Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-116
District Docket Nos. XIV-2017-0257E
and XIV-2017-0302E

In the Matter of

Tomas Espinosa

An Attorney at Law

Decision

Argued: September 21, 2023

Decided: October 31, 2023

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a two-year suspension filed by a special ethics master. 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), and In re Hollendonner, 102 N.J. 21 (1985) (knowingly misappropriating client and/or escrow funds); RPC 1.2(a) (failing to abide by the client's decisions concerning the scope and objectives of the representation); RPC 1.4(a) (failing to fully inform a prospective client of how, when, and where the client may communicate with the lawyer); RPC 1.4(b) (two instances – failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 1.5(a) (engaging in fee overreaching, in violation of the principles of In re Quinn, 25 N.J. 284 (1957)); RPC 1.5(a) (charging an unreasonable fee for paraprofessional support); RPC 1.5(c) (failing to set forth in writing whether expenses would be deducted before or after the contingent fee is calculated); RPC 1.7(a)(2) and (b) (four instances – engaging in a concurrent conflict of interest); RPC 1.8(a) (engaging in an improper business transaction with a client); RPC 1.8(f) (accepting compensation for representing a client from a source other than the client without the client's informed consent); RPC 1.9(a) (engaging in a conflict of interest with a former client); RPC 1.9(c)(1) (using information relating to a former representation to the disadvantage of the former client); RPC 1.15(a) (negligently misappropriating client funds); RPC 1.15(d) (failing to comply with the

recordkeeping provisions of R. 1:21-6); RPC 1.16(a)(1) (failing to withdraw from a representation if it will result in a violation of the Rules of Professional Conduct or other law); RPC 1.16(d) (two instances – failing to refund an unearned portion of the fee upon termination of representation); RPC 3.1 (engaging in frivolous litigation); RPC 5.3(a) and (b) (failing to supervise nonlawyer staff); RPC 5.4(a) (fee sharing with a nonlawyer); RPC 5.4(c) (two instances – permitting a person who recommends, employs, or pays the attorney to render legal services for another to direct or regulate the attorney's professional judgment in rendering legal services); RPC 5.5(a)(1) (engaging in the unauthorized practice of law); RPC 7.1(a) (making a false or misleading communication about the lawyer or the lawyer's services); RPC 7.2(c) (a lawyer shall not give anything of value to a person for recommending the lawyer's services); RPC 7.3(d) (a lawyer shall not compensate or give anything of value to a person or organization for recommending or securing the lawyer's services); RPC 8.1(a) (two instances – knowingly make a false statement of material fact in a disciplinary matter); RPC 8.4(a) (three instances – violating or attempting to violate the Rules of Professional Conduct); RPC 8.4(b) (two instances – committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); RPC 8.4(c) (four instances – engaging in conduct involving dishonesty, fraud, deceit, or

misrepresentation); and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).

Although we unanimously determine that respondent violated the Rules of Professional Conduct, we are unable to reach a consensus among the six participating Members regarding whether respondent knowingly misappropriated client funds and, thus, could not agree on the appropriate quantum of discipline.

As set forth below, three Members found that respondent knowingly misappropriated client funds and, therefore, voted to recommend to the Court that he be disbarred. The remaining three Members concluded, given the unique facts of the case, that the OAE had not established, by clear and convincing evidence, respondent's knowing misappropriation of client funds. For the totality of his misconduct, these Members voted to impose a three-year suspension.

Respondent earned admission to both the New Jersey bar and the New York bar in 1985. During the relevant time, he maintained a practice of law in North Bergen, New Jersey. He has no prior discipline.

The OAE's seven-count complaint, charging more than forty violations of the Rules of Professional Conduct, alleged that respondent engaged in myriad misconduct stemming from his representation of a group of ninety-nine

plaintiffs across two federal lawsuits asserting theories of civil liability pursuant to the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962, in connection with purported unlawful foreclosure actions.

We now turn to the facts underpinning each count of the OAE's complaint.

Terms of Respondent's Representation in the RICO Lawsuits (Count One)

In 2012, Tyson Taylor[1] sought legal representation on behalf of himself and a group of individuals who were facing residential mortgage foreclosure. Taylor, who was the managing partner and owner of Hopkins, Cornell & Associates (HCA) at the time he met respondent, had experience assisting borrowers with loan modifications.[2] According to Taylor, HCA was a consulting company, formed in 2008, in the business of arranging and facilitating loan modifications.[3] A mutual friend, Linda Zimmerman, introduced him to respondent.

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[1] Tyson Taylor is also known as Thai Christie. To avoid confusion, he is referred to as Taylor throughout this memorandum, unless the distinction is otherwise relevant.

[2] Over the course of his business career, Taylor worked in the financial services sector, including as a mortgage broker. After the 2008 financial crisis, his business was "drying up" and, thus, in 2010, he contacted Bank of America seeking a loan modification of his own mortgage, which was denied because, at the time, he was employed by that very financial institution. That experience pushed Taylor to conduct research into the mortgage industry following the financial crisis which, ultimately, led him to respondent.

[3] According to publicly available documents on Virginia's State Corporation Commission website, on April 13, 2012, American Elite Financial Planners LLC registered to do business as "Hopkins, Cornell & Associates," for the purpose of "real estate investment." The trade

(footnote cont'd on next page)

Taylor, who is not a lawyer, discussed his concerns with respondent and informed him he wanted to pursue a lawsuit against the trustees of residential, mortgage-backed securities trusts, on a theory that the trustees never acquired ownership of the mortgage loans and, thus, lacked standing to foreclose against borrowers in default. Respondent agreed to pursue the lawsuit.

Respondent and Taylor agreed that the litigation was best pursued on behalf of multiple plaintiffs, to allow for the pooling of resources. Taylor, who had a network of "friends and family" whose residential mortgages were in default or facing foreclosure, agreed to act as a "liaison" between respondent and the clients that he recruited for the potential litigation. Initially, they agreed that twenty-five plaintiffs would be sufficient to generate the funds required to support the litigation.

On August 1, 2012, following two meetings with Taylor, respondent entered into a "Service Agreement" with HCA,[4] whereby HCA agreed to provide

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name filing was submitted and signed by Thai Christie (a.k.a. Taylor), as Managing Partner of American Elite Financial Planners. American Elite was registered as an LLC in 2009 by Taylor, as "member or manager." Effective December 7, 2017, American Elite was issued a certificate of cancellation at Taylor's request. Although this publicly available information was not included in the record, PEx26, which is the civil fraud complaint filed against respondent, HCA, and others, identified HCA as "American Elite Financial Planners, LLC d/b/a Hopkins, Cornell and Associates (HCA)."

[4] Taylor testified that the Service Agreement was jointly drafted by HCA and respondent.

respondent with "litigation support services." Taylor signed the Service Agreement as the managing partner of HCA.

The Service Agreement, along with its single-page attachment, described the services that HCA would provide to respondent, including the identification and organization of plaintiffs for their contemplated litigation. In relevant part, the Service Agreement stated:

> WHEREAS: [Respondent] is a law firm based in New Jersey that supports homeowners throughout the United States in defense of mortgage foreclosure. [Respondent] is actively pursuing legal actions in accordance to [sic] the objectives of plaintiff members and thus it is in need of litigation support services including but not limited to document retrieval, information gathering, and coordination with paralegals associated with [respondent's] legal strategies in connection with such litigation; and
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> WHEREAS: HCA has the ability and is ready, willing, and able to provide the litigation support services set forth above to [respondent];
>
> WHEREAS: **HCA has identified plaintiff members for a RICO suit for the purpose of providing litigation support to [respondent] who is retained by the members**
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> NOW THEN THE PARTIES HEREBY AGREE AS FOLLOWS:
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> …
>
> 4. … It is understood that the viability of this litigation depends on the number of members kept at 25 members

> or more. HCA will use all of its efforts to keep this level or increase it.
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> [PEx12.] (emphasis added).[5]

The single-page attachment to the Service Agreement, titled "EXHIBIT A Litigation Service Request," further delineated the services HCA was expected to provide to respondent and included the identification of plaintiffs as one of HCA's responsibilities:

> 1. HCA agreed to assist [respondent] by identifying and organizing Plaintiff members for the RICO and/or any other cause of action in which the members are found by the attorney(s). The initial objective is to have at least 25 Plaintiff members in the RICO lawsuit.
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> [PEx12.]

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[5] "1T" refers to the transcript of the January 14, 2020 ethics hearing.
"2T" refers to the transcript of the January 15, 2020 ethics hearing.
"3T" refers to the transcript of the January 22, 2020 ethics hearing.
"4T" refers to the transcript of the January 23, 2020 ethics hearing.
"5T" refers to the transcript of the January 28, 2020 ethics hearing.
"6T" refers to the transcript of the January 29, 2020 ethics hearing.
"8T" refers to the transcript of the February 26, 2020 ethics hearing.
"13T" refers to the transcript of the March 2, 2021 ethics hearing.
"19T" refers to the transcript of the March 17, 2021 ethics hearing.
"21T" refers to the transcript of the April 15, 2021 ethics hearing.
"PEx" refers to the OAE's exhibits entered into evidence during the ethics hearing.
"REx" refers to respondent's exhibits entered into evidence during the ethics hearing.
"RS" refers to respondent's July 2, 2021 written summation.
"OAES" refers to the OAE's July 23, 2021 written summation.
"SMR" refers to the April 19, 2022 report of the special master.
"Rb" refers to respondent's July 24, 2023 submission to the Board.

Additionally, HCA agreed to serve as the "liaison" between respondent and the "Plaintiff members," to "obtain necessary information and documents," and "to collect inquiries of the Plaintiff members to relay them to [respondent]

The Service Agreement also authorized HCA, as liaison, to collect "monthly payments from Plaintiff members and to deposit the same in a special trust account as directed by [respondent]," after deducting HCA's "intake fee, monthly service fee and expenses prior to making deposit into the trust account."

Respondent agreed, pursuant to the Service Agreement, that HCA would collect a $1,500 "intake fee per Plaintiff member that HCA brought into the RICO and false claims lawsuit." On November 5, 2013, this provision was amended, retroactive to August 1, 2012, to permit HCA to "determine the amount of intake fee per Plaintiff member."

Further, pursuant to the Service Agreement, respondent agreed to pay HCA $40 per month "for each RICO Plaintiff during the duration of the lawsuit," with the payment being made "only from the funds deposited by the plaintiff(s) members in the special escrow account and [respondent] shall not be obligated for any sums not covered by the deposit."

Thus, pursuant to the Service Agreement, HCA was receiving the entire intake fee (which later would increase to $3,600 per home), a $40 monthly service fee, and expenses.

On November 5, 2013, respondent and HCA entered into an amended Service Agreement to pay HCA a "success fee upon successful conclusion of the lawsuit," in the amount of one-third (33.33%) of respondent's "earning proceeds" in each case. Further, the amendment authorized HCA to manage and devise a compensation plan for third parties' supporting services, stating:

> HCA will directly oversee and manage third parties' supporting services for the lawsuit. HCA will also [be] responsible for negotiation and devise compensation plan for third parties' supporting services.
>
> [PEx21.]

The amendment also clarified that respondent's "earning proceeds" would be calculated by subtracting the "third party referral service fee" from his total earnings.

<u>Respondent's Retainer Agreements With Clients</u>

From August 3, 2012 through November 12, 2013, respondent entered into retainer agreements (the Retainer Agreement) with thirty-three clients, including Taylor,[6] which clients had been recruited by Taylor.[7] These (and

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[6] Taylor's residential property was owned by his company, Sequoia Holdings LLC. Both were named in the Retainer Agreement, and both became plaintiffs in the litigation.

[7] Respondent repeatedly objected to identifying this document as a "retainer agreement," insisting it was an "agreement for services" or "contingency agreement."

other) clients would become the plaintiffs in the first federal lawsuit, which respondent filed on January 25, 2013 in the United States District Court for the Southern District of New York, captioned Tran, et al. v. Bank of New York, et al., Civil Action No. 13-cv-580 (the RICO I litigation).[8] Additional plaintiffs were added to the RICO I litigation, for a total of thirty-nine plaintiffs (thirty-eight individuals and one limited liability company).

The RICO I litigation was not successful. On March 26, 2014, the District Court granted the defendants' joint motion to dismiss the complaint for lack of standing. Tran v. Bank of New York, 2014 U.S. Dist. LEXIS 40261 (March 24, 2014). Specifically, the District Court held that the plaintiffs, who admittedly were not parties or beneficiaries to the PSAs, lacked standing to assert noncompliance with the PSA as a claim or defense. In fact, the District Court emphasized that the law was well-settled in this respect, though the Second Circuit had not yet ruled directly on the issue:

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[8] The theory underpinning the lawsuit was as follows: The defendants were trustees of residential mortgage-backed securities trusts created under New York law for the purpose of pooling mortgage loans and issuing residential mortgage-backed securities to investors. Also named as defendants were the trusts in which plaintiffs' mortgages were held. Each trust was formed pursuant to a pooling service agreement (PSA), which is a contract that governs the trust. The parties to a PSA include a depositor, who conveys the loans to the trustee in exchange for certificates; the trustee, who owns and holds the mortgage loans in trust for investors; and a servicer, who performs administrative tasks, such as monthly payment collection and foreclosure. The plaintiffs, who were not parties to the PSAs, alleged that each defendant breached the PSAs and such breach prevented the trustee defendants from acquiring ownership of the plaintiffs' mortgage loans. The plaintiffs further alleged that, because the defendants did not own the mortgage loans, they lacked standing to enforce the loans against the plaintiffs.

> Though the Second Circuit has not ruled directly on this issue, district courts in this Circuit and elsewhere have generally held that "a nonparty to a PSA lacks standing to assert noncompliance with the PSA as a claim or defense unless the non-party is an intended (not merely incidental) third-party beneficiary of the PSA." Rajamin v. Deutsche Bank Nat. Trust Co., 2013 U.S. Dist. LEXIS 45031, (S.D.N.Y. Mar. 28, 2013) (citing, inter alia, Livonia Property Holdings, LLC v. 12840-12976 Farmington Road Holdings, LLC, 717 F. Supp. 2d 724, 736-37 (E.D. Mich. 2010) ("For over a century, state and federal courts around the country have [held] that a litigant who is not a party to an assignment lacks standing to challenge that assignment."), aff'd, 399 F. App'x 97 (6th Cir. 2010)); see also Karamath v. U.S. Bank, N.A., No. 11 Civ. 1557 (RML), 2012 U.S. Dist. LEXIS 135038 (E.D.N.Y. Aug. 29, 2012) (mortgagor "is not a party to the PSA or to the Assignment of Mortgage, and is not a third-party beneficiary or either, and therefore has no standing to challenge the validity of that agreement or the assignment"). These cases have further held that for a party to be considered a third-party beneficiary to a PSA, the intent to render a non-party a third-party beneficiary must be clear from the face of the PSA. Rajamin, 2013 U.S. Dist. LEXIS 45031 (internal citations omitted).
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> [Tran, 2014 U.S. Dist. LEXIS 40261, *14-15.]

On January 30, 2015, the Second Circuit affirmed the dismissal based upon lack of standing and, on November 2, 2015, the Supreme Court of the United States denied respondent's petition for writ of certiorari. Tran v. Bank of New York, 136 S. Ct. 409 (November 2, 2015).

Thereafter, between May 1, 2013 and March 21, 2015, respondent entered into an additional fifty-four Retainer Agreements with clients who would become the plaintiffs in a second federal action. On June 12, 2014, respondent filed a second civil action in the Southern District of New York, captioned Suarez, et al. v. Bank of New York, et al., Civil Action No. 14-cv-4246 (the RICO II litigation).[9] The only material difference between the RICO I and RICO II complaints were the plaintiffs.

On October 19, 2015, the District Court dismissed the RICO II complaint on the same basis that the RICO I complaint had been dismissed. Suarez v. Bank of New York, 2015 U.S. Dist. LEXIS 141817 (S.D. N.Y. October 19, 2015).[10] On July 11, 2017, the Second Circuit affirmed the dismissal. Suarez v. Citibank, 2017 U.S. App. LEXIS 12341 (2d Cir. N.Y. July 11, 2017).

In total, respondent entered into eighty-seven Retainer Agreements, which he drafted, and which were substantially similar to one another. The introductory

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[9] Notably, the RICO II complaint was filed after the dismissal of RICO I, but during the pendency of its appeal.

[10] In dismissing the RICO II matter, the District Court emphasized that the Second Circuit, twice in the past eighteen months, had "ruled that mortgagor-plaintiffs lack[] standing to pursue claims based on alleged breaches of PSAs to which the mortgagor-plaintiffs are neither parties nor intended third-party beneficiaries." Suarez, 2015 U.S. Dist. LEXIS 141817, *9, citing respondent's RICO I case and Rajamin v. Deutsche Bank Nat'l Trust Co., 757 F.3d 79 (2d Cir. 2014). Though charged in the complaint, the OAE dismissed its allegation that respondent engaged in frivolous litigation, in violation of RPC 3.1 and RPC 8.4(d).

paragraph recited the objective of the litigation against the mortgage trusts and, in furtherance of that objective, authorized respondent to:

> obtain support services including but not limited to documents retrieval, information gathering, client coordination, supporting staffs and designated attorneys for the pursuing of the objectives of the group.
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> [PEx13(B).]

To fund the litigation, the Retainer Agreements obligated each client to make three distinct monetary contributions: (1) a one-time “intake fee,” (2) monthly payments of either $500 or $600 per property in foreclosure, toward litigation costs; and (3) a monthly “administrative fee.” Each are discussed below.

The Intake Fee

First, each client was required to pay to HCA a one-time intake fee, in varying amounts ranging from $1,500 to $3,600, intended to “cover for the cost of client acquisition, qualification and document preparation.” Some, but not all, of the Retainer Agreements informed the clients that the intake fee was “not part of the litigation fund” and would not be “deposited in the special trust account.”

Monthly Payments For Expenses (the Litigation Fund)

Next, each client was obligated to make monthly payments of either $500 or $600, per property in foreclosure, which respondent agreed to hold in a "special trust account that is administered by [respondent] for the lawsuit proceeding purpose." (the Litigation Fund). The clients were informed, by virtue of the Retainer Agreement, that HCA would collect and deposit these monthly payments in respondent's RICO ATA.[11]

The Retainer Agreements broadly described the permissible uses of the Litigation Fund, to include "expenses, costs of litigation and engagement of other counsels, and for travels and lodge [sic] expenses, as well as, attorney's fees, including the fees of Tomas Espinosa, Esq." Further, the Retainer Agreement provided that respondent could retain experts and other attorneys, who would be paid from the "monthly aggregate amount paid by the group members."

Additionally, each client acknowledged, via an attachment to the Retainer Agreement titled "Plaintiff Member Obligations Agreement," that their monthly payments would be used for the following costs and expenses:

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[11] Respondent maintained his attorney business account and attorney trust account at TD Bank. On December 6, 2012, respondent opened a second ATA at TD Bank, solely designated for the RICO I and RICO II litigation (the RICO ATA). All monthly payments were deposited into that account, and respondent held no other client funds in the RICO ATA.

> I knowledge and agree that my case(s) has/have expenses to pay, which some of them are: Fee(s) for Court, Stamps, Copies, Legal Research(es), Report(s), Request of Document(s) (e.g.) Medical Report, Worksheet Reports, etc), and that the fees of attorney included but are not limited to traveling, research, meetings interview, investigation, Legal Research, drafting of documents[,] counseling, phone calls, correspondence and waiting time as well as court appearance and arguments and that these expenses and costs shall be paid from the funds deposited in the trust of account of [respondent].
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> [PEx13(B)¶2.][12]

The Retainer Agreement also authorized respondent, in a separate paragraph, to use the funds "for the defense of each case as Thomas Espinosa, Esq. finds fit."

At least four of his earlier agreements with the RICO I clients, including Taylor, permitted respondent to deduct up to $1,600 per month from the Litigation Fund "to deal with correspondences, organize the files, answer the phone calls" and "perform ancillary tasks in reference to the cases." None of the RICO II Retainer Agreements included this language.

Each client acknowledged that the Litigation Fund would be used for the "collective action of the clients" and that each client authorized the use of their funds toward other client's or groups of client's cases. In the event a client

[12] Though the paragraph numbering varied among the clients, each Retainer Agreement contained identical or substantially similar language.

missed one monthly payment, respondent could, in his discretion, terminate the representation and that client would "forfeit any and all sums he had paid under [the] agreement."

On the other hand, if too many clients were terminated from the litigation, the remaining clients agreed that they would cover any delinquency by sharing equally in the litigation through increased monthly payments.

The Administrative Fee

The Retainer Agreements also permitted respondent to charge each client $80 per month as an "administrative fee," which would be deducted from the client's monthly payment. Specifically, each Agreement contained the following language (although the paragraphs were numbered differently in the various versions):

> It is also understood that the monthly administrative fee for each group member during the duration of the lawsuit is $80 per month. The administrative fee will be deducted from the litigation trust account of [respondent].
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> [PEx13(A)¶5;PEx13(D)¶5.1;PEx14(A)¶6;PEx14(B)¶.]

The Retainer Agreements did not disclose the purpose of the $80 administrative fee, or the fact that respondent shared half of it ($40) with HCA, per the terms of his separate Service Agreement with HCA.

HCA (Taylor) Named Liaison Between Clients and Respondent

The Retainer Agreement informed each client that HCA would assist with the collection of monthly payments and communication, as necessary.

> It is understood that [HCA] will assist with the monthly payment collection from group. There shall be a special trust account of Tomas Espinosa, Esq. that is designated as the trust account for the case from which all monthly payments are deposited.
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> [PEx13(B)¶5.1.]

Further, it named HCA as "the liaison between the clients and [respondent] where HCA's assistance is necessary," stating:

> HCA is responsible for obtaining information and documents necessary for the process of the cases, and to collect the inquiries of the client to relay them to [respondent], although both the clients and [respondent] or [respondent's] staff can have direct consultation/communication with one another.
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> [PEx13(B)¶8;PEx13(D)¶5.2; PEx14(A)¶9.]

Importantly, the Retainer Agreements required each client to acknowledge and agree that respondent "is the only one who is in charge of my case and if I have any question, I should address it to him through the liaison." Similarly, each client was required to acknowledge that respondent would "never … negotiate my case without my consent or authorization."

None of the Retainer Agreements expressly granted HCA or Taylor powers of attorney, proxy to speak on behalf of the other clients, or fiduciary

responsibilities. In fact, respondent acknowledged, in his October 26, 2015 e-mail to Taylor, that Taylor did not have powers of attorney on behalf of the other clients and, therefore, respondent would not disburse the remaining funds in his RICO ATA to Taylor.

> [M]y obligations on the funds were entered in individual retainers signed by me and each member for the[ir] participation with the other members as a group in the litigation of their claims. The agreement contemplates you as the liaison between the members and me **not as their attorney in fact**.
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> [PEx118.] (emphasis added).

Respondent's Legal Fees

Respondent's entitlement to legal fees was contingent on a successful resolution of the lawsuit, although the percentage varied. The majority of the Retainer Agreements provided for a contingent fee of thirty-three and one-third percent of any "judgment and/or settlement granted in the case," however, some of the Agreements, including Taylor's, provided for a fifteen-percent contingent fee of any recovery and at least one agreement (Hoang) provided for a thirty-five-percent contingent fee.

Most, but not all, of the Retainer Agreements in the RICO I litigation provided that the contingent fee would be based on the "the amount of any net settlement and/or judgment." (emphasis added). All the agreements in the RICO

II litigation, and some of the agreements in the RICO I litigation, provided that the contingent fee would be based on "the amount of any judgment and/or settlement" awarded in the case.

Over the course of his representation, respondent collected $601,560 in monthly payments from the RICO I and RICO II plaintiffs, which funds were deposited in his RICO ATA which he opened for the purpose of establishing the Litigation Fund.

Between December 2012, when he opened the RICO ATA, and July 2017, when the account was depleted of all funds, respondent made the following disbursements to himself, Taylor (through HCA), and his paralegal and office manager, Veronica Espinosa, who also is his wife:

- **Respondent** **$65,479.91**
  - *$14,118.45 - computer system*
  - *$8,450.21 – invoiced expenses*
  - *$1,499.90 – Declaratory Judgment action (fees/costs)*
  - *$41,411.35 - $40 per client per month in administrative fees*
- **HCA** **$169,014.73**[13]
  - *Litigation support and reimbursements*
- **Veronica Espinosa** **$49,600**
  - *paralegal support*

[13] The amount respondent paid to HCA was exclusive of HCA's intake fees and the $40 monthly administrative fee Taylor collected from each client. HCA collected $56,760 in monthly administrative fees, which he deducted from each client's monthly payment, prior to depositing the balance in respondent's dedicated RICO ATA. The record is silent with respect to the amount HCA collected in intake fees, and the OAE confirmed that it did not do a full financial analysis of Taylor's or HCA's accounts.

The remainder of the clients' funds were disbursed by respondent to pay for experts and miscellaneous expenses ($48,300.36) and IOLTA interest ($2,882.05). According to his January 12, 2015 invoice, the expenses he incurred in the RICO I matter included purchases of copier paper ($228), toner ($150), and included multiple charges for repairs to his office copier machine. ($400; $75; $65; and $400). Further, in both matters, respondent expensed photocopies at .20 per page, including the cost to printout the research performed by Taylor. Respondent also reimbursed himself for his $216 admission fee to the Second Circuit Court of Appeals.

Following the plaintiffs' termination of respondent as their attorney, he turned over $234,143.38 in client funds to Taylor, who had been granted power of attorney by the remaining clients. Respondent withheld $45,920 from that disbursement, however, which sum was the subject of a legal dispute with some RICO II clients (discussed below). Ultimately, those funds were returned to the clients, following litigation against respondent, Taylor, and others, concerning their handling of the RICO II matter.

Testimony of Respondent and Witnesses Relating to Retainer Agreements

During the investigation, respondent admitted to the OAE that he did not speak with each client prior to executing a Retainer Agreement. During the ethics hearing, however, respondent testified that he spoke to every client before

they retained him. Respondent, however, was unable to identify a single client he spoke with prior to executing a Retainer Agreement, or the date of any such conversation.

Taylor, on the other hand, testified that he provided each putative plaintiff with a copy of a Retainer Agreement for their signature, along with a cover sheet that provided no additional information or contact information for respondent. After he received the signed Retainer Agreement from a client, Taylor provided it to respondent, at which time respondent executed the Agreement on his own behalf.

Taylor testified that he did not go over the Retainer Agreement with each plaintiff unless the client lacked proficiency in English or had specific questions.[14] Several clients (Dwyer, Olsen, Pham) testified that they asked Taylor questions prior to signing their Retainer Agreement; all testified that they had not spoken with respondent prior to signing their agreement. Respondent and Taylor both testified that respondent conducted conference calls with the clients, during which the clients were permitted to ask questions. All the clients testified that respondent did not advise them of conflicts of interests between the different plaintiffs.

[14] Like Taylor, the majority of the clients were of Vietnamese descent.

With respect to his intake fee, Taylor testified that it had been set by HCA and was intended to cover the cost of investigating whether a putative plaintiff met the criteria to be part of the lawsuit. He explained that his preliminary investigation included collecting loan documents, analyzing the loan to ensure it was held by a mortgage trust, and determining the location of that trust. Over time, Taylor increased the intake fee from $1,500 to between $2,000 and $3,600, based on his view that he was performing a significant amount of work on putative plaintiffs who, ultimately, were not qualified to serve as a plaintiff. As he put it, the plaintiff "qualification ratio" was significantly less than he had anticipated.

Regarding the clients' monthly fees, Taylor testified that each client would pay their monthly fee via direct deposit to either an HCA bank account, or a Priority Investment Group[15] bank account. Taylor would then transfer the money to respondent's RICO ATA, less HCA's $40 monthly administrative fee.

Taylor testified that he understood the deposit was being made to a "special trust account" for the litigation fund. Further, Taylor testified that the purpose of the litigation fund "was to pay for everything that was necessary . . . for the suit, except [respondent's] fees that were contingent."

[15] Taylor testified that Priority Investment Group was a "sub-account of HCA."

Taylor testified that his $40 share of the administrative fee was intended to compensate him for assisting respondent with the collection of fees, his liaison function, and to cover any expenses incurred by HCA. He explained that, prior to depositing the clients' monthly payments to respondent's RICO ATA, he deducted his $40 share of the fee.

Respondent admitted that the Retainer Agreement did not disclose his fee sharing arrangement with Taylor.

Taylor also explained that, as liaison, he set up conference calls with the group of plaintiffs and respondent so that the group could ask respondent questions regarding the putative litigation. Additionally, he would gather questions from the clients and present them, via e-mail or telephone call, to respondent. Frequently, he stayed on the conference calls "explaining" to the clients what respondent had just told them.

During the ethics hearing, respondent also described the various fees he collected from the RICO I and RICO II clients. Respondent testified that, although not defined in the Retainer Agreement, his share of the administrative fee ($40) was intended to cover "costs" and "expenses of litigation," including payments to HCA for litigation support services. During his interview with the OAE, he had explained that it was intended to cover "telephone calls, the fact of looking at the file, keeping the file. That – that [was] what the administrative

fee [represented]. … It was not for the expenses of the – of the work." Respondent also claimed that he used the administrative fees "for having the files in place, and for the mere rights of the members cases to occupy for example three cabinets in the respondents files and various shelves with more than 55 [binders] in his file room." Veronica testified that respondent used the administrative fee to pay firm overhead charges, including telephone, cell phones, filing cabinets, and storage costs.

Taylor testified that he was surprised when he reviewed respondent's January 12, 2015 invoice of expenses because he believed that many of the expenses should have been absorbed into his $40 monthly administrative fee. The clients, too, were surprised when they learned respondent was charging an administrative fee and reimbursing himself for expenses that they would have expected to be covered by the administrative fee.

Further, respondent testified that his legal fees were contingent upon the success of the litigation. He admittedly did not discuss with the clients what they could expect to pay in the litigation, or that they could opt to pay an hourly rate for his legal services, stating instead that they could not afford an hourly rate. Respondent also acknowledged that his written fee agreements did not disclose, in most instances, whether his contingent fee would be calculated from the gross or net award. Further, respondent failed to advise the clients in the Retainer

Agreements that, if successful, the RICO cause of action permitted fee shifting[16] and whether the clients would receive a return of any of their monetary contributions to the Litigation Fund.

Respondent acknowledged that Taylor was appointed liaison and that he acted under respondent's direction:

> The OAE: Okay. So, either you're aware of –
>
> RESPONDENT: You – no –
>
> The OAE: what he's doing or you're not aware of what he's doing.
>
> RESPONDENT: No, ma'am. Tyson Taylor was acting on my direction on the matter of the investigation and the corporation and the system they gave me. As a liaison, he was the liaison of the -- of the -- of the clients. And as the liaison the clients that were the one that had contacted him in order for him and I convey my -- my instruction to the clients and my report to the clients through him. Unless as the agreement said, the client decided to get in contact with me directly. Because what it was been look for was a centralized way of minimal communication by which I will not have hundreds of calling to my officer that -- I am one attorney which had at the time Maria Giara (phonetic) is the secretary. My -- my wife as the office administrator and also as the paralegal that would go and do work on a fee basis there.
>
> [PEx35pp20-21.]

[16] 18 U.S.C. § 1964(c) states that a successful plaintiff "shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney's fee."

During the ethics hearing, respondent testified that he had discussed with the clients, during conference calls, how his contingent fee would be calculated. However, during his recorded December 12, 2012 conference call with the RICO I clients, no such discussion took place. Rather, in response to one client's question regarding how settlements would be handled for each case, respondent replied, "each one of the losses have to be calculated by the economic expert. Roughly the only thing I can tell you is that this [sic] three times the amount of your actual losses." He mentioned nothing about expenses and whether the clients would be reimbursed for expenses that they had paid, or how statutory fees, if awarded, would be handled.

During his demand interview and the ethics hearing, respondent stated that he was not required to include in the Retainer Agreement whether the clients would be reimbursed for expenses upon a successful outcome.

Several clients testified that they did not understand what costs would be covered by the administrative fees. Many assumed it would cover copying costs, litigation expenses, or were the costs identified in the first paragraph of the Retainer Agreement.

Dwyer, for instance, testified that she paid a $2,000 intake fee, which she had been told "was for the purpose of ascertaining information as to whether or not my loan was a securitized loan." Dwyer understood that respondent's legal

fees were contingent on the success of the litigation, and that she was paying monthly fees of $600. In her discussions with Taylor, prior to signing the Retainer Agreement, she questioned him to ensure "there were no other fees to be paid to [respondent] during and after." When asked what expenses she understood that respondent was permitted to pay with her monthly fee, Dwyer testified:

> The only thing that I understood was that the administrative fees would be taken out to cover administrative fees, and I also believed that there would expenses during the litigation that perhaps needed to be paid.
>
> [3T12.]

She interpreted the administrative fee to include "the day-to-day administration of the case: printing supplies, mailing, anything that goes on in a day-to-day carrying on of a case." Dwyer expected the remainder of the Litigation Fund to be used for "[e]xpenses directly related to the cost of the litigation." Although she had been promised monthly accounting updates, by Taylor and during "conference calls," she did not receive them.

<u>Taylor's Solicitation of Clients</u>

Respondent's Service Agreement with HCA provided that Taylor would assist respondent in finding clients "by identifying and organizing Plaintiff

members for the RICO and/or any other cause of action in which the members are found by the attorney(s).” Taylor testified that he contacted “friends and family,” as well as other connections, and, if those individuals expressed an interested in the litigation, he would send them a proposed retainer agreement, drafted by respondent, along with an instruction sheet that he had prepared.

At some point, respondent tasked Taylor with identifying New York plaintiffs to include in the RICO lawsuit to overcome venue concerns. For this purpose, Taylor rented a virtual office in New York and set up information sessions for potential plaintiffs to learn about the RICO litigation. Taylor testified that, on two dates, he had meetings scheduled in the virtual office with prospective clients, who, ultimately, did not attend. The total cost to rent the virtual office was $555, which was paid for via of the Litigation Fund.

Taylor testified that he also created a website called “Homeowners Compensation Project,” www.homeownerscompensationproject.org (the HCP website), which he used in connection with his search to identify New York plaintiffs. The HCP website, of which respondent was aware and had reviewed, included details regarding the RICO lawsuit, as well as biographical information about respondent. Taylor was not reimbursed for the costs associated with his website.

In 2014, unbeknownst to respondent, Taylor enlisted the support of Debbie Thompson[17] to assist him in communicating with several prospective RICO II clients who resided in California. Thompson, whose home was in foreclosure, had heard about the lawsuit from Taylor; however, she was not qualified to be a plaintiff. She volunteered, however, to assist Taylor in his communications with clients based in California and, in fact, identified clients. Thompson was not compensated for her services.

Taylor believed the Service Agreement authorized him to work with third parties in furtherance of the RICO matters. When asked to describe the tasks Thompson performed for HCA, Taylor testified as follows:

> She would – at the time, she and I, we was on a lot of communication and she also helped brainstorming how to assist with the program. For example, for the – them – there were many clients, members, potential members, one could join the lawsuit, but they don't have the funds to do that. And so we will brainstorm on how Debbie Thompson would have access to potential investor that can help fund these members to join the lawsuit. Things like that. Yes.
>
> [1T128.]

Taylor also acknowledged that Thompson had assisted him in retaining the California clients. Thompson sent e-mails to the California clients with a proposed Retainer Agreement, instructing the clients to return the signed

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[17] Thompson also used the alas "J.C. Wells" in some of her communications.

Retainer Agreement to Thompson and Taylor. In addition, Thompson prepared a three-page document, dated July 10, 2014, and titled "Confidential Members Memo," that she circulated to a group of individuals, including the nine California clients who had joined the RICO II litigation. Taylor assisted Thompson in the preparation of this document. The memo described an "incentive plan" whereby clients who struggled to pay the monthly contribution could receive a discount for a successful client referral.

Thompson also prepared, with Taylor's input, a July 10, 2014 document titled "Preliminary Civil RICO Case Information Equity Recovery Project." In this document, which she circulated to a group of individuals, including the California RICO II clients, Thompson stated that respondent "successfully [had] concluded four RICO cases," had won "millions of dollars of damage awards," and had handled "dozens of successful mortgage litigations over the past three years." Thompson described respondent as "one of the foremost authorities in the country that not only has the superior knowledge but also the court track record to address illegal foreclosure issues." Taylor testified that he provided the language regarding respondent's credentials to Thompson. Taylor admitted that respondent had never seen these documents but maintained that he had seen the language used to describe his legal success and experience.

Thompson also provided status updates to the California clients. For instance, in an August 6, 2014 e-mail, Thompson asserted that respondent would get governing law reversed to their benefit and stated that she and the legal team were "excited in the progress of the case." In another e-mail, Taylor wrote "no other foreclosure cases to date ever reached the level of legal play field that we are …." In a December 11, 2014 e-mail, Thompson told the California group of clients that, despite the dismissal of the RICO I complaint and a similar decision in Rajamin v. Deutsche Bank Nat'l Trust Co., 757 F.3d 79 (2d Cir. 2014), "we are in an excellent position."

Taylor testified that he provided Thompson with the content for her various e-mails to the California clients, but that respondent did not pre-approve or review and, in fact, "would have no knowledge of this." Respondent knew, however, that Taylor had other individuals working with him to assist with liaison tasks.

Respondent attended conference calls with Taylor and the prospective California clients to discuss the RICO litigation, prior to their execution of retainer agreements. Taylor testified that Thompson also attended other conference calls, despite not being a client.

Without respondent's knowledge, Taylor circulated side agreements with clients who could not afford to pay his full intake fee. For instance, he would

accept a reduced intake fee in exchange for a percentage of the client's recovery in the litigation. Although Veronica testified that she checked Taylor's deposits in the RICO ATA against the ledgers he produced to her each month, she did not check to confirm the clients were paying the monthly amounts required pursuant to their individual Retainer Agreements. Nor would Veronica ask Taylor why certain clients were receiving discounts off their monthly payments, or what steps Taylor was taking to collect from clients who had missed their monthly payments. Respondent and Veronica solely relied upon Taylor to handle the collection of payments from the clients.

Taylor identified all the RICO I clients, and all but one (Peter DeLamos) of the RICO II clients who signed Retainer Agreements with respondent.

Based on the foregoing, the OAE asserted that respondent had violated RPC 1.4(a); RPC 1.5(a); RPC 1.5(c); RPC 1.7(a) and (b); RPC 1.8(a); RPC 1.16(a)(1); RPC 1.16(d); RPC 3.1; RPC 5.3(a) and (b); RPC 5.4(a); RPC 5.4(c); RPC 7.1(a); RPC 7.2(c); RPC 7.3(d); RPC 8.1(a); RPC 8.4(a) (three instances); RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d).[18]

[18] Prior to the ethics hearing, the OAE withdrew the RPC 3.1 and RPC 8.4(d) charges.

Respondent's Purchase of a Computer System (Count Two)

At the outset of respondent's representation of the RICO I plaintiffs, in late 2012, his office was equipped with two computers, which were old, not secure, and not connected to a network. He initially told the OAE that he was concerned that his computer system was inadequate to handle his representation of clients in what was anticipated to be complex litigation. During the ethics hearing, however, respondent attempted to back away from his earlier statements to the OAE, stating that his concern surrounding the adequacy of his computer system was based solely upon Taylor's concerns.

Respondent's friend and client, Ralph Montague, owned Metis Enterprises, LLC, an authorized distributor for IBM/Lenovo computer systems, and, thus, had access to discounts that he offered to respondent. For years, Montague had been telling respondent to upgrade his computers.

Respondent asked Taylor, who had been working in respondent's office on the RICO I matter, for his assistance in selecting an updated computer system. Taylor agreed and assisted respondent in selecting the new computer system, including working directly with Montague. Taylor testified that he had agreed to assist, but that he had done so in his "personal capacity," based upon his knowledge of computer systems, as well as respondent's concern that Montague might try to sell respondent something he did not need.

Montague drafted a proposal for a new system, and Taylor reviewed and suggested modifications to the proposal, frequently exchanging e-mails with Montague regarding the computer system. On April 10, 2013, after Taylor had approved the proposal, respondent authorized Montague, via e-mail, to install the computer system. Respondent's e-mail stated:

> Ralph:
>
> Tyson gave you the approval for the purchase of the equipment. Please continue with the project.
>
> Thanks.
>
> [REx115].

The new computer system included, among other things, four desktop computers; eight monitors; a laptop; a network scanner; a file server; software; and networking equipment.

The new computer system cost $14,118.45. On April 11, 2013, respondent issued a RICO ATA check in the amount of $14,118.45, payable to Metis Enterprises, LLC, drawn from the Litigation Fund. Respondent dropped the check off to Montague's home and required Montague to sign an acknowledgment of receipt. At the time of the disbursement, respondent held approximately $23,000 in his RICO ATA on behalf of the thirty-three clients he represented at the time. Of the $23,000 in RICO ATA funds, only $4,520 constituted his monthly administrative fees.

On April 15, 2013, four days after he paid for the computer system, respondent's office manager and wife, Veronica Espinosa, divided the total cost ($14,118.45) between the thirty-three existing RICO I clients and itemized it as a deduction of $427.83 on each of their client ledgers with the notation "Metis Enterprises, LLC Systems and Technology."

On September 22, 2015, more than two years after the computer system was purchased and after receiving repeated requests from Taylor and individual clients, respondent circulated to his clients, for the first time, a detailed accounting that included spreadsheets, bank statements, and invoices, spanning from December 2012 through September 2015. Respondent's cover letter to the clients stated that there had been two "Rico Annual Accountings reports previously submitted, one as to September 30, 2013 and back in December 2014."

Respondent included, among the nearly 400 pages of attachments, a one-page document titled "RICO ANNUAL ACCOUNTING JANUARY 1, 2013 TO SEPTEMBER 30, 2013, which itemized a $14,118.45 expense for "Equipment/Software/Security/System." Also included were two separate spreadsheets, one of which identified the $14,118.45 payment to "Metis Enterprises, LLC" without any further description, and the second identifying the payment to Metis on April 15, 2013, with a description "Computer System."

Subsequently, respondent participated in an October 8, 2015 conference call with Taylor and the clients, to answer questions about his September 22, 2015 accounting. Mai Pham, a RICO I client since August 20, 2012, expressed surprise that respondent had used client funds to purchase the computers:

> Pham: … [W]hy is there a computer system invoice for your office that's been billed to the trust account?
>
> Respondent: "A computer? I – I don't understand the question."
>
> Pham: Why the computer system was charged to the trust account?
>
> Respondent: No. Further no. Further no. We needed to have a – a – a – a computer system that would be – that is a rather complex thing. Okay. We – we wanted to have for – for your case a top notch matter of this nature. It was – it was charged to the account. We discussed the matter with …Tyson, and we obtained something relatively inexpensive. But knowing that I – I told – I told Tyson the following. There are two options. … either I give back to the – to the – to the – to the members the computer system or I stop collecting the amount that – of administrative – of administrative fee up to the amount of the computer value, and I did. That is the reason why you see, when you look at it, you will see a period of – in which it – I did not collect the administrative payment that had to come to my office. And when they start again. That was when the amount of money of the value of the computer system was covered by [me] not collecting from you the amount of the administrative expenses.
>
> [PEx71pp34-35.]

Taylor chimed in to clarify, stating:

> So essentially the computer system expenses, this was an expense from the trust account for [respondent] to purchase the computer for his office and – and the amount was being subtracted out of the admin fee, the monthly admin fee from his office for the during of – from October 2012 to October 2013.
>
> [PEx71pp35.]

Respondent continued, emphasizing the benefits of the new computers and stating, again, that he told Tyson, on an unspecified date, that he would either return the computer to the class or he would pay for it using his administrative fees:

> …But the equipment was there and the equipment, from the beginning I told Tyson one of two things. After that they can have the – the – the old. I deduct it. I don't charge my - my – my –my – administrative fee until the amount is totally paid, which -- which is the same as charging it and using it to pay back similar. It balance[s] out.
>
> …
>
> In a – in a – in a word, it was paid with the funds of my administrative fees, which were not collected during –
>
> [PEx71pp36-37.]

The facts surrounding respondent's purchase of the computer system and the clients' knowledge of the purchase and their authorization to use litigation funds for this purchase were hotly contested.

Respondent consistently maintained that he had authorization to purchase the computer system using the Litigation Fund. Respondent was inconsistent, however, with respect to the source of the alleged authorization (via individual clients versus through Taylor, as liaison).

Initially, during his October 30, 2017 interview with the OAE, respondent claimed that he had discussed the purchase of a new computer system with the individual clients during a conference call, and that they had agreed to the purchase using his administrative fees. However, respondent could not recall the date of this conference call, which he described as a "conversation[]" where "it came [up] that it was going to be paid from the proceeds … of the amount that would come to me for the administrative fees." Respondent told the OAE that he did not "believe" the call was ever recorded.

Respondent could not remember how many clients had attended the conference call, which he claimed had occurred while he was negotiating the purchase of the computers. Respondent also claimed that he had informed the clients, during the conference call, that his current computer system "would not be able to do it."

Although respondent was unsure of whether all his clients had participated in the purported conference call, he insisted that any client who had missed the conference call would have been made aware of the call by Taylor, the liaison:

> OAE: Okay. Do you have any idea how many people were on that phone call?
>
> RESPONDENT: No, I don't.
>
> OAE: So, you have no idea whether the number of clients that you charged for this computer system actually agreed that you could do that?
>
> RESPONDENT: Oh no. They – they knew it. And they knew it –
>
> OAE: … If they weren't on the conference call how did they know?
>
> REPONDENT: Through the liaison.
> …
>
> OAE: But, did you speak to your clients individual[ly] though to make sure that they were authorizing it?
>
> RESPONDENT: Because that was not the way in which it was arranged.
>
> OAE: So, no –
> …
>
> RESPONDENT: The answer is individually, no. But, at the conference, yes.
>
> [PEx35pp15-16.]

When pressed by the OAE to explain his theory that his clients knew about and had approved his acquisition of the Metis computer system, respondent asserted that Taylor, as liaison for the thirty-three plaintiffs, had authorized respondent's use of the Litigation Funds. However, he never identified a specific

conversation he had with Taylor in which Taylor told him that the clients had given specific authorization to use the Litigation Funds. Further, respondent never directed Taylor to converse with the clients to determine whether they would authorize respondent's use of the Litigation Funds. Additionally, respondent admitted that he had no written confirmation from Taylor indicating that he had obtained each client's authorization.

Respondent acknowledged that the cost of the computers was divided among the thirty-three clients and reflected as an expense on their individual client ledgers. Respondent, however, did not directly answer whether each client had authorized the purchase:

> OAE: Do you know for a fact that all thirty three of these clients were aware before hand [sic] that you were going to purchase –
>
> RESPONDENT: Let me – let me put –
>
> OAE: That computer system?
>
> RESPONDENT: Let me put it to you this way. If Tyson Taylor didn't do his work but the – the – in the same manner that you will see some discussion with respect to the – to our reporting. The way it was reported to – to Tyson Taylor was same The way it was reported to Tyson Taylor was same thing he -- the -- the copies of the -- of the escrow account and in conjunction with his -- deposits. With the -- there was no one single step done by my office that was not in connection with (indiscernible). Not one single step. In connection with (indiscernible). You have -- you have two groups and that group was the -- the group of the -- we the

> (indiscernible) what I call the Vietnamese group, initial one, the (indiscernible) was the one that was constituted while the (indiscernible) was already in court. During – during every one of these -- of these time there had been not only conversation, not only reports, not only but decisions made with the liaison with respect to -- to every aspect of it and documentation given to him. (indiscernible) documentation about Metis. Every one of them was given to the liaison.
>
> [PEx35pp18-19.]

When asked if respondent knew, for certain, that Taylor had obtained permission from each client, he stated only that Taylor had told him that it had been "approved by all of the clients." He was unaware whether Taylor ever had circulated an e-mail to the clients asking for their authorization. Further, respondent could not identify any client by name who had directly authorized him to acquire the computer system out of the Litigation Funds.

Respondent described the computer system as "an expense necessary for us to be able to litigate properly." Accordingly, respondent believed that he could have used Litigation Funds (rather than the funds earmarked as his "administrative fees") for the purchase, based upon the terms of the Retainer Agreement; however, if he used Litigation Funds, the computers would be a "client asset" that he would have to return to the clients at the conclusion of the litigation. Because respondent intended to use the computers for other client matters, he determined to pay for the system using the administrative fees, an

arrangement which, in his view, would have allowed him to keep the computers at the conclusion of the representation.

At the time he purchased the computers in March 2013, however, respondent had accrued only $4,520 in administrative fees; thus, he admittedly leveraged the Litigation Fund for the balance of the amount due. Although he admitted to repaying the clients for the computer system, respondent refused to admit that his use of their funds constituted a loan:

> OAE: Okay. Did you – let me ask you this. You repay this money so do you consider it that you loaned the money from your clients?
>
> RESPONDENT: That I have what?
>
> OAE: That you borrowed or loaned the money from the clients?
>
> RESPONDENT: Borrowed the money? No.
>
> OAE: You didn't borrow it?
>
> RESPONDENT: The money – no, I didn't borrow the money from the client. The client had a – a – a—a – they pay me the administrative fee and from the administrative fee that amount was paid.
>
> [PEx35p45.]

Respondent could not recall if he gave his clients the opportunity to consult with another attorney. Likewise, he did not advise each client of the

advantages and risks associated with a common representation, including the risks associated if certain clients settle or otherwise drop out of the litigation.

Subsequently, during his January 23, 2018 interview, respondent reiterated to the OAE that he had spoken to his clients during conference calls prior to his purchase of the computer system. Respondent further claimed that he had informed his clients, during those calls, that he would be using money from the Litigation Fund to purchase the computer system, but that the amounts would be covered by his administrative fee:

> OAE: So you spoke with them in the conference calls before you purchased the computer and you told them that you were going to use the money in the RICO trust account?
>
> RESPONDENT: Yes. And even, and even, I believe that I told him exactly that, that this was going to be used and paid by the – by the fees of – administrative fees.
>
> [PEx24p47.]

Despite the OAE's specific request, respondent was unable to produce any handwritten notes from this purported conference call, which he claimed took place on an unspecified date. Although he produced four audio tapes of recorded conference calls that he had attended with Taylor and RICO clients, only one took place prior to his purchase of the computer system (December 12, 2012),

and it featured no discussion regarding a computer system. The remaining calls took place March 27, 2014, June 6, 2014, and October 9, 2015.

Even after obtaining his cellular telephone records, respondent was unable to identify the date of the conference call. He did indicate, however, in a February 12, 2018 letter to the OAE, that he had located a December 16, 2012 entry in his personal calendar "with note about what transpired in the meeting conference phone members re: technology."

During the ethics hearing, respondent, for the first time, testified that, during a December 28, 2012 visit to Taylor's home in Virginia, Taylor had authorized him to use up to $30,000 for the acquisition of a new computer system for his office:

> On the 28th Veronica has testified what had happened. All of the discussions that we -- we had had, which were the subject matter of the conference of Sunday the 16th of December, December of 2012, okay, were resolved from that date to the date in which we met in which he told us that -- that the member -- the members have reserved $30,000 for the purchase of -- of -- designated $30,000 for the purchase of the computer system.
>
> [19T100-19T101.][19]

Respondent had never once, in his prior interviews and interactions with the OAE, or in his verified answer, mentioned this purported meeting with

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[19] Notably, Veronica was the first to testify as to this December 28, 2012 meeting in Virginia. Respondent, who testified after Veronica, did not dispute her testimony.

Taylor; rather, he repeatedly had asserted his claim that he had a conference call with the clients. Respondent admitted, however, that as of December 16, 2012, he had not yet collected $30,000 in Litigation Funds. Indeed, as of December 31, 2012, the Litigation Fund balance was $23,103.44.

Also, for the first time, respondent testified that every RICO client attended four separate conference calls that occurred between December 12, 2012 and April 11, 2013. According to respondent, the purpose of the four conference calls was to discuss and approve the acquisition of computer equipment for his office. However, respondent did not have any notes documenting the conference calls (with the exception of his December 16, 2012 calendar entry), and none were recorded. Respondent claimed that Taylor took a roll call at each conference call.

Respondent testified that, during the December 16, 2012 unrecorded conference call, the discussion related to whether he could provide the computers to the clients at the conclusion of the litigation or purchase them from the clients. He further stated that the clients had authorized him to use his administrative fees, rather than Litigation Funds, to pay for the computer system, acknowledging he required their consent because, at the time he purchased the computer system, he had not accumulated enough administrative fees to cover the cost.

> SPECIAL MASTER: Let me – let me ask you a question, because I'm having a hard time following. Is it your testimony that initially the members … authorized you to purchase the computer out of the escrow, period? Without talking about your administrative fees ….
>
> RESPONDENT: Yes, it was.
>
> …
>
> SPECIAL MASTER: And then at some point it changed where you got a second authorization for them to take it … out of the – your administrative fees?
>
> RESPONDENT: No … We said that we would pay the amount that were used from the trust by using the administrative fee and [Taylor] agreed.
>
> SPECIAL MASTER: And when did you do that?
>
> RESPONDENT: I don't recall the period of time, but I believe that – that Veronica has testified with respect to the period of time. And you can look at her testimony for that.
>
> [19T125-19T126.]

Respondent emphasized that the call had occurred on December 16, 2012, stating that he specifically recalled discussing the computer purchase with the clients. He stated that the call had occurred on a Sunday, a day that he ordinarily does not conduct business unless it is "urgent" because he observes the Shabbat. He acknowledged that his very first conference call with the clients occurred just four days prior, on December 12, 2012, and was recorded. During that initial call, there was no discussion regarding respondent's need for a computer system.

Respondent also testified that the computer purchase was discussed during January 2013 conference call(s) with the clients.

Respondent conceded that he never asked Taylor to obtain the clients' written authorization for his purchase of the computers with the Litigation Funds. Moreover, respondent admitted that, in June 2015, when he considered hiring another attorney, Eric Jaffe, Esq., to handle the RICO I appeal before the United States Supreme Court for $20,000, Taylor advised respondent, in writing, that the clients had authorized the expenditure. Further, in September 2015, when respondent needed to represent to the Supreme Court of the United States that each client joined in a filing, he had asked Taylor to obtain each client's telephone number so that he could obtain each client's authorization. Likewise, in his October 26, 2015 e-mail to Taylor, following the breakdown of the parties' relationship and in response to Taylor's request for a return of the funds held in his RICO ATA, respondent stated:

> Your participation and work as that of HCA has been under my direction and rightfully so because you are not an attorney. Therefore, it is the members that can remove me and substitute me. I made this clear to you in our conversation and since you indicated that this was the desire of the members, I requested that this should be in writing and signed by each member either in individual original letters to me or in a collective letter with original signatures.
>
> [PEx118.]

In short, respondent admitted that he did not ask the RICO I clients, individually, if they authorized the computer purchase, and stated that "the only that I know is that it was authorized through [Taylor.] Respondent also admitted, during cross-examination, that he had not mentioned Taylor's alleged $30,000 authorization during the October 2015 conference call, when his client expressed surprise that he had purchased a computer system using their Litigation Fund:

> OAE: … I'm asking you if you said anything on that conference call in response to Mai Pham that indicated that there had been a $30,000 authorization given by the members back in 2012.
>
> …
>
> RESPONDENT: At that moment, no.
>
> [21T116-21T117.]

Further, respondent's amended answer did not refer to a December 2012 meeting with Taylor or his purported $30,000 authorization.

Veronica's testimony was similar to respondent's version of events. Specifically, Veronica maintained that, on December 28, 2012, Taylor stated that "the computer system has to be upgraded and for that, there were around $30,000 to be available, and it was approved by the members." Veronica admitted that Taylor had not documented this authorization in writing, and that neither she nor respondent asked for written authorization prior to purchasing

the computers because, according to her, the clients had authorized it during a January 2013 conference call.

> OAE: When do you claim that the conference call occurred?
>
> VERONICA: The conference occur on January 2013.
>
> OAE: On what day?
>
> VERONICA: I don't remember specifically the date. I would be lying if I – if I say so.
>
> OAE: Before ordering a computer system, did [respondent] take any action to verify that the members were willing to spend $30,000 of their funds on a computer system for your office?
>
> VERONICA: No. They were already disclose[d] in the conference, and the members agreed to that.
>
> [13T144.]

Notably, Veronica previously had not mentioned that Taylor had authorized respondent to spend $30,000 on the computer purchase. She admitted that, as of December 2012, when Taylor claimed the clients had approved the use of $30,000 of their funds, the Litigation Fund had accumulated only $23,103.[20]

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[20] In December 2012, there were only twenty-two members; it increased to thirty-three by April 11, 2013.

Further, despite purportedly having the clients' approval to purchase the computer system, Veronica explained that, on April 10, 2013, the day respondent authorized the purchase of the computers, she and respondent had agreed that respondent would waive his administrative fee from client funds until the computer system was paid off. She testified that neither the clients nor Taylor were involved in this decision. She confirmed that the only written confirmation of this arrangement was a November 5, 2013 letter from respondent to Taylor.

Veronica explained that she prepared ledger cards for each of the RICO I and RICO II clients, which she updated monthly. For any disbursements, she testified that, on the date of the payment, she would "divide it over the monthly payments of members there were at that particular time." She admitted that, on April 15, 2013, she divided the cost of the computer system among the thirty-three clients and entered it as a $427 debit on each of their client ledgers. She acknowledged that she did not verify that all thirty-three clients had authorized the purchase. Veronica admitted that, despite having expensed $427 on each client ledger for the computers, she subsequently did not reverse it or credit it, simply stating "[t]here is no payment to [respondent] for the administrative fee."

She understood that the administrative fee was intended to cover costs such as "[t]elephone, for Lexis, cell phone, [], file cabinets," as well as

"storage." Veronica disagreed that the fee was solely intended for the files to occupy space within the law firm.

During the ethics hearing, Veronica also asserted, for the first time, that she recalled overhearing a conference call in which the clients had authorized the computer purchase. She testified that she believed the call took place in January 2013, contrary to her previous statements that she had attended just one conference call with the clients, on October 8, 2015, when the accounting had been discussed. She did not recall how many clients participated in that call.

Veronica also claimed, for the first time, that she participated in several meetings with respondent, Taylor, and Montague, during which the computer costs were discussed. Further, she maintained that Taylor repeatedly urged respondent to upgrade his computers because, according to Taylor, "we have, you know, huge amount of work to be done against powerful banks and their resources compared to the ones that we have in our office, a small office."

Montague also testified. During the ethics hearing, he maintained that Taylor had told him multiple times that he had the clients' authorization for respondent to purchase the computer system. During his interview with the OAE, however, he stated only that Taylor had authorized the purchase of the computer system.

> OAE: Did Tyson Taylor ever say specifically that the – as you put it here, the members participating in the

> RICO lawsuit said it was okay to buy the computer system?
>
> MONTAGUE: I'm not sure about that. I know that he said that he was in charge of buying the computer system, that he had been authorized. And –
>
> OAE: Authorized to do what exactly?
>
> MONTAGUE: To buy all this stuff.
>
> [PEx38pp58-59.]

Montague had told the OAE, repeatedly, that respondent's computer system, though outdated, "seemed to work for them," stating "in all honesty, I don't think that [respondent] really needed a better computer system." He told the OAE that it was Taylor who claimed respondent's system was insufficient for the RICO litigation needs. Montague also told the OAE that, during his first meeting with Taylor, he had mentioned spending up to $30,000, which he thought "was going to be part of [respondent's] compensation." He recalled respondent that believed $30,000 was too much to spend on the computers.

Montague explained that he met with Taylor several times regarding the computer purchase. He also recalled that when respondent came to his house to drop off the check in payment for the computer system, respondent asked him to sign something acknowledging receipt of the check, which made him "uncomfortable." Montague told the OAE that respondent intended to use the computers for general office work not limited to the RICO litigation:

> OAE: All right. So just I'm clear, if I understand you correctly, and please correct me if I don't, the computer was being installed because – well, it was initiated because of this large case. But it served as a general upgrade to [respondent's] office that he was going to use for all of his legal work.
>
> MONTAGUE: Right.
>
> [PEx38p36.]

Montague also told the OAE that he had advised respondent, but not Taylor, that he required a payment prior to installing the computers because he did not have enough money to cover the relevant expenses. Accordingly, respondent went to Montague's home and dropped off the ATA check.[21]

Taylor, on the other hand, repeatedly denied telling respondent that he could purchase the computers using Litigation Funds. Taylor also denied having discussed the computer purchase with the clients, or telling respondent that he had spoken to, and obtained the permission of the clients, thus, allowing respondent to pay for the computers with the Litigation Fund. Moreover, Taylor

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[21] On November 1, 2017, Montague sent a letter to the OAE, at respondent's behest. Although Montague consistently maintained that he had authored the letter, the OAE pointed out several statements in the letter that suggested the letter had been drafted by respondent, e.g., use of "U.S. $30,000," rather than simply stating "$30,000. Notably, Montague did not use "US" in his invoices. Additionally, Montague, in his letter, referred to Taylor as the "liaison" and "agent" in connection with "RICO" litigation, and expressly stated "I do not know the details of the matters before you because Mr. Espinosa stated to me that it was confidential." Further, although Montague told the OAE that he had obtained their address using "Google" it was addressed to "Office of the Attorney Ethics Of the Supreme Court of New Jersey," just as respondent had addressed his letters to the OAE.

did not believe he possessed the authority to act on the clients' behalf without their permission.

> OAE: Okay. Did you ever tell [respondent] that the plaintiff members of the RICO lawsuits had agreed to pay for the computer system?
>
> TAYLOR: No.
>
> …
>
> OAE: Did you ever speak with the plaintiffs in the RICO lawsuit about the fact that [respondent] was about to purchase a computer system?
>
> TAYLOR: No. Because it no relevance [sic].
>
> OAE: Okay. Before the actual purchase of the computer system, were you aware that it would be paid for using funds from the RICO trust account?
>
> TAYLOR: No.
>
> OAE: Okay. Did [respondent] ever tell you that he was going to borrow RICO Trust funds to purchase the new computer system?
>
> TAYLOR: No.
>
> [2T78.]

Taylor admittedly sent an October 2, 2013 e-mail to the clients, in advance of a conference call scheduled for later that evening, attaching a one-page summary of expenses that respondent had spent of the Litigation Fund, which stated:

Total number of members	38
Total payment received	$167,600.00

Expenses:	
Administrative	$12,300.00
Court materials & Office equipment	$ 2,266.13
Court Service	$ 1,099.60
HCA legal supporting services	$12,500.00
HCA Travel expense reimbursement	$ 6,500.00
Equipment/Software/Security/System	$14,118.45
Paralegal service	$
Travel & Accommodation for experts	$ 4,452.56
Total Expenses	$53,236.74
Escrow account balance	$114,363.26

[REx125,126,127.][22]

Taylor testified that he sent the e-mail at respondent's "instruction" and that, although the e-mail itemized as an expense the cost of the computer system ($14,118.45), the clients, including himself, did not understand the description to mean that respondent had used client funds to purchase the computers for the law office. Taylor testified that the summary of expenses was prepared by

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[22] Earlier in the day, Taylor forwarded to respondent, for his review, a draft e-mail with the attached summary accounting. The initial accounting did not include a line item for "Paralegal services." Thereafter, the summary accounting was edited, at respondent's request, to include the "Paralegal services" line item. Also, Taylor edited his e-mail to the clients to state "At present, we have included about $2,000 in paralegal service fee. We shall have the exact amount for this fee next week and will deduct the account accordingly."

respondent's office, stating "Veronica would provide information or prepare the report directly."[23]

On November 5, 2013, respondent produced a letter to Taylor, who was in his office that same day to sign the amended service agreement. The letter was addressed to Taylor and stated that the administrative fees from October 2012 to October 2013, totaling $13,560, had been "applied to the expenses disclosed to the group before of $14,118.45 dollars that was used for the costs of the equipment needed for support of the litigation effort." The letter continued, "This letter also discloses that I had paid from the trust account II of the members payments for the paralegal services contractual from October 2012 to October 2013 the sum of $19,200.00 dollars."[24] The letter instructed Taylor to "[p]lease forward this information to the members."

According to Taylor, this was when he learned, for the first time, that respondent had used Litigation Funds to pay for his computers. He did not forward the November 5, 2013 letter to the clients. Taylor testified that he had a heated conversation with respondent but admitted that he had not told the other

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[23] Veronica testified that Taylor prepared the one-page summary attached to the October 2, 2013 e-mails.

[24] Taylor testified that the November 5, 2013 letter shown to him during the disciplinary hearing was different from the version he recalled seeing while in respondent's office that same date. Specifically, he stated that the letter he recalled seeing did not refer to Veronica's paralegal services.

RICO plaintiffs about the purchase because he was concerned the litigation could fall apart if the clients lost trust in respondent.

The special master asked Taylor to explain the "heated conversation."

> TAYLOR: Well, in my recollection, I said why is – this expense being charged to the trust account, and he said because he can, you based on his, his understanding of the contractual agreement. And I said no, that's not possible. At the time, one of the opinion, very concerned to it at the time because we have limited fund in the trust account and we want to protect as much as possible to -- for to dedicate to the litigation services. And there's no reason – even though its my concern with a secure system in his office, it can be overcome with a $50 device. I don't have to install this whole elaborate system, there's no reason for that.
>
> SPECIAL MASTER: And when you had this conversation, did he make any promises – when I say he, did [respondent] make any promises to you to tell you how he was going to rectify the situation?
>
> TAYLOR: No, he did not. And because of that, thereafter, I would after that we wanted a full accounting … And until only in 2015, everything became available to the members at that time.
>
> [5T119-5T120.]

As a client, Taylor testified he was surprised and "outraged" respondent would use Litigation Funds to upgrade his office computers, particularly since, in his view, a $50 device would have resolved Taylor's security concerns.

> OAE: When you were being examined by [respondent], you were asked if you had told him that the members had allocated and separated $30,000 [from] the client

> litigation support system, and you said absolutely not, and I can tell you why, but you were not allowed to tell us why. So could you tell us why?
>
> RESPONDENT: Objection.
>
> SPECIAL MASTER: Overruled. That's exactly what redirect is for.
>
> TAYLOR: It would not be making any sense for us to pay for the computer system. As I have stated before, security was a concern, security [indiscernible] secure information, that can hack it. But if that was – with my profession, and even if that was a concern, that could be easily done with a $50 device to address that. You don't have to devise a whole network system for his office for the purpose, and then we paying for it. That would not make any sense, and nobody would agree with that. And nobody here, referring to the members, would. And also, at that time, we have very limited fund, and the objective in trying to build the trust fund as much as possible so that we can anticipate hiring these expert in different system for the litigation ….
>
> [6T164-6T165.]

Taylor readily admitted to having encouraged respondent, in 2012 and early 2013, to replace his outdated computer system which, in his view, presented a security risk. He also admitted that he was integrally involved in helping respondent, via Montague, to select the computer system, because respondent was not computer savvy, and to prevent respondent from being overcharged. Taylor believed, however, that respondent would pay for the computer using his own funds, and not the client funds he held.

Taylor confirmed that the clients first learned that their funds had been used to purchase the computer system following their receipt of respondent's September 2015 accounting.

Three clients testified at the hearing (Colleen Dwyer, Patti Adkins, and Mai Pham) and denied that they had been asked by anyone, over the course of the litigation, for their permission to use Litigation Funds to purchase the new computer system. Nor were Dwyer, Adkins, or Pham aware that respondent had paid for the computer system by waiving his right to take an administrative fee for approximately one year. Further, all three testified that they were surprised to find out, following their review of respondent's September 22, 2015 accounting, that $14,118.45 of their client funds had been used to purchase the computer system two years earlier.

All three admitted, however, that they had heard some discussion during conference calls with respondent and Taylor concerning respondent's acquisition of an updated computer system to assist with the RICO litigation.

When asked about their understanding of the administrative fee, they all testified that they did not understand what it was intended to over, other than assuming it covered costs such as copying.

Dwyer and Atkins both testified that, if respondent had asked permission to use money from the Litigation Fund to purchase a new computer system, they

would have denied that request. Dwyer explained that, in her view, an attorney should have a computer system in place and, if the system requires an update, the attorney should obtain the update. In short, none of these clients authorized respondent to use $427.83 per client, from the Litigation Fund, to purchase a computer system in April 2013.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.15(a), and the principles of Wilson and Hollendonner; RPC 8.1(a); RPC 8.4(b); and RPC 8.4(c).

Litigation Support Payments (Count Three)

Litigation Support Payments to Veronica and HCA

In accordance with the Service Agreement, over the course of the representation, Taylor, through HCA, submitted invoices to respondent for litigation services rendered, at an hourly rate of $75, plus expenses. Taylor testified that his services included legal research and meeting with experts, which he conducted at respondent's request. Taylor also submitted invoices for reimbursement of expenses, including travel expenses (airfare, hotel, meals) for June 2013 meetings he attended with potential experts in Atlantic City. Taylor explained that his first invoice, for the timeframe spanning from October 1, 2012

through September 30, 2013, totaling $19,000 was not detailed. However, at respondent's direction, he included more detail in his subsequent invoices.

Thereafter, between October 7, 2013 and November 5, 2015, respondent paid HCA $153,956.04 from the Litigation Fund. This was in addition to HCA's one-time intake fee that was paid directly by the prospective clients, and the $40 per month administrative fee.

Despite paying HCA over $153,000, for paraprofessional services including legal research, respondent also paid his spouse, Veronica, a monthly fee of $1,600 for paralegal services[25] rendered from October 2012 to May 2015, totaling $49,500. Specifically, in or around October, 2012, Veronica and respondent agreed that she would work exclusively on the RICO cases as a paralegal and receive $1,600 per month for her services, paid out of the Litigation Fund. During that period, respondent did not pay Veronica her salary; instead, she was compensated directly from the Litigation Fund.

[25] Respondent testified that he employed Veronica since 2004. Initially, she performed bookkeeping functions, later assisting with other litigation support functions, including legal research. Respondent and Veronica both admitted, however, that she had no formal paralegal training. Prior to her involvement in the RICO cases, Veronica had handled all of the administrative work for respondent's office, including the firm's bookkeeping responsibilities, and described herself as respondent's "right hand." Veronica informed the OAE that her work in RICO I and II matters were the first client matters for which she had charged a flat fee; however, she was working exclusively on the RICO cases, including working overtime, so, in her view, it was favorable to the clients to bill at a flat rate.

Veronica broadly described her paralegal services to include conducting legal research, drafting pleadings, and drafting letters and other communications on respondent's behalf, in furtherance of the RICO cases. According to her invoices, she received a flat fee of $1,600 per month, regardless of the number of hours she worked on the RICO matters.

The paralegal services Veronica performed between October 1, 2012 and October 31, 2013, for which she billed the clients $19,200, were largely undocumented, with the exception of online legal research performed on November 9, 2012. Indeed, it was during this period that Taylor was actively recruiting plaintiffs for the litigation. Veronica informed the OAE that her early work in the litigation included reviewing Taylor's files to determine if a client was qualified to serve as a plaintiff.

For the period November 1, 2013 to May 31, 2015, Veronica testified that she worked side-by-side with Taylor and respondent, providing paralegal services. Her invoices, however, do not identify specific paralegal tasks that were performed. In fact, many invoices simply include numerous pages of citations to case law, statutes, and articles, without describing the nature of the research performed. Her January 9, August 2, and November 3, 2014 invoices included no description of the paralegal services she had provided. Other invoices describe, generally, clerical tasks that she performed, such as

organizing binders, reviewing materials provided by Taylor, or drafting e-mails for respondent.

Neither the Retainer Agreements nor her billing invoices, which were submitted directly to respondent, disclosed to the clients that respondent would be paying Veronica from the Litigation Fund for her paralegal services or to check HCA's pre-qualification work. Dwyer, who testified at the hearing, stated that she had not authorized respondent to pay Veronica for her paralegal services; further, Dwyer believed, based upon his visit to respondent's law office, that Veronica provided respondent with clerical but not paralegal support.

In an initial summary of expenses, which Taylor sent to the clients via e-mail on October 2, 2013, respondent informed the clients that he had incurred expenses for paralegal services totaling approximately $2,000. Respondent did not disclose that Veronica was his paralegal. Subsequently, on November 5, 2013, a revised summary of expenses disclosed that Veronica had been paid $19,200 in paralegal fees. Although Veronica prepared a November 5, 2013 letter, which summarized these expenses, including the $19,200 she had been paid for the period of October 2012 to October 2013, that letter was not sent to the clients. She admitted that neither she nor respondent asked the clients for their authorization to use client funds to pay for her paralegal fees.

The clients had no knowledge that their funds had been used to pay for Veronica's paralegal services. Groveman, for instance, testified that he could not understand why respondent paid both HCA and Veronica for paralegal services. In fact, during the October 8, 2015 conference call that respondent conducted to address client concerns over his September 22, 2015 accounting, one client stated that she "didn't know that we even agreed to a paralegal service."

Taylor testified that he had learned Veronica was performing paralegal services and being compensated from the Litigation Fund when he received an accounting report. Taylor failed to understand why Veronica would check his legal research, as it was his understanding that respondent was checking it. Taylor also testified that, at the OAE's request, he had reviewed Veronica's invoices and concluded that the itemized tasks on some of Veronica's invoices, e.g., list of status and cases, were the same work that he had performed and itemized in his invoices to the clients. He surmised that Veronica had organized Taylor's research into binders.

Respondent Failed to Provide Clients with Regular Accounting Updates

The clients testified that they expected regular accountings of how the Litigation Fund was being spent but did not receive a detailed accounting until

September 22, 2015. One client, for instance, expressed her concern via an e-mail to respondent, stating:

> I have been a plaintiff for the RICO lawsuit since October of 2012. I have been requesting for the detail[ed] accounting report several times during the length of the lawsuit with negative results. I have been promised a detailed account report which was anticipated to take place on July 15, 2015. Up to date, I have yet received the detail[ed] report.
>
> I am very frustrated about [the] continuous delay ….
>
> [PEx50A.]

Another client testified that he had expected regular updates regarding respondent's use of the Litigation Fund: as follows:

> OAE: Was there anything in [the Retainer Agreement] that required [respondent] to provide monthly bills to you or an accounting of how the client funds were spent?
>
> Groveman: Well, it was assumed. I mean, I'd have to read this whole thing word by word, which I don't wish to do. But the assumption was that we were supposed to have some sort of a communication from [respondent] about the accounting, where the monies were being spent and how they were being spent.
>
> [4T84-4T85.]

Taylor also testified that respondent promised the clients, during conference calls, that he would provide full accountings of how the Litigation Fund was spent but did not do so.

Taylor maintained that the first time the clients were provided with a detailed accounting was in September 2015. Taylor testified that he had asked respondent, during the course of the litigation, to provide an accounting. However, in early 2015, the clients began requesting, via e-mails sent to Taylor, that respondent provide them with an update on how the Litigation Fund had been used. Between June 23 and September 30, 2015, Taylor sent numerous e-mails to respondent, inquiring about the whereabouts of the Litigation Fund accounting, as had been promised. In fact, a conference call to discuss the accounting had been scheduled for July 15, 2015.

According to Taylor, when the clients ultimately received respondent's September 22, 2015 accounting, which consisted of 480 pages, they were all dissatisfied. On September 30, 2015, Taylor forwarded to respondent, via e-mail, some of the feedback he had received from the clients, who had expressed "disappointment" regarding the accounting, which they claimed "lack[ed] . . . clarity" and was "disorganized" and "confusing," prompting the clients to express their "serious concerns." In fact, one client requested respondent to prepare a report based upon accounting standards:

> I could not make sense out of the accounting report that you sent to us. Can you make the accounting report based on [an] accounting standard and send to me for review[] as soon as possible? I'm very concern[ed] about that fact that your report is not clear.

[PEx50.]

Respondent, on the other hand, testified that he had prepared annual reports, in 2013 and 2014, that he had shared with Taylor. Further, respondent testified that Taylor had access to the bank records, invoices, and other documentation related to expenditures from the RICO ATA.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(2) and (b); and RPC 8.4(c).

Conduct Involving Sophiometics LLC (Count Four)

The RICO clients who could not afford their monthly payments had the option of obtaining financial assistance from an investor, through Sophiometics, LLC, a company formed by Taylor. Respondent was identified, on the certificate of formation, as its registered agent, though he denied that his office had filed the certificate or that Taylor had listed him as the registered agent. Priority Investment Group was identified as Sophiometics' "members and managers."

Specifically, through Sophiometics, an investor could sign an agreement and pay funds on behalf of a plaintiff in exchange for a share of any judgment or award. Over the course of the RICO litigation, at least seven Sophiometics funding agreements were executed; respondent was a signatory to each one. The Sophiometics funding agreements, which respondent drafted, provided that any

judgment or award would be paid directly into respondent's RICO ATA, and that respondent was responsible for administering and disbursing the funds.

Further, the funding agreements provided:

> 8.3 The Plaintiff and [respondent] agree that they will not conclude the Proceedings without prior consultation with LLC.
>
> ….
>
> 10. Change of Attorney
>
> The Plaintiff agrees that they will not retain any other attorney to act for them in the Proceedings other than [respondent] without the prior written approval of the LLC, such approval not to be unreasonably withheld if any new attorney enters into an agreement with LLC that contains terms and conditions that are no more onerous to that attorney than applying to the Plaintiff under this agreement.
>
> ….
>
> Exhibit 1 – Payment Plan
>
> Investors to provide 100% funding through Sophiometics, LLC to cover all legal costs on behalf of the Plaintiffs. The Judgment and/or Award will be distributed through the Trust Account As follow: Plaintiff(s) to receive Twenty-three and one-third percent (23.33%), Law Firm to receive Thirty-three and one-third percent (33.33%) and Investors (through Sophiometics, LLC) to receive Fourty-three [sic] and one-third percent (43.33%).
>
> [PEx53.]

Seven clients entered into funding agreements, which were signed by respondent. Respondent testified that he did not review or discuss the Sophiometics funding agreements with any of the seven clients who had entered into such agreements. Taylor testified that he would provide the funding agreement to the client for execution and then submit it to respondent.

Tien Foley signed a funding agreement with respondent and Pauline Thai, a plaintiff in the RICO II litigation. Foley testified that she knew Thai and had been introduced to her and Taylor through her fortune teller. Foley understood that her investment in the litigation would benefit those at risk of losing their homes, but that she would be paid if the litigation was successful.

Taylor also signed the funding agreement on behalf of Sophiometics. Taylor testified that he was an investor in some of the Sophiometics agreements. Respondent did not advise Taylor that he had a right to have independent counsel regarding his execution of these funding agreements. Nor did respondent inform Taylor that there might be a conflict of interest in Taylor entering into the funding agreements.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.4(c); RPC 1.7(a)(2) and (b); RPC 1.8(f); and RPC 5.4(c).

RICO II and Declaratory Judgment Action (Count Five)

Ida Spector, who resided in California and had learned of the litigation from Thompson, executed a Retainer Agreement with respondent on May 17, 2014. She received the Retainer Agreement from Thompson and did not meet with or speak to respondent prior to executing the Agreement. She testified that she signed the Retainer Agreement without a full understanding of the various fees charged by HCA and respondent but had been told "we would receive protection under this lawsuit from foreclosure," and that she felt pressured from Taylor and Thompson.

In November 2014, Spector, informed Taylor that she was unable to pay her monthly payments toward the RICO II litigation. Spector, whose monthly fee was $600, had made her last payment in August 2014. On December 7, 2014, Taylor informed Spector, via e-mail, that she would be removed from the lawsuit if she did not bring her account current by December 15, 2014.

In response, Spector reminded Taylor that he and Debbie Thompson had promised her a reduction in her monthly fees if she referred other clients to the RICO litigation. According to Spector, Taylor and Thompson permitted reduced monthly fees to clients who referred other clients to the litigation. Spector reminded Taylor that she had referred two clients (Ronnie Lyles and Theresa

Codilla), both of whom owned multiple properties and had joined the lawsuit, yielding combined monthly fees in excess of $100,000.

Two days later, on December 9, 2014, Spector forwarded to respondent her e-mail communications with Taylor and requested a private telephone conference with respondent. On December 10, 2014, respondent spoke to Spector on the telephone. According to Spector, respondent told her that his agreement with HCA "took preference" over any contract she had with him and that "he was under [HCA's] direction to do whatever they needed to do."

On December 16, 2014, Spector sent an e-mail to Taylor with a copy to respondent, demanding a refund of the $3,000 she had paid into the Litigation Fund, and asserting that she would take legal action. Respondent replied, stating he was not obligated to honor agreements she had made with HCA regarding discounted monthly payments and, further, that involving himself in her dispute with HCA would put him in conflict with his other RICO clients. Respondent advised Spector that he would communicate with her in writing and would "take the necessary steps available to me under the law." Respondent did not tell Spector he would no longer represent her and did not ask Spector if she had discharged him. Further, he did not inform Spector he was going to remove her from the litigation.

Like Spector, other clients had difficulty making their monthly payments. For instance, on December 3, 2014, Ingrid and David Phillips informed Taylor that they were unable to make their monthly payments toward the RICO II litigation. The Phillips, whose monthly fee was $600, had made their last payment in September 2014. They did not, however, complete the repayment plan. The Phillips were not informed that they would be removed from the litigation. In fact, Ingrid testified she continued to receive invitations to the RICO conferences in December 2014 and January 2015; thus, she believed herself to be an active member of the litigation despite her delinquency in monthly payments.

On January 9, 2015, Spector sent respondent another e-mail, again demanding a full refund of payments made toward the Litigation Fund, totaling $3,000, in connection with the RICO II matter. On the same date, other RICO II clients (Ronda Gamez; Theresa Codilla; Christopher Lamont; Ronnie Lyles; and Lillian Hennegan), who had been part of the "California Group" of clients, sent similar e-mails to respondent demanding full refunds. In his January 14, 2015 reply e-mail, respondent informed these clients:

> Under the agreement you have no right to any refund. There was an agreement to fund the costs and expenses of litigation… You are in breach of the agreement and the agreement clearly speaks of the consequences.
>
> [PEx56.]

On February 5, 2015, Phillips sent a similar email to respondent, demanding a full refund. Phillips did not hear back from respondent.

On March 25, 2015, respondent filed a second amended complaint in the RICO II litigation, removing as plaintiffs the clients who had e-mailed him demanding a full refund.[26] Respondent neither notified these clients that he was removing them from the litigation nor copied them on his correspondence to the Court. Further, respondent never sought their permission to withdraw as their counsel nor sought an order from the court. Respondent testified regarding his position that the Retainer Agreements permitted him to take such action and, thus, he was not required to separately notify them.

In October 2015, the RICO I and RICO II plaintiffs (excluding those who had been unknowingly removed from the RICO II litigation) signed powers of attorney, drafted by Taylor, granting Taylor the authority to manage the Litigation Fund and to retain new legal counsel. On November 1, 2015, the RICO I matter concluded when the Supreme Court of the United States Court denied the petition for certiorari.

Respondent and Taylor discussed how to transition the Litigation Fund to Taylor. Respondent determined that the California-based plaintiffs had paid

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[26] Specifically, Christopher Lamont, Ida Spector, Jay Codilla, Theresa Codilla, Ronda L. Gamez, Ronnie Lyles, David A. Phillips, Ingrid Phillips, and Lillian H. Hennegan were removed as plaintiffs.

$45,920 into the Litigation Fund. On November 5, 2015, respondent acknowledged he might have a conflict of interest in suing his former clients and that the RICO plaintiffs should retain Audwin Lavasseur, Esq., for this purpose.

On November 23, 2015, respondent signed a "disengagement agreement" with Taylor. Pursuant to the disengagement agreement, which Taylor drafted, and respondent revised, respondent agreed to file a declaratory judgment action against nine of the clients who "had dropped out of the group in violation of the agreement." Further, the disengagement agreement provided that the RICO I and RICO II clients waived any claims related to the use of the Litigation Fund by respondent during the course of his representation.

Thereafter, on January 15, 2016, respondent filed the declaratory judgment action in the Superior Court of New Jersey, Hudson County, captioned Dang, et al. v. Lamont, et al., Docket No. HUD-L-229-16. Respondent brought this declaratory judgment action on behalf of forty-five RICO II plaintiffs against the nine former RICO II plaintiffs, who were part of the California group and who he had unilaterally removed as plaintiffs in the RICO II action. None of respondent's former clients were aware that he intended to sue them. Prior to instituting his lawsuit, respondent did not contact his former clients to seek a

waiver of any conflict of interest. Respondent, for his part, maintained that he was authorized pursuant to the Retainer Agreements to take such action.

Through the declaratory judgment action, respondent sought a judgment that the $45,920 total paid by the nine former RICO II clients was forfeited to the current RICO II clients, in accordance with the terms of the Retainer Agreements. The current RICO II clients were unaware that respondent had filed this action on their behalf. The objective of the lawsuit was obtaining a declaration that the funds were forfeited so that respondent could release the funds from his trust account to Taylor, for the benefit of remaining RICO clients. After being served with the declaratory judgment complaint, the former RICO II clients retained Joel Schneck, Esq., to defend them against the action. Levasseur eventually replaced respondent as counsel for the current RICO II clients; however, he did not file a substitution of attorney until January 31, 2017.

On May 12, 2016, Schneck, on behalf of his nine RICO II clients, filed a complaint in the United States District Court for the District of New Jersey, against respondent, Taylor, HCA, and others, seeking civil damages for false statements and a refund of monies paid toward the RICO litigation, captioned Spector, et al., v. Christie, et al., Civil Action No. 16-cv-2692. Schneck testified that the theory underpinning his civil complaint against respondent which, ironically, asserted a claim pursuant to RICO, was as follows:

> … [Taylor] was basically running the scheme using [respondent] as the attorney who he had made various statements inflating his experience and background. There was another woman named Debbie Thompson, I forgot her real name in California who was also bringing people into the scheme and brought a couple of my clients into this scheme.
>
> Together they were all sharing in the monies that my clients were purportedly paying for legal services which is blatantly improper. Mr. Taylor was taking, and I believe Ms. Thompson as well, they were getting an up-front fee for each person they brought into these lawsuits.
>
> So it was basically a scheme in which there were runners and [respondent] was involved to give it credibility and to, you know, bring the lawsuit which had no chance ….
>
> [8T18-8T19.]

In July 2017, the matter settled, resulting in the release of the remaining $45,920 held in the Litigation Fund. As part of the settlement, the declaratory judgment action also was dismissed.

From the settlement funds, Schneck paid his firm's outstanding attorneys' fees, and refunded the remainder to the clients who had paid him a retainer for the defense of the declaratory judgment action, and the filing of the federal action against respondent. Phillips and Spector were not refunded any of their money because they had been unable to contribute to Schneck's retainer.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.2(a); RPC 1.4(b); RPC 1.7(a) and (b); RPC 1.9(a); RPC 1.9(c)(1); RPC 1.16(d); RPC 8.4(c); and RPC 8.4(d).

Recordkeeping and Negligent Misappropriation of Funds (Count Seven)[27]

On February 17, 2017, the OAE conducted a random audit of respondent's financial books and records, including his ATA, RICO ATA, and attorney business account (ABA). The OAE's audit revealed the following recordkeeping deficiencies:

ATA

a) Failure to conduct three-way reconciliations of his ATA (R. 1:21-6(c)(1)(H));

b) Client ledger cards with debit balances (R. 1:21-6(d))

c) Client ledger cards lacked full description (R. 1:21-6(c)(1)(B));

d) Failure to maintain separate client ledger card for bank charges (R. 1:21-6(d));

e) Inactive balances in ATA (R. 1:21-6(a)(1)); and

[27] The OAE dismissed Count Six, which alleged respondent had engaged in the unauthorized practice of law in California, in violation of RPC 5.5(a)(1).

f) Commingled personal funds in ATA (R. 1:21-6(a)(1)).

RICO ATA

a) Commingled personal funds in ATA (R. 1:21-6(a)(1)); and

b) Improper ATA designations on bank statements, checks, and deposit slips (R. 1:21-6(a)(2)).

ABA

a) Failure to maintain ATA and ABA receipts and disbursements journals (R. 1:21-6(c)(1)(A));

b) Failure to deposit earned legal fees in ABA (R. 1:21-6(a)(2)); and

c) Improper image processed business checks (R. 1:21-6(b)).

As of January 24, 2018, respondent corrected his recordkeeping deficiencies to the OAE's satisfaction.

The OAE's investigation also revealed that, on June 7, 2016, respondent had negligently misappropriated $9,969.57 of client funds when he over-disbursed funds in a real estate matter that he was handling for his client, Juanita Lewis-Hill. Respondent's over-disbursement impacted funds belonging to ten other clients that he was required to hold, inviolate. To correct these shortages, on February 21, 2017, respondent replenished the funds in his ATA. Respondent admitted to the underlying facts but disputed that he had negligently misappropriated client funds.

Based on the foregoing, the OAE asserted that respondent violated RPC 1.15(a) and RPC 1.15(d).

The ethics proceeding in this matter spanned twenty-two days, commencing on January 14, 2020 and, after nine days, the onset of the global COVID-19 pandemic delayed the scheduling of additional hearing dates. Subsequently, when the Court directed the continuation of virtual disciplinary proceedings, the ethics proceeding resumed, via Zoom, for an additional thirteen days, as follows: February 16, 17, 18, March 2, 3, 4, 9, 10, 16, 17, April 14, 15, and 30, 2021.[28]

The special master described respondent's conduct during the hearing as "outrageous," toward the OAE and the special master. The OAE, in its summation, and the special master, in his report, emphasized respondent's uncivil and disrespectful behavior, and the delays caused by his conduct.

By way of example, respondent's direct testimony spanned four days. During his cross-examination, respondent repeatedly interrupted the presenter, and his answers frequently were non-responsive to the questions. In fact, on the

[28] On February 11, 2021, the special master denied respondent's motion to delay the proceedings until such time as in-person hearings resumed, determining that the ethics hearing could proceed in a virtual format. The special master stated that there was "no reason not to proceed with the Hearing in this matter remotely," stating that even prior to the pandemic, "the Rules permitted virtual testimony of witnesses in disciplinary matters." Further, the special master concluded that respondent's arguments were not only inconsistent with the law, but "seem pretextual at best and/or interposed to delay this matter further."

first day of cross-examination, the special master directed respondent more than sixty times to answer the question or to stop interrupting. The special master stated, after respondent had repeatedly ignored the instruction, that "I have to believe that you are consciously obstructing the process." Later, the special master chastised respondent's behavior as "atrocious and unprofessional," and likened his testimony to a "runaway witness who will not – who refuses to answer even one question as it's asked."

Yet, the very next day, respondent engaged in the same tactics. Further, respondent refused to accept the special master's rulings, re-arguing issues already decided. For instance, while conducting his cross-examination of Thompson, respondent wanted to show an exhibit that he had not provided in advance:

> SPECIAL MASTER: I've already ruled on this. Okay? I've ruled on this numerous times. I said, either you need to either give it to them in advance or – either give it to the OAE to provide to [the witness] or provide it to [the witness] yourself or be prepared to send it to her in some way.
>
> [4T50-4T51.]

This type of behavior persisted the entirety of the hearing.

On June 15, 2021, respondent submitted his 1,357-page summation brief, which was rejected by the special master as unreasonable and unhelpful. After

settling on a 400-page limit, on July 2, 2021, respondent submitted his 362-page summation brief with over 1,700 pages in accompanying exhibits.

Respondent's summation consisted of lengthy transcript excerpts and images of evidence. He denied nearly all the alleged misconduct, and his arguments reiterated his trial testimony and lacked a succinct or reasoned analysis. Thus, we only have summarized his arguments with regard to the knowing misappropriation charge.

In short, respondent denied having committed knowing misappropriation of client funds. He recounted the testimony of various witnesses, including himself, and the evidence that he believed established that he had the clients' authorization, directly and through Taylor, to purchase the computers from the Litigation Fund. For instance, respondent stated:

> Respondent testified that the authorization from his clients to acquire a computer system with RICO trust fund moneys were made with phone calls on December 16, 2012; January 10th or 12th, 2013; January 21, 2013; and January 25, 2013, also the meeting at [Taylor's] house in Fairfax were [sic] it was conveyed to respondent and Veronica that the members authorized the implementation of the technology and allocated amount of $30,000, this meet[ing] of December 28, 2012, respondent testified that he visited a few members, too. The confirmation by [Taylor], not only with respondent and Veronica, but also with Mr. Montague, and the engagement of list of computer and technology system since January 21, 2013, it clearly shows that [Taylor] has been lying as to the facts of the computer system.

> Special Master, please ask yourself, why then, respondent would not collect the administrative fees from October 2012 through October 2013 if it was not because of the understanding of the computer to be purchased from the trust account for the members and purchased from the members through the monthly fees. If that would have not been the understanding, then, it would not be evidence at least one or two checks were withdrawn from April 2013 through October 2013 payable to respondent for administrative fees? Why would respondent not collect his administrative fees? Does it make sense to you, that because respondent agreed in conference calls with the members and the liaison that this would be method to purchase from them the computer system that [Taylor] required for his group when he was so concerned about security which now, after the couching of the OAE, he reneged, and [Taylor's] group of members now reneged of the authorization and agreement as a scratched long play disc.
>
> [RSp86.]

Respondent admitted that the authorization to purchase the computers was not reduced to writing but asserted that it had been "openly discussed" during conference calls, "for which the member[s] agreed" and it was "ratified by [Taylor]." According to respondent, the "computer system was never a problem until [Taylor] decided to conspire against respondent in September 2015, even, though, he confirmed that he backed all decisions in the Rico action, including the purchase of the computer system."

Respondent claimed that Taylor "was lying on his testimony" and that "he knew from January 2013 that the computer system was going to be paid from the administrative fees."

On July 23, 2021, the OAE submitted its written summation to the special master. The OAE asserted that the clear and convincing evidence introduced at the hearing established all the charged violations of the Rules of Professional Conduct, with the exception of RPC 3.1, RPC 5.5(a)(1), and RPC 8.4(d) (one instance), which it had determined to dismiss.

Specifically, the OAE asserted that respondent knowingly misappropriated client escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, by using $14,118.45 of entrusted funds for the purchase of a new computer system for his law office, without the authorization of his clients. Respondent entered into Retainer Agreements with each client, obligating the client to make monthly contributions toward costs associated with the RICO I and RICO II actions. In return, respondent was obligated to hold the funds, in trust, for expenditures consistent with the terms of the Retainer Agreements. Though the Retainer Agreements broadly described the permissible use of the funds, any expenditures were required to be in furtherance of the litigation. In addition, the Retainer Agreements permitted respondent to deduct for himself a monthly $80 administrative fee from the

client’s monthly payments. At the time he purchased the new computer system, he had accrued approximately $4,500 in administrative fees.

The OAE rejected, as incredible, respondent’s assertion that he had obtained the clients’ authorization to use their funds. First, the OAE emphasized respondent’s evolving story regarding the purported authorization. During an interview, respondent told the OAE that he had purchased the computers with the administrative fees; that he had discussed the purchase with the clients during a conference call, and that he had discussed keeping the computers himself or, alternatively, turning them over to the clients upon the conclusion of the litigation. At the time of his interview, respondent could not remember the date of the conference call, how many clients were on the call, and which clients were on the call. Further, respondent could not identify a single client who directly authorized him to acquire the computers. When pressed by the OAE, respondent stated that Taylor had authorized the purchase.

During a second interview with the OAE, respondent reiterated that he had spoken to the individual clients during a conference call regarding the computer purchase but, again, was unable to identify the date. He subsequently produced four audio tapes of recorded conference calls, which the OAE transcribed. None of the tapes contained a discussion regarding a computer purchase.

In a subsequent letter to the OAE, respondent referenced a December 16, 2012 calendar entry. He was unable to provide any additional documents, including telephone records, that would identify any additional dates that conference calls may have taken place.

Later, during the ethics hearing, respondent testified, for the first time, that, on April 10, 2013, the same date he authorized the purchase of the computer system, he and Veronica agreed that they would not take their administrative fees until the computer system was paid off. According to the OAE, even if respondent paid for the computer system with the intention of repaying the client funds by waiving his administrative fee, respondent still committed knowing misappropriation because he borrowed against client funds, citing In re Blumenstyk, 152 N.J. 158, 163 (1997).

The OAE emphasized that both respondent and Veronica had testified that, on December 28, 2012, Taylor authorized the use of $30,000 toward the computer purchase. Never had either mentioned this purported meeting during their earlier interviews with the OAE; respondent also failed to mention it in his verified amended answer to the complaint, filed after his receipt of the OAE's In re Gavel, 22 N.J. 248 (1956) letter.

Taylor denied telling respondent or Veronica that the clients had authorized a $30,000 expenditure using Litigation Funds for the purchase of a

new computer system. The three clients who testified at the ethics hearing denied having been told that their funds were being used for a computer purchase.

In short, if the clients had authorized respondent's use of $30,000, the OAE argued that there would have been no need for respondent to replenish the Litigation Fund by waiving his monthly administrative fee.

During the hearing, also for the first time, respondent testified to four conference calls that purportedly occurred between December 12, 2012 and January 25, 2013, during which he, Taylor, and the clients discussed the acquisition of respondent's computer system. Further, for the first time, respondent insisted that all clients had participated. Respondent's testimony, according to the OAE, lacked any semblance of credibility since, prior to the ethics hearing, he had not identified any dates in January 2013 when an alleged conference call took place, despite having scoured his personal calendars and telephone records.

The OAE also highlighted the numerous credibility concerns surrounding the testimony of Montague and Veronica. In short, the OAE asserted:

> There is no dispute that Respondent used the clients' funds on April 11, 2013 by writing a check to Metis to pay for his computer system. There is no credible evidence that the RICO I clients gave Respondent permission to use their trust funds to buy a computer for his office. If the clients had given Respondent

> permission to use their funds to acquire a computer system, there would be no reason to reimburse them by waiving his administrative fee for thirteen months. Moreover, there is no evidence that Respondent had an agreement with the clients that he was borrowing funds from them to acquire a computer system. Finally, if it was Respondent's intent to secretly borrow client funds on April 10, 2013 and then pay back the funds by waiving the taking of an administrative fee for thirteen months, Respondent would still have knowingly misappropriated client funds….
>
> [OAESp33.]

By knowingly misappropriating his client's funds, respondent also engaged in criminal conduct, contrary to N.J.S.A. 2C:21-15, and, thus, violated RPC 8.4(b). Further, by taking monthly fees from each client, in amounts ranging from $500 to $600, for litigation costs and expenses but instead using those funds to purchase a computer system, respondent engaged in dishonest and deceitful conduct, in violation of RPC 8.4(c).

The OAE argued that, in violation of RPC 8.1(a), respondent had repeatedly misrepresented to the OAE that he had the authorization of the thirty-three clients, through Taylor. However, Taylor and each client who testified, consistently stated to the contrary. Montague's testimony, the only alleged witness to Taylor's statement regarding the clients' authorization, "has been demonstrated to be biased and incredible."

Moving to the remainder of the charges, the OAE asserted that respondent violated RPC 1.4(a), which requires a lawyer to fully inform a prospective client of how, when, and where the client may communicate with the lawyer, by failing to meet with each client before entering into Retainer Agreements with them and, instead, allowing Taylor and, to a lesser extent, Thompson, to communicate on his behalf. Further, the Retainer Agreements failed to provide each client with specific information about how they could communicate with respondent, stating instead that HCA would be the primary means of communication. The OAE asserted that respondent's belated testimony during the ethics hearing that he had spoken with every client before they retained him lacked credibility since it contradicted his earlier statements to the OAE. Even if respondent had communicated with the clients via conference calls, the OAE argued this also was problematic since respondent and Taylor determined the scheduling of the calls and, on one occasion, Taylor directed a client who had contacted respondent not to bother him with "these type of questions."

According to the OAE, respondent violated RPC 1.5(a) by failing to disclose to the clients, verbally or in his Retainer Agreements, about what they could expect to pay in the litigation, or what it would cost them if they shared his hourly rate in a multi-party litigation. Further, although the Retainer Agreements provided that his legal fees were contingent upon the outcome, he

failed to inform the clients that the RICO claims were cost-shifting and what that would mean with respect to his fees and costs. Respondent also failed to inform each client whether his contingent fee would be determined on the net or gross award, as RPC 1.5(c) requires. Citing Balducci v. Cige, 240 N.J. 574, 600 (2020), discussed below, the OAE argued that respondent was obligated, in a fee-shifting case, to explain to the clients what "they could expect to pay in fees and costs, what attorneys' fees he could receive if a settlement or judgment was obtained and how statutory attorneys' fees and costs would be allocated between attorney and client if the matter was successful."

Respondent's Retainer Agreements also violated RPC 1.16(d) because they provided that a client who failed to make their monthly payments would be removed from the litigation and forfeit any sums "paid under this agreement whether used or not in the process of litigation and/or defense."

Next, the OAE asserted that respondent engaged in a concurrent conflict of interest, violative of RPC 1.7(a)(2) and RPC 1.7(b), by representing multiple clients in a single matter without obtaining each client's informed consent. Specifically, the format of the litigation required each client to cover the costs for each other, so that a steady stream of client payments would be available. Further, respondent compounded the conflicts by treating clients inconsistently. Intake fees were set by Taylor and varied considerably; respondent charged

contingent fees of fifteen percent of the recovery to some clients, whereas most clients were charged a third of the recovery. Respondent separately violated RPC 1.7(a)(2) and (b) by entering into a business transaction with Taylor, a client, to perform litigation support services, and failing to disclose this arrangement to the other clients and, in particular, that Taylor would be paid from the Litigation Fund, as well as a share of respondent's monthly administrative fee.

> Here, there was a significant risk that Respondent's representation of one or more clients would be materially limited by Respondent['s] responsibilities to Taylor, a client in the RICO I matter, and HCA, a third party. It was to the client's benefit for their monthly fees of $500 or $600 a month to cease and it was to Taylor's benefit for the monthly payments to continue, so that he continued to receive monthly administrative fees of $40 a month from each client.
>
> [OAESp51.]

Further, by entering into a business transaction with Taylor without written informed consent, respondent violated RPC 1.8(a). The OAE rejected respondent's assertion that he had entered into a business agreement with HCA, and not Taylor, because, according to the OAE, "Taylor is HCA. There is no distinction between the two."

The OAE argued that respondent violated RPC 5.4(a), which prohibits a lawyer from sharing fees with a nonlawyer, by sharing half of his monthly

administrative fee with Taylor, for a total of $54,740. Further, by amending the Service Agreement with Taylor that permitted Taylor to receive one-third of respondent's anticipated contingent fee in the RICO I and RICO II lawsuits, respondent attempted to violate RPC 5.4(a), in violation of RPC 8.4(a).

Next, the OAE asserted that respondent violated RPC 7.2(c), RPC 7.3(d), and RPC 8.4(a) by sharing the intake fees and monthly administrative fees with Taylor, in exchange for Taylor's solicitation of clients. The terms of the Service Agreement expressly contemplate Taylor securing at least twenty-five clients and, in fact, Taylor secured all by one client.

The OAE argued that respondent had committed third degree theft by deception, contrary to N.J.S.A. 2C:20-4, by accepting a monthly administrative fee from each client purportedly to be used for administrative expenses related to the litigation when, in fact, respondent separately charged the clients for the administrative expenses he incurred. In this respect, the OAE alleged respondent had violated RPC 8.4(b).

Respondent failed to keep his clients reasonably informed about the status of the Litigation Fund and failed to promptly reply to requests for such information, in violation of RPC 1.4(b). Despite his repeated promises that he would provide the clients with a full accounting of the Litigation Fund, he failed to do so until September 22, 2015. Further, he failed to inform the clients that

he had used the Litigation Fund to purchase the computer system, despite the fact that Veronica had itemized a deduction of $427.83 on each client ledger. Respondent also failed to disclose to the clients that he had used Litigation Funds to pay for paralegal services.

Next, respondent violated RPC 1.5(a) by charging his clients excessive costs and litigation expenses. Respondent violated this Rule, and the principles of In re Ort, 134 N.J. 146 (1993), by paying Veronica a monthly flat fee of $1,600, totaling $49,600, from the Litigation Fund, for paralegal and clerical services. By doing so, respondent was able to take Veronica off his law firm's payroll. Veronica's purported paralegal services, however, were not supported by any invoices or documents of record and based upon the testimony, were clerical in nature or duplicative of the work performed by Taylor/HCA.

Respondent separately violated this Rule by charging each client a monthly administrative fee, which he applied toward his computer system and to pay office expenses. In total, respondent received $41,411.35 in administrative fees, in addition to the new computer system which he paid for by waiving his fee until the computer system was paid off. None of the clients fully understood what the administrative fee was intended to cover. Further, respondent failed to disclose to his clients that Taylor, through HCA, was receiving half of respondent's monthly administrative fee.

Respondent also paid Taylor $153,956.05 from the Litigation Fund for paralegal and research services. Respondent reimbursed Taylor for travel related expenses and costs associated with flying potential experts to New Jersey.

In addition, respondent reimbursed himself $6,922.41 for RICO I expenses, such as filing fees, copy paper, copier machine repairs, and toner, and $1,527.80 for RICO II expenses, which primarily included copying costs. The expenses for which respondent reimbursed himself were in addition to other expenses, e.g., expert fees, that he paid directly from the Litigation Fund.

In short, the expenses and costs paid by the RICO I and RICO II clients, each of whom owned homes that were in default or foreclosure, were excessive. Dwyer, for instance, who joined the RICO II litigation on January 4, 2013, paid a net amount of $10,033 to respondent and HCA; Adkins paid a net amount of $8,073 to respondent; Ingrid and David Phillips paid $6,000 to respondent and $2,500 to HCA for an intake fee; Groveman paid $14,600 to respondent and $3,000 to HCA for an intake fee. Respondent's fee overreaching alone, according to the OAE, should be met with a one-year term of suspension.

Respondent's failure to disclose to his clients the intended purpose of the monthly administrative fee and, further, that he was sharing it with Taylor, constituted dishonest conduct in violation of RPC 8.4(c). Although some clients assumed it would cover costs, such as copying expenses and other litigation-

related expenses, respondent separately billed the clients for those type of expenses. Respondent claimed during the disciplinary proceeding that he required the administrative fee for "the mere right of the members cases to occupy for example three cabinets" in his office, whereas Veronica claimed the fee was intended to cover phone costs, online legal research, storage, and filing. Respondent failed, however, to introduce any corroborating evidence that the administrative fees were applied to cover such expenses.

Respondent violated this Rule, the OAE alleged, by submitting Veronica's invoices to the clients, on September 22, 2015, that failed to accurately reflect the services she performed.

Respondent engaged in a concurrent conflict of interest, contrary to RPC 1.7(a)(2) and RPC 1.7(b), because he had a pecuniary interest in prolonging the litigation to ensure his continued receipt of the monthly administrative fee and the $1,600 flat fee for Veronica's paralegal services. His representation of the clients created a significant risk that his representation would be materially limited by his own financial interest. Respondent could have, but did not, cure this conflict of interest by obtaining consent from each client, after full disclosure.

By entering into a business arrangement with Sophiometics, whereby an entity was permitted to pay respondent's costs on behalf of a client, respondent

violated RPC 1.4(c); RPC 1.8(f); and RPC 5.4(c). Respondent admittedly did not review or discuss the terms of the Sophiometics funding agreements with those clients who entered into such arrangements. Further, the funding agreements precluded the client from settling a case without Sophiometics consent, thereby interfering with the lawyer's independence or judgment.

With respect to Count Five, the OAE asserted respondent had violated RPC 1.2(a); RPC 1.4(b); RPC 1.7(a) and (b); RPC 1.9(a); RPC 1.9(c)(1); RPC 1.16(d); RPC 8.4(c); and RPC 8.4(d). Specifically, prior to filing a second amended complaint on March 25, 2015, in the RICO II action, in which he removed eleven plaintiffs, respondent failed to notify each client of his intent to remove them; did not copy them on his court filing; and did not file a motion seeking the court's permission to withdraw as counsel on behalf of those clients. By failing to communicate with his former clients, respondent violated RPC 1.2(a); RPC 1.4(b); and RPC 8.4(c). He further violated RPC 1.16(d) by failing to take any steps to protect their interests.

Thereafter, on January 15, 2016, respondent filed a declaratory judgment action against nine of his former clients, on behalf of the remaining RICO II plaintiffs, seeking a declaration that the $45,920 remaining in the Litigation Fund could be released to Taylor. Prior to doing so, however, he did not notify his former clients that he intended to sue the sue them; nor did he ask each of

them to consent to a waiver of any conflict of interest. Respondent also failed to inform the existing RICO II clients that he filed this action on their behalf. By filing the declaratory judgment action, respondent violated RPC 1.7(a)(2) and (b) because there was a significant risk that his representation of the RICO II clients would be materially limited by his responsibilities to his former clients. Although this conflict could be waived, respondent admittedly failed to obtain the informed consent of the existing RICO II clients before filing the lawsuit. In this same respect, respondent violated RPC 1.9(a) by representing clients whose interests were material adverse to his former clients, without the former clients' informed consent.

According to the OAE, respondent also violated RPC 1.9(c)(1) by using information that he learned in the course of his representation of his former clients against them to prepare the declaratory judgment action; namely, the specific terms of the representation, the terms of their Retainer Agreements, and the amount of money each had contributed to the Litigation Fund.

The OAE asserted that respondent abdicated all responsibility to Taylor, including the retention of clients, communication with clients, and billing disputes, in violation of RPC 5.3(a) and (b). Consequently, when Taylor enlisted Thompson to assist him with identifying and communicating with California-based clients, respondent was unaware that both had made misrepresentations

about his credentials, experience, and success with other RICO matters. Further, both Thompson and Taylor exaggerated the strength of the RICO litigation, thereby creating an unjustified expectation about the results respondent could achieve. These statements were violative of RPC 7.1(a)(1) and (2), as well as RPC 8.4(c). The OAE further alleged that respondent allowed Taylor to direct or regulate his personal judgment, in violation of RPC 5.4(c).

During his June 21 and October 30, 2017 interviews with the OAE, respondent denied that Taylor acted as a runner for his law firm, despite the express terms of his Service Agreement with Taylor. Respondent could not, however, explain why Taylor needed to receive $40 per month per client from respondent's share of the administrative fee. Respondent also denied that his amended Service Agreement with HCA, which further compensated HCA with a percentage of respondent's contingent legal fee, a so-called "success fee," constituted compensation for Taylor's referring and securing clients. The OAE asserted that respondent's denial in this respect dishonest and in violation of both RPC 8.1(a) and RPC 8.4(c).

Finally, the OAE asserted that the record clearly and convincingly established respondent's negligent misappropriation of client funds, in violation of RPC 1.15(a), stemming from his recordkeeping deficiencies which, the OAE acknowledged, had been corrected.

In sum, the OAE argued that respondent's knowing misappropriation of client funds, by acquiring a computer system without the authorization of his thirty-three clients, mandated his disbarment. In the alternative, citing In re Ehrlich, 235 N.J. 321 (2018), In re Velahos, 225 N.J. 165 (2016), and In re Schlissel, 239 N.J. 4 (2019), respondent's other serious misconduct warranted a two- or three-year term of suspension.

In aggravation, the OAE emphasized respondent's "lack of civility and disrespectful conduct" during the lengthy disciplinary hearing.

* * *

After reviewing the evidence and testimony presented at the ethics hearing, the special master concluded that respondent had committed some, but not all of, the charged misconduct.[29]

The special master concluded that, in his view, the evidence and testimony elicited during the "needlessly long hearing" demonstrated that there were "scant few relevant facts truly in dispute." Rather, the special master found that respondent, who repeatedly proclaimed himself to be a "true believer" in the RICO claims, set him down a path of ethical misstep after another.

> This also caused his behavior and demeanor at the hearing to be abhorrent at times, from attempts to needlessly delay the matter, to acting aggressive and

[29] On May 26, 2023, the special master submitted a supplemental report addressing a number of RPCs that were not explicitly addressed in his April 18, 2022 report.

> unprofessional, both to the OAE counsel, and at times, to the Special Ethics Master. While perhaps this can be attributed to the Abraham Lincoln quote about a man who represents himself, it is equally attributable to the fact that he was a "true believer." Unfortunately, he was unable to see what was true.
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> [SMRpp1-2.]

On the other hand, the special master described the OAE's prosecution of the case as "overzealous in seeking disbarment for knowing misappropriation, given the plethora of authority that holds that the misuse of a retainer is not a conversion of trust funds."

The special master began his analysis with his conclusion that respondent had not knowingly misappropriated client funds, in violation of RPC 1.15(a), or the principles of Wilson or Hollendonner. The uncontroverted facts established that the clients, through Taylor, made monthly payments to account for costs that would be incurred in connection with the litigation and held in respondent's trust account. The special master described the clients' payments as "more akin to a retainer on account of costs, than a deposit for a real estate deal or other client funds," and need not have been deposited in respondent's trust account. Based on his conclusion in this respect, the special master stated that the numerous days of testimony regarding the purchase of the computer system was "largely a waste of time," and that the clients' testimony was "largely unhelpful

because … everything went through their liaison, [Taylor], for virtually every issue."

According to the Special Master, Taylor, indisputably, advocated, if not required, respondent to purchase a new computer system. Further, Taylor was involved in all aspects of the computer project, from the design of the system, selection of hardware, and its set up. He also communicated with the computer consultant directly and in respondent's presence. The special master concluded that, despite Taylor's later denial, the testimony and evidence established that Taylor had authorized the purchase of the computer system on behalf of the clients.

When the clients learned, in September 2015, of the computer purchase using the funds they had advanced for litigation costs, the special master acknowledged that they were rightfully upset. Rather than accepting responsibility for his decision to the clients, however, the special master concluded that Taylor "cut Respondent loose on the issue and threw him under the bus." The special master reasoned that Taylor had "motive to do so to keep the [client] group happy, because he was sharing in the administrative fees and was richly rewarded for his work on this case."

The special master also was persuaded by the fact that respondent had not taken his share of the monthly administrative fees for nearly one year,

approximating the total cost of the computer system. Further, the special master reasoned that "the issue as to whether an expense is chargeable to a client or not, much like whether the issue of a time entry on a bill is excessive or not, is not knowing misappropriation of client funds." Rather, it "may very well be overbilling which could be addressed in fee arbitration or another forum."

Although the special master acknowledged that an inculpatory statement is not a necessary element of proof and that circumstantial evidence can suffice, he asserted that the line between knowing and negligent misappropriate is often close. Here, the special master concluded that the OAE had not even proven negligent misappropriation, let alone knowing, because Taylor had authorized the purchase. For the same reason, the special master concluded respondent did not commit a criminal act, in violation of RPC 8.4(b).

Likewise, the special master concluded respondent had not violated RPC 8.1(a) or RPC 8.4(c) when he told the OAE he had his client's authorization to purchase the computer system with their monthly fees. Rather, the special master found that respondent had "believed that he had authorization from Tyson Taylor." The special master stated he found Taylor's testimony "not credible in this regard." On the contrary, Montague's testimony, though adversarial and, at times, absurd, was credible, as was that of respondent and Veronica on this point.

For the remainder of the charges, the special master found, by clear and convincing evidence, that respondent violated RPC 1.4(b) (two instances); RPC 1.4(c); RPC 1.5(a) (two instances); RPC 1.5(c); RPC 1.7(a) and (b) (two instances); RPC 1.8(a); RPC 1.9(a); RPC 1.9(c)(1); RPC 1.15(a); RPC 1.15(d); RPC 1.16(a)(1); RPC 1.16(d) (two instances); RPC 5.3(a) and (b); RPC 5.4(c); RPC 8.1(a); RPC 8.4(a); and RPC 8.4(c) (two instances). The special master determined, however, that the OAE had failed to prove, by clear and convincing evidence, that respondent violated RPC 1.2(a); RPC 1.4(a); RPC 1.8(f); RPC 5.4(a); RPC 7.1(a); RPC 7.2(c); RPC 7.3(d); RPC 8.4(b); RPC 8.4(d).

The OAE, according to the special master, failed to prove respondent's violation of RPC 1.4(a) because each retainer agreement explained that (1) the liaison would be primary method of communication and (2) that the clients could communicate directly with respondent, and provided each client with respondent's office address. Thus, the ability to know how to reach respondent was available to the clients.

The special master, however, found that respondent violated RPC 1.5(a) by failing to advise each client of their right to retain an attorney under an arrangement for compensation on the reasonable value of his services. Respondent admitted that he failed to have any such conversation with his clients in this respect and, further, stated that an hourly retention would have

been impracticable and unaffordable. While perhaps true, given the nature of the litigation and that many clients were facing foreclosure, the special master concluded that respondent had violated the Rule.

Next, respondent violated RPC 1.5(c) by failing to advise his clients whether his contingent fee would be calculated on the gross or net award. Further, citing Balducci v. Cige, 240 N.J. 574, 600 (2020), respondent separately violated this Rule by not advising his clients, in the Retainer Agreements, that RICO provided for fee shifting and, if successful, whether and how the clients could recoup their contributions to the Litigation Fund.

Respondent violated RPC 1.16(d) because the plain language of the Retainer Agreements provided that nonpaying clients would be removed from the litigation and forfeit any money already paid. Worse, respondent actually sought to enforce its terms by refusing to return funds to the California clients, despite their demands that he does so.

The special master concluded that respondent violated RPC 1.7(a)(2) and (b), by failing to advise each client that either their failure to make a monthly payment, or that of another member, could create a conflict and that, if members were dropped from the litigation, the remaining members' monthly payments would be increased. Further,

> [t]hey were not explained that their claims were separate from each of the other members and as such,

> they were all seeking compensation from the same resources from the same defendants, without knowing their resources or ability to pay one plaintiff versus the other. There was seemingly no explanation of the potential for serious conflicts of any multi-party litigation.
>
> [SMRpp18-19.]

Respondent separately violated RPC 1.7(a)(2) and (b) by failing to disclose to the RICO I and RICO II clients that Taylor, who was also a client, was being paid a monthly $40 administrative fee per client, in addition to the intake fee, and the payments he received, through HCA, for paralegal services. According to the special master, this conflict was "worsened when the members were charged for paralegal services, performed both by [Taylor], and by Veronica Espinosa. Respondent failed to disclose this conflict to the clients or obtain waivers." The special master determined, however, that respondent did not violate RPC 1.7(a) and (b) through his receipt of the administrative fees, as the OAE had charged.

Next, respondent violated RPC 1.8(a), by entering into a business transaction with Taylor, a client, in three ways. First, Taylor, through HCA, screened all potential clients. Next, he served as the liaison between respondent and each client. And, last, he provided litigation support services to respondent. Respondent admittedly failed to advise Taylor to seek independent counsel or obtain his informed, written consent. The special master rejected respondent's

attempt to distinguish Taylor from HCA as "insulting" since they were "one and the same for all intents and purposes."

The special master declined to find that respondent violated RPC 5.4(a) by sharing his monthly administrative fee with Taylor. According to the special master, respondent's $80 monthly administrative fee was intended to cover costs, not "legal fees," as the Rule requires.

> Just as it would not be an ethical violation if a law firm used a collection agency to assist collecting fees owed to a firm and agreed to pay the collection agency a percentage of what is collected, what occurred here is not a violation.
>
> [SMRp21.]

However, the special master concluded that respondent attempted to violate RPC 5.4(a), thereby violating RPC 8.4(a), by entering into an amended Service Agreement with Taylor whereby he agreed to share in any future fee awarded in the RICO matters.

The special master also declined to find violations pursuant to RPC 7.2(c) or 7.3(d), which prohibits an attorney from giving anything of value to a person for recommending the lawyer's services. The special master reasoned that respondent's sharing of his administrative fee with Taylor was for administrative services "that Taylor arguably earned for his efforts in both collecting the funds each month and serving as the liaison."

Likewise, the special master determined that there was no clear and convincing evidence that respondent had committed theft by deception, in violation of RPC 8.4(b), by collecting the monthly $80 administrative fee and sharing it with Taylor.

Next, the special master agreed that respondent had failed to keep the clients reasonably informed about his use of the Litigation Fund, in violation of RPC 1.4(b), by failing to provide them with regular accountings, despite his promises to do so. Instead, the facts clearly and convincingly established that, on October 2, 2013, he produced a one-page summary of expenses paid from the RICO ATA and failed to provide a detailed accounting until September 22, 2015. Further, there was no evidence that respondent had told his clients he had acquired the computer system with their funds. The special master remarked that, on one hand, if respondent had used his own funds via the administrative fee, there was no reason to tell the clients how the computer system was paid for; yet, on the other hand, Veronica itemized it as an expense on the client ledger for each of the thirty-three RICO I clients. The special master, thus, reasoned that "it is clear that at some point, the intention was to pass the cost along to the clients."

Next, the special master determined that respondent charged excessive fees, in violation of RPC 1.5(a), by taking Veronica off his payroll and, instead,

paying her a flat fee of $1,600 for paralegal services from the Litigation Fund. The special master characterized respondent's misconduct in this respect as "egregious, borderline fraudulent." The special master noted that the services Veronica performed for the first year (October 1, 2012 through October 31, 2013) were largely undocumented and coincided with the timeframe Taylor was recruiting clients, for which she had no responsibilities.

According to the special master, Veronica's testimony revealed that she conducted research, and drafted letters and pleadings for respondent who was a poor typist. She typed most of his e-mails, printed out incoming e-mails for respondent's review, and reminded him of deadlines. The special master concluded that none of these tasks were appropriate billable time, but rather nonlegal, clerical tasks.

For the period October 1, 2013 through May 31, 2015, respondent paid Veronica $32,000 for paralegal work; during this same period, he paid $142,375.18 to HCA for legal support services, outside attorney services, and research. The special master described Veronica's billing invoices as lacking detail related to the performed tasks or the time spent on each task. Several invoices included long lists of cases, without a description of the legal research performed and, further, Veronica had admitted that many of the listed cases were obtained by Taylor. The invoices included clerical tasks, such as reviewing

materials sent by Taylor and e-mails she drafted for respondent. In contrast, HCA's invoices for the same period included substantial detail regarding the research Taylor had performed, which were corroborated by e-mails from Taylor that respondent had produced in connection with the investigation. Further, his invoices included the amount of time he spent on each task, along with his hourly rate ($75).

In short, the special master concluded that there "was no credible testimony at the hearing to justify the work she claimed to do" and, thus, respondent violated RPC 1.5(a) by charging the clients for her services. Respondent's misconduct in this respect was also dishonest, in violation of RPC 8.4(c).

Respondent further violated RPC 1.5(a) by reimbursing himself for expenses such as "copying costs, copy repairs, copy paper, toner and [his] admission fees to the Second Circuit Court of Appeals," since those expenses should have been captured by his monthly administrative fees. The special master described respondent's misconduct in this respect as "egregious." On the other hand, the special master concluded that HCA's intake fees and bills, including travel expenses to interview experts, were not unreasonable.

Next, respondent violated RPC 1.4(c) by signing funding agreements with Sophiometics because he, admittedly, failed to review or discuss the agreements

with each of the seven clients in advance of their execution. Further, the funding agreements violated RPC 5.4(c) because they, by their terms, directed or regulated the lawyer's professional judgment. The special master declined to find a violation pursuant to RPC 1.8(f), determining that funding agreements, generally, are not impermissible, and, here, did not increase respondent's compensation.

Regarding respondent's declaratory judgment action, the special master determined that respondent violated RPC 1.4(b) by failing to inform eleven RICO II clients that he intended to withdraw as their attorney, and further by filing a second amended complaint removing them as plaintiffs in the RICO II action. His actions in this respect, however, were not violative of RPC 1.2(a) and RPC 8.4(c), as the OAE had charged.

Next, the special master concluded that respondent engaged in a conflict of interest, in violation of RPC 1.7(a) and (b), when he filed the declaratory action on behalf of his existing RICO clients against his former RICO II clients, without seeking a waiver. The special master rejected respondent's claim that he had not engaged in a conflict of interest because he promptly substituted out of the matter in 2016. Further, the special master determined that respondent had failed to obtain informed consent from the clients he represented in the declaratory judgment action and, further, failed to make a full disclosure to his

former clients. In this respect, respondent also violated RPC 1.9(a). Further, respondent violated RPC 1.9(c)(1) because he used information he had learned during his representation of the nine former RICO II clients against them to prepare the declaratory judgment complaint, including the specific terms of the representation, the terms of their Retainer Agreements, and their monthly payments.

The special master found the evidence "uncontroverted" that respondent failed to supervise Taylor and, to a lesser extent, Thompson. Taylor's contractually agreed upon role as liaison required that he be the point of contact between respondent and the clients. However, Taylor screened clients without respondent's supervision. The fact Veronica claimed she had to re-check Taylor's eligibility determination suggests a failure to supervise the work Taylor was conducting. Certainly, respondent did not supervise Taylor or Thompson with respect to the information they were providing to the clients to induce them to sign a Retainer Agreement. "And because he wasn't supervising them, he was unaware of their puffery and exaggeration regarding his skills and experience in similar cases. In fact, he had little experience in RICO cases as the testimony evidence." Taylor and Thompson circulated information to clients that "were likely to create an unjustified expectation about the results that Respondent could achieve." Thus, respondent violated RPC 5.3(a) and (b).

On the other hand, however, the special master concluded that the OAE had not established, by clear and convincing evidence, that respondent violated RPC 5.4(c). The special master reasoned that:

> While it is clear that Taylor was significantly involved and clearly offered his opinion regarding the substantive RICO matters, there is no evidence that he "directed or regulated" Respondent's professional judgment. Respondent, for better or for worse, was a true believer in the action and that directed his substantive decisions, not Taylor.
>
> [SMRp55.]

Likewise, respondent did not violate RPC 7.1(a), which prohibits an attorney from making a false or misleading statement about his services, because there was no evidence that respondent made or authorized the false and misleading information that was disseminated by Taylor and Thompson.

The special master also rejected the OAE's assertion that Taylor was acting as a "runner" for respondent's law firm. Rather, the screening was rigorous in terms of the documents Taylor reviewed to determine if a potential client was suitable as a plaintiff. Further, the $40 administrative fee that respondent shared with Taylor was not a reward for client intake, but rather was to cover costs associated with his collection of the monthly fees and his liaison responsibilities.

However, without question, respondent's amended Service Agreement with HCA expressly stated it would compensate HCA with a "success fee" in each matter, based upon respondent's contingent legal fee. Thus, respondent's denial to the OAE that he agreed to share his fee with a non-lawyer for referring all but one of respondent's RICO clients, constituted a "false statement of material fact" and was dishonest and deceitful, in violation of RPC 8.1(a) and RPC 8.4(c).

Finally, the special master concluded that the OAE's demand audit revealed numerous recordkeeping deficiencies, in violation of RPC 1.15(d), resulting in his negligent misappropriation of client funds, in violation of RPC 1.15(a). Respondent corrected all of his deficiencies, and offered no evidence at the hearing that the OAE's allegations were inaccurate. He continued to deny, however, that he had negligently misappropriated any client funds.

In aggravation, the special master weighed respondent's ongoing misconduct, which "continued during the investigation wherein he was seemingly unable to concede violations, though he conceded all of the facts related thereto." The special master emphasized that, in some instances, respondent "simply made misrepresentations and nonsensical arguments." In short, the special master described respondent's conduct during the ethics hearing as "outrageous," contumacious, unprofessional, and having caused

unnecessary delay.

In mitigation, the special master noted respondent's lack of prior discipline. Further, respondent's underlying misconduct was not motivated by ill will (explicitly distinguishing, however, his conduct during the investigation and hearing). Rather, the special master emphasized respondent was a "true believer" with respect to his RICO cases, despite the fact "the litigation was misguided" and that he had continued with RICO II "after there was no legal chance of success" after RICO I and Rajamin had been dismissed.

> But "true believer status and defense of his wife aside, Respondent was clearly in over his head, both substantively, technologically, economically and logistically (he did not have the staff necessary to properly fight this fight). This caused Respondent to violate the RPCs in many different ways as set forth herein.
>
> [SMRp62.]

The special master described the OAE as "overzealous" in seeking respondent's disbarment given the undisputed facts of the case.

For the totality of respondent's misconduct, the special master concluded that a two-year suspension was warranted to protect the public and preserve the public's confidence in the disciplinary system.

On July 26, 2023, the OAE submitted a letter brief to us, expressing disagreement with the special master's determination that respondent did not knowingly misappropriate client or escrow funds.

The OAE asserted that the special master had erred by finding that the Litigation Fund was comprised of "retainer" funds which could not be misappropriated. The OAE distinguished In re Stern, 92 N.J. 611 (1983), cited by the special master, and In re Jackson, 201 N.J. 116 (2010), where the attorneys had accepted retainers for legal fees, agreed to perform legal services, failed to perform those services, and spent the retainer on business expenses. Both attorneys failed to return the retainers to their clients.

Retainers, the OAE asserted, are defined as "the compensation paid to an attorney to ensure that he or she will render legal services at some point in the future." Unlike client or escrow funds, attorneys are not obligated to hold retainers, or unearned legal fees, in their trust accounts. By contrast, here, respondent was obligated, by virtue of the express terms of the Retainer Agreement, to hold his clients' monthly payments in the "special trust account" to be used "for the lawsuit proceeding purpose." Indeed, respondent opened a second ATA solely designated to both RICO matters and deposited no other client funds in that account. Veronica prepared client ledgers for each client,

documenting client payments and, likewise, documenting pro rata shares of all expenses, shared by each of the RICO clients.

By holding his clients' monthly payments in his RICO ATA, the OAE argued that he had agreed to serve as a fiduciary to the clients for all expenditures. Citing In re Stein, 97 N.J. 550 (1984), the OAE asserted that funds held in trust cannot be taken by an attorney for personal use or released as legal fees, without notice to a client.

The OAE acknowledged the lack of disciplinary precedent relating to an attorney's knowing misappropriation of money held in a litigation fund but likened it to situations where the attorney held client funds earmarked for a specific purpose, and instead used those funds for other purposes. For instance, in In re Barlow, 140 N.J. 191 (1995), the attorney was disbarred for failing to pay title insurance and survey costs with funds held in his trust account and earmarked for that purpose. Instead, the attorney transferred those funds ($2,894.94) to his business account and used the funds to pay personal debts. Although the attorney eventually paid the title insurance and survey costs, the attorney was disbarred. Notably, we were divided on whether Barlow had knowingly misappropriated client funds. In the Matter of Dennis Barlow, DRB 93-393 (September 27, 1994).

Likewise, the OAE argued that attorneys have been disbarred for failing to use escrow funds as directed by the client. See In re Richards, 197 N.J. 30 (2008) (attorney held $1,500 of funds in escrow as a "reserve" for his client's medical bills; attorney disbarred for disbursing funds to his business account and cutting checks to other clients without authorization of his client); In re Daly, 170 N.J. 200 (2001) (attorney disbarred for disbursing $2,000 of client funds from trust account without authorization from the client; attorney should have continued to hold these funds in escrow so that the funds could pay a court-appointed psychiatrist and a court-appointed attorney for his client); In re Picciano, 158 N.J. 470 (1999) (attorney held $5,000 in escrow to pay a client's medical bills; attorney disbarred for using the funds for his own obligations); In re Cavuto, 160 N.J. 185, 193-94 (1999) (attorney disbarred for failing to directly pay client's medical bills to the medical providers from the remainder of personal injury settlement funds he was holding in escrow; the attorney transferred escrow funds to his personal bank accounts and used these funds to pay his own expenses).

The OAE emphasized that the special master acknowledged that respondent used the clients' monthly payments to acquire the computer, and that the clients had not known about the purchase until September 22, 2015, when respondent finally provided them a full accounting. Further, the special master

recognized that the computer purchase was extraordinary and should not have made without the clients' consent. The special master also agreed that respondent's October 2, 2013 one-page summary of expenses, itemizing $14,118.45 with the description "Equipment/Software/Security/System," was a clear attempt to mislead the clients.

The OAE asserted that the special master's findings in these respects contradicted the testimony of both respondent and Veronica, who testified about four purported conference calls with all thirty-three clients and, thus, the OAE surmised that the special master did not find credible respondent's prolonged testimony that the clients had directly authorized the purchase of the computer.

Further, the OAE argued that the broad language contained in the Retainer Agreements did not grant respondent the authority to use the Litigation Fund to pay for his own office expenses or to cover any overhead expenses of his law practice. Accordingly, respondent did not have direct authorization from the thirty-three clients to acquire the computer system using their funds.

Next, the OAE asserted that respondent could not have reasonably believed that Taylor had obtained specific consent from each client for the purchase of the computer system, notwithstanding the special master's finding to the contrary. The OAE emphasized that Veronica's testimony regarding a December 28, 2012 conversation with Taylor was presented for the first time at

the disciplinary hearing. Neither respondent nor Veronica had previously mentioned this alleged conversation, notwithstanding having participated in several interviews with the OAE. Moreover, during the hearing, respondent himself never claimed that he remembered the alleged December 28, 2012 conversation. Rather, respondent mentioned only that Veronica had already testified about what had happened. Further, respondent offered no explanation why Taylor would authorize him to spend more funds than were being held in the RICO ATA at the time the purported authorization was made.

Taylor, on the other hand, testified that he never told respondent that he had obtained permission from the thirty-three clients to permit respondent to use client funds to acquire the computer system. Indeed, Taylor objected when he learned respondent had used the clients' funds because their funds were limited.

The OAE argued that respondent failed to support his assertion that Taylor was the "agent" of the clients and had the authority to make the decision on their behalf. To the contrary, the clients neither appointed Taylor as their "attorney in fact" or otherwise formally designated him as agent or as holding power of attorney.

The OAE also emphasized that respondent never identified a specific conversation during which Taylor informed him that the clients had given their express authorization to use the Litigation Funds to acquire the computers.

Indeed, respondent never directed Taylor to discuss with the clients the computer purchase to determine whether they would authorize the purchase. The also stressed that, during its investigation, respondent never claimed that he had pressed Taylor to confirm he had spoken to all thirty-three clients prior to April 10, 2013, and respondent admitted he never required Taylor to confirm in writing that he had conferred with the clients. Based upon the foregoing, the OAE asserted that it was not reasonable for respondent to believe that all thirty-three clients had authorized him to purchase a new computer system with their funds.

The OAE agreed with the special master that Taylor had encouraged respondent to acquire a new computer system. However, Taylor did not and could not "require" respondent to do so; he was not power of attorney for the clients, nor was he responsible for managing the RICO ATA.

The OAE agreed that the clients had not been harmed because respondent reimbursed the Litigation Fund by waiving his administrative fee; however, this does not spare him from disbarment.

The OAE also emphasized respondent's ever evolving positions. On October 30, 2017, respondent told the OAE that "while we were negotiating" the acquisition of the computer, he had conference calls during which the clients authorized his use of the administrative fees to pay for the new system.

Likewise, during his January 23, 2018 interview, and in his verified answer to the formal ethics complaint, respondent claimed that, prior to his acquisition of the computers, he had discussed setting off the computer costs by waiving his entitlement to the administrative fees. At the hearing, however, respondent's story changed yet again. Both he and Veronica testified that they agreed to waive their administrative fee on April 10, 2013, the same day they told Metis that they would purchase the system. Yet, this testimony conflicts with the fact that, on April 15, 2013, Veronica deducted $427.83 from each client ledger card for all thirty-three clients. If they had agreed, on April 10, 2013 to waive the collection of administrative fees, there would have been no need to pass on the costs of the computer system to the thirty-three RICO I clients.

Additionally, Veronica had prepared a letter dated October 25, 2013, addressed to the clients, advising them that respondent would be deducting his administrative fees from the RICO ATA, totaling $13,560, for the period from October 1, 2012 to October 31, 2013. The letter, however, was not sent, and respondent never withdrew $13,560 from the RICO ATA. Instead, on November 5, 2013, Veronica prepared a second letter, this time stating that respondent's $13,560 in accumulated administrative fees was "applied to the expenses disclosed to the group before of [sic] $14,118.45 dollars that was used for the costs of the equipment needed for the support of the litigation effort." Although

respondent claims this letter was sent to Taylor for distribution to the clients, both respondent and Taylor admitted that it had not been sent.

Based on the foregoing, the OAE argued that respondent's own records suggest that, sometime between October 5 and November 5, 2013, respondent decided to waive the collection of his administrative fees for one year to partially offset the $14,118.45 he paid Metis for the computer system.

Importantly, even if Veronica's testimony was true, that she and respondent agreed, on April 10, 2013, to use the administrative fees to cover the computer purchase, respondent still committed knowing misappropriation because, at the time, he had collected only $4,520 in administrative fees. He would have borrowed the rest from the Litigation Fund without the clients' permission.

The OAE disputed the special master's characterization that the OAE was overzealous in seeking respondent's disbarment for his knowing misappropriation of client funds, and that the pertinent facts were "undisputed." The OAE recommended that respondent be disbarred or, alternatively, suspended for a two or three-year period. The OAE did not address the remainder of the RPCs charged in the complaint.

In his July 24, 2023 submission, and during oral argument before us, respondent stated that the special master correctly described him as a "true

believer," in the viability of the federal claims he filed on behalf of RICO I and RICO II clients. He emphasized that his legal practice was aimed at helping poor and working-class individuals, not institutions. Further, he has never been disciplined in thirty-eight years at the bar.

Overall, respondent's submission to us merely recapped the special master's findings, without any additional argument or analysis. Concerning the most serious charge, respondent simply agreed with the special master's determination that he did not knowingly misappropriate client funds because he had the authorization from Taylor, the leader of the group. Respondent further agreed with the special master's determinations to dismiss many of the charged violations. During oral argument, in response to our questioning, respondent conceded that he did not have any document or e-mail memorializing that he had the clients' permission to purchase the computer system; he maintained, however, that it had been discussed during the conference calls and that Taylor had authorized the purchase.

Respondent disagreed with the special master's determination that he violated RPC 1.16(d), stating that he disbursed the remainder of funds from his RICO ATA, totaling $234,143.38, to Taylor on October 30, 2015. He denied that he refused to return the clients' funds; merely, he required authorization from each and every client before doing so. Similarly, respondent argued that

the $45,920 that he held on behalf of the California plaintiffs remained in his trust account pending the declaratory judgment action. Ultimately, respondent asserted that the funds were returned to those clients as well. Accordingly, respondent requested that this charge be dismissed.

For his repeated violations of RPC 1.7(a)(2) and (b), respondent urged the imposition of discipline less than a term of suspension based on his view that his violations were de minimis. For his violation of RPC 1.8(a), respondent urged imposition of a reprimand. Respondent denied that he attempted to share his contingent fee with a non-lawyer, in violation of RPC 8.4(a), but rather he was attempting to "maximize their return and the performance of person involved actions by reduction of his contingency fees." Nonetheless, citing In re LaVan, 238 N.J. 474 (2019), respondent argued that discipline no greater than a reprimand was required.

Respondent disagreed with the special master's conclusion that he violated RPC 1.4(b) by failing to keep his clients apprised of the Litigation Fund expenditures. To the contrary, respondent asserted that he provided updates to Taylor who, as liaison, should have provided such updates to the clients. Respondent asserted that Taylor was provided with all bank account statements to provide to the clients; Taylor worked "hand to hand" with Veronica "when proper accounting was given in contemplation of the scheduled conferences with

the members." He emphasized that, on December 20, 2014, he sent an e-mail to Taylor with all 2014 bank statements and a detailed spreadsheet. A second e-mail with detailed expenses was sent to Taylor or January 12, 2015.

Respondent maintained that the clients agreed to have Taylor serve as their liaison for communication and that "Taylor was instructed to provide the documents that respondent's and his office submitted for accounting purposes prior to telephone conferences." Respondent stated that the special master overlooked a March 23, 2015 e-mail, in this respect.

Next, respondent disagreed with the special master's determination that he violated RPC 1.5(a) by virtue of the paralegal fees paid to Veronica from the Litigation Fund. He maintained that the Retainer Agreements authorized respondent to hire anyone to assist with the litigation. He denied that her work was duplicative of Taylor's, stating that she conducted legal research comprising fifty binders that are still in his law office and, further, that the OAE had been offered the opportunity to review the binders.

Respondent admitted that Veronica did some work on other cases for which she billed the clients. He claimed that she previously earned $500 per week but settled for $1,600 per month to work exclusively on the RICO cases. Although her invoices admittedly lacked detail, he requested that she be permitted to submit more detailed invoices for our consideration.

Respondent also denied, contrary to the finding of the special master, that he violated RPC 8.4(c) by billing for Veronica's paralegal services:

> Contrary to the perception of the Special Master, respondent did not violate RPC 8.4(c) because first Veronica was not charging on a time basis but did all of her work on a flat fee of $1,600 per month. The work of Veronica included the bookkeeping of the trust account for Rico clients, the drafting of documents, the constant communication with Mr. Taylor, the legal research that she performed with Lexis Advance for the litigation, separate and beyond those by Mr. Taylor efforts, the review of the legal aspects provided by Mr. Taylor to respondent, she read the cases, law and discussed it with respondent and Mr. Taylor. The dishonesty does not play a role here by Veronica, regardless of being the respondent's wife, she has been employed by respondent for more than 17 years giving paralegal services.
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> [Rbp11.]

Respondent further claimed that Taylor "demanded a full-time paralegal for this case" and that Veronica "settled it for $1,600." He claimed Taylor refused to admit that he was aware Veronica was working on the RICO litigation and that "this finding by the Special Master hurts deeply respondent since, all of his life as an attorney has been always dedicated to the good cause."

Respondent disagreed with the special master's conclusion that he failed to supervise Taylor and, to a lesser extent, Thompson, stating that he was unaware Taylor had been dealing with Thompson or the false statements being

made to induce clients to join the RICO litigation. Respondent also maintained that he supervised all legal research that was performed by Veronica.

Respondent denied having made false statements to the OAE, contrary to the finding by the special master, when he claimed, he was not going to share his contingent fee with Taylor. Although he admitted that his amended Service Agreement with Taylor expressly provided that Taylor would receive a percentage of respondent's contingent fee, respondent argued that it was not final and binding because the underlying litigation was, ultimately, not successful.

> There was no winning of the case, there was no actual sharing of any fees, and respondent cannot be charged for violation of any RPC based on assumptions, there was no actual damages [awarded] to any of the clients nor to HCA. Also, respondent was substituted on appeal, which made the Amendment to the Service Agreement null and void.... Respondent does not agree on the findings of the Special Master because the alleged sharing never occurred or took place, therefore, respondent cannot be found in violation of RPC 8.1(a) and RPC 8.4(c) when the allegation did not accrue.
>
> [Rbp17.]

In mitigation, respondent cited his cooperation with the ethics investigation and his lack of prior discipline. Further, he stated that he "has learned his lesson and deeply regrets his oversight and mistakes, apologizes to the Special Master and the OAE's attorneys for any improper conduct and asks

their forgiveness." During oral argument, however, he accused the OAE of being more concerned with winning than ascertaining the truth.

For the totality of his misconduct, respondent urged us to impose a reprimand or, as he suggested during oral argument, a censure. In support, respondent cited the following disciplinary precedent, without analysis: In re Hae Yeon Baik, 224 N.J. 260 (2016) In re Seymour, 230 N.J. 339 (2017) In re Ambrosio, 200 N.J. 434 (2009) In re Rihacek, 230 N.J. 458 (2017); In re Cameron, 225 N.J. 370 (2016); In re Pavliv, 230 N.J. 459 (2017); In re Bolno, 179 N.J. 315 (2004); In re Irving, 233 N.J. 462 (2018); In re Simon, 206 N.J. 306 (2011); In re Vena, 227 N.J. 390 (2017); In re Bahir, 229 N.J. 330 (2019); In re Wigenton, 210 N.J. 95 (2012); In re Margo, 229 N.J. 338 (2019); In re Lisa, 254 N.J. 274 (2023).

* * *

Following our de novo review of the record, we are satisfied that the special master's conclusion that respondent committed unethical conduct is fully supported by clear and convincing evidence.[30] We did not, however, adopt all

[30] We also conclude that the special master correctly determined that the hearing could proceed in a virtual (versus live) format. R. 1:20-6(c)(2)(A) and the Court's Second Omnibus Order, effective April 24, 2020, contemplated virtual hearings for non-complex disciplinary matters. The Order also provided that the discretion to proceed in relatively straightforward matters rested with the OAE Director. The Court issued subsequent Omnibus Orders, which confirmed its earlier directives that disciplinary hearings may continue in a virtual format. See September 17 and October 8, 2020 Omnibus Orders. Further, to the extent respondent's

(footnote cont'd on next page)

the special master's findings. Further, we are divided on whether respondent committed knowing misappropriation of client funds and, consequently, are divided on the appropriate quantum of discipline to be imposed. We are unanimous in our other findings of misconduct and will begin our analysis on that common ground.

Unanimous Findings of Misconduct

We all agree that respondent committed serious misconduct. Given the number of charges, our below findings correspond to each count of the OAE's complaint.

Count One

As to Count One, we conclude that respondent violated RPC 1.5(a); RPC 1.5(c); RPC 1.7(a) and (b); RPC 1.8(a); RPC 1.16(a)(1); RPC 1.16(d); RPC 5.3(a) and (b); RPC 7.2(c); RPC 7.3(d); RPC 8.1(a); RPC 8.4(a) (three instances); and RPC 8.4(c). We determine to dismiss the charges pursuant to RPC 1.4(a); RPC 5.4(a); RPC 5.4(c); RPC 7.1(a); RPC 8.4(b); RPC 8.4(d).

As the Court repeatedly has observed, "an attorney's freedom to contract with a client is subject to the constraints of ethical considerations and our

motion raised any constitutional objections to the virtual disciplinary hearing, those objections are reserved for the Court. See R. 1:20-15(h).

supervision." Cohen v. Radio-Electronics Officers Union, 146 N.J. 140, 155 (1995). Thus, the Court will "scrutinize contracts between attorneys and clients to ensure that they are fair." Ibid.

> When contracting for a fee, therefore, lawyers must satisfy their fiduciary obligations to the client. The lawyer must explain at the outset the basis and rate of the fee. In addition, the lawyer should advise the client of potential conflicts, the scope of representation, and the implications of the agreement. (citation omitted). A retainer agreement may not provide for unreasonable fees or for the unreasonable waiver of a clients' rights.
>
> [Id. at 156.]

Respondent breached his fiduciary obligations to his clients by the onerous terms of his Retainer Agreements, the manner in which he contracted with his clients, and his later attempt to enforce the terms of the agreements. The record clearly and convincing established that respondent did not discuss any of the terms of his fee arrangement with the prospective clients (with the limited exception of the California-based clients who participated in a conference call in advance of signing their agreements), instead solely relying upon Taylor to secure the executed agreement and address any of the clients' concerns.

Respondent, thus, violated RPC 1.5(a) by admittedly not advising his clients of their ability, or afford them an opportunity, "to retain the attorney

under an arrangement for compensation on the basis of the reasonable value of the services," as R. 1:21-7(b) expressly requires.

Respondent separately violated this Rule by entering into Retainer Agreements that reflected an intent to commit fee overreaching, contrary to the principles of In re Quinn. Respondent's contingency agreements required each client to make significant monthly payments, of either $500 or $600, including the monthly $80 administrative fee purportedly to cover costs. The Retainer Agreements also permitted respondent to reimburse himself for out-of-pocket costs, over and above the monthly $80 administrative fee he collected. In total, respondent collected over $600,000 from his clients that he used to purchase a new computer system, to cover his monthly administrative fees, and to pay for HCA's litigation support services.

Further, respondent failed to advise his clients, in the Retainer Agreements, that RICO provided for fee shifting and, if successful, whether and how the clients could recoup their contributions to the Litigation Fund. See Balducci v. Cige, 240 N.J. 574, 600 (2020) (in fee-shifting cases the attorney should explain how statutory counsel fees and costs will be allocated between the attorney and client). In short, respondent entered into Retainer Agreements with his clients that assured him a monthly source of income, while also guaranteeing him a contingent legal fee if the litigation was successful, without

providing the clients the information they needed to make a well-informed decision to enter into the arrangement.

Next, respondent violated RPC 1.5(c), which provides:

> A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, **and whether such expenses are to be deducted before or after the contingent fee is calculated**. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.
>
> (emphasis added).

As the special master observed, respondent violated RPC 1.5(c) by failing to advise his clients whether his contingent fee would be calculated on the gross or net award. Indeed, the majority of the Retainer Agreements were silent in this respect.

RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists not only if "the representation of one client will be directly adverse to another client," but also if "there is a significant risk

that the representation . . . will be materially limited . . . by a personal interest of the lawyer." Pursuant to RPC 1.7(b), however, "[n]otwithstanding the existence of a concurrent conflict of interest under paragraph (a)," a lawyer may represent a client, if:

> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation;
>
> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (3) the representation is not prohibited by law; and
>
> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, respondent's representation of the RICO I and RICO II clients created a concurrent conflict of interest by virtue of the express terms of the Retainer Agreements, which permitted respondent to remove a client from the litigation for failure to make their monthly payments to the Litigation Fund. In the event too many clients were dropped from the litigation, the Retainer Agreements permitted respondent to spread any financial deficiency among the remaining clients. As the OAE pointed out, it was foreseeable that clients struggling to pay their mortgage might have difficulty making the onerous financial contributions required by the terms of the Retainer Agreements. In fact,

several clients did struggle with their monthly payments, resulting in their removal from the RICO II litigation.

Respondent admittedly failed to explain to his clients any potential or actual conflicts of interest caused by his representation of multiple clients in a single litigation; nor did respondent require his clients to sign a written, informed consent, prior to entering into the Retainer Agreements. In fact, respondent failed to discuss the terms of the representation with any client, including any potential conflicts, in advance of entering into the Retainer Agreements. Thus, respondent violated RPC 1.7(a) and (b).

Respondent separately violated this Rule by failing to disclose to his clients that he had entered into a business arrangement with Taylor, a client, to perform litigation support services, whereby Taylor would be compensated from the Litigation Fund and receive a share of the administrative fees respondent was paid.

Next, respondent violated RPC 1.8(a), which prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
>
> (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Although there is no absolute prohibition on an attorney entering a business transaction with a client, the Court repeatedly has cautioned against such business relationships. See In re Humen, 123 N.J. 289, 300 (1991) (the Court has "warned attorneys repeatedly of the dangers of engaging in business transactions with their clients") (citing In re Silverman, 113 N.J. 193 (1988), and In re Reiss, 101 N.J. 475 (1986)). See also In re Palmieri, 76 N.J. 51, 52-53 (1978) (quoting In re Carlsen, 17 N.J. 338, 346 (1955)) ("society might be 'better served if practicing attorneys were to remain full-time lawyers rather than become part-time businessmen'").

Thus, in order to protect the interests of a client who engages in business transactions with their lawyer, RPC 1.8(a) mandates extensive disclosures and writings that are designed to ensure the business transactions between a lawyer and client are knowing, informed, and consensual.

Here, the record is clear that respondent entered into a business transaction with Taylor, his client, when he entered into the Service Agreement, thereby

implicating RPC 1.8(a). Further, the record demonstrates that respondent entered into this contract without any of the disclosures or writings required by RPC 1.8(a)(1) through (a)(3). Therefore, respondent violated RPC 1.8(a).

Next, respondent violated RPC 1.16(a)(1), which requires a lawyer to withdraw from the representation of a client if "the representation will result in violation of the Rules of Professional Conduct or other law." As the special master observed, respondent's representation of these RICO clients was fraught from the start and sent him down a path of ethical missteps as he continuously entered into Retainer Agreements with dozens of clients, with whom he never met, that permitted him to collect unreasonable fees, and share fees with a Taylor, a non-lawyer.

Respondent also violated RPC 1.16(d), which provides:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. No lawyer shall assert a common law retaining lien.

Respondent violated this Rule by failing to refund to the California-based clients their portion of the funds paid to the Litigation Fund, despite their demands, and who subsequently were forced to hire counsel and commence litigation to recoup

their money. Indeed, respondent's Retainer Agreements, which stated that all client funds paid would be forfeited "if the member fails to make one monthly payment," were unenforceable on their face. See Cohen, 146 N.J. at 157 ("A retainer agreement may not prevent a client from discharging a lawyer. Neither directly nor indirectly may the agreement restrict a client's right to representation by a lawyer of the client's choice."). In this respect, respondent also violated RPC 8.4(a), which prohibits an attorney from attempting to violate the Rules of Professional Conduct.

RPC 5.3(a) and (b), governing respondent's responsibilities to nonlawyer assistants, states:

> (a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
>
> (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer

Respondent abdicated to Taylor complete responsibility to retain clients, to communicate with his clients, and to deal with the collection of client payments and billing disputes. Taylor had the sole responsibility to find clients who were willing to pay the intake fees, along with the monthly fees to be part

of the RICO litigation. Taylor, and not respondent, provided the potential clients with a Retainer Agreement and answered any questions concerning the representation. Respondent never provided Taylor with instructions in this respect; nor did respondent ask Taylor what information he was sharing with potential clients.

Moreover, Taylor set up the clients' conference calls with respondent, often meeting with the clients after respondent had left the conference calls, to address any outstanding questions or concerns. Taylor communicated with clients who struggled to pay their monthly fees, often reaching agreements with those clients, in exchange for a reduction of their monthly payment amount, unbeknownst to respondent. Taylor partnered with Thompson to solicit clients, and to assist with communication with the California-based clients. In communications with the California-based clients, Thompson and Taylor both made misrepresentations about respondent's credentials and his successes in prior matters.

Respondent claimed that he was unaware of Taylor's or Thompson's misleading statements and denied that he knew about any referral incentives offered to prospective clients; however, his lack of knowledge stemmed directly from his lack of supervision of Taylor in any of the tasks he performed in furtherance of the litigation.

The uncontroverted evidence clearly and convincingly established that respondent abdicated his responsibilities to Taylor, without making a reasonable effort to ensure that Taylor's services were compatible with his own professional obligations. Respondent, thus, violated RPC 5.3(a) and (b).

Next, RPC 7.2(c) and RPC 7.3(d) both prohibit a lawyer from compensating or giving anything in value to a person for recommending the lawyer's services. The policy served by this prohibition is clear:

> To ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client.
>
> [In re Weinroth, 100 N.J. 343, 350 (1985).]

The OAE alleged that respondent violated both Rules by sharing the intake fees and monthly administrative fees, in exchange for Taylor's identification of clients for the RICO litigation. Admittedly, this is not the typical situation where an attorney is paying a referral fee to a nonlawyer or a "runner" [31] for sending him client referrals. Often, the arrangement provides the nonlawyer with a fixed percentage of the legal fee that is collected. That is not the case here.

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[31] A "runner" is an individual who, in exchange for compensation, solicits business for a lawyer. In New Jersey, it is a third-degree crime for a person to knowingly act as a runner or to use a runner. See N.J.S.A. 2C:21-22.1.

Here, respondent contracted with his client Taylor, via the Service Agreement with HCA, for the express purpose of identifying additional clients to serve as plaintiffs in respondent's anticipated RICO lawsuit. In fact, Taylor had represented to respondent that he had family, friends, and connections who could serve as potential plaintiffs. Instead of simply referring those contacts to respondent for screening, however, Taylor and respondent entered into a business transaction to secure the clients. The Service Agreement provided that "It is understood that the viability of this litigation depends on the number of members kept at 25 members or more. HCA will use all of its efforts to keep this level or increase it."

The Service Agreement permitted Taylor to charge each potential client an intake fee, starting at $1,500, and later amended to permit Taylor to charge each putative client whatever Taylor deemed fit. Undoubtedly, respondent's contractual arrangement with HCA gave Taylor a veil of legitimacy, which he touted while recruiting clients when he exaggerated respondent's credentials and success in similar litigation. In exchange, HCA was handsomely compensated by the potential clients who paid very steep intake fees directly to HCA. Thus, respondent's contractual arrangement with HCA allowed HCA to reap significant financial benefits for seeking out clients on respondent's behalf.

Respondent further rewarded Taylor for referring RICO clients to him by sharing half of his monthly $80 administrative fee, totaling over $50,000.

Accordingly, through the Service Agreements, respondent provided Taylor with something of value in exchange for the procurement of clients. The Service Agreement permitted Taylor to charge and collect significant sums of money directly from potential clients; and compensated Taylor $40 per month for each client that retained respondent. Though the compensation did not come directly from respondent, the Service Agreement served as a convenient workaround to facilitate the relationship and, perhaps to prevent detection or scrutiny, as it assured respondent that any funds paid to HCA came directly from the clients and not him. In fact, since all payments flowed through HCA to respondent, HCA was even able to take its share of the monthly administrative fee before depositing those funds in the RICO ATA. Respondent, however, cannot escape culpability based upon the ingenuity and creative wording of his Service Agreement. Accordingly, contrary to the special master's conclusion, we determine that respondent violated RPC 7.2(c) and RPC 7.3(d). Further, by amending the Service Agreement to include a promise to share with HCA a percentage of his contingency fees, respondent violated RPC 8.4(a).

When respondent was interviewed by the OAE, he denied that his amended Service Agreement, despite its unambiguous terms, contemplated the

sharing of his legal fee with Taylor. In this respect, respondent knowingly made a false statement of material fact to the OAE, in violation of RPC 8.1(a), and was dishonest, in violation of RPC 8.4(c).

The special master correctly determined that respondent did not violate RPC 1.4(a), which requires a lawyer to inform a prospective client of how, when and where the client may communicate with the lawyer. The Retainer Agreements contemplated that the majority of communications would flow through Taylor, as the liaison; however, they also expressly stated that respondent and the clients could have direct access to each other. Thus, we dismiss this charge.

Respondent did not violate RPC 5.4(a), which prohibits a lawyer from sharing a fee with a nonlawyer, because respondent did not share his legal fees with Taylor. As noted above, however, respondent attempted to violate this Rule, in violation of RPC 8.4(a), when he amended his Service Agreement with HCA.

We determine, as did the special master, that the record lacked clear and convincing evidence that Taylor directed respondent's professional judgment in rendering legal services. Thus, we dismiss the charge pursuant to RPC 5.4(c).

Nor did respondent violate RPC 7.1(a) when, unbeknownst to him, Taylor and Thompson made false and misleading statements about his credentials.

Although respondent should have been supervising Taylor to ensure the communications being made to prospective client were accurate, his failure in this respect is better addressed by his violations of RPC 5.3(a) and (b). We also determine to dismiss the charge that respondent separately violated RPC 8.4(b) through his receipt of the monthly administrative fee, in addition to being reimbursed to actual expenses, contrary to N.J.S.A. 2C:20-4.

Count Three

As to Count Three, we conclude that respondent violated RPC 1.4(b); RPC 1.5(a); and RPC 8.4(c). We determine to dismiss the charges pursuant to RPC 1.7(a) and (b).

RPC 1.4(b) states that a lawyer "shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Respondent violated this Rule by failing to keep his clients informed regarding expenditures from the Litigation Fund, despite his repeated promises to do so. Although he provided the clients a one-page summary of expenditures in October 2013, the record firmly established that respondent failed to provide the clients with a detailed accounting until September 2015, nearly three years after having established the Litigation Fund. The clients expressed great frustration over respondent's lack of transparency and, upon

receipt of the detailed accounting, were surprised to learn that he had purchased a computer system and had paid Veronica for paralegal services. Contrary to respondent's assertion, it was his – and not Taylor's – ethical obligation to communicate with his clients and keep his clients' abreast as to his expenditures from the Litigation Fund comprised of their money. Respondent grossly violated this obligation by not providing prompt financial disclosures, despite his clients' specific requests that he do so.

The reasonableness requirement of RPC 1.5(a) applies to all legal costs for which the client is responsible, including fees, expenses, and paraprofessional services. See Michels, New Jersey Attorney Ethics, (GANN 2023) at § 33:3-2(c) (citing ABA Formal Opinion 93-379 (1993)). Respondent violated this Rule in two respects. First, without informing his clients, respondent determined to pay Veronica a flat monthly fee of $1,600, directly from the Litigation Fund, for paralegal services that she purportedly provided in both RICO matters. In total, respondent paid Veronica $49,600 from the Litigation Fund.

Veronica's paralegal services, however, were not well-documented and, in fact, the evidence established that Veronica often performed clerical tasks on respondent's behalf, to include printing his e-mails, typing all correspondence

because respondent, admittedly, was not a typist, and performing bookkeeping functions for the office.

For instance, for the period spanning October 1, 2012 through October 31, 2013, Veronica was paid $19,200. Her invoice, however, lacked any detail whatsoever. In fact, during this time, respondent was engaging clients (through Taylor) and preparing the RICO I complaint. There is no evidence to support the purported paraprofessional services she was allegedly performing, under respondent's direction. Although Veronica testified that much of her paralegal work during this time frame involved confirming the pre-qualification work performed by Taylor, it was unreasonable for respondent to bill clients for work that they already had paid Taylor to perform, as intake fees. Further, if respondent was concerned about the accuracy of Taylor's pre-qualification work, he should have discontinued using Taylor for paralegal services. Instead, during this same period, respondent paid Taylor, via HCA, $12,500, for "legal support services."[32]

Veronica's subsequent invoices contained varying amounts of detail, including pages of legal citations, which she printed and organized in binders. Veronica was unable to explain what, if any, legal research she conducted.

[32] During that same period, Taylor also had received $13,020 in administrative fees, in addition to whatever he collected in intake fees.

Further, she described herself as respondent's "left hand," typing e-mails; printing e-mails; maintaining the calendar and reminding him of deadlines. These are clerical tasks and not appropriate billable time.

According to R. 4:42-9(b), governing an award of attorney's fees, paraprofessional services that are properly billable must be "legal in nature" and performed "under the direction and supervision of attorneys." Specifically:

> If the court is requested to consider the rendition of paraprofessional services in making a fee allowance, the [attorney's] affidavit shall include a detailed statement of the time spent and services rendered by paraprofessionals, a summary of the paraprofessionals' qualifications, and the attorney's billing rate for paraprofessional services to clients generally. No portion of any fee allowance claimed for attorneys' services shall duplicate in any way the fees claimed by the attorney for paraprofessional services rendered to the client. For purposes of this rule, "paraprofessional services" shall mean those services rendered by individuals who are qualified through education, work experience or training who perform specifically delegated tasks which are legal in nature under the direction and supervision of attorneys and which tasks an attorney would otherwise be obliged to perform.

There is no credible evidence that respondent delegated to Veronica specific legal tasks that he otherwise would have been obliged to perform. Surely, printing out legal material and organizing it into binders is not the type of billable paraprofessional task contemplated by the Rule. Her invoices do not describe how much time she dedicated to any particular task, or her hourly rate.

As the special master observed, there was simply no credible evidence introduced at the hearing to justify the paralegal work she claimed to have performed.

Equally concerning is respondent's lack of transparency regarding his payments to Veronica. Respondent did not disclose to the clients that he had determined to pay Veronica a flat monthly fee for her services. None of the clients who testified were aware that Veronica was performing paralegal services and being compensated for those services from their Litigation Fund. In fact, it appears that respondent attempted to conceal from the clients that he was compensating Veronica from the Litigation Fund. Specifically, on October 3, 2013, when Taylor sent respondent a draft e-mail and accounting summary for his review, respondent added a line item for "paralegal services," omitting the amount attributable to this expense. Respondent did not disclose to the clients, in the accounting summary or in his edits to Taylor's e-mail, that Veronica was performing the paralegal services or that he was paying her a flat fee of $1,600. Respondent's conduct in this respect also was dishonest, in violation of RPC 8.4(c).

Respondent separately violated this Rule by reimbursing himself for firm overhead expenses, such as copying costs, repairs to his copier machine, toner, and copy paper charges. These costs clearly should have been covered by his

$40 monthly administrative fee. As the special master remarked, respondent's conduct this respect, which amounted to double dipping, was "egregious."

We determine, however, that respondent did not engage in a conflict of interest, in violation of RPC 1.7(a)(2) and (b), by virtue of an alleged personal interest in paying his wife $1,600 per month, or his receipt of the monthly administrative fees. As the special master observed, the fact that an attorney is receiving payments for costs and expenses, standing alone, does not create a conflict of interest.

Count Four

Next, we find that, with respect to his involvement with Sophiometics, respondent violated RPC 1.4(c); RPC 1.7(a)(2) and (b); RPC 1.8(f); and RPC 5.4(c).

Specifically, respondent admitted that he entered into funding agreements with Sophiometics and at least seven clients who no longer were able to afford their monthly payments. Sophiometics was created and owned by Taylor, who provided some but not all the investor funding.

Pursuant to each funding agreement, Sophiometics, through an investor, agreed to pay the clients' legal costs in exchange for a large percentage (43.33%) of each client's future recovery. Respondent violated RPC 1.4(c) by, admittedly, failing to review the funding agreements with each client prior to their signing

it. Further, contrary to the special master's determination, respondent engaged in a conflict of interest because there was a significant risk that respondent's representation of the clients would be materially limited by respondent's responsibilities to another client, Taylor, who was now a client, liaison, business partner to respondent, and investor. The clients and Taylor had not given informed consent, confirmed in writing, after full disclosure by respondent. Respondent, thus, violated RPC 1.7(a)(2) and (b).

Next, respondent violated RPC 1.8(f), which prohibits a lawyer from accepting compensation from someone other than the client, unless:

> (1) the client gives informed consent;
>
> (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and
>
> (3) information relating to representation of a client is protected as required by RPC 1.6.

Respondent failed to obtain his clients' informed consent by admittedly not discussing the terms of the funding agreements with them. Further, by their very terms, the funding agreements prohibited the client from settling a case or changing counsel without the prior written approval of the investor, thereby interfering with respondent's independence, judgment, and the attorney-client relationship. Respondent's misconduct in this respect is also violative of RPC

5.4(c), which precludes an attorney from permitting a person who "pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services."

Count Five

With respect to Count Five, we conclude, as did the special master, that respondent violated RPC 1.4(b); RPC 1.7(a) and (b); RPC 1.9(a) and (c); and RPC 1.16(d). We determine to dismiss the charges pursuant to RPC 1.2(a); RPC 8.4(c); and RPC 8.4(d).

The record established, by clear and convincing evidence, that respondent removed multiple clients from the RICO II lawsuit, by filing an amended complaint, without their knowledge or consent. Respondent did so because these clients had failed to keep current on their monthly payment obligations, pursuant to the terms of their Retainer Agreements. When those clients demanded refunds of their unused monetary contributions, respondent denied those requests.

Respondent violated RPC 1.4(b) by failing to inform his clients that he intended to remove them and, ultimately, had removed them, as plaintiffs from the RICO II action. Further, respondent failed to afford his former clients the opportunity to find new counsel, or proceed pro se, in the RICO II lawsuit. Instead, without their knowledge or consent, he simply removed them. Respondent, thus, failed to protect their interests, in violation of RPC 1.16(d).

Respondent separately violated this Rule by refusing to return to them any unused portion of their contributions to the Litigation Fund, despite their express demands that he do so.

On January 15, 2016, after refusing to refund to the clients the unused portion of their monthly payments, respondent filed a lawsuit against his clients, on behalf of the remaining RICO II clients, seeking a declaratory judgment that their funds, totaling $45,920, had been forfeited and belonged to the Litigation Fund. Respondent filed this lawsuit without the knowledge or informed consent of his current or former clients. In this respect, respondent engaged in a conflict of interest in violation of RPC 1.7(a)(2) and (b).

Respondent also violated RPC 1.9(a) and (c)(1), which state:

> (a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.
>
> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
>
> (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known.

Respondent violated subsection (a) of the Rule by representing RICO II clients against nine former clients in the declaratory judgment matter, which was substantially related to the underlying representation. Moreover, the interests of his current clients were materially adverse to the interests of the former clients, since both groups claimed an interest in the $45,920 in dispute. Respondent violated subsection (c) because he used information he had learned during his representation of the former RICO II clients, namely the amount of money each contributed toward the Litigation Fund, to prepare the declaratory judgment complaint.

Respondent did not, however, violate RPC 1.2(a); RPC 8.4(c); or RPC 8.4(d), as the OAE had alleged. The charges pursuant to RPC 1.2(a) and RPC 8.4(c) stemmed from respondent's failure to communicate with the clients that he intended to, and eventually did, remove them from the RICO II lawsuit. Respondent's misconduct in this respect, however, is more precisely addressed by his violation pursuant to RPC 1.4(b). Further, a violation of RPC 8.4(c) requires a finding that an attorney engaged in a knowing act of deception by clear and convincing evidence. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Thus, we determine to dismiss the charges pursuant to RPC 1.2(a) and RPC 8.4(c).

We also dismiss the RPC 8.4(d) charge. The OAE alleged respondent engaged in conduct prejudicial to the administration of justice by filing the declaratory judgment action without complying with the pre-action notice requirements of R. 1:20A-6. The special master correctly determined that the declaratory judgment action, however, was not a lawsuit to recover a legal fee and, thus, the pre-action notice requirements had not been triggered.

Count Seven

We further find, in accord with the special master, that respondent negligently misappropriated client funds, in violation of RPC 1.15(a), as a result of his failure to comply with his recordkeeping obligations, contrary to RPC 1.15(d).

In sum, we unanimously find that respondent committed extensive ethics violations, as follows. Respondent violated RPC 1.4(b) (two instances); RPC 1.4(c); RPC 1.5(a) (two instances); RPC 1.5(c); RPC 1.7(a)(2) and (b) (three instances); RPC 1.8(a); RPC 1.8(f); RPC 1.9(a); RPC 1.9(c)(1); RPC 1.15(a); RPC 1.15(d); RPC 1.16(a)(1); RPC 1.16(d) (two instances); RPC 5.3(a); RPC 5.3(b); RPC 5.4(c); RPC 7.2(c); RPC 7.3(d); RPC 8.1(a); RPC 8.4(a) (three instances); and RPC 8.4(c) (two instances). We determine to dismiss the remaining charges pursuant to RPC 1.2(a); RPC 1.4(a); RPC 5.4(a); RPC 7.1(a); and RPC 8.4(d).

Members Not Finding Knowing Misappropriation – Discipline

Vice-Chair Boyer, Member Petrou, and Member Rodriguez adopt the special master's finding that respondent did not knowingly misappropriate client funds. However, these Members diverge from the special master's reasoning, instead concluding that the OAE simply failed to prove, by clear and convincing evidence, that respondent knowingly misappropriated client funds, in violation of Wilson. These Members were not persuaded, to a clear and convincing standard, that respondent's use of the Litigation Fund to purchase the computer system for his law office constituted a knowing misappropriation of client funds. The extensive record in this matter, including the conflicting, evolving, and contradictory testimony, spanning twenty-two days, left these Members unable to conclude that respondent's use of the funds was unauthorized.

Those Members determine, however, to impose a three-year suspension for respondent's other troubling misconduct, spanning years, and impacting such a significant number of clients. They begin their analysis with respondent's most serious misconduct – namely, his fee overreaching; his multiple conflicts of interest; and, his compensation agreement with a nonlawyer – which, standing alone, warrants a term of suspension.

Attorneys who have committed fee overreaching have received terms of suspension and, in extreme cases, disbarment. See, e.g., In re Verni, 172 N.J.

315 (2002) (three-month suspension; the attorney charged excessive fees in three matters and knowingly made false statements to disciplinary authorities (RPC 8.1(a)); the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half, finding that the attorney had exaggerated his time; prior reprimand); In re Heckler, 109 N.J. 539 (1988) (six-month suspension for attorney who engaged in a repetitive pattern of overcharging the municipality he represented; the attorney submitted bills which contained misrepresentations as to the work he had done; the overcharges were the result of a grossly inadequate and inefficient billing system; the attorney committed other misconduct, including filing a frivolous appeal, engaging in a conflict of interest by participating in transactions in which his personal interest was in conflict with his client; no prior discipline); In re Cohen, 114 N.J. 51 (1989) (one-year suspension for attorney who submitted to the court a statement of services that contained misrepresentations, including twenty court appearances when, at most, the attorney appeared in court twice; the statement of services was so recklessly prepared to amount to a knowing misrepresentation; the attorney committed other misconduct across multiple client matters); In re Ledingham, 240 N.J. 115 (2019) (disbarment; the attorney charged fees of $120,275.25 in an

estate matter, $88,410.48 of which the client paid; the customary charge in the same county for a similar estate would range between $10,000 and $12,000; the client retained subsequent counsel who completed the estate for less than $10,000, with an additional $3,500 billed by local counsel in another state; therefore, the attorney's total fee should not have exceeded $15,500; the attorney, thus, charged the estate almost eight times the amount of the fee considered reasonable for such a matter; further, the attorney failed to establish that he had obtained any specific results on behalf of the estate from the excessive amount of time he billed on the matter); In re Ort, 134 N.J. 146 (disbarment; the attorney charged an estate valued at approximately $300,000 over $32,000 in legal fees; acted contrary to the wishes of client/administratrix by obtaining a home equity loan from which he paid his legal fees; prepared time sheets for the sole purpose of justifying those fees; and where the attorney's "overstated and exaggerated time sheets reflect conduct involving misrepresentation and deceit prejudicial to the administration of justice, in violation of RPC 8.4(c) and (d)").

Respondent also engaged in multiple conflicts of interest, including his improper business transactions with Taylor, his client; concurrent conflicts among the RICO plaintiffs; and the subsequent lawsuit he filed against his former clients. It is well-settled that, absent egregious circumstances or serious

economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134 (1994). Where an attorney's conflict of interest has caused serious economic injury or the circumstances are egregious, however, the Court has not hesitated to impose a term of suspension. See, e.g., In re Gilbert, 258 N.J. 1046 (2021) (three-month suspension for a senior attorney who failed to ensure that a junior lawyer avoided an egregious conflict of interest, in which both the senior and junior attorneys concurrently represented the buyer and seller in a failed commercial real estate transaction involving the Bird & Bottle Inn, an historic bed and breakfast; the senior attorney directed the junior lawyer to review and revise documents related to the failed transaction, which resulted in significant financial harm to the prospective buyer, who canceled the deal after discovering significant issues with the property and business; thereafter, the seller sued the buyer for $3 million in damages, based on the buyer's alleged default; during the litigation, the buyer learned of an disclosed $900,000 loan, inaccuracies in the Inn's books, and the underreporting of sales and underpayment of state and federal taxes; in our split decision, the Members who voted for a censure weighed, in mitigation, (1) the passage of nine years since the underlying conduct, (2) that the senior attorney had a nearly unblemished thirty-nine-year career at the bar, with the exception of a 1996 reprimand for unrelated misconduct, and (3) that the senior attorney's behavior

was unlikely to recur; the three Members who voted for a three-month suspension weighed, in aggravation, (1) that the senior attorney had engaged in a known conflict of interest to further his pecuniary interest, as both the buyer and seller owed him legal fees, (2) encouraged the transaction even after the buyer could not obtain conventional financing, (3) suggested that the transaction take place as a stock sale, with bootstrap financing, and (4) the fact that the senior attorney directed the junior attorney to work on the matter, thus, embroiling him in the conflict); In re Kim, 227 N.J. 455 (2017) (three-month suspension for attorney who borrowed $9,000 from a client, without observing the safeguards of RPC 1.8(a), and failed to preserve the client's case files, among other recordkeeping infractions; in aggravation, we weighed the attorney's failure to repay the client loans, despite the passage of eleven years, his improper use of his trust account in connection with the client loans, and his disciplinary record, consisting of a prior admonition for recordkeeping violations, which demonstrated his failure to learn from past mistakes and justified the enhancement of the sanction); In re Fitchett, 184 N.J. 289 (2004) (three-month suspension; the attorney engaged in multiple conflicts of interest that arose when he continued to represent a public entity in litigation with the defendant, after he had become employed by the defendant's law firm, and then filed a suit on behalf of the defendant against the public entity; the Court

described that the circumstances surrounding his conflicts of interest, in violation of RPC 1.7(a), RPC 1.9(a)(1), and RPC 1.10(a), as "egregious" and his misconduct "blatant and gross"); In re Schultz, 241 N.J. 492 (2020) (six-month suspension for an attorney who borrowed $32,000 from a client, purportedly to be "worked off" through the provision of future legal services, without observing the requirements of RPC 1.8(a); the attorney additionally violated RPC 1.7(a) and, via his deceitful conduct during the disciplinary investigation and his filing of a dishonest claim for fees against the client's estate, also violated RPC 8.1(a) and RPC 8.4(c); in mitigation, we weighed the attorney's nearly spotless disciplinary record in more than forty years at the bar); In re Kalman, 177 N.J. 608 (2003) (pro hac vice privileges suspended for one year for attorney who engaged in a conflict of interest and accepted compensation for representing a client from someone other than the client, the attorney engaged in litigation for a client in Pennsylvania while representing another client in related litigation in New Jersey; both states' courts found that the attorney withheld documents from his adversary and failed to correct his client's false pleadings).

The discipline imposed on attorneys who engage in improper fee-sharing arrangements with nonlawyers ranges from a three-month suspension to disbarment. See e.g., In re Gross, 186 N.J. 157 (2006) (three-month suspension

(suspended) imposed for the attorney's use of a paid runner; the attorney stipulated that, between 1998 and 2000, he paid $300 to the runner on at least fifty occasions; in mitigation, the attorney inherited a system that his father had established); In re Pease, 167 N.J. 597 (2001) (three-month suspension imposed on attorney who paid a runner for referring fifteen prospective clients to him and for loaning funds to one of those clients; in mitigation, the attorney had not been disciplined previously, he had performed a significant amount of community service, and the misconduct was limited to a four-month period, which took place more than ten years prior to the ethics proceeding, when the attorney was relatively young and inexperienced); In re Walker, 234 N.J. 164 (2018) (one-year suspension imposed on an attorney who participated in a four-and-a-half-year fraudulent scheme and accepted at least fifty cases from runners; no prior discipline); In re Chilewich, 192 N.J. 221 (2007) and In re Sorkin, 192 N.J. 76 (2007) (companion motions for final discipline; one-year suspensions imposed on two personal injury attorneys who, along with a husband-and-wife runner team, were charged in a ninety-three-count indictment; the runners bribed New York hospital employees to divulge confidential patient information to them in exchange for a referral fee; over a five-year period, Chilewich accepted twenty referrals, while Sorkin accepted fifty such cases; the attorneys then filed false retainer reports with New York's Office of Court Administration in order to

conceal their deeds, for which they pleaded guilty to one count each of offering a false instrument for filing, a first degree, Class E felony, in violation of § 175.35 of the Penal Law of the State of New York; neither attorney had prior discipline); In re Grannan, 250 N.J. 319 (2022) (motion for reciprocal discipline; two-year suspension for attorney who used a runner to solicit business in at least two client matters, in exchange for a $100 payment; the attorney also grossly neglected seven immigration matters, resulting in adverse court rulings on behalf of his clients, who were facing severe consequences); In re Pajerowski, 156 N.J. 509 (1998) (disbarment for attorney who, for almost four years, used a runner to solicit personal injury clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients; although the attorney claimed that the runner was his "office manager," in 1994, the attorney had compensated him at the rate of $3,500 per week ($182,000 a year) for the referrals).

The remainder of respondent's RPC violations typically are met with discipline ranging from an admonition to a censure.

Attorneys who fail to adequately communicate with their clients, in conjunction with other, less serious misconduct, are admonished. See, e.g., In the Matter of Kourtney Anna Borchers, DRB 21-237 (February 22, 2022) (the attorney violated RPC 1.4(b) by repeatedly failing, for weeks, to reply to a

client's reasonable requests for information; the attorney also violated RPC 1.3 (lacking diligence); attorney had a prior admonition).

However, a reprimand may result, depending on the presence of other RPC violations and aggravating factors. See In the Matter of Eric J. Clayman, DRB 21-234 (January 21, 2022) (the attorney violated RPC 1.4(b) by failing to inform his client of the postponement of a meeting with the bankruptcy trustee and, thereafter, that immediate action on the client's part had been necessary to reschedule the meeting; the attorney also violated RPC 1.4(c) (failing to communicate), by failing to explain to his client the possible ramifications of inaction related to the required debt payment in advance of the first confirmation hearing with the bankruptcy trustee; prior censure), and In re Levasseur, 244 N.J. 410 (2020) (the attorney violated RPC 1.4(b), in a default matter, by failing to return a client's multiple telephone calls, e-mails, and text messages; he also violated RPC 8.1(b) (failing to cooperate with disciplinary authorities) by ignoring the DEC's request that he submit a written reply to the grievance; prior reprimand).

Admonitions typically are imposed on attorneys who violate RPC 1.5(c), even when accompanied by other misconduct. See In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (the attorney violated RPC 1.5(c) by failing to communicate the method by which his fee in a contingent fee matter would

be determined; attorney also violated RPC 1.4(c) and RPC 1.5(b) (failing to set forth in writing the basis or rate of the attorney's fee)).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of the attorney's abrogation of his recordkeeping obligations, his nonlawyer assistant was able to steal more than $149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career).

A reprimand usually is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See In re Osterbye, 243 N.J. 340 (2020) (the attorney's poor recordkeeping practices caused a negligent invasion of, and failure to safeguard, funds owed to clients and others as a result of real estate transactions, in violation of RPC 1.15(a); his inability to conform his recordkeeping practices despite multiple opportunities to do so also violated RPC 8.1(b)).

Ordinarily, a reprimand is imposed on an attorney who knowingly makes a false statement of material fact to a disciplinary authority. See In re DeSeno, 205 N.J. 91 (2011).

Based upon applicable precedent, consistent with Schultz and Grannan, these three Members conclude that the totality of respondent's blatant and egregious ethics infractions warrant, at a minimum, a significant term of suspension from the practice of law. To craft the appropriate discipline, however, those Members also consider both mitigating and aggravating factors.

In mitigation, respondent has no prior discipline in his nearly forty years at the bar, a consideration these three Members accord substantial weight. In re Convery, 166 NJ 298 (2001).

In aggravation, respondent committed twenty-nine instances of misconduct. His assault on the Rules of Professional Conduct occurred over a prolonged period, spanning three years, and caused significant harm to his vulnerable clients, who were experiencing financial hardship when they sought his representation. His clientele, who were required to make significant upfront and monthly payments toward the ultimately unsuccessful litigation, were all facing foreclosure on their homes. Despite collecting hundreds of thousands of dollars from them, respondent failed to provide them with updates on how their funds were being used and, worse, attempted to conceal from them that he had

spent nearly $50,000 of their money to compensate his wife for purported paralegal services. Respondent also concealed from them his business arrangements with Taylor, including the fact he was sharing half of the $80 monthly administrative fee. Respondent's rampant dishonesty persisted throughout the entirety of his representation of the RICO clients.

Worse, his agreements permitted him to retain his clients' funds, even if the client was removed from the litigation. In fact, when respondent removed several of the clients from the lawsuit, he refused to refund their unused portion of their contributions, forcing them to retain separate counsel and file a lawsuit to recoup their funds.

In further aggravation, when facing disciplinary charges for his misconduct, respondent failed to recognize the gravity of his misconduct or the harm he inflicted on his clients, instead choosing to blame his client (Taylor) and the OAE.

On balance, given the extent and severity of respondent's misconduct, these three Members determine that a three-year suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Finding Knowing Misappropriation

Members Campelo, Hoberman, and Menaker find that respondent knowingly misappropriated client funds and, therefore, decline to adopt the special master's findings in this respect. Accordingly, those Members also diverge from the special master's recommendation to impose a two-year term of suspension.

Instead, those Members determine that respondent knowingly misappropriated $14,118.45 in entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson, and recommend to the Court that he disbarred. In the view of those Members, respondent's claimed belief that he had the client's authorization to use the funds was neither credible nor reasonable.

Determining whether an attorney's conduct amounts to knowing misappropriation is a challenging task and, because of the severe consequences that befall attorneys who commit knowing misappropriation, the standard of proof – clear and convincing evidence – must be fully satisfied. In re Johnson, 105 N.J. 249, 260 (1987).

Misappropriation of client trust funds is defined as:

> 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.]

As elaborated by the Court in In re Noonan:

> 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.
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> [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.

Thus, to establish a knowing misappropriation of client funds, the evidence must clearly and convincingly demonstrate that the attorney used entrusted funds, knowing they belonged to a client and knowing that the client had not authorized him or her to do so. Intent to steal or defraud and dishonesty are irrelevant. So long as the attorney knows the funds are not the lawyer's and knows that the client has not consented to the taking, the absence of evil motives, the good use to which the funds are put, the attorney's good character, and the lack of prior discipline, are all irrelevant.

In this matter, there is no dispute that, on April 11, 2013, respondent issued a $14,118.45 RICO ATA check, made payable to Metis, for the new computer system he had purchased for his law office. At the time of his disbursement, respondent held in his RICO ATA – a dedicated trust account that he opened for the sole purpose of holding the RICO clients' funds – approximately $23,000, comprised of the monthly payments each client had paid toward litigation expenses, in accordance with the terms of the Retainer Agreements (again, the Litigation Funds). Respondent admitted that, on that date, only $4,520 of those funds constituted "administrative fees" to which he was entitled. Thus, the remainder constituted Litigation Funds. On April 15, 2013, just four days after he disbursed the funds, respondent's bookkeeper and paralegal, Veronica, expensed the purchase, pro rata, on the client ledgers for

each of the thirty-three RICO I clients. Thus, at the time of the $14,118.45 disbursement, respondent indisputably used Litigation Funds belonging to thirty-three clients to pay for his newly purchased computer system.

The special master erroneously concluded, according to these three Members, that the Litigation Funds were akin to a "retainer on account of costs" and, unlike escrow or client funds, incapable of being misappropriated. However, as the OAE observed, a retainer is "compensation paid to an attorney to ensure that he or she will render legal services at some point in the future." Michels, New Jersey Attorney Ethics, (GANN 2023), at § 34:1. Stated differently, a retainer is an advance payment for legal fees and, on occasion, expenses incidental to the representation. In fact, in New Jersey, unless a client instructs otherwise, an attorney is permitted to place a retainer for unearned legal fees in a business or operating account, rather than a trust account. See In re Friedrich, 250 N.J. 291 (2022) (citing In re Stern, 92 N.J. 611, 619 (1983).

Here, the clients' monthly payments to respondent were not retainers intended to compensate him for legal fees. Indeed, respondent's entitlement to legal fees was entirely contingent on a favorable judgment or settlement. Rather, the client's monthly payments were intended, by virtue of the express terms of the Retainer Agreements, to be held in a "special trust account," administered by respondent, "for the lawsuit proceeding purpose" which included, among

other things, hiring and paying for experts and other lawyers. Further, it was undisputed that Veronica maintained client ledgers for each client, itemizing and documenting each expense, pro rata, among each of the RICO clients. Moreover, respondent's duty to hold those client funds, inviolate, was cemented by the fact he held the clients' funds in a separate ATA that he opened and dedicated solely to the RICO matters. Compare In re Stein, 97 N.J. 550, 564 (1984) (when legal fees are held in trust, the client must be given notice before a lawyer can take a legal fee from the account).

Consequently, the cases upon which the special master relied to support a sanction less than disbarment are not dispositive because, in each of those cases, the attorney used advance legal retainer fees for personal purposes; not client funds designated solely for future litigation expenses. See In re Schultz, 241 N.J. 492 (the attorney accepted loans from an individual who, subsequently, became his client; the attorney agreed to provide legal representation to work off the balance of the loan; although the attorney used the funds for personal expenses, he did not commit knowing misappropriation since the remaining funds either constituted a loan or, alternatively, an unearned retainer fee); In re Jackson, 201 N.J.100 (2010) (failure to return an unearned legal fee is not the same as stealing or borrowing client funds without authorization); In re Stern, 92 N.J. 611, 617

(1983) (the Court noted that it has "never held that the expenditure of a retainer is a conversion of trust funds").

The record also established that the funds constituted client, not escrow funds. See In re Leiner, 232 N.J. 35 (2018) ("Client 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 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.").

These three Members observed that there is no disciplinary precedent specifically addressing an attorney's misappropriation of client funds, held in a Litigation Fund, in trust, on behalf of multiple clients in furtherance of a common legal objective. However, the Court has routinely disbarred attorneys who knowingly misappropriate funds that they were obligated to hold, in trust, on a client's behalf for a designated purpose, e.g., to retain an expert, to maintain a "reserve" for expenses, to pay medical bills, or to pay specific costs associated with a transaction. See In re Richards, 197 N.J. 30 (2008) (attorney disbarred for disbursing $1,500 in funds that he was required to reserve for his client's medical bills); In re Daly, 170 N.J. 200 (2001) (attorney disbarred for disbursing to himself funds that his client had provided to him, in escrow, for payment to a

court-appointed psychiatrist and a court-appointed attorney in a matrimonial matter); In re Cavuto, 160 N.J. 185, 193-194 (1999) (attorney disbarred after he used for his own benefit funds that he had received on behalf of a client to be disbursed to the client's medical providers); In re Picciano, 158 N.J. 470 (1999) (the attorney's unauthorized use of the funds held for the payment of a doctor's outstanding bill constituted a knowing misuse of escrow funds); In re Barlow, 140 N.J. 191 (1995) (the attorney used real estate funds that he held in his trust account on behalf of two clients for the payment of title insurance and surveyor's fees; he deposited the funds in his overdrawn business account and then used the funds to pay other business and personal expenses; although the attorney later paid the title insurance and surveyor fees, the Court disbarred the attorney, concluding the attorney knew the misappropriated funds were client funds and that his clients had not given him permission); In re Gifis, 156 N.J. 323 (1988) (the attorney blatantly used real estate deposits and settlement funds for his own purposes, claiming that he did not need both parties' permission to use the funds; the attorney contended that his use of the deposit was not knowing misappropriation because he was unaware of the Court's holding in Hollendonner, and because he honestly, but mistakenly, believed that the funds belonged solely to one of the parties; we rejected those arguments and recommended that Gifis be disbarred; the Court agreed).

Next, although intent to steal is irrelevant in determining whether an attorney commits knowing misappropriation, there must, nevertheless, be clear and convincing evidence that the attorney knew that the use of client funds was unauthorized. Here, the record established that respondent paid for his law firm's upgraded computer system without the authorization of the thirty-three RICO I clients, whose money comprised the Litigation Fund at the time of the purchase. Nor did respondent hold a reasonable belief that the clients had authorized him, through Taylor, to use their funds for the computer purchase.

These three Members reject respondent's ever evolving attempts to justify his unauthorized use of his client funds.

First, they reject respondent's belated assertion, raised for the first time during the ethics hearing, that each of his individual clients expressly had authorized him to use the Litigation Funds, through his administrative fee, to purchase the computer. Respondent's self-serving testimony contradicted his earlier statements to the OAE, when he repeatedly admitted that he had not spoken with each client, but instead had relied upon Taylor. Respondent's motivation for changing his story during the ethics hearing was clear – to attempt to preserve his future ability to practice law.

Importantly, respondent's testimony that each client had pre-authorized his purchase during four separate conference calls is belied by the unambiguous

testimony of four clients, including Taylor, who each stated that they had not authorized respondent to use their funds to purchase the computer system. Further, two of those clients testified that, even if they had been asked, they would have declined such authorization for computer equipment because, in at least one client's view, respondent, as a practicing lawyer, should have possessed such equipment in the first place.

Further, respondent's testimony that he had the clients' authorization to use the funds prior to purchasing the computers (regardless of whether that authorization came from Taylor or the individual clients), conflicts with Veronica's unambiguous testimony that she and respondent had made the decision to waive his administrative fee contemporaneous with the purchase.

Rather, the evidence established that the clients learned, for the first time, in September 2015, that respondent had purchased new computers with their funds. Even the special master noted that the evidence "seems clear" that the clients "found out about the purchase of the computer system" on September 22, 2015, and that it was understandable that they were upset when they learned of the purchase since it "is not for any client to pay for these types of purchases in the ordinary course, and certainly not without their consent." Based upon the special master's finding in this respect, it appears the special master rejected respondent's and Veronica's lengthy testimony that, over the course of four

unrecorded conference calls that occurred between December 16, 2012 and April 10, 2013, each and every client had approved the acquisition of the computer system.

Second, respondent's assertion that Taylor, as liaison, had authorized the computer purchase on the clients' behalf, misses the mark in several respects. A reasonable, good-faith belief of entitlement to the funds will sometimes defeat a finding of knowing misappropriation, even if that belief turns out to be mistaken or erroneous. See In re Cotz, 183 N.J. 23 (2005) (the attorney reasonably believed that he had more funds in his trust account than were actually on hand; because he had forgotten that he had borrowed $9,000 from a client, some of the monies in his trust account that he believed were his actually belonged to a client; in addition, the bank where the attorney maintained his accounts had erroneously debited more than $10,000 against his trust account, instead of his business account, when business account checks were returned for insufficient funds; because the attorney did not reconcile his trust account, he failed to detect these chargebacks; the attorney, thus, reasonably, but mistakenly, believed that he had $19,000 in his trust account and was not aware of the shortage; the attorney received a six-month suspension).

However, disbarment invariably will result when an attorney possesses an unreasonable belief of entitlement to the misappropriated funds. See In re

Mason, 244 N.J. 506 (2021) (finding that the attorney knowingly misappropriated escrow funds by improperly releasing investor funds to a third-party, in violation of an operating agreement, which required the attorney to hold the funds, inviolate, pending the satisfaction of a condition precedent, and to return them to the investors in the event that sufficient funds were not raised for the investors' intended film project; the attorney lacked any reasonable belief that the investors suddenly were willing to risk their investments at the same time they had been pressing him to return their funds); In re Frost, 156 N.J. 416 (1998) (the attorney failed to sustain his burden of proving that he reasonably believed that he was entitled to trust funds that he had taken; the attorney settled a products liability lawsuit and believed that he had obtained the consent of the workers' compensation carrier to compromise its lien; he, thus, sent a check to the carrier for the compromised amount; the carrier, however, returned the check, asserting that it had not agreed to reduce its lien; the attorney claimed that, because he had tendered the funds to the carrier, and the carrier had rejected the tender, the funds belonged to his client; he then persuaded his client to lend him the funds; the Court found that the attorney knowingly misappropriated the carrier's funds; as an escrow agent, the attorney held the funds for the benefit of both his client and the carrier; he, therefore, needed the consent of both parties before he could borrow the funds; it was undisputed that the attorney did not

seek or obtain the carrier's consent to borrow the money; the Court rejected as not credible Frost's contention that he reasonably believed that, once the carrier rejected the tender, it no longer had an interest in the funds).

The burden of proof is on the attorney to establish the reasonableness of the belief:

> Respondent also testified that whenever he withdrew escrow fees in advance of a closing, the withdrawal was based on his assumption that he had an equivalent "cushion" in his trust account. However, respondent did not attempt to offer any specific factual basis for that assumption, and respondent's own expert testified that when he performed a reconciliation of the trust account he determined that "there weren't always sufficient funds on hand, and he was always indeed out of trust." Respondent's erroneous belief that he had an equity cushion was unfounded, and respondent failed to offer evidence to sustain the contention that his belief in the existence of an adequate cushion was reasonable or justifiable.
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> [In re Mininsohn, 162 N.J. 62, 73-74 (1999).]

Here, these three Members found that respondent failed to offer credible evidence that he possessed a reasonable, good-faith belief that he was authorized to use client funds to pay for his computer system upgrade. Even accepting respondent's claim that Taylor had authorized the purchase, respondent failed to offer specific facts that would justify his wholesale reliance on Taylor's purported representation that the clients had authorized the use of their Litigation Fund to purchase a new computer system for respondent's law office.

First, Taylor was not empowered, pursuant to either his Service Agreement with respondent or respondent's individual Retainer Agreements with each client, to make decisions on behalf of the clients, individually or as a group. Rather, both documents, which respondent drafted or assisted in drafting, expressly limited Taylor's role to a liaison between respondent and the clients to facilitate communication and to collect the clients' monthly payments. Neither document vested Taylor with powers of attorney, proxy, or agency, to make decisions on behalf of the other clients, individually or collectively. Nor did the documents vest Taylor with authority to direct, review, or approve expenditures from the Litigation Fund. Quite the contrary, respondent's Retainer Agreements with each client stated that respondent "is the only one who is charge of my case."

Thus, respondent's characterization of Taylor as an "agent" or "leader" of the clients, empowered to authorize spending of client funds, is contradicted by respondent's own contractual agreements with, and obligations to, his other RICO I clients. Respondent did not represent Taylor in a fiduciary or representative capacity with, perhaps, derivative obligations to the remaining clients. Rather, he owed a duty of honesty, fidelity, and full disclosure to each and every one of his thirty-three clients, including an obligation to hold their client funds, inviolate. Cf., Petrillo v. Bachenberg, 139 N.J. 472, 483-84 (1995)

("[A]ttorneys may owe a duty of care to non-clients when the attorneys know, or should know, that non-clients will rely on the attorney's representations and the non-clients are not too remote from the attorneys to be entitled to protection.").

Next, respondent's reliance upon Taylor's purported authorization was unreasonable because respondent admittedly never pressed Taylor to confirm he had, in fact, obtained authorization from all thirty-three clients; he never required Taylor to provide written confirmation that he had conferred with all clients; and did not direct Taylor to speak to all thirty-three clients to obtain their authorization. Respondent's complete abdication of his fiduciary obligations to his clients, in preference to his blind reliance upon Taylor's claim that the clients had, collectively, authorized use of their funds, was not reasonable.

Third, respondent's belated claim that Taylor had authorized him, in a December 28, 2012 meeting, to spend $30,000 in Litigation Funds toward a computer upgrade when, at the time, the Litigation Fund held approximately $23,000, was likewise unreasonable. Respondent has offered no logical explanation why he would accept an offer to use client funds to enhance the functionality of his office when, at the time, the amount he was purportedly authorized to use exceeded actual funds on deposit. In short, absent some proof

that Taylor actually spoke with, or obtained authorization from, all of the RICO I clients, respondent's reliance upon Taylor to authorize use of client funds to purchase equipment that he, admittedly, did not think required updating, was not reasonable.

Taylor's active role in the acquisition of the computer system, including his involvement and interaction with Montague in selecting the equipment, does not diminish or obviate respondent's fiduciary obligation to all his RICO clients. Taylor did not nor could not require respondent to purchase a new computer system. Moreover, Taylor consistently stated that he believed respondent would use his own funds to purchase the computer system for his law office. Although Taylor found respondent's existing computers to be outdated, he testified that his security concern could have been addressed by $50 device. Taylor also testified that did not possess, and had not sought, the individual clients' authorization to permit respondent's use of the Litigation Fund to purchase his law firm's new and enhanced computer system.

The special master correctly found that no client had been harmed because respondent had paid back the Litigation Fund by waiving his $40 share of the administrative fee from October 1, 2012 to December 31, 2012. However, the subsequent replacement of client funds will not save respondent from the Wilson disbarment rule. See In re Blumenstyk, 152 N.J. at 163 (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).

As a final point, these three Members reject respondent's assertion that the broad language in the Retainer Agreements would have permitted him to use the Litigation Fund, "for the defense of each case as [respondent] finds fit," and, because he needed updated computers with enhanced security to properly litigate the RICO cases, the expenditure was in furtherance of the representation. This argument misses the mark.

Ordinarily, it is improper to bill a client for expenditures that constitute firm overhead, unless expressly provided for in the retainer agreement. See Balducci, 240 N.J.at 603 ("an attorney has an obligation to provide the client with meaningful information about the potential aggregate hourly fees and costs that may be incurred during the course of the litigation so that the client may make an intelligent assessment whether to retain the attorney and on what terms."). See also Arbus, Maybruch & Goode, LLC v. Cohen, 475 N.J. Super. 509, 517 (App. Div. 2023) ("Our jurisprudence has interpreted sufficient writings to require, in addition to a sum certain for an initial retainer fee, a

disclosure of the out-of-pocket costs of representation, such as photocopying and secretarial overtime.”)

In short, these three Members conclude that the record clearly and convincingly establishes that respondent knowingly misappropriated $14,118.45 in client funds within months of having signed the first Retainer Agreement with his RICO I clients. Respondent’s claims that he had valid permission, directly from all clients or indirectly from Taylor, are contradicted by (1) respondent’s contractual agreements with his clients; (2) Taylor’s testimony, wherein he stated that he did not have the clients’ authorization for the computer purchase, nor did he tell respondent he had the clients’ authorization; (3) the testimony of three clients, who credibly testified that, in September 2015, they learned for the first time that their funds had been used for the computer purchase, when they were provided with a detailed accounting; and (4) respondent himself, who offered conflicting and evolving stories regarding the clients’ authorization for his use of the Litigation Fund to upgrade his law firm’s computer system. By doing so, respondent knowingly misappropriated his clients’ funds, in violation of RPC 1.15(a), and the principles of Wilson.

As a result of respondent’s knowing misappropriation of client funds, the OAE also charged him with having violated RPC 8.4(b). Specifically, his actions

constitute the misapplication of entrusted property, in violation of N.J.S.A. 2C:21-15, which provides, in relevant part, that "[a] person commits a crime if he applies or disposes of property that has been entrusted to him as a fiduciary." A violation of RPC 8.4(b) may be found even where, as here, the conduct does not result in criminal charges. In re McEnroe, 172 N.J. 324 (2002). These three Members conclude that respondent's knowing misappropriation of clients' funds violated N.J.S.A. 2C:21-15, which, in turn, constituted a violation of RPC 8.4(b) and RPC 8.4(c).

These Members determine, however, to dismiss the charge that respondent violated RPC 8.1(a) when he initially told the OAE that his clients had approved the computer purchase through Taylor. Although respondent held an unreasonable belief that the clients, through Taylor, had approved the computer purchase, the evidence did not establish, by clear and convincing evidence, that he lied to the OAE during the course of its investigation.

Respondent's knowing misappropriation of client funds, in violation of RPC 1.15(a) and the principles of Wilson, require his disbarment. Regardless of any mitigating factors, including respondent's unblemished forty-year career at the bar, because respondent knowingly misappropriated client funds that had been entrusted to him, these three Members conclude that disbarment is the only appropriate sanction, pursuant to the principles of Wilson.

Chair Gallipoli was recused.

Members Joseph and Rivera were 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 Tomas Espinosa
Docket No. DRB 23-116

Argued: September 21, 2023

Decided: October 31, 2023

Disposition: Other

Members	Disbar	Three-Year Suspension	Recused	Absent
Gallipoli			X	
Boyer		X		
Campelo	X			
Hoberman	X			
Joseph				X
Menaker	X			
Petrou		X		
Rivera				X
Rodriquez		X		
Total:	3	3	1	2

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