SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-009
District Docket Nos. XIV-2022-0129E
and XIV-2022-0207E

In the Matter of Neal E. Brunson
An Attorney at Law

Decided
July 8, 2024

Certification of the Record

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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 on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with knowing misappropriation of client and/or escrow funds, in violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), and with having violated 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 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation); RPC 1.15(a) (commingling); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 1.16(a)(1) (undertaking or failing to withdraw from a representation if it will result in a violation of the Rules of Professional Conduct or other law); RPC 5.5(a)(1) (engaging in the unauthorized practice of law – practicing law while suspended); RPC 7.5(a) (improperly using a professional designation that violates RPC 7.1); RPC 8.1(b) (three instances – failing to cooperate with disciplinary authorities); RPC 8.4(b) (engaging in a criminal act that reflects

adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); RPC 8.4(c) (three 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).[1]

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

Respondent earned admission to the New Jersey bar in 1988. During the relevant period, he maintained a practice of law in Rutherford, New Jersey.

Respondent has a significant disciplinary history, beginning with a reprimand he received, in September 1998, for having violated RPC 1.3 (lacking diligence); RPC 1.4(b); RPC 1.5(b); RPC 3.2 (failing to expedite litigation); and RPC 8.4(c). In re Brunson, 155 N.J. 591 (1998) (Brunson I).

On July 22, 2021, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying the matter later docketed as DRB 22-015. In re Brunson, 247 N.J. 486 (2021).

[1] Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to respondent, the OAE amended the complaint to include the third charged violation of RPC 8.1(b) and the second charged violation of RPC 8.4(d).

On March 21, 2023, in two consolidated default matters, the Court suspended respondent for three months for having violated RPC 1.15(d); RPC 8.1(b); RPC 8.4(b); and RPC 8.4(c). In re Brunson, 253 N.J. 327 (2023) (Brunson II). In the first matter, respondent, as a defendant in a contract dispute with a court-reporting company, settled the litigation and, in exchange for a dismissal of the lawsuit, agreed to pay his outstanding balance to the company in two installments. In the Matter of Neal E. Brunson, DRB 22-015 and DRB 22-075 (Aug. 3, 2022) at 5-7. Respondent made the first payment but failed to make the second one, forcing the company to refile its complaint. Id. at 6-7. Following mediation, respondent again agreed to settle the case and also provided the company with a check from his attorney business account (ABA) for the remaining balance. Ibid. However, the check was returned for insufficient funds. Ibid.

The ensuing OAE audit revealed that, throughout the month in which respondent tendered the check, he maintained a negative balance in his ABA. Ibid. Moreover, he knew the settlement check had been returned for insufficient funds, yet he failed to cure the shortfall. Id. at 20-22. Further, he had been assessed a myriad of overdraft charges for his negative ABA balance. Ibid. Consequently, he knew that issuing the settlement check would almost certainly cause an overdraft and, by doing so, violated N.J.S.A. 2C:21-5 (governing bad

checks), as well as RPC 8.4(b) and (c). Id. at 20-22. Respondent also failed to comply with multiple recordkeeping requirements, in violation of RPC 1.15(d). Id. at 18-19.

In the second matter comprising Brunson II, respondent violated RPC 8.1(b) in three respects. First, he failed to reply to the ethics investigator's written requests for information concerning a grievance. Id. at 22- 23. He again violated the Rule by failing to respond to an ethics investigator's written requests for information in response to a referral from the Fee Arbitration Committee. Ibid. He violated RPC 8.1(b) a third time by failing to answer the formal ethics complaint. Ibid.

In determining the appropriate quantum of discipline in Brunson II, we concluded that the baseline for the totality of respondent's misconduct was a reprimand. Id. at 27-29. In aggravation, however, we considered respondent's pattern of failing to cooperate with disciplinary authorities, which spanned three ethics investigations, and determined that his heightened awareness of his obligation to cooperate justified an enhancement from a reprimand to a censure. Ibid. Additionally, we weighed the default status of both matters and, based upon In re Kivler, 193 N.J. 332, 342 (2008), further enhanced the discipline to a three-month term of suspension. Id. at 29-30. The Court agreed. Brunson II, 253 N.J. at 327.

Also on March 21, 2023, in respondent's third default matter, he received a reprimand for his violations of RPC 8.1(b) and RPC 8.4(d) after he failed to file, within thirty days of the Court's July 22, 2021 Order imposing his temporary suspension, the affidavit required of suspended attorneys, pursuant to R. 1:20-20(b)(15). In re Brunson, 253 N.J. 325 (2023) (Brunson III).

Respondent remains suspended in connection with both his temporary suspension and disciplinary suspension.

Service of Process

Service of process was proper. On December 6, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail receipt was signed by respondent and returned to the OAE, indicating delivery on December 14, 2023. The letter sent by regular mail was not returned to the OAE.

On December 28, 2023, the OAE sent a second letter to respondent's home address of record, by certified and regular mail, with an additional copy by e-mail, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful

violation of RPC 8.1(b) and RPC 8.4(d) by reason of his failure to answer. According to the United States Postal Service (USPS) tracking system, the certified mail was delivered on January 4, 2024, although no signed certified mail receipt was returned to the OAE. The regular mail was not returned to the OAE, and delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

As of January 9, 2024, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On January 29, 2024, Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, informing him that the matter was scheduled before us on March 21, 2024 and that any motion to vacate the default must be filed by February 19, 2024. The certified mail receipt was signed by respondent and returned to the Office of Board Counsel (the OBC), indicating delivery on February 1, 2024. The letter sent by regular mail was not returned to the OBC.

Moreover, on February 5, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on March 21, 2024. The notice informed respondent that, unless he filed a successful motion

to vacate the default by February 19, 2024, his prior failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

Facts

As detailed above, effective July 22, 2021, the Court temporarily suspended respondent for failing to comply with the OAE's ethics investigation underlying Brunson II. Subsequently, effective March 21, 2023, the Court suspended respondent for three months in connection with a disciplinary matter. Brunson II, 253 N.J. at 328. To date, the Court has not reinstated him to the practice of law.

In connection with respondent's law practice, he maintained an attorney trust account (ATA) at Capital One Bank and an ABA at TD Bank. In conjunction with the July 2021 Order temporarily suspending respondent, the Court prohibited him from disbursing funds from these accounts without the Court's approval.

The K.N. Matter (District Docket No. XIV-2022-0129E)

In July 2021, in Nobles, et al. v. Anderson, et al. and Brown, et al. v. N.J. Department of Corrections, the New Jersey Department of Corrections

(NJDOC) and plaintiffs agreed to settle two class action lawsuits filed on behalf of female inmates who had been incarcerated at Edna Mahan Correctional Facility for Women (EMCFW) at any time since January 1, 2014. Specifically, the plaintiffs in both matters alleged that female prisoners at EMCFW during the specified period had been subjected to sexual abuse and harassment by NJDOC staff. The class action settlement approved payments to every person within the class who submitted a qualifying claim to the EMCFW Settlement Administrator.

In October 2021, K.N.[2] – a former inmate at EMCWF during the relevant period – hired respondent to represent her in submitting a claim to the EMCFW Settlement Administrator. Respondent failed to inform K.N. of his July 2021 suspension from the practice of law, which remained in effect.

On or about October 29, 2021, respondent submitted K.N.'s claim form and supporting certifications to the EMCFW Settlement Administrator. Neither the claim form nor the certifications evidence that respondent assisted in their preparation. However, respondent submitted the materials with a cover letter, written by him to the Settlement Administrator, and printed on letterhead that identified him as "**NEAL E. BRUNSON ESQ.** ***Counselor at Law***." Likewise,

[2] We refer to K.N. by her initials to protect her anonymity.

the return address on the envelope to the Administrator also identified respondent as "Neal E. Brunson, Esq." and "Counselor at Law."

On November 4, 2021, the office of the EMCFW Settlement Administrator entered the correspondence relating to K.N.'s claim into its claim system. On November 15, 2021, the Settlement Administrator wrote to respondent, via e-mail, to confirm receipt of K.N.'s claim submission packet and provide additional information relating to the settlement and processing of claims.

During the next few months, respondent and K.N. periodically communicated about her matter, by text messages and telephone. However, at times, K.N. found it difficult to contact respondent, and he frequently failed to return her calls and text messages.

After K.N. shared with respondent the financial difficulties she faced as she awaited the outcome of the claims process, respondent loaned her $2,000 in cash. In addition, on another occasion, using a telephone application (app), he sent her $75 to cover the cost of her transportation to a meeting with him. According to K.N., respondent told her not to use a pre-settlement funding company but to turn to him for money, instead. In one text message to her, respondent wrote, "I do not like these serv[ic]es because of how they have hurt clients in the past."

In January 2022, K.N. learned of respondent's suspension from the practice of law and confronted him, by text message, regarding his suspension. In reply, he wrote, "I have an issue with attorney ethics. I thought that it was resolved but I need to do some more things for them. I am working on it today."

Thereafter, on January 18, 2022, K.N. contacted one of the plaintiffs' attorneys in the EMCFW class action lawsuit, informing him that she had retained respondent to represent her. That attorney discovered that the judiciary's website listed respondent as suspended from the practice of law and, by letter dated January 20, 2022, informed the OAE of respondent's alleged representation of K.N. while suspended.

Subsequently, K.N. again sent respondent a text message, asking if he was suspended. In reply, he wrote, "I thought I had resolved it but they want me to provide some records." Further, he admitted that "I should have told you about the temporary suspension." K.N. then retained new counsel to represent her in pursuing her claim in connection with the EMCFW settlement proceeds.

On May 2, 2022, the OAE sent respondent a letter, by certified and regular mail, to his combined street and post office box (P.O. Box) address of record, requesting that he respond to the referral made on K.N.'s behalf by May 11, 2022. The certified mail receipt was signed (by an unknown party) and returned

to the OAE, indicating delivery on May 9, 2022. The complaint did not indicate whether the letter sent by regular mail was returned to the OAE.

Respondent failed to reply by the May 11 deadline.

Consequently, on May 13, 2022, the OAE sent respondent a second letter, by certified and regular mail, to his combined street and P.O. Box address, directing him to reply to the referral by May 20, 2022. The certified mail receipt was signed and returned to the OAE, indicating delivery on May 19. The complaint did not indicate whether the letter sent by regular mail was returned to the OAE.

Respondent again failed to reply by the deadline.

On June 16, 2022, the OAE contacted respondent by telephone. He claimed that the USPS mailperson had been signing the certified mail receipts on his behalf and without his knowledge. He also stated that he had been delayed in responding to the OAE's correspondence due to a medical condition affecting his eyesight.

Accordingly, on June 21, 2022, the OAE sent respondent a third letter, by United Parcel Service (UPS), to his home address, with copies also sent to him twice, by e-mail, directing him to reply to the referral by July 8, 2022. UPS confirmed delivery to his home address. Deliveries to respondent's e-mail

address were complete, although no delivery notifications were sent by the destination server.

Respondent failed to provide a written reply to the referral by July 8, 2022.

Next, on July 11, 2022, the OAE personally served respondent, at his home, with the May 2 and May 13, 2022 letters, and directed that he provide his written reply to the referral by July 23, 2022. Once again, he failed to reply by the deadline.

On December 27, 2022, the OAE sent respondent a letter scheduling a demand interview for January 9, 2023, at 10 a.m. The next day, the OAE sent a revised letter, again informing him about the upcoming demand interview but alerting him that the interview would take place at 2 p.m. rather than 10 a.m. on January 9. Finally, on December 29, 2022, the OAE sent respondent a third letter about the demand interview, clarifying that it would address not only the K.N. matter but also the Estate matter (described below). The same letter directed respondent to provide his written response to the referral by January 6, 2023.

On January 6, 2023, respondent replied, via e-mail, to the OAE's December 29 letter and requested an additional three days to submit his reply. The OAE apparently did not reply. Nevertheless, respondent failed to submit his response by January 9, nor did he appear for his demand interview.

The OAE rescheduled the demand interview for January 24, 2023. Respondent appeared for the interview on that date; however, he stated that he was not prepared to answer questions about either the K.N. or the Estate matter, purportedly because he had not known that the OAE intended to address those matters. In addition, he stated that he must have misplaced the OAE's correspondence and requested additional copies of the grievances for both matters.

Respondent stated that he would be prepared to answer questions on January 27, 2023, and the OAE rescheduled the demand interview accordingly.

On January 27, 2023, respondent appeared for the demand interview. However, he requested time to consult with counsel before being interviewed regarding the K.N. matter.[3]

Accordingly, on February 3, 2023, the OAE sent respondent a letter, by certified and regular mail, to his home and P.O. Box addresses, with a copy by e-mail, granting him an extension, until February 10, 2023, to consult with counsel, and further stating that, on that date, a new demand interview would be

[3] The complaint stated that, during the January 27, 2023 demand interview (which was scheduled to address both matters at issue), respondent "requested time to consult with counsel before being interviewed on docket XIV-2022-0129E (Estate of Bellinger)." In isolation, this statement is ambiguous, because the docket number corresponds to the K.N. matter, although the parenthetical refers to the Estate matter. However, the statement appears in Count One of the complaint, which addresses the K.N. matter, and elsewhere in the record and in the complaint, the OAE consistently and exclusively describes respondent's request to consult with counsel as applying to that matter. Accordingly, the parenthetical "Estate of Bellinger" appears to be typographical error.

scheduled. The letters sent by regular and certified mail to respondent's home and P.O. Box addresses were returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

On February 22, 2023, the OAE sent respondent a letter, by regular and certified mail, to his home and P.O. Box addresses, with a copy by e-mail, scheduling the demand interview for March 6, 2023. Moreover, the letter informed respondent: "***This is our final attempt to interview you.***" Further, the letter required respondent to provide a written reply to the referral by March 3. The certified mail receipt for the correspondence sent to respondent's home address was signed by respondent and returned to the OAE, indicating delivery on February 28, 2023. The letters sent by regular and certified mail to respondent's P.O. Box were returned to the OAE. The complaint did not indicate whether the letter sent by regular mail to his home was returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

On March 6, 2023, respondent failed to appear for the demand interview.

Finally, on March 10, 2023, the OAE sent respondent a letter, by certified and regular mail, with a copy by e-mail, stating that the OAE had attempted to conduct a demand interview regarding the K.N. matter with him on four

occasions, without success, and that he likewise had failed to respond to the OAE's five requests for his written response to the grievance, in violation of RPC 8.1(b). The letters sent by certified and regular mail to his home address and P.O. Box were returned to the OAE. The complaint did not indicate whether the letter sent by regular mail to his home was returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Based on the above facts, the OAE charged respondent with violating the following Rules of Professional Conduct:

- RPC 1.4(b), by failing to return K.N.'s telephone calls or text messages or to contact her in a timely manner to keep her reasonably informed about the status of her case;
- RPC 1.8(e), by improperly providing $2,075 in financial assistance to K.N. in connection with pending or contemplated litigation;
- RPC 5.5(a)(1), by practicing law while suspended, in violation of the Court's July 22, 2021 Order, when he met with and agreed to represent K.N. as a new client, provided her with legal advice, and submitted class action settlement paperwork on her behalf;

- RPC 7.5, by using letterhead and holding himself out as a practicing attorney, while suspended, when he submitted the class action settlement documents to the EMCFW Settlement Administrator;
- RPC 8.1(b), by failing to appear for the January 9 and March 6, 2023 demand interviews, appearing for the January 24, 2023 demand interview but being unprepared to answer questions, appearing for the January 27, 2023 demand interview but purportedly "refus[ing] to answer question," and failing to respond to the OAE's lawful demands for information; and
- RPC 8.4(c), by misrepresenting to K.N. the status of his license to practice law.

The Estate Matter (District Docket No. XIV-2022-0207E)

After her mother died intestate, in February 2021, Cheryl Bellinger-Murphy retained respondent to represent her mother's estate with regard to an insurance claim involving property damage to her mother's home (the Estate matter).

On June 11, 2021, Palisades Insurance issued a $235,359.81 loss payment to the Estate. Specifically, the company sent respondent three checks, for

$95,000, $94,000, and $46,359.81, payable to the "ESTATE OF [THE DECEDENT] AND LAW OFFICE OF NEAL E BRUNSON."[4]

On June 24, 2021, respondent deposited the three checks in his ATA. Thereafter, between June 25 and July 28, 2021, he disbursed $6,000 in legal fees in conjunction with the Estate matter, as follows:

Check No.	Date Made	Date Posted	Payee	Memo	Amount
1901	June 25, 2021	June 25, 2021	Respondent	"Est. [] Bellinger Legal Fee"[5]	$3,000
1906	July 2, 2021	July 2, 2021	Respondent	"Est o[f] [] Bellinger Legal"	$500
1908	July 12, 2021	July 12, 2021	Respondent	"Atty Fee Est Bellinger"	$500
1907	July 16, 2021	July 16, 2021	Respondent	"Atty Fee Est [] Bellinger"	$500
1915	July 22, 2021	July 22, 2021	(left blank)	"Bellinger Legal Fee"	$1,000
1916	July 28, 2021	July 28, 2021	Respondent	"Bellinger Estat Legal"	$500

Respondent also issued checks to the Office of the Medical Examiner and the City of Jersey City in connection with the Estate. However, these disbursements do not form the bases for any charged RPC violations and apparently correspond to his obtaining a copy of the coroner's report and arranging for the municipal construction office to inspect the decedent's home.

[4] The record does not indicate why the insurance company issued three separate checks.

[5] Because the record does not include copies of the checks, we quote the "memo" annotations recited in the formal ethics complaints.

As stated above, on July 22, 2021, the Court temporarily suspended respondent based on his failure to comply with the OAE's investigation of an unrelated matter. Nevertheless, he failed to advise Bellinger-Murphy that the Court had suspended him and that he could not continue to represent her at that time.

As of July 30, 2021, respondent held $229,275.89 in his ATA, or $6,083.92 less than the $235,359.81 that he should have held, inviolate, on behalf of the Estate.

At some point after he deposited the insurance checks, respondent failed to reply to Bellinger-Murphy's attempts to communicate with him regarding her matter, despite her efforts to reach him by telephone, e-mail messages, and visits to his office. In March 2022, she retained Vincas M. Vyzas, Esq., to replace respondent in representing her in the Estate matter.

On June 7, 2022, the OAE received correspondence from Vyzas, providing copies of the cancelled insurance checks and alleging that respondent had failed to answer Vyzas's letters, in which he inquired about the status of the insurance proceeds. Thereafter, the OAE docketed the matter for investigation

and subpoenaed respondent's ATA records for the period May 30, 2020 through June 23, 2022.[6]

Subsequently, on July 11, 2022, the OAE personally served respondent, at his home address, with a copy of the grievance in the Estate matter and requested his written reply by July 23, 2022. Respondent failed to submit a reply by the deadline.

On October 11, 2022, the OAE interviewed Bellinger-Murphy, and by e-mail dated October 24, she provided the OAE with additional information. According to Bellinger-Murphy, respondent did not provide to her a written retainer agreement. She explained to the OAE that she had met respondent many years before her mother's death, in his capacity as a community leader. After her mother died, he reached out to express his condolences and to offer his services. She explained that, during an ensuing conversation, he had asked for $1,500 minimum and $500 "at th[e] time we agreed to accept his offer to help us." Her brother "had cash on hand and paid him" the initial $500 at that time.

According to the OAE's memorandum documenting the October 11, 2022 interview of Bellinger-Murphy, she "advised the OAE that she never gave [r]espondent permission to use any of the funds received from the insurance

[6] The references in the complaint to "May 30, 2022" as the starting date for the subpoenaed records are typographical errors. The OAE's subpoena sought respondent's ATA records for the period beginning May 30, 2020.

company." However, in her October 24, 2022 letter to the investigator, she wrote that she had told respondent that the insurance funds should go toward paying off the mortgage on her mother's residence, and the record likewise corroborates that she expressed to respondent the importance of paying the mortgage obligation. The formal ethics complaint alleged that Bellinger-Murphy "advised that no agreement was ever reached with [r]espondent on what disbursements should be made from the money received from Palisades Insurance," but that she also did "indicate[] in her interview with the OAE, that she did not approve any of the disbursements to [r]espondent."

On December 12, 2022, the OAE sent respondent a letter, by certified and regular mail, to his home and P.O. Box addresses, with a copy by e-mail, scheduling a demand interview for December 29, 2022 at 10 a.m. Although the certified mail receipt for the letter sent to his home address was signed by respondent and returned to the OAE, it indicated delivery on January 5, 2023, after the December 29 interview date. The letters sent by certified and regular mail to his P.O. Box were returned to the OAE. The complaint did not indicate whether the letter sent by regular mail to his home address was returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Respondent failed to appear for the December 29, 2022 demand interview, which was scheduled to proceed remotely at 10 a.m. At 10:09 a.m., the OAE sent him an e-mail, advising that the investigators were waiting for him to join the virtual interview. At 10:35 a.m., respondent called the OAE to advise that he had been unaware of the demand interview. Approximately ten minutes later, he sent a message to the OAE, by e-mail, clarifying that he could not attend the interview that week due to family matters, but that the following week would be better. Respondent also stated he had been unable to open an attachment to one of the OAE's recent e-mails. When the OAE replied, by e-mail, stating that a staff member would contact him at 2 p.m. that afternoon, he reiterated his unavailability due to family commitments.

Thereafter, the OAE informed respondent, by letter dated December 29, 2022, sent by certified and regular mail, with a copy by e-mail, that the January 9, 2023 demand interview, already scheduled to address the K.N. matter, also would address the Estate matter. The same letter directed him to provide his written reply to both grievances by January 6, 2023. Further, the letter informed respondent as follows:

> After reviewing your currently frozen bank account records, it appears by your ATA that client money is missing and that a knowing misappropriation has occurred. **Please be advised that a violation of knowing misappropriation comes with automatic**

> **disbarment.** See In re Wilson[,] 81 N.J. 451 (1979), [and] In re Hollendonner, 102 N.J. 21 [(1985)].
>
> [C-Exs. 63, 66.][7]

As stated above (in conjunction with the K.N. matter), although respondent sent an e-mail message to the OAE on January 6, 2023, requesting an extension, until January 9, to complete his reply, he then failed to submit his reply by the latter date. Moreover, he failed to appear for the January 9, 2023 demand interview.

The OAE then rescheduled the demand interview for January 24, 2023, on which date respondent appeared but stated he was unprepared to address the matters at issue.

Consequently, the OAE rescheduled the demand interview for January 27, 2023.

On January 27, 2023, respondent appeared for the demand interview. However, according to the complaint, "he could not provide any explanation for the nine checks" disbursing funds from the Estate. Although he admitted that he had not promptly disbursed fees from his ATA upon earning them, the complaint does not indicate that this admission pertained to the Estate matter.

[7] "C-Ex." refers to exhibits attached to the OAE's November 30, 2023 formal ethics complaint.

Respondent failed to provide documents pertaining to the Estate matter. Accordingly, the OAE had no written agreement or other evidence that would contradict Bellinger-Murphy's claims that she and respondent never agreed on disbursements to be made from the insurance proceeds, and that she did not approve any disbursements to him.

Also on January 27, 2023, the OAE sent respondent a letter, by certified and regular mail to his home and P.O. Box addresses, with a copy by e-mail, asking him to provide, by February 10, 2023, his written response to the grievance in the Estate matter; a copy of the client file for that matter; his fee and retainer agreements; depository letter; and all correspondence between him and anyone within or associated with the Bellinger-Murphy family. The certified mail receipt for the letter sent to respondent's home address was signed by him and returned to the OAE, indicating delivery on February 2, 2023. The letters sent by certified and regular mail to respondent's P.O. Box were returned to the OAE. The complaint did not indicate whether the letter sent by regular mail to his home was returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Thereafter, on January 31, 2023, the OAE sent respondent a letter, by certified and regular mail to his home and P.O. Box addresses, with a copy by e-mail, requesting that he provide, by February 14, the following:

a. Copies of your Attorney Trust Accounts from ***January 1, 2014 to date of suspension***:
   1. Monthly bank statements, cancelled checks, wire transfers, deposit items, debit and credit items as well as the check books;
   2. Monthly three-way attorney trust account reconciliations;
   3. Client ledger cards for those clients whose funds were maintained in your attorney trust account during this audit period; and
   4. Cash receipts and cash disbursements journals for your trust accounts;

b. Copies of your Attorney Business Accounts from ***January 1, 2014 to date of suspension:***
   1. Monthly bank statements, cancelled checks, wire transfers, deposit items, debit and credit items as well as the check books;
   2. Monthly three-way attorney business account reconciliations;
   3. Client ledger cards for those clients whose funds were maintained in your attorney business account during this audit period; and
   4. Cash receipts and cash disbursements journals for your business accounts;
   5. Retainer Agreement for client file Jackson/Wakefern Food Corp. including the Settlement statement and Client Trust Ledger.[8]

[C-Ex. 82.]

The letters sent by certified and regular mail to respondent's P.O. Box were returned to the OAE as undeliverable, and the certified mail sent to his home address was returned to the OAE as unclaimed. The complaint does not

[8] The OAE previously had requested records regarding the Jackson/Wakefern Food Corporation client matter during one of the investigations underlying Brunson II.

state whether the letter sent by regular mail to his home address was returned. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Respondent did not provide the materials requested in the OAE's January 27 and January 31, 2023 letters by the specified deadlines.

Consequently, by letter dated February 22, 2023, sent by certified and regular mail to respondent's home and P.O. Box addresses, with a copy by e-mail, the OAE sent a final request seeking a written reply to the grievance in the Estate matter, along with any supporting documentation, as well as his financial books and records for the period January 1, 2014 until the date of his suspension. Therein, the OAE set a new deadline of March 1, further advising that that constituted "***a final deadline date. No more extensions will be granted to you.***"

The certified mail receipt for the correspondence sent to respondent's home address was signed by respondent and returned to the OAE, indicating delivery on February 28, 2023. The letters sent by regular and certified mail to respondent's P.O. Box address were returned to the OAE. The complaint did not indicate whether the letter sent by regular mail to his home was returned to the OAE. Delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Respondent failed to submit the requested books and records to the OAE by March 1, 2023.

The OAE prepared a financial reconstruction of respondent's ATA transactions using the limited records it possessed. The OAE's review of the records for respondent's ATA revealed not only the disbursements associated with the Estate matter, but also six cash withdrawals, totaling $127,930, made by respondent from his ATA between February 9 and June 14, 2021, in violation of R. 1:21-6(c)(1)(A).[9] Further, the OAE alleged that respondent's ATA bank records revealed the following additional recordkeeping deficiencies, in violation of R. 1:21-6: (1) failure to maintain three-way ATA reconciliations, fully-descriptive ATA disbursements and receipts journals, ABA disbursements or receipts journals, individual client ledger cards, a ledger card for attorney funds for bank charges, and client monthly balances; (2) electronic transfers made without proper authorization; (3) improper image-processed ABA checks; (4) IOLTA ATA not maintained in accordance with R. 1:28A; and (5) improper ABA designation (collectively, violations of R. 1:21-6(a)(2); R. 1:21-6(b); R. 1:21-6(c)(l)(A), (B), and (H); and R. 1:21-6(d)).

[9] Respondent made these cash withdrawals before he deposited the insurance proceeds in the Estate matter. According to the complaint, Bellinger-Murphy informed the OAE that she did not approve these withdrawals.

Based on the above facts, the OAE charged respondent with violating the following Rules of Professional Conduct:

- RPC 1.15(a) and the principles of Wilson and Hollendonner, by knowingly misappropriating client and/or escrow funds;
- RPC 1.4(b), by failing to communicate with Bellinger-Murphy regarding the insurance checks and the status of the Estate matter;
- RPC 1.5(b), by failing to provide Bellinger-Murphy a writing setting forth the basis or rate for his fee;
- RPC 1.15(a), by commingling client funds and personal funds when he admittedly failed to disburse, from his ATA, funds that he earned in legal fees promptly upon earning them;
- RPC 1.15(d), by violating the R. 1:21-6 recordkeeping requirements specified above and failing to produce or respond completely to the OAE's demands for financial records;
- RPC 1.16(a)(1), R. 1:20-20(b)(1), RPC 8.4(c), and RPC 8.4(d), by failing to advise Bellinger-Murphy of his suspension and his corresponding inability to continue to represent her;[10]

[10] Because subpoints (g) and (i) in the OAE's recitation of charged RPC violations were substantially the same, we combined them for purposes of this decision.

- RPC 8.1(b), by failing to produce his financial books and records and to respond to the OAE's other lawful demands for information, failing to appear for the December 29, 2022 demand interview, and appearing for the January 24, 2023 demand interview but being unprepared to answer questions;
- RPC 8.4(b), by committing a criminal act when he took funds from the Estate without authorization; and
- RPC 8.4(c), by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation when he took client money without authorization.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the facts recited in the formal ethics complaint support most, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has

occurred. See In re Pena, 164 N.J. 222 (2000) (stating that the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethic[s] violations found by the [Board] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct").

We, therefore, will decline to find a violation of a Rule of Professional Conduct where the facts within the certified record do not constitute clear and convincing evidence that an attorney violated a specific Rule. See In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022), and In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017).

In Wilson, 81 N.J. 451, 455 n.1 (1979), the Court described knowing misappropriation 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 [the lawyer], including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom.

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," id. at 453, consists simply of a lawyer taking a client's money entrusted to [the lawyer], 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 [the lawyer] took it, or whether in fact [the lawyer] ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. . . . The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

In 2022, more than forty years after the Court decided Wilson, the Court re-affirmed its "bright-line rule . . . that knowing misappropriation will lead to disbarment." In re Wade, 250 N.J. 581, 601 (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." Ibid.

In In re Hollendonner, 102 N.J. 21 (1985), 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 . . . an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule[.]" Id. at 28-29.

Here, the insurance proceeds that respondent held in trust for the Estate constituted both client and escrow funds. "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." In the Matter of Robert H. Leiner, DRB 16-410 (June 27, 2017) at 21; see also In the Matter of Angelo M. Perrucci, DRB 21-032 (August 25, 2021) at 12-13 (determining that an attorney had an attorney-client relationship with the beneficiaries of an estate and, thus, applying the principles of Wilson, but not Hollendonner, to the attorney's knowing misappropriation of funds from the estate's account).

In the present matter, Bellinger-Murphy had an attorney-client relationship with respondent, as well as a presumptive claim to a share of the assets included in the Estate of her mother, who died intestate. Thus, a portion

of the insurance proceeds constituted client funds. In addition, a third party (Bellinger-Murphy's brother) also presumptively numbered among the decedent's heirs, and the decedent may have had other heirs not identified in the record. Thus, a portion of the insurance proceeds almost certainly constituted escrow funds. Accordingly, the OAE appropriately charged respondent with violating the principles of both Wilson and Hollendonner.

Although an attorney may refute an allegation of knowing misappropriation by establishing that the attorney held a reasonable belief of entitlement to the funds, here, respondent put forward no such defense. The six checks at issue bear memo lines referring to "atty fee," "legal fee," or "legal," but according to Bellinger-Murphy, respondent had no prior approval to disburse any portion of the insurance proceeds to himself. Moreover, no document in the record sets forth respondent's fee, and Bellinger-Murphy stated that he failed to provide her with a retainer agreement. Rather, Bellinger-Murphy, her brother, and respondent orally agreed that respondent would receive, at minimum, $1,500 for his work on the matter, and Bellinger-Murphy's brother paid him $500 in cash toward that amount at the outset of the representation.

Respondent could not reasonably have believed himself entitled to the funds paid by the insurance company to the Estate. He and Bellinger-Murphy only had an oral agreement, never memorialized in writing, regarding fees.

Nothing in the record before us suggests that Bellinger-Murphy and her brother even addressed with respondent, let alone authorized, his withdrawal of $6,000 in attorney's fees from the Estate's funds. Moreover, respondent informed them that his minimum fee would be $1,500, of which they paid $500 initially, and the record contains no information indicating he had any entitlement to $6,000 in addition to the $500 already paid toward the representation.

Accordingly, we find that respondent took, for his own use, $6,000 that he was required to hold, inviolate, on behalf of the Estate and its beneficiaries, despite knowing that he lacked authorization to do so. Thus, he knowingly misappropriated funds in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. His conduct in surreptitiously withdrawing these funds also constituted conduct involving dishonesty or deceit, in violation of RPC 8.4(c).

We next address the other charged violations of the Rules of Professional Conduct.

RPC 1.4(b) requires an attorney to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information. Here, in the K.N. matter, although respondent replied promptly to some of K.N.'s text messages, he failed to answer others in a timely manner during periods when K.N. urgently needed information regarding her anticipated settlement proceeds. Further, in the Estate matter, respondent failed to reply to

Bellinger-Murphy's attempts to obtain updates on the status of the Estate, notwithstanding her repeated efforts to communicate with him by telephone, e-mail messages, and a visit to his office.

RPC 1.8(e) provides, in relevant part, that an attorney "shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter," and also, "(2) . . . [if] representing an indigent client, may pay court costs and expenses of litigation on behalf of the client." In the K.N. matter, respondent advanced $2,000 in cash directly to the client, during the pendency of her application for funds from the EMCFW class action settlement. The record contained no basis to regard this $2,000 cash payment as a court cost or expense of litigation. Thus, respondent clearly violated RPC 1.8(e). However, regarding the $75 that he provided to cover the cost of K.N.'s transportation to meet with him, the record is too sparse to determine whether this payment rose to the level of unethical conduct.

Next, respondent violated RPC 1.15(a) when he commingled funds by admittedly failing to promptly disburse earned fees from his ATA. He likewise violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Specifically, he improperly made six cash withdrawals, totaling

$127,930, from his ATA between February 9 and June 14, 2021; failed to maintain his IOLTA ATA in compliance with R. 1:28A; made or permitted electronic transfers from his ATA without proper authorization; and failed to produce or respond completely to the OAE's questions regarding his financial books and records.

However, the record documented only that the OAE subpoenaed respondent's ATA records from Capital One Bank and did not reflect the OAE's receipt of any records related to his ABA (maintained at TD Bank). Consequently, we find the complaint's factual recitation insufficient to support the OAE's claims of deficiencies in his ABA: specifically, that he used an improper ABA designation and had improperly formatted image-processed ABA checks. Moreover, the record did not include sufficient factual bases to determine that he failed to maintain three-way reconciliations, receipts and disbursements journals, ledger cards, and monthly balances. To the contrary, the ATA records provided by the bank would not shed light on his internal recordkeeping practices. However, respondent clearly violated RPC 1.15(d) through his violation of the other R. 1:21-6 requirements cited by the OAE.

Further, respondent violated RPC 1.16(a)(1) by failing to terminate his representation in the Estate matter before his temporary suspension took effect. Particularly, RPC 1.16(a)(1) states that "where representation has commenced,"

an attorney "shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law." Here, by failing to withdraw from the Estate matter upon his suspension from the practice of law, he practiced law in violation of R. 1:20-20(b)(1) and, consequently, also violated RPC 1.16(a)(1).

In addition, respondent violated RPC 5.5(a)(1) by practicing law while suspended in the K.N. matter.[11] He undertook K.N.'s representation in October 2021, more than two months after the effective date of his temporary suspension. Further, when he submitted K.N.'s documents to the EMCFW Settlement Administrator, he held himself out to the Administrator as a practicing attorney by referring to himself as "Esq." and "Counselor at Law," on both his cover letter and mailing envelope. However, we determine to dismiss, as duplicative, the associated charge that respondent violated RPC 7.5, which rests solely on the letterhead and envelope used for the EMCFW Settlement submission and is subsumed within his more serious violation of RPC 5.5(a)(1).

Respondent likewise violated RPC 8.4(c) in the K.N. matter when he knowingly misrepresented to K.N. and to the EMCFW Settlement Administrator that he remained authorized to practice law in New Jersey. Subsequently, when K.N. confronted him about his suspension, he twice misled her by remaining

[11] The OAE did not charge respondent with violating RPC 5.5(a)(1) in the Estate matter.

silent regarding the fact of his suspension. Instead, he brushed off her queries by stating that he thought he had "resolved" the situation, but that he needed to "do some more things" or "provide some records" to disciplinary authorities. However, he eventually admitted to K.N. that "I should have told you about the temporary suspension[.]"

Likewise, respondent violated RPC 8.4(c) in the Estate matter by misrepresenting to Bellinger-Murphy, through his silence regarding his July 22, 2021 suspension, that he could continue to represent her after that date.

Moreover, respondent violated RPC 8.4(b), which prohibits an attorney from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is well-settled that a violation of this Rule may be found even in the absence of a criminal conviction or guilty plea. 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), and In re McEnroe, 172 N.J. 324 (2002) (the attorney was found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense). Respondent's issuance of six checks for legal fees in the Estate matter, without Bellinger-Murphy's authorization, violated RPC 8.4(b) because his misconduct represented the theft of funds from the Estate.

Finally, during the OAE's investigations into both the K.N. and the Estate matters, respondent violated RPC 8.1(b) by failing to respond to lawful demands for information from disciplinary authorities. Specifically, he failed to reply to either grievance, missed multiple demand audits, and failed to provide other documentation requested by the OAE in conjunction with these matters, as well as his financial books and records. In addition, he violated RPC 8.1(b) a third time when he failed to file a verified answer to the formal ethics complaint, despite proper notice, and allowed this matter to proceed as a default.

We determine to dismiss, however, as inadequately pled, the charge that respondent violated RPC 1.5(b) in the Estate matter. Pursuant to that Rule, "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." Here, notwithstanding Bellinger-Murphy's statement that she had met respondent many years earlier, the complaint failed to address whether respondent had represented her in other legal matters during the years of their acquaintance.

We also determine to dismiss the charged violations of RPC 8.4(d). The first, based on respondent's failure to advise Bellinger-Murphy of his suspension and his inability to continue her representation, is more precisely and fully encompassed by the charged violation of RPC 1.16(a)(1) in the Estate matter.

The second RPC 8.4(d) charge was added contemporaneously with the RPC 8.1(b) charge, with both charges stemming from respondent's failure to answer the formal ethics complaint. Although failure to file an answer to a complaint does constitute a violation of RPC 8.1(b), it is not per se grounds for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (after the attorney failed to answer the formal ethics complaint and cooperate with the investigator, the district ethics committee charged her with violating RPC 8.4(d); upon review, the Court noted that "[a]lthough the committee cited RPC 8.4(d) for failure to file an answer to the complaint, RPC 8.4(d) deals with prejudice to the administration of justice. RPC 8.1(b) is the correct rule for failure to cooperate with disciplinary authorities.").

In sum, respondent committed knowing misappropriation of entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. In addition, respondent violated RPC 1.4(b) (two instances); RPC 1.8(e); RPC 1.15(a) (commingling); RPC 1.15(d); RPC 1.16(a)(1); RPC 5.5(a)(1); RPC 8.1(b) (three instances); RPC 8.4(b); and RPC 8.4(c) (three instances). We determine to dismiss the charges pursuant to RPC 1.5(b); RPC 7.5(a); and RPC 8.4(d) (two instances).

Conclusion

The crux of this case is respondent's knowing misappropriation of entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner, a violation which mandates his disbarment. Regardless of any mitigating factors, because respondent knowingly misappropriated funds that had been entrusted to him, 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 his additional ethics violations.

We, thus, recommend to the Court that respondent be disbarred.

Members Menaker and Rivera, weighing that this matter constitutes respondent's fourth default in less than three years, also find that respondent's repeated defaults provide a second basis to recommend to the Court that respondent be disbarred. In their view, respondent's behavior exhibits his repeated and deep disdain for New Jersey's disciplinary system, which – in combination with his disciplinary history and the numerous violations present here, even apart from knowing misappropriation – warrant a recommendation to the Court that respondent be disbarred.

Member Joseph voted to impose a two-year suspension.

Member Campelo was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Neal E. Brunson
Docket No. DRB 24-009

Decided: July 8, 2024

Disposition: Disbar

Members	Disbar	Two-year suspension	Absent
Gallipoli	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez	X		
Total:	7	1	1

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