SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-172
District Docket No. XIV-2021-0310E

In the Matter of Kathleen Marie Cehelsky
An Attorney at Law

Argued
October 19, 2023

Decided
January 31, 2024

Jason D. Saunders appeared on behalf of the
Office of Attorney Ethics.

Raymond S. Londa appeared on behalf of respondent.

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Introduction

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

This matter was before us pursuant to R. 1:20-6(c)(1).[1] 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 entrusted funds); RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter); RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the lawyer to have arisen in the matter); RPC 8.4(b) (two instances – committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (three instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

[1] That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to be heard in aggravation.

Respondent earned admission to the New Jersey bar in 1989 and has no disciplinary history. At the relevant times, she maintained a practice of law in Woodbridge, New Jersey.

On January 30, 2023, the Office of Attorney Ethics (the OAE) filed a motion with the Court for respondent's immediate temporary suspension in connection with her misconduct underlying this matter, pursuant to R. 1:20-4(g) and R. 1:20-11.

On June 5, 2023, the Court issued an Order denying the OAE's motion, without prejudice to the OAE's right to renew its application if respondent failed to complete an accounting of the estate of Michael M. Brown and make distributions within ninety days of the Court's Order. In re Cehelsky, 254 N.J. 120 (2023). The Court further required respondent to have all checks issued on behalf of the estate include a co-signer who is a licensed New Jersey attorney.

Effective November 3, 2023, the Court temporarily suspended respondent following her failure to comply with its June 5, 2023 Order. In re Cehelsky, __ N.J. __ (2023), 2023 N.J. LEXIS 1163. She remains temporarily suspended to date.

Facts

On April 10, 2013, Michael M. Brown executed his Last Will and Testament (the Will) naming respondent, his long-time friend, as the executor of his estate. In his Will, Brown noted that he had no children and that his wife previously had passed away. Additionally, Brown directed that respondent, in her capacity as executor, satisfy the estate's debts and expenses "as soon after [his] death as may be convenient." Further, Brown directed that respondent take her executor's fee and satisfy the estate's outstanding tax obligations prior to any distributions to the beneficiaries Following the payment of the estate's debts and expenses, Brown bequeathed the remainder of his estate to his family and friends as follows: (1) 30% to Laurie and Michael Shepard; (2) 30% to Bonnie and Richard Kisco; (3) 13% to Lucia Leonard; (4) 12% to respondent; (5) 6% to Thomas Heaney; and (6) the remaining 9% to various schools and charities. The Will did not authorize respondent, as executor, to borrow estate funds for her own personal use.

One year later, on April 10, 2014, Brown passed away, leaving an estate valued at approximately $280,268.87. Specifically, the estate consisted of (1) a $160,274.31 Morgan Stanley portfolio;[2] (2) various "probate asset[s]" with a total value of $105,869.04, funds which respondent subsequently deposited in a

[2] Respondent did not appear to have account access to the Morgan Stanley portfolio.

Bank of America estate account (the Estate Account); (3) $12,572.52 in bonds; and (4) two vehicles with a combined value of $1,550.

On April 23, 2014, the Morris County Surrogate's Court admitted Brown's Will to probate and issued letters testamentary appointing respondent as the executor of Brown's estate. On May 9, 2014, following her appointment as executor, respondent opened the Estate Account.

On June 16, 2014, respondent sent a letter to the estate's beneficiaries advising them that Brown's Will had been admitted to probate. In her letter, respondent claimed that, although she would "try to move this estate along as quickly as possible," her administration of the estate "may take some time" because Brown purportedly "did not keep the best records." Respondent also stated that she wanted "to make sure all loose ends are tied up."

Meanwhile, between May and December 2014, respondent funded the Estate Account via various "probate asset deposits" totaling at least $105,869.04.

Following respondent's June 16, 2014 correspondence, Lucia Leonard, one of the estate's beneficiaries, claimed that she had attempted to contact respondent regarding Brown's estate but that, as time passed, respondent stopped returning her telephone calls.

Meanwhile, between November 28, 2014 and May 17, 2021, respondent made at least eighty-eight unauthorized disbursements, via "[e]lectronic transfer[,]" from the Estate Account to her personal and business accounts. The disbursements ranged in amounts from $20 to $12,200 and totaled $133,690. In her verified answer, respondent admitted that the beneficiaries had not authorized her to use or borrow those estate funds. Moreover, the amount of respondent's disbursements far exceeded the maximum $44,904.55 that she would have been entitled to receive in combined executor's commissions and her 12% beneficial share of Brown's estate, calculated after the payment of the estate's expenses.[3] Additionally, respondent conceded that her unauthorized use of estate funds had no connection to any legitimate estate expenses or disbursements to the other beneficiaries. Rather, she admitted that the disbursements were "strictly instances of [her] borrowing estate funds without authorization."

During her January 25, 2022 OAE demand interview, respondent further admitted that she had borrowed estate funds without the authorization of the beneficiaries:

[3] Pursuant to N.J.S.A. 3B:18-14, respondent, as the executor, would have been entitled to a 5% commission on the first $200,000 of the estate corpus and a 3.5% commission on the remainder of the estate corpus between $200,000 and $1 million. Applying these principles, respondent would have been entitled, at most, to $12,809.41 in executor's commissions and $32,095.14 in connection with her 12% beneficial share of Brown's estate.

OAE: [O]ne of the things that the Court Rules that govern disciplinary investigations allows the [OAE] to do is to independently subpoena bank records. And we've done that in this particular instance. And so, I'll let you know at this juncture, that we've . . . subpoenaed your trust and business account; and we've subpoenaed the estate account for Mr. Brown.

RESPONDENT: Right.

OAE: And having said that, I want to go back to a question that I asked earlier. Is there anything you would like to correct, supplement, or explain to the [OAE] at this point?

RESPONDENT: I tried to do the best. I tried to take stuff out and put it back as soon as I can.

OAE: What do you mean by that?

RESPONDENT: I . . . when I needed to borrow funds I borrowed them, I know I would be able to pay it back. That's what I'm doing now.

OAE: How much funds do you still have to pay back into the [estate] account?

RESPONDENT: I paid back everything that I borrowed. That's why I got everything all straightened out.

OAE: Okay . . . . [W]hen you borrowed these funds, did you have authorization from any of the beneficiaries . . . to do that?

RESPONDENT: No.

. . . .

> OAE: Based upon our review of the bank statements, it's very clear to us that you significantly invaded those funds through your use of those funds for your personal purposes. Do you disagree or do you have a response to that?
>
> . . . .
>
> RESPONDENT: I don't disagree . . . . I did something wrong.
>
> [Ex.6pp.48-53.][4]

In her verified answer, respondent conceded that, on at least twenty-two occasions, between December 3, 2014 and May 3, 2022, she replenished the Estate Account with funds from third parties or "other sources." Respondent's twenty-two replenishment deposits ranged in amounts from $15 to $56,396.27 and totaled $166,313.63. Although the identities of those third parties or "other sources" are unclear based on the record before us, it appears that respondent's parents were the source of the $56,396.27 deposit. Moreover, between March 2016 and November 2017, respondent utilized the deposits ranging in amounts from $15 to $50 to remedy numerous Estate Account overdrafts. Based on those overdrafts, respondent admitted that she was aware that "she had withdrawn the full value of" the Estate Account "at various time periods."

[4] "Ex." refers to the exhibits of the formal ethics complaint.

Meanwhile, on March 29, 2017, while her knowing misappropriation of estate funds was ongoing, respondent sent the estate beneficiaries a letter purporting to provide an update regarding her administration of the estate. In her letter, respondent claimed that Brown was the beneficiary of the estates of his mother and wife, both of whom had predeceased him. Respondent also maintained that, in connection with her administration of Brown's wife's and mother's respective estates,[5] she was waiting for the New Jersey Unclaimed Property Administration (the UPA) to provide funds purportedly owed to Brown, his mother, and his wife. Respondent further alleged that she was "dealing with [Brown's] personal income tax issues" and that she needed to file amended tax returns for Brown "for a few years prior to his death." Respondent advised the beneficiaries that, although she was attempting "to move this along and keep you advised on these matters," there were "still issues that must be resolved." Respondent, however, concealed from the beneficiaries her ongoing invasion of Brown's estate funds.

In or around July 2019, following her unsuccessful attempts to obtain updates from respondent regarding her administration of Brown's estate, Leonard retained Michael Mezzacca, Esq. Between July 19, 2019 and June 27,

[5] During the January 25, 2022 demand interview, respondent advised the OAE that she served as the administrator of both Brown's mother's and wife's respective estates.

2020, Mezzacca sent respondent at least fourteen e-mails requesting an update and an interim estate accounting. Respondent failed to reply to many of Mezzacca's e-mail messages and, when she did reply, she frequently would claim that she was still awaiting funds from the UPA.

Further, on June 19, 2020, respondent sent Leonard and Mezzacca an e-mail claiming that she had failed to reply to many of Mezzacca's e-mails because those messages had gone to her "junk mail" folder. Respondent also maintained that she was experiencing "serious family medical issues" and that she was still waiting for the UPA to provide her additional funds. Respondent, however, failed to provide any interim accounting to Mezzacca or to disclose her ongoing misappropriation of the estate's funds. Indeed, between July 2019 and June 2020, while Mezzacca was pressing her for updates, respondent simultaneously reduced the Estate Account balance from $25,501.41 to $15,951.41.

On July 21, 2020, Leonard filed an ethics grievance against respondent for "cheating" her and the other estate beneficiaries "out of their inheritance."

On October 1, 2021, the OAE obtained, via subpoena, the Estate Account bank records. Five days later, on October 6, 2021, the OAE sent respondent a letter directing that she provide a written reply to Leonard's grievance by making "a full, candid, and complete disclosure of all facts reasonably within the scope" of the grievance.

On October 20, 2021, respondent submitted her written reply to the OAE, claiming that she had "done nothing wrong," as evidenced by purported Estate Account bank statements included in her submission. Further, respondent claimed that "there was nothing underhanded going on" and that, "if it was just [Brown's] estate, we would be done right now." Respondent, however, maintained that her administration of Brown's estate was incomplete due to issues "clos[ing] out" Brown's wife's and mother's estates. Respondent advised the OAE that Brown's estate consisted of a $160,274.31 Morgan Stanley portfolio, $12,572.52 in bonds, and two vehicles worth a total of $1,550. Finally, respondent claimed that the Estate Account had a $64,272.68 balance.

In her verified answer, respondent admitted that, in her prior written reply, she had falsely advised the OAE of the Estate Account's purported $64,272.68 balance. Rather, at the time she submitted her October 20, 2021 reply, respondent knew that the Estate Account balance was only $7,951.41. Moreover, to conceal the actual Estate Account balance and the fact that she had made numerous electronic transfers between that account and her personal and business accounts, respondent included, in her reply to the grievance, fabricated bank statements for the timeframe between May 2014 and September 2021. Specifically, using "scissors and glue," respondent altered the Estate Account balance, in each monthly bank statement, and removed more than one hundred

transactions in her effort to artificially inflate the account value and omit any evidence that she had transferred funds to her personal and business accounts. Respondent's altered bank statements falsely represented that, between January 2015 and September 2021, the Estate Account had a near continuous balance of approximately $64,000.

At the outset of her January 25, 2022 demand interview, when asked whether she wished to correct or supplement her written reply to Leonard's grievance, respondent replied that she did not "think so" and that, in her view, she "gave [the OAE] everything." However, later during that same demand interview, after the OAE had advised respondent that it had obtained her Estate Account bank records via subpoena, respondent admitted that she had altered the bank statements because she "didn't want to make it look like [she] was stealing" and that she "just wanted to get everything back to square one, get this closed out and be done with it." During a subsequent interview with the OAE, respondent maintained that she had altered the bank statements to "help her reconcile the account."

On October 25, 2021, five days after her reply to the grievance, respondent deposited in the Estate Account a $56,396.27 check, dated October 23, 2021,

from the account of John George Cehelsky and Lucille E. Cehelsky.[6] The check was signed by Anne C. Cehelsky, respondent's sister, acting as power of attorney.

Additionally, during her January 25, 2022 demand interview, respondent claimed that she had "paid back everything that [she had] borrowed" from the Estate Account and that she had "got everything all straightened out." However, in her verified answer, respondent conceded that, at the time of her demand interview, she had not fully replenished the Estate Account. Indeed, throughout January 2022, the account had a continuous $64,272.68 balance. Consequently, on May 3, 2022, respondent made an additional $41,596.36 deposit, which increased the account balance to $105,869.04.[7] According to the 2022 bank statement for the Estate Account, the most recent statement in the record, the account balance was $105,869.04.

As previously mentioned, on January 30, 2023, the OAE filed a motion with the Court seeking respondent's immediate temporary suspension, based on her misconduct underlying this matter. On June 5, 2023, the Court denied the OAE's motion, without prejudice to its right to renew the application if

[6] The nature of respondent's apparent familial relationship with John George and Lucille Cehelsky is unclear based on the record before us.

[7] The source of the $41,596.36 deposit is unclear based on the record before us.

respondent failed to complete the estate's accounting and make appropriation distributions within ninety days. On November 3, 2023, the Court temporarily suspended respondent following her failure to comply with its June 5 order.

As of June 7, 2023, respondent had failed to provide the OAE or any of the estate beneficiaries with an accounting of the estate's funds. Additionally, despite the passage of more than nine years since Brown's death, respondent has not disbursed any portion of the net $267,459.46 estate corpus to the beneficiaries, other than to herself.[8]

Based on the foregoing facts, the formal ethics complaint charged respondent with having violated RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner, based on her knowing misappropriation of entrusted funds in violation of her fiduciary duty to the beneficiaries. Additionally, the formal ethics complaint charged respondent with having violated RPC 8.4(b) by committing second-degree misapplication of entrusted property, in violation of N.J.S.A.2C:21-15, by knowingly misappropriating the estate's funds for her own pecuniary purposes, thereby subjecting the estate to a substantial risk of loss.

[8] The estate corpus was calculated by subtracting respondent's maximum $12,809.41 executor's commission from the $280,268.87 value of the gross estate.

Further, the formal ethics complaint charged respondent with having violated RPC 8.4(b) and RPC 8.4(c) by committing fourth-degree falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4(a), by knowingly altering her Estate Account bank statements to conceal her misappropriation. Finally, the formal ethics complaint charged respondent with having violated RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c) by knowingly offering materially false statements and documents to the OAE.

In her verified answer, respondent admitted that she violated her fiduciary duty to the estate beneficiaries by knowingly misappropriating estate funds for her own pecuniary benefit, in violation of RPC 1.15(a), RPC 8.4(c), and the principles of Wilson and Hollendonner. Respondent, however, denied having violated RPC 8.4(b) by committing second-degree misapplication of entrusted property based on her claim that "all funds belonging to the estate are in the estate."

Respondent also denied having violated RPC 8.1(a); RPC 8.1(b); RPC 8.4(b); and both RPC 8.4(c) charges in connection with her submission of fraudulent bank statements to the OAE and her misrepresentations during the January 2022 demand interview and in her October 2021 reply to the grievance. Respondent denied these charges based on her view that her "conduct was

always with the intent to replace borrowed funds." Respondent also maintained that she has since "replaced all estate funds."

Respondent admitted the material facts underlying the allegations of the formal ethics complaint, including that she "knew that she had exceeded any reasonable" executor fee and beneficiary share "to which she may have been lawfully entitled, because she completely depleted the [e]state account."

Respondent, however, denied some of the facts alleged in the complaint, including that Leonard frequently had contacted her, via telephone, following her June 16, 2014 letter to the beneficiaries informing them that Brown's Will had been admitted to probate. Respondent also denied having received all Mezzacca's e-mails sent between August 2019 and June 2020. Further, respondent alleged that her failure to provide Mezzacca with an interim accounting was due to her "bookkeeping inadequacies" and not her knowing misappropriation of the estate's funds. Finally, respondent requested that the complaint be dismissed or that a sanction other than disbarment be imposed.

On July 18, 2023, the OAE sent respondent's counsel a letter inquiring whether respondent would consent to the submission of the pleadings in this matter to us, pursuant to R. 1:20-6(c)(1), given the lack of genuine disputes of material fact and her decision to not request a hearing on the charges or in mitigation.

On August 1, 2023, respondent's counsel sent the OAE a reply letter stating that respondent had consented to the OAE submitting this matter to us pursuant to R. 1:20-6(c)(1).

At oral argument, the OAE urged us to recommend respondent's disbarment based on her admission that she engaged in a pattern of knowing misappropriation spanning nearly six-and-a-half years. The OAE analogized respondent's misconduct to the disbarred attorney in In re McCue, 153 N.J. 365 (1998), who, as detailed below, knowingly misappropriated trust assets while serving as the trustee.

Respondent, through counsel, conceded that her conduct violated the principles of Wilson and Hollendonner and, consequently, that we would be "constrained" to recommend her disbarment pursuant to those principles. However, referencing the Court's establishment of a committee to recommend whether to modify the Wilson and Hollendonner rules for permanent disbarment for knowing misappropriation, respondent expressed her hope that she could, "at some point in time," apply for reinstatement from her disbarment and be given a second chance to enjoy the privilege to practice law in New Jersey, given her otherwise unblemished thirty-five-year career at the bar, purported lack of intent to steal estate funds, and her lack of experience performing estate work. See In re Wade, 250 N.J. 581, 608 (2022) (establishing a committee "to recommend

whether to modify the rule of permanent disbarment for matters in which disbarment has been mandatory – that is, for knowing misappropriation of client funds under Wilson and of escrow funds under Hollendonner").

Analysis and Discipline

As a preliminary matter, we determine that this matter is properly before us pursuant to R. 1:20-6(c)(1), which provides that:

> A hearing shall be held only if the pleadings raise genuine disputes of material fact, if respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases[,] the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

In In the Matter of Bernard J. McBride, Jr., DRB 06-082 (Aug. 31, 2006), a formal ethics complaint charged McBride with, among other infractions, charging an excessive legal fee. Id. at 3. Although McBride admitted most of the facts underlying that charge, he denied that he had performed less than three hours of legal work, as alleged in the complaint. Ibid. Despite McBride's denial, we found "no jurisdictional or other procedural problem in going forward with our review pursuant to R. 1:20-6(c)(1)." Ibid. Specifically, when viewing the matter as a whole – five formal ethics complaints alleging ten RPC violations –

we found that McBride's denial that he did not earn his legal fee in one matter to be "of little import to the outcome of this disciplinary case in the aggregate, both as to findings and as to discipline." Ibid. Stated differently, given McBride's admission to the other "numerous allegations made in the five complaints – some of them serious – his denial of a lesser charge" had no "significant impact on the ultimate determination of the violations committed or the measure of discipline that they deserve." Id. at 3-4. Consequently, "where a multitude of infractions have been alleged and admitted," we did "no violence to the jurisdictional limits of R. 1:20-6(c)(1) when, even in the face of a disputed charge," we proceeded to review the matter under R. 1:20-6(c)(1). Id. at 25-26.

Here, as in McBride, the pleadings do not raise genuine disputes of material fact. To the extent that respondent denies certain facts alleged in the complaint, including whether she had received all Mezzacca's e-mails, the frequency in which Leonard may have attempted to contact her, via telephone, and her reasons for failing to provide Mezzacca with an interim accounting, these issues have little relevance to the outcome of this matter. Indeed, the fact that respondent denied certain RPC violations based on her view that she had refunded all "borrowed" estate funds does little to change the outcome of not only those charges, but also the most serious (and admitted) allegation in the complaint – that she knowingly misappropriated estate funds. Consequently, we

find no impediment to our review of this matter under R. 1:20-6(c)(1), as the parties requested.

Violations of the Rules of Professional Conduct

Turning to our de novo review, we determine that the material facts recited in the formal ethics complaint, as admitted by respondent in her answer, support the conclusion that she knowingly misappropriated entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, RPC 8.4(b), and RPC 8.4(c). Consequently, we recommend to the Court that she be disbarred.

It is well-settled that respondent, as the executor of Brown's estate, owed a fiduciary duty to the estate beneficiaries. See In re Estate of Folcher, 224 N.J. 496, 511 (2016) (holding that "[t]hose who hold the legal title of executor or trustee plainly owe a fiduciary duty to the beneficiaries of the estate or the trust respectively"). However, for nearly six-and-a-half years, between November 2014 and May 2021, respondent, in her capacity as executor, admitted that she violated her fiduciary duty to the beneficiaries by making at least eighty-eight unauthorized disbursements, via wire transfer, from the Estate Account to her personal and business accounts for her own use. The disbursements totaled $133,690, far exceeding the maximum $44,904.55 that she would have been entitled to receive in combined executor's commissions and as a 12%

beneficiary of Brown's estate. Respondent acknowledged that the beneficiaries had not authorized her to use or borrow the estate's funds and, further, that her use of those funds had no connection to any legitimate estate expense or disbursement to the other beneficiaries. Rather, respondent admitted that the disbursements were "strictly instances of [her] borrowing estate funds without authorization."

Respondent's prolonged scheme of using the estate funds for her own pecuniary purposes nearly depleted the entire Estate Account for more than two years, between October 2015 and November 2017. During that timeframe, respondent not only concealed her illicit activity from Leonard and the other estate beneficiaries, but she also was forced to replenish the Estate Account with deposits ranging from $15 to $50 to remedy numerous overdrafts. Consequently, respondent conceded that she was aware that "she had withdrawn the full value" of the account "at various time periods."

In her verified answer, respondent maintained that she consistently had acted "with the intent to replace borrowed funds" and that she had since "replaced all estate funds." However, the Court has "consistently maintained that a lawyer's subjective intent, whether it be to 'borrow' or to steal, is irrelevant to the determination of the appropriate discipline in a misappropriation case." In re Warhaftig, 106 N.J. 529, 533 (1987) (citations

omitted). Indeed, the subsequent replacement of escrow funds will not save an attorney from the Wilson disbarment rule. See In re Blumenstyk, 152 N.J. 158 (1997) (attorney disbarred for knowingly misappropriating funds; he received $65,000 from a buyer as a deposit for a real estate deal and took $10,000 and $5,412.55 from the escrow funds, without the authorization of the owner of the funds; his defense, that he had made restitution, was rejected).

Finally, an attorney-client relationship between a lawyer and the beneficiary of an estate is not a prerequisite for a finding of knowing misappropriation. See In re Meenen, 156 N.J. 401 (1998) (attorney disbarred for knowing misappropriation of funds stolen from an estate for which he served as the administrator, not the attorney), and In re McCue, 153 N.J. 365 (1998) (despite the absence of an attorney-client relationship between the attorney and the beneficiaries of a trust for which he was the trustee, the attorney was disbarred for his knowing misappropriation of trust assets). Consequently, based on respondent's prolonged, intentional, and surreptitious misuse of the estate funds for her own pecuniary purposes, we determine that she knowingly misappropriated entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, and RPC 8.4(c).

Similarly, respondent violated RPC 8.4(b) by committing second-degree misapplication of entrusted property, in violation of N.J.S.A. 2C:21-15. That statute 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 . . . in a manner which he knows is unlawful and involves substantial risk of loss or detriment to . . . a person whose benefit the property was entrusted whether or not the actor has derived a pecuniary benefit.

Pursuant to N.J.S.A. 2C:21-15, a "fiduciary" includes an executor. Moreover, "[i]f the benefit derived from a violation of this [statute] is $75,000, or more, the offender is guilty of a crime of the second degree." Ibid.

"The 'essential elements' of [N.J.S.A. 2C:21-15] are that 'the [person] knowingly misused entrusted property.'" State v. Coven, 405 N.J. Super. 266, 272 (App. Div. 2009) (citations omitted). Indeed, those elements "track those of a disbarment proceeding under [Wilson]." Ibid. (citing In re Lulo, 115 N.J. 490, 502 (1989)). In that vein, whether a person acts with fraudulent intent in connection with their knowing misuse of entrusted property is irrelevant. See State v. Manthey, 295 N.J. Super. 26, 30-31 (App. Div. 1996) (rejecting a defendant's argument that the trial judge erred by refusing to instruct the jury that, to obtain a conviction under N.J.S.A. 2C:21-15, the State was required to prove that the defendant acted with fraudulent intent).

Applying these principles, respondent committed second-degree misapplication of entrusted property by improperly disposing of at least $133,690 of Brown's estate corpus, resulting in at least an $88,785.45 unlawful pecuniary benefit to which she was not entitled. Respondent's defense to this criminal charge – that "all funds belonging to the estate are in the estate" – is irrelevant under N.J.S.A. 2C:21-15. See State v. Modell, 260 N.J. Super. 227, 250-51 (App. Div. 1992) (in attempting to overturn his convictions for violating N.J.S.A. 2C:21-15, the defendant argued that he did not benefit from the improper transactions because all victims were, eventually, reimbursed for the amounts that he had misapplied; the Appellate Division rejected the defendant's argument, reasoning "that if a victim whose property has been misapplied is eventually made whole, then no conviction may stand because the State no longer can prove that the defendant received a benefit[;] [N.J.S.A. 2C:21-15] does not support this position[;] [f]urther, we note that although all three victims here may have been reimbursed, it was not demonstrated that defendant was directly responsible for that reimbursement"), certif. denied, 133 N.J. 432 (1993).

Here, regardless of respondent's claim that the Estate Account has been made whole, it is undisputed that she received at least an $88,785.45 unlawful pecuniary benefit from the estate, in violation of her fiduciary duty to the

beneficiaries. Moreover, like the defendant in Modell, it is unclear whether respondent was directly responsible for the replenishment of the Estate Account, given that she had used funds from third parties or "other sources," including her family, to reimburse the estate.

Finally, the fact that respondent was not formally convicted of any crime is irrelevant to our finding that she engaged in criminal conduct. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime). See also In re Nazmiyal, 235 N.J. 222 (2018) (although an attorney was not charged with, or convicted of, violating New Jersey law surrounding the practice of debt adjustment, the attorney was found to have violated RPC 8.4(b)), and In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

Respondent, however, committed additional, serious misconduct beyond her knowing misappropriation of estate funds. Specifically, respondent violated RPC 8.4(b) and RPC 8.4(c) by committing fourth-degree falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4(a). That statute provides, in relevant part, that "a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record

knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing."

Here, respondent violated N.J.S.A. 2C:21-4(a) by providing the OAE with more than seven years of fraudulent bank statements that she had altered, using "scissors and glue," to conceal her misappropriation of the estate's funds. Respondent falsely inflated the Estate Account balance, in each monthly bank statement, and removed more than one hundred transactions between the Estate Account and her personal and business accounts in an attempt to cover up her illicit activities. As respondent admitted during the January 2022 demand interview, she provided the OAE with the fraudulent bank statements because she "didn't want to make it look like [she] was stealing."

Finally, respondent violated RPC 8.1(a), RPC 8.1(b), RPC 8.4(c) by knowingly making false statements to the OAE and by failing to correct a misapprehension known by respondent to have arisen in connection with the disciplinary investigation.

Specifically, in her October 20, 2021 reply to the grievance, respondent falsely claimed that the Estate Account had a $64,272.68 balance and that she had "done nothing wrong," as evidenced by the purported bank statements that she had attached to her reply. However, as respondent conceded, at the time she replied to the grievance, she was fully aware that the Estate Account balance

was only $7,951.41 and that she had attempted to conceal her misconduct via her fraudulently altered bank statements.

Additionally, at the outset of the January 2022 demand interview, when the OAE asked respondent whether she wished to correct or supplement her reply to the grievance, she falsely stated that she did not "think so" and that, in her view, she had given the OAE "everything." However, after the OAE advised her that it had obtained her Estate Account bank records via subpoena, respondent admitted to altering the bank records and to knowingly misappropriating the estate funds. Consequently, at the outset of the demand interview, respondent failed to correct the OAE's misapprehension that she had nothing to correct or supplement in connection with her reply to the grievance. Although the OAE was not actually under any misapprehension at the outset of the demand interview, the fact remains that, from respondent's perspective, she knew that the OAE was under a misapprehension regarding her illicit activities and failed to truthfully explain her actions, in violation of RPC 8.1(b).

Also, during the January 2022 demand interview, respondent falsely claimed that she had "paid back everything that [she had] borrowed" from the Estate Account and that "everything was all straightened out." However, as respondent admitted in her verified answer, she knew that, at the time of the demand interview, she had not replenished the Estate Account. Indeed, it was

not until May 3, 2022, when respondent made an additional $41,596.36 deposit from an unknown source, that she finally appeared to replenish the Estate Account.

In sum, we find that respondent violated RPC 1.15(a) and the principles of Wilson and Hollendonner; RPC 8.1(a); RPC 8.1(b); RPC 8.4(b) (two instances); and RPC 8.4(c) (three instances). The sole issue left for our determination is the appropriate quantum of discipline for her misconduct.

Quantum of Discipline

The crux of respondent's misconduct was her blatant knowing misappropriation of entrusted funds, via eighty-eight separate disbursements to herself, in her capacity as the executor of Brown's estate. In New Jersey, "[d]isbarment is mandated for the knowing misappropriation of clients' funds." In re Orlando, 104 N.J. 344, 350 (1986) (citing Wilson, 81 N.J. at 456). In Wilson, the Court described knowing misappropriation of client trust funds as follows:

> Unless the context indicates otherwise, 'misappropriation' as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

[Wilson, 81 N.J. 455 n.1.]

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable' . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant.
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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 601.

The Wilson rule also applies to other funds that the attorney is to hold inviolate, such as escrow funds. Hollendonner, 102 N.J. 21. In Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the "obvious parallel" between client funds and escrow funds, holding that "[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule . . . ." Hollendonner, 102 N.J. at 28-29.

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

> [c]lient funds are held by an attorney on behalf, or for the benefit, of a client. Escrow funds are funds held by an attorney in which a third party has an interest. Escrow funds include, for example, real estate deposits (in which both the buyer and the seller have an interest) and personal injury action settlement proceeds that are to be disbursed in payment of bills owed by the client to medical providers.
>
> [Id. at 21.]

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

As noted above, an attorney-client relationship between a lawyer serving as an executor and the estate beneficiaries is unnecessary to sustain a knowing misappropriation charge.

In In re Guido, 240 N.J. 477 (2020), Guido served as trustee for his mother-in-law's life insurance trust and performed legal work on behalf of the trust. In the Matter of Michael Peter Guido, DRB 19-110 (Oct. 29, 2019) at 3. In his deposition, Guido denied having provided legal services for the trust, asserting that he served only as trustee. Ibid. When the trust beneficiaries noticed discrepancies, they requested a full accounting from the trust company, which revealed that Guido improperly had issued four checks, totaling $35,748.33, to himself. Id. at 4. Guido noted on these checks that they were for fees and administrative costs. Id. at 5. The beneficiaries had been unaware of these distributions, despite their repeated requests for information and an accounting. Ibid.

In determining that Guido had committed knowing misappropriation, we found that it "matters not whether [Guido] was the trustee or had an attorney-client relationship with the trust or its beneficiaries. He was entrusted with safeguarding the corpus of the trust and failed to do so when he improperly advanced $35,748.33 in costs or fees to himself without a scintilla of documentation to substantiate his entitlement." Id. at 16. The Court agreed with our determination and disbarred Guido.

In In re Sogliuzzo, 248 N.J. 578 (2021), the Court disbarred an attorney who knowingly misappropriated estate funds while serving as the estate's

executor. Specifically, during his administration of the estate, Sogliuzzo, without the authorization of the other beneficiaries, disbursed to himself $40,738.32 more than he was entitled to receive in combined executor's commissions and his 1/7th beneficial share of the estate. In the Matter of John B. Sogliuzzo, DRB 20-253 (June 11, 2021) at 7, 23. Sogliuzzo's proffered defense to the knowing misappropriation charge was that he was not acting as an attorney for the estate. Id. at 9. Rather, Sogliuzzo claimed that there was no attorney for the estate and that he viewed his administration of the estate "as a family matter" and not as a legal matter. Id. at 9-10. However, according to the estate's tax returns, Sogliuzzo received $7,500 in counsel fees and a separate $14,500 executor fee. Id. at 12-13. Sogliuzzo also sent letters to the three beneficiaries using his law firm letterhead. Id. at 13.

We determined that, although Sogliuzzo was acting as an attorney in representing the estate, even if he were not, there was no legal support for a "family matter" exception to excuse him, either as an attorney or executor, from his fiduciary duty to the beneficiaries. Id. at 30. Consequently, because Sogliuzzo knowingly disbursed to himself estate funds that should have been distributed to the beneficiaries, we recommended that Sogliuzzo be disbarred for knowingly misappropriating entrusted funds. Id. at 30, 33. The Court agreed with our determination and disbarred Sogliuzzo.

Here, like Sogliuzzo, respondent violated her fiduciary duty to the beneficiaries of Brown's estate by knowingly and brazenly misappropriating at least $88,785.45 of the estate's funds for her own pecuniary gain. Respondent's scheme spanned nearly six-and-a-half years, between November 2014 and May 2021, during which time she concealed her invasion of the estate's funds from the other beneficiaries, including Leonard and her attorney, whose inquires respondent largely ignored or deflected with vague, non-responsive answers, in an apparent attempt to avert their suspicions.

In her October 2021 reply to Leonard's grievance, respondent further attempted to cover up her misconduct by claiming that "there was nothing underhanded going on," as evidenced by the seven years of fraudulent bank statements that she had altered, using scissors and glue, in an attempt to conceal her illicit transactions. Respondent's deception continued during the January 2022 demand interview, when she refused to disclose her misconduct until confronted by the OAE with the fact that it had obtained her legitimate bank statements via subpoena. Moreover, even after respondent had confessed to the OAE that she had knowingly misappropriated the estate's funds, she continued to lie by claiming that she had "paid back everything that [she had] borrowed" and that she had "got everything all straightened out." However, it was not until four months later, in May 2022, when respondent made an additional $41,596.36

deposit of funds obtained from an unknown source, that she finally appeared to replenish the entire Estate Account. Nevertheless, based on the record before us, none of the beneficiaries, other than respondent, have received any distributions, despite the passage of more than nine years since Brown's death.

Conclusion

In conclusion, based on respondent's admitted knowing misappropriation alone, disbarment is the only appropriate sanction, pursuant to the principles of Wilson and Hollendonner. Therefore, we need not address the appropriate quantum of discipline for respondent's additional ethics violations.

Moreover, we recommend that the Court order respondent to disgorge, by a date certain, all legal fees and executor commissions received from the Estate of Michael M. Brown. Because the OAE has confirmed that an attorney-trustee already has been appointed to oversee respondent's private practice of law, we need not recommend such an action.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kathleen Marie Cehelsky
Docket No. DRB 23-172

Argued: October 19, 2023

Decided: January 31, 2024

Disposition: Disbar

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

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