434.10 from Everett, in connection with his unpaid medical bill, and "$500 represented an even number." Respondent further claimed that he had disbursed the $500 to Everett via a "cashier's check." However, respondent's ATA statement contained no record of the purported check. Moreover, respondent failed to produce any written evidence corroborating his assertion that the paralegal had authorized him to disburse $500 of SOCC's funds to Everett. Indeed, during the ethics hearing, the paralegal testified that she "would have never" authorized respondent to draw from SOCC's funds because, in her view, as a paralegal, she had no authority to do so. During respondent's September 2018 demand interview with the OAE, he did not claim that the paralegal had authorized him to draw $500 from SOCC's funds, but, rather, stated that SOCC had refused (1) to settle Everett's medical debt for $7,900, or (2) to return the $434.10 that it already had garnished from Everett.

On March 13, 2017, five days after having deposited the SOCC escrow funds in his ATA, respondent withdrew $7,900 from his ATA, reducing the

balance to $78.62 and creating a shortfall of more than $8,000 in SOCC's escrow funds. Respondent's signed withdrawal slip identified "4500 – Project M Motors[,] LLC[,]" a business entity belonging to a "buddy" of respondent, as the payee of a corresponding cashier's check.[2] Respondent claimed that he had "no idea" why "Project M Motors" was written on the withdrawal slip, maintaining that the bank teller had completed the withdrawal slip, which was not in respondent's "handwriting." However, respondent explained his account withdrawal procedures as follows:

> Whenever I bring in cash to get a cashier's check, at times, I tell the teller exactly who I need it for. Either I write it on a separate slip or I tell the cashier orally exactly what I need.
>
> [1T41.][3]

Although the withdrawal slip identified "Project M Motors" as at least the partial payee of the $7,900, respondent claimed, during the ethics hearing and his September 2018 interview with the OAE, that he had used the entire $7,900 to purchase a cashier's check made payable to the law firm representing SOCC, in "anticipation" of SOCC accepting $7,900 as settlement of its medical debt. Respondent claimed that he had placed the purported $7,900 cashier's check in

[2] Respondent's ATA records contained no cashier's check for "Project M Motors."

[3] 1T refers to the September 21, 2021 ethics hearing transcript.

his "folder," but never issued the check to SOCC because he never "reached a settlement" regarding the medical debt. Respondent, however, could not locate the purported cashier's check; maintained that the bank had no record of the check; and conceded that the check proceeds were "gone" and that he did not know "what [had] happened to that money."[4]

Following respondent's $7,900 withdrawal, at least $76.36 of SOCC's original $8,476.36 remained in his ATA. Respondent then continued, for more than one year, to repeatedly invade SOCC's remaining funds in his ATA.

Meanwhile, on January 11, 2018, respondent sent SOCC's law firm's paralegal a proposed settlement offer, requesting that SOCC settle its $11,493.43 medical bill for $8,476, the full amount of SOCC's insurance proceeds, minus $0.36. On January 15, 2018, SOCC's attorney sent respondent a proposed written settlement agreement, whereby SOCC offered to accept $8,476 as "full payment" of Everett's medical debt. In its proposed settlement agreement, SOCC noted that it would not return the $434.10 already garnished from Everett. Further, in SOCC's attorney's cover letter to the settlement agreement, he instructed respondent to hold the "agreement[]" in "escrow" until SOCC received "the settlement monies." Everett, however, rejected the

[4] During respondent's May 2018 interview with the OAE, he claimed that the purported $7,900 cashier's check for SOCC had "expired" after approximately ninety days.

settlement offer, and insisted that SOCC settle its debt for $8,476, minus the $434.10 that already had been garnished. SOCC refused Everett's counteroffer, and, thus, the parties were unable to reach a settlement agreement.

On May 22, 2018, respondent deposited in his ATA two checks, totaling $2,500, which represented a real estate deposit for respondent's client, James Choice. That $2,500 deposit increased his ATA balance to $2,500.91. On the next day, May 23, 2018, respondent withdrew $2,500 from his ATA and, on the withdrawal slip, identified himself as the payee of a cashier's check.

On May 23, 2018, respondent deposited in his ATA a $6,000 check, which represented a real estate deposit for another client, Maria Nakal. On the next day, May 24, 2018, respondent withdrew $6,000 from his ATA and, on the withdrawal slip, again identified himself as the payee of a cashier's check.[5]

In respondent's disciplinary stipulation, he agreed that the $6,000 withdrawal reduced his ATA balance to $0.91, "when he should have been holding $8,476.36 for SOCC, $2,500 for Choice, and $6,000 [for] Nakal." Respondent further stipulated that he had "invaded [. . .] Choice and Nakal's funds from May 23 to at least May 30, 2018." However, in his testimony at the ethics hearing, respondent denied that he had used Choice and Nakal's funds

[5] Respondent's ATA statement contains no record of the purported $2,500 or $6,000 cashier's checks.

"for other purposes" and maintained that he had used their funds only for their "intended purposes."[6]

Meanwhile, during his September 2018 demand interview with the OAE, respondent claimed that, at some point, he had a conversation, or received an e-mail, from SOCC's law firm, who allegedly told him that, unless "X amount is paid by a certain date . . . a grievance would be filed." Respondent further claimed that he had received from an SOCC employee a voicemail, allegedly accusing respondent of "stealing" SOCC's funds. Consequently, respondent advised Everett that they needed to "wash [their] hands clean" and "deal with the [garnishment dispute] on the back end." On May 22, 2018, SOCC filed a grievance with the OAE, alleging that Everett still owed medical debt to SOCC and that respondent had deposited SOCC's health insurance funds in his ATA.

Three days later, on May 25, 2018, respondent deposited $5,000 in cash in his ATA, which increased his ATA balance to $5,000.91. Respondent's deposit slip did not specify the source or purpose of the $5,000. Thereafter, on May 29, 2018, respondent deposited in his ATA, via wire transfer, $120 from Michelle Padilla,[7] which increased his ATA balance to $5,120.91. On May 30,

[6] During the OAE's closing argument, the OAE conceded that it "did not put on proof with regard to [. . .] Necale [sic] and Choice."

[7] The record does not disclose Padilla's relationship with respondent.

2018, respondent made two cash deposits in his ATA, totaling $3,400,[8] which increased his ATA balance to $8,520.91, which was $44.55 more than the amount needed to cover SOCC's $8,476.36. That same date, respondent issued from his ATA a $8,476.36 cashier's check, made payable to SOCC. As a result of the $8,476.36 cashier's check, respondent stipulated that he had reduced his ATA balance to $44.55, "when he should have been holding $2,500 for Choice and $6,000 for Nakal."

In his verified answer to the formal ethics complaint, via his attorney's arguments to the special master, and in his November 11, 2019 certification to the special master, respondent admitted the facts underlying the formal ethics complaint, but denied that he had knowingly misappropriated client or escrow funds. Rather, respondent maintained that he had "negligent[ly]" "mishandle[ed]" ATA funds based on his lack of experience with the RPCs, the recordkeeping requirements of R. 1:21-6, and law office and trust account management.

Specifically, respondent maintained only a New York ATA and failed to maintain either a separate New Jersey attorney trust account, as R. 1:21-6(a)(1) requires, or a New Jersey attorney business account, as R. 1:21-6(a)(2) requires.

[8] Respondent's deposit slips, again, did not specify the purpose of the $3,400.

Respondent, thus, conceded that his New York ATA "became his general operating account[,]" wherein he "immediately" commingled funds. Additionally, although respondent noted that he did not maintain individual client ledger cards, as R. 1:21-6(c)(1)(B) requires, he claimed that he "kept all [his] business transactions in [his] head" and relied upon his "excellent recall and [. . .] intelligence." Moreover, respondent claimed that his business transactions "were rarely complicated[;]" that he was "pretty good at remembering the deals and the numbers[;]" that he reviewed his monthly ATA statements; and that he "prepared monthly [ATA] reconciliations." Despite his purported unfamiliarity with the recordkeeping Rules, respondent testified that he did not seek the advice of a practicing attorney regarding the recordkeeping requirements because, in his view, he "believed that [he] could figure it out."

Respondent testified that, following his 2012 graduation from law school, he worked for two years at Morgan Stanley, where he dealt with "financial regulators." Thereafter, he worked for a consulting firm, where he assisted financial institutions. Respondent, thus, admitted that he understood "the concept" and purpose of a trust account. Nevertheless, respondent admitted that he had "misused" his ATA, but he denied that he had "misused the money." Specifically, respondent claimed that he could not "account for the numerous

cashier's checks that [he had] purchased with cash that [did not] hit [his] account."[9]

On September 29, 2020, respondent's counsel sent the OAE and the special master a letter, which expressed his "serious concerns" for respondent's mental health and stated that respondent had exhibited "clear signs of either a mental or emotional breakdown." Consequently, respondent's counsel requested that respondent be evaluated by a psychiatrist to determine if he was "medically fit and competent to participate in" the disciplinary proceedings.

On January 21, 2021, respondent's counsel provided the OAE and the special master with a report from Dr. Jacob H. Jacoby, respondent's treating psychiatrist, who stated that respondent suffered from a personality disorder with narcissistic features, which "impair[ed] his ability to productively prepare and coordinate his case with his lawyer."

On March 12, 2021, Dr. Jacoby testified before the special master "as an expert in the field of psychiatry." Specifically, Dr. Jacoby stated that respondent suffered from "narcissistic personality traits" and was "immersed in his own life struggles[.]" Dr. Jacoby also observed that respondent maintained "a certain macho image" in light of his need "to succeed" without "show[ing] any

[9] During his September 2018 interview with the OAE, respondent claimed that he did not issue ATA checks because, in his view, it was "[t]oo much liability" and "much more hassle than it's worth."

weakness[.]" Dr. Jacoby further noted that respondent's narcissistic personality traits had impaired his judgment, given that respondent "does[not] go by the book. He goes by what he thinks should be done. And he thinks somehow that the world will conform to his perception of what is right or what is real."

Dr. Jacoby explained, however, that, since beginning psychotherapy three months earlier, respondent's condition had been "improving" and he was "seeing things clearly." Dr. Jacoby concluded that respondent was "in a much better position" to assist in his defense, though he still suffered from "stress and strain[.]" Based on Dr. Jacoby's testimony, respondent's counsel conceded that he could not raise a psychiatric defense on respondent's behalf.

The special master found that the OAE had proven, by clear and convincing evidence, that respondent had negligently misappropriated SOCC's, Choice's, and Nakal's funds. The special master, however, did not find that respondent's misappropriation was "knowing." In reaching that conclusion, the special master found Dr. Jacoby's testimony "compelling with regard to [r]espondent's ignorance [of] proper procedures and his unwillingness to seek advice and help from practicing attorneys." Similarly, the special master found that "[r]espondent's ignorance of the RPCs" satisfied him that "[r]espondent lacked the necessary mens rea to have violated" RPC 8.4(c). The special master,

however, found that respondent failed to promptly turn over SOCC's $8,476.36 in escrow funds, in violation of RPC 1.15(b).

The special master recommended that respondent remain temporarily suspended until he (1) successfully completes an OAE-approved trust and business accounting course; (2) an OAE-approved psychiatrist "certifies" respondent as competent to practice law; and (3) "[u]pon completion of the [foregoing] conditions," respondent must practice law under the supervision of an OAE-approved "practicing attorney" "until further Order of the Court."

At oral argument and in its April 26, 2022 brief to us, the OAE urged us to find that respondent had knowingly misappropriated SOCC's escrow funds and to recommend to the Court that respondent be disbarred.[10]

The OAE emphasized that, on March 9, 2017, the day after respondent deposited SOCC's $8,476.36 in insurance proceeds in his ATA, he withdrew $500 from his ATA, purportedly via cashier's check, to give to Everett, despite knowing that "almost every penny" in his ATA belonged to SOCC. The OAE urged us to reject respondent's claim that SOCC's law firm's paralegal had authorized him to issue $500 to Everett as reimbursement for a garnishment. The OAE emphasized that the paralegal credibly had testified that she never

[10] The OAE, however, made no attempt to argue whether there was clear and convincing evidence that respondent had knowingly misappropriated Choice's or Nakal's funds.

would have authorized respondent to disburse SOCC's funds because, as a paralegal, she had no authority to do so. Moreover, the OAE highlighted the fact that, during SOCC's settlement negotiations with respondent, SOCC was unwilling to reimburse Everett for the $434.10 that it had garnished.

The OAE also asserted that, on March 13, 2017, respondent had no authority from SOCC to withdraw $7,900 of its funds from his ATA. The OAE argued that, contrary to respondent's claim that he had used those funds to purchase a $7,900 cashier's check made payable SOCC's law firm, in anticipation of settlement, the withdrawal slip for the transaction showed that "at least a portion" of those funds was destined for "Project M Motors," a business entity belonging to a friend of respondent. The OAE further argued that, when respondent withdrew the $7,900, he knew that there was no agreement to settle Everett's medical debt for any amount. Moreover, the OAE emphasized not only that respondent produced no proof that he had issued a cashier's check to SOCC's law firm, but also that respondent's bank had no record of the purported cashier's check.

Additionally, between May 25 and 30, 2018, a few days after SOCC had filed its grievance, the OAE noted that respondent made several cash deposits to his ATA, which increased his ATA balance to just above $8,476.36 and allowed him to issue a cashier's check to SOCC for the entirety of its escrow

funds, including the $500 that respondent claimed he had permission to give to Everett. The OAE argued that, had respondent retained the purported $7,900 cashier's check or had permission to give $500 of SOCC's proceeds to Everett, his cash deposits would have been unnecessary.

The OAE also urged us to reject respondent's defense that his ignorance of the RPCs and the recordkeeping rules had prevented him from knowingly misappropriating SOCC's funds. Relying on In re Skevin, 104 N.J. 476 (1986), and In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. 440 (1986), the OAE asserted that respondent was indefensibly and willfully blind to what was occurring in his ATA. Specifically, the OAE argued that respondent maintained only one account in connection with his practice of law and disregarded his responsibility to monitor ATA funds, which rendered him willfully blind to the risk of misappropriating entrusted client and escrow funds.

Finally, the OAE argued that respondent failed to assert any valid defense to his misconduct.

During oral argument and in his June 10, 2022 brief to us, respondent urged the imposition of the special master's recommended discipline and argued that he did not knowingly misappropriate SOCC's escrow funds. In support of his argument, respondent maintained that Dr. Jacoby's testimony demonstrated that he acted "in a manner that [was] the direct result of a personality disorder."

In that vein, respondent stated that he operated his "new legal practice" in an "unconventional" manner and that he "fell victim to his own inexperience" regarding the use of his ATA.

Respondent also maintained that this case resulted in no "overdrafts, returned checks, drawn checks, cash withdrawals[,] or negative balances attributable to [r]espondent that are characteristic of prima facie knowing misappropriation." Further, although respondent claimed that all "funds alleged to have been invaded were made whole and used for the[ir] intended purpose[,]" he could not explain to us, at oral argument, what he had done with the majority of SOCC's funds. Nevertheless, respondent argued that SOCC's paralegal (1) knew that he had received SOCC's insurance funds, (2) authorized him to deposit its funds in his ATA, and (3) allowed him to disburse $500 of its funds to Everett. In respondent's view, SOCC's paralegal's contrary testimony during the ethics hearing was "speculative, at best," because she could not recall specific interactions with respondent himself, despite her testimony that she would never have authorized respondent to draw from or deposit SOCC's funds. Moreover, although respondent claimed that the special master had found the paralegal's testimony to be "incredible[,]" the special master, in fact, made no such credibility findings regarding the paralegal.

Additionally, contrary to his admission in his stipulation that he violated RPC 1.15(b) by failing to promptly disburse SOCC's insurance funds, respondent, in his brief to us, maintained that he did not violate that Rule because he had notified SOCC's paralegal, in a March 8, 2017 e-mail,[11] that he "was in possession of" SOCC's insurance proceeds. Thereafter, respondent claimed, without any corroborating evidence, that SOCC's attorney had "entered into a separate agreement with full knowledge that [r]espondent was in continuous possession of the funds."

Finally, respondent argued that his actions should not result in his disbarment, given that he was "a young attorney with little to no practical experience" who "had no guidance or mentorship to effectively run a small practice." Respondent also urged, as mitigation, his "unblemished background and accomplishments" and his view that, had he been given the "appropriate educational tools" and guidance, these "unfortunate, yet unintentional, set of events would" likely not have occurred.

On June 27, 2022, respondent submitted a letter to us, apologizing for his counsel's failure to answer our questions, at oral argument, regarding his use of SOCC's funds. In his letter, respondent referenced his testimony before the special master, wherein he maintained that, on March 9, 2017, the day after he

[11] Respondent did not provide his alleged March 8, 2017 e-mail in his brief to us.

had deposited SOCC's two checks totaling $8,476.36, SOCC's paralegal verbally had authorized him to disburse $500 of SOCC's funds to Everett. Moreover, respondent again maintained, incorrectly, that the special master found the paralegal's contrary testimony to be incredible.

Respondent further highlighted other portions of his testimony before the special master, wherein he alleged that, days after his $500 disbursement to Everett, he purchased a $7,900 cashier's check to SOCC, in anticipation of settlement. Although respondent conceded, during the ethics hearing, that those funds were "gone" and that he did not know "what [had] happened to that money[,]" respondent argued to us that "no evidence exists for the alleged misappropriation" because the purported $7,900 cashier's check "was not tendered."

In reply to respondent's June 27, 2022 post-oral argument submission, the OAE submitted an opposition letter, correctly noting that the special master made no credibility findings regarding the paralegal and reiterating its position that the totality of the evidence clearly and convincingly demonstrates that respondent knowingly misappropriated SOCC's funds.

Following our de novo review of the record, we determine that respondent knowingly misappropriated SOCC's escrow funds, in violation of RPC 1.15(a),

RPC 8.4(c), and the principles of Wilson and Hollendonner. Consequently, we recommend to the Court that he be disbarred.

Specifically, on March 8, 2017, respondent, without SOCC's permission, deposited SOCC's $8,476.36 in insurance proceeds in his ATA, which increased his ATA balance from $2.26 to $8,478.62. Although respondent admitted he, thus, knew that "almost every penny" in his ATA belonged to SOCC, on the next day, March 9, 2017, he withdrew $500 from his ATA, purportedly via cashier's check, and disbursed those funds to Everett or someone else, without SOCC's authorization. Thereafter, on March 13, 2017, respondent, without having made any additional deposits in his ATA, withdrew $7,900 from his ATA, again without SOCC's permission, and, based on the notation on the withdrawal slip, disbursed at least a portion of those funds to his friend's business.

Following his improper $500 and $7,900 withdrawals, respondent repeatedly invaded SOCC's $76.36 remaining in his ATA, until May 30, 2018, when he, via a series of just-in-time, almost all cash deposits, replenished his ATA balance to just above $8,476.36 and issued a cashier's check to SOCC for that amount.

Respondent's claims that he had SOCC's law firm's paralegal's permission to issue the $500 to Everett, and that he had used the $7,900 to

purchase a cashier's check payable to SOCC's law firm, are belied by the evidence. Specifically, the totality of the paralegal's testimony, respondent's failure to produce any documentary evidence to support his claims, and the contrary documentary evidence in the record, clearly and convincingly demonstrate that respondent knowingly and almost immediately misappropriated SOCC's escrow funds, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner.

We further find that respondent violated RPC 1.15(b) by failing, for more than fourteen months, to provide SOCC with its $8,476.36 in insurance proceeds. Although respondent claimed that SOCC's paralegal had authorized him to deposit its funds in his ATA and that SOCC was fully aware that he held its funds, respondent failed to support his theories with any documentary evidence. Rather, SOCC's paralegal's testimony credibly established that she would never have authorized respondent to deposit SOCC's funds in his ATA. Indeed, respondent had no right to intercept and deposit SOCC's insurance proceeds, which were made payable directly to SOCC as reimbursement for Everett's medical treatment. Respondent's prolonged failure to provide SOCC with its insurance proceeds, to which neither he nor Everett had a reasonable claim of entitlement, thus, violated his obligation to promptly deliver those funds to SOCC.

Moreover, respondent committed negligent misappropriation, in violation of RPC 1.15(a), based on his admission in his stipulation that, between May 23 and 30, 2018, he had invaded Choice's and Nakal's respective $2,500 and $6,000 real estate deposits. Specifically, during that timeframe, respondent reduced his ATA balance to $0.91 and $44.55, when, as he stipulated, "he should have been holding" $2,500 for Choice and $6,000 for Nakal. However, as the OAE conceded during its closing argument, it failed to present any evidence that respondent had knowingly misappropriated those client funds. Indeed, the OAE's brief and oral arguments to us made no attempt to support that claim. Consequently, we determine to find only that respondent negligently misappropriated client funds in the Choice and Nakal matters.

In sum, we find that respondent violated the principles of Wilson and Hollendonner; RPC 1.15(a); RPC 1.15(b); and RPC 8.4(c) in connection with SOCC's escrow funds. We further determine that respondent negligently misappropriated Choice and Nakal's client funds, in violation of RPC 1.15(a). There remains for determination the appropriate quantum of discipline to impose on respondent for his misconduct.

The crux of respondent's misconduct was his knowing misappropriation of SOCC's escrow funds. In New Jersey, "[d]isbarment is mandated for the knowing misappropriation of clients' funds." In re Orlando, 104 N.J. 344, 350

(1986) (citing In re Wilson, 81 N.J. 451, 456 (1979)). 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).]

More than forty years after Wilson, the Court re-affirmed its "bright-line rule [. . . .] that knowing misappropriation will lead to disbarment." In re Wade, 250 N.J. 581 (2022). In Wade, the Court observed that "[w]hen clients place money in an attorney's hands, they have the right to expect the funds will not be used intentionally for an unauthorized purpose. If they are, clients can confidently expect that disbarment will follow." Id. at 39.

The Wilson rule also applies to other funds that the attorney is to hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21 (1985). 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 [. . .] ." Hollendonner, 102 N.J. at 28-29.

As we opined in In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017):

> [c]lient funds are held by an attorney on behalf, or for the benefit, of a client. Escrow funds are funds held by an attorney in which a third party has an interest. Escrow funds include, for example, real estate deposits (in which both the buyer and the seller have an interest) and personal injury action settlement proceeds that are

> to be disbursed in payment of bills owed by the client to medical providers.
>
> [Id. at 21.]

The Court agreed. In re Leiner, 232 N.J. 35 (2018).

Regardless of whether the funds in question are held on behalf of a client or a third party, there must be clear and convincing proof of an attorney's knowing misappropriation to apply the ultimate sanction of disbarment. "The burden of proof in proceedings seeking discipline [. . .] is on the presenter. The burden of going forward regarding defenses [. . .] relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

As the Court stated in In re Konopka, 126 N.J. 225 (1991):

> [w]e insist, in every Wilson case, on clear and convincing proof that the attorney knew he or she was misappropriating. [. . .] If all we have is proof from the records or elsewhere that trust funds were invaded without proof that the lawyer intended it, knew it, and did it, there will be no disbarment, no matter how strong the suspicions are that flow from that proof.
>
> [Id. at 234.]

The clear and convincing standard was described in In re James, 112 N.J. 580 (1988), as:

> [t]hat which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable

> [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."
>
> [Id. at 585.]

To be sure, proving a state of mind, in the absence of an outright admission, may pose difficulties. However, "an inculpatory statement is not an indispensable ingredient of proof of knowledge [. . . .] [C]ircumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that clients' funds were being invaded." In re Johnson, 105 N.J. 249, 258 (1987).

In this case, we determine that the OAE proved, by clear and convincing evidence, that respondent knowingly misappropriated SOCC's escrow funds. Respondent's $500 and $7,900 ATA withdrawals alone clearly and convincingly establish that he knowingly misappropriated at least $8,400 of SOCC's escrow funds. Respondent admitted that, when he deposited SOCC's funds in March 2017, he knew that "almost every penny" in his ATA belonged to SOCC. Nevertheless, within days of that improper ATA deposit, respondent knowingly withdrew all but $76.36 of SOCC's funds for unauthorized purposes, in violation of the principles of Wilson and Hollendonner.

Following respondent's $500 and $7,900 withdrawals, he continued to invade SOCC's remaining $76.36 in escrow funds, for more than one year, as evidenced by his ATA statements demonstrating that his ATA balance had routinely fallen below $76.36.

On May 22, 2018, more than fourteen months after respondent had intercepted and misappropriated SOCC's insurance funds, SOCC filed a grievance alleging that respondent had deposited its funds in his ATA. SOCC's grievance was preceded by a conversation respondent claimed that he had with SOCC's law firm, who threatened to file the grievance unless respondent remitted SOCC's funds. Respondent also received a voicemail from an SOCC employee, who accused respondent of "stealing" SOCC's insurance funds. The voicemail prompted respondent to advise Everett to resolve the garnishment dispute "on the back end."

Thereafter, between May 25 and 30, 2018, respondent made a series of mostly cash deposits, the purpose of which was not reflected in the deposit slips, which increased his ATA balance from $0.91 to $8,520.91. The deposits were made just in time to allow him to issue an $8,476.36 cashier's check to SOCC, representing the belated payment of the entirety of its escrow funds. Although respondent argued that his poor recordkeeping practices and ignorance of the RPCs and trust account management had prevented him from knowingly misappropriating SOCC's funds, his just-in-time replenishment of SOCC's funds just days after SOCC had filed its grievance, and just prior to his issuance of the May 30, 2018 cashier's check to SOCC, demonstrates that he knew exactly what was happening in his ATA.

One of the most commonly asserted defenses to knowing misappropriation is shoddy recordkeeping. Attorneys charged with the intentional invasion of entrusted funds frequently allege that their failure to properly maintain their trust account records prevented them from knowing that they were using entrusted funds for the benefit of themselves or another. They also often allege that their failure to promptly remove earned legal fees from their trust account (commingling), coupled with their failure to reconcile their trust account records, led them to believe that they had sufficient personal funds of their own in the account to cover personal withdrawals. Because the line between knowing misappropriation and negligent misappropriation is a thin one and because of the grave consequences that befall attorneys found guilty of the former, the standard of proof – clear and convincing evidence – must be fully satisfied.

For instance, in In re Fleischer, In re Shultz, and In re Schwimer, 102 N.J. 440 (1986), the attorneys commingled personal and trust funds and, ultimately, invaded clients' funds by exceeding the disbursements against their funds. The Court rejected the attorneys' defense that poor accounting procedures prevented them from knowing the amount of their own funds in the trust account:

> It is no defense for lawyers to design an accounting system that prevents them from knowing whether they are using clients' trust funds. Lawyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds.

[Id. at 447.]

Finding overwhelming evidence that the attorneys had knowingly misappropriated clients' funds, the Court ordered their disbarment.

Six months later, the Court decided In re Skevin, 104 N.J. 476 (1986). In Skevin, the attorney was out of trust in amounts ranging from $12,000 to $133,000. The attorney admitted the shortages but pointed out that he had deposited $1 million of his own funds in the trust account to cover personal withdrawals. The Court found that, because the attorney did not maintain an accounting or running balance of his personal funds in the account, each time he made withdrawals for himself and for clients before the receipt of corresponding settlement funds, there was a "realistic likelihood of invading the accounts of another client since [the attorney] had no way of knowing what the balances were." Id. at 485. The Court, thus, equated "willful blindness" to knowledge:

> The concept arises in a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist. Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases [citations omitted].
>
> [Id. at 486.]

The attorney was disbarred. Skevin is considered the seminal willful blindness case.

Another willful blindness decision is applicable to the facts of the instant matter. In In re Pomerantz, 155 N.J. 122 (1998), the Court found that the attorney "had used her client's funds for her own purposes without authorization." Id. at 133. The Court explained:

> Her juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. [The attorney's] behavior demonstrates that she was aware of shortfalls in her accounts. For example, [the attorney] paid D'Esposito from the trust account rather than the business account when the business account did not contain enough money to cover the amount due D'Esposito. We have previously observed that when an attorney makes a loan to a deficient trust account, it indicates that the attorney may be "personally aware on that date that his handling of the trust account had produced the deficit result."
>
> [Ibid.]

Further, the Court noted that, even though Pomerantz "may not have intended to permanently deprive [the client] of her money," and that she "intended to replace the funds," her intentions were irrelevant, citing In re Irizarry, 141 N.J. 189, 192 (1995), and Noonan, 102 N.J. at 160. Id. at 134. As a corollary, the Court rejected the importance of the claimed ability to make restitution, noting that the restitution funds may fail to materialize. Id. at 134-35.

The attorney's defenses constituted willful blindness, in the Court's eyes, because knowledge that the invasion of client funds is likely as a result of an attorney's conduct constitutes "a state of mind consistent with the definition of

knowledge in our statute law." Ibid. In other words, even if the Court had accepted Pomerantz's contentions that "she was unaware that she was out-of-trust, her 'willful blindness' satisfie[d the Court] that she knowingly misappropriated client funds." Ibid.

More recently, in In re Anderson, 248 N.J. 576 (2021), the Court disbarred an attorney who began knowingly misappropriating her client's funds, the sole purpose of which was to be used for child support payments, almost as soon as she received her client's final deposit. In the Matter of Rosemarie Anderson, DRB20-285 (July 26, 2021) at 42-43, 54. We found that, despite the attorney's purported ignorance of what was happening in her attorney accounts, she was "quite adept" at tracking and moving funds. Id. at 50-51. Specifically, the attorney managed to understand her account balances enough to transfer funds, from whichever account(s) necessary, to make timely payments of other monthly obligations, including her mortgage and office rent. Id. at 53. In that vein, the attorney engaged in "lapping," that is, using one party's funds to pay trust obligations owed to another party. Id. at 43 (citing In re Brown, 102 N.J. 512, 515 (1986)). To "keep her financial ship afloat," the attorney made either just-in-time deposits or transfers of funds back to her trust or business accounts to cover trust account shortages, negative client balances, and other obligations as they became due. Id. at 43, 53.

Like the disbarred attorney in Anderson, respondent's purported ignorance of what was occurring in his ATA is belied by his just-in-time replenishment of SOCC's entire $8,476.36 in escrow funds. Specifically, between May 25 and 30, 2018, just days after SOCC had filed its grievance, respondent made a series of mostly cash ATA deposits, which increased his ATA balance from $0.91 to $8,520.91, just above the amount needed to cover SOCC's escrow funds and just in time to issue a May 30, 2018 $8,476.36 cashier's check to SOCC. Although respondent appears to have designed a substantially cash-based accounting system that concealed the true purpose of many of his transactions, respondent's just-in-time cash deposits demonstrate that he was aware of the shortfalls in his account and had replenished SOCC's funds just in time to fulfill his obligation.

Additionally, despite respondent's purported ignorance of his ethical obligations, the Court has consistently held that ignorance of the law is no excuse for an attorney's failure to abide by the RPCs. See In re Berkowitz, 136 N.J. 134, 147 (1994) ("Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct"), and In re Goldstein, 116 N.J. 1, 5 (1989) (holding that "[i]gnorance of ethics rules and case law does not diminish responsibility for an ethics violation") (citations omitted). Moreover, the Court

has repeatedly held that "'[i]nexperience' or an 'outstanding career' also 'seem[] less important' when 'misappropriation is involved.'" Wade, 250 N.J. at 596-97 (second alteration in original) (quoting Wilson, 81 N.J. at 459-60). Consequently, the Court has found that "the 'offense against common honesty should be clear even to the youngest[.]'" Id. at 32-33 (citation omitted). We, thus, cannot excuse respondent's misconduct because of his youth, inexperience, or unfamiliarity with the RPCs.

Finally, Dr. Jacoby's medical testimony failed to establish any meritorious defense to respondent's misconduct. It is well-settled that mental illness serves as a defense only where the illness reduces the mental state of the attorney beyond that required to establish the charged violations of the Rules of Professional Conduct. The Court has explained that such a defense is not established where, as here, an attorney does not:

> furnish any basis grounded in firmly established medical facts for a legal excuse or justification for respondent's [misconduct]. There has been no demonstration by competent medical proofs that respondent suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful.
>
> [In re Jacob, 95 N.J. 132, 137 (1984).]

Further, neither respondent nor Dr. Jacoby asserted that respondent was afflicted by "[a] mental illness that impair[ed] the mind and deprive[d] [him] of the ability

to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong." In re Cozzarelli, 225 N.J. 16, 31 (2016). To the contrary, Dr. Jacoby's testimony merely described respondent's struggles with "narcissistic personality traits[.]" In that vein, respondent's counsel himself conceded, during his closing argument before the special master, that Dr. Jacoby's testimony failed to establish any valid medical defense. Although respondent argued, in his brief to us, that his actions were attributable to his "personality disorder[,]" that disorder did not deprive him of the ability to act knowingly or to distinguish between right and wrong. Thus, respondent's narcissistic personality traits fail to establish a valid medical defense.

In short, the record clearly and convincingly establishes that respondent knowingly and almost immediately misappropriated virtually all of SOCC's escrow funds. Respondent's claims that he had valid permission to disburse $500 of SOCC's funds to Everett, or that he had used $7,900 of SOCC's funds to purchase a March 2017 cashier's check for SOCC's law firm, are contradicted by (1) respondent's ATA records, which failed to corroborate respondent's theories; (2) the contemporaneous withdrawal slips, which showed that at least a portion of SOCC's $7,900 was destined for his friend's automotive business; (3) the settlement correspondence, which demonstrated that SOCC never

authorized respondent to disburse $500 of its funds to Everett as reimbursement for a prior garnishment; (4) SOCC's counsel's paralegal's testimony, who credibly stated that she never would have authorized respondent to deposit or use SOCC's funds; and (5) respondent himself, who offered conflicting theories regarding whether SOCC had authorized a reimbursement of its prior garnishment.

Moreover, respondent's purported ignorance of what was occurring in his ATA is belied by his May 2018 just-in-time cash deposits, which replenished SOCC's funds just days after SOCC had filed its grievance and immediately before respondent had issued the repayment check. However, the subsequent replacement of escrow funds will not save respondent from the Wilson disbarment rule. See In re Blumenstyk, 152 N.J. 158 (1997) (attorney disbarred for knowingly misappropriating funds; he received $65,000 from a buyer as a deposit for a real estate deal and took $10,000 and $5,412.55 from the escrow funds, without the authorization of the owner of the funds; his defense, that he had made restitution, was rejected).

Accordingly, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for respondent's additional ethics violations.

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 Edwyn D. Macelus
Docket No. DRB 22-038

Argued: June 16, 2022

Decided: September 12, 2022

Disposition: Disbar

Members	Disbar
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Singer	X
Total:	9

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