SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-140
District Docket No. XIV-2023-0252E

In the Matter of William C. Kelly
An Attorney at Law

Argued
September 19, 2024

Decided
December 11, 2024

Timothy J. McNamara appeared on behalf of the
Office of Attorney Ethics.

Grant W. McGuire appeared on behalf of respondent.

Table of Contents

Introduction

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

This matter previously was before us on a motion for discipline by consent filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-10(b) (DRB 23-108).[1] The parties had urged a two-year suspended suspension for respondent's stipulated violation of RPC 1.15(a) and the principles of In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds)[2] and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). On July 12, 2023, we denied that motion, based on our determination that a two-year suspended suspension was not supported by precedent. We, thus, remanded the matter to the OAE for further proceedings.

[1] Although a prior, denied motion for discipline by consent typically would be treated as confidential, pursuant to R. 1:20-9(a), the parties expressly waived such confidentiality in the disciplinary stipulation presently before us.

[2] The parties stipulated, in paragraph 34 of the stipulation, that respondent violated RPC 1.15(a) based on his failure to "hold property of clients or third parties that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." The disciplinary stipulation, however, further addresses respondent's admitted knowing misappropriation of law firm funds and contains a fulsome discussion of applicable disciplinary precedent, including Siegel. Accordingly, in our view, respondent was charged pursuant to Siegel under this Rule and in conformity with In re Roberson, 194 N.J. 557 (2008).

The parties have returned the matter to us, now as a disciplinary stipulation. Again, respondent has stipulated to having violated RPC 1.15(a) and the principles of Siegel,[3] and RPC 8.4(c).

For the reasons set forth below, we determine that a three-year suspension is the appropriate quantum of discipline for respondent's misconduct.

Ethics History

Respondent earned admission to the New Jersey bar in 2004, the New York and Connecticut bars in 1991, and the Pennsylvania bar in 1992. At the relevant times, he was a non-equity partner at the law firm of Tompkins, McGuire, Wachenfeld & Barry, LLP (the Firm), working at the Firm's office in Newark and, later, Roseland, New Jersey. More recently, he has been employed by law firms located in Garden City, New York.

Respondent has no prior discipline in New Jersey and no public discipline in New York, Connecticut, or Pennsylvania.

[3] The parties' disciplinary stipulation similarly charged respondent, as detailed in footnote 2, with having violated the principles of Siegel.

Facts

Respondent and the OAE entered into the disciplinary stipulation, dated June 27, 2024, which sets forth the following facts in support of respondent's admitted ethics violations.

From 2008 until 2021, respondent was a non-equity partner at the Firm. At the time he joined the Firm and throughout his tenure, he did not have a partnership agreement or written employment agreement with the Firm.

Upon joining the Firm, respondent earned a starting annual salary of approximately $130,000. He received periodic raises in the years that followed and, by 2017 and 2018, earned approximately $160,000 annually. However, in early 2019, the Firm advised him that it planned to implement firm-wide salary reductions and begin reducing staff. Thereafter, respondent's salary decreased to approximately $143,000 in 2019 and, further, to $137,000 in 2020 through March 2021, when the Firm terminated his employment.

This disciplinary matter arises from respondent's provision, while employed at the Firm, of outside legal services (the Outside Work), under the Firm's name, on matters for which he did not open files at the Firm. In connection with these matters, in 2013, 2018, and 2019, he personally generated invoices for services rendered in seven matters (detailed below), indicating that payment should be made directly to him. These invoices were not the Firm

invoices prepared on Firm letterhead but rather e-mails sent to the concerned party indicating payment should be made to "William C. Kelly, Esq." Respondent kept the resultant payments, totaling $11,415, for his personal use.

Respondent did not provide formal letters of representation to the Outside Work clients. Instead, he communicated with them orally about the scope and nature of his representation. According to respondent, he conducted most, if not all, of his communications with the Outside Work clients by telephone or e-mail. Although he believed that he primarily communicated via his personal e-mail account, he conceded that he sometimes used his Firm e-mail account, office telephone, and cellular telephone for Outside Work communications.

Respondent's misconduct apparently came to light around the time he suffered a seizure at work, in February 2021, that led to his hospitalization and inpatient treatment for alcoholism – a condition with which he had struggled since at least 2011. According to the Firm's managing partner, while respondent was unavailable, an Outside Work client attempted to reach him and, upon learning respondent was not available, asked to speak with someone else at the office. The client subsequently was contacted by a different partner.

On March 15, 2021, upon respondent's return to work, the managing partner and others met with him about the Outside Work. He admitted his misconduct, and the Firm terminated his employment the next day. However,

the Firm did not institute civil litigation or seek restitution from him. In addition, no Outside Work client filed an ethics grievance against him.

By letter dated March 24, 2021, the Firm's managing partner informed the District VB/VC Ethics Committee that respondent admittedly had been "performing legal services, under our firm name, on files he had not opened within the firm." Further, in 2018 and 2019, he had "sent 'invoices' he surreptitiously created to clients, and kept fees received from those invoices personally, without disclosing, much less remitting, those fees to the firm."

Subsequently, the OAE docketed the matter for investigation and forwarded the Firm's ethics referral to respondent.

By letter dated October 18, 2021, respondent, through counsel, submitted his reply to the referral. He did not dispute the substance of the referral; acknowledged the gravity of the issues raised therein; took full responsibility for his actions; and acknowledged that "his conduct was unacceptable and merit[ed] discipline." At that time, he estimated that the Outside Work had "comprised some 5 [or] 6 matters amounting to total billings of $6,000 to $7,000." He explained, however, that he could only estimate the figures because he no longer had access to the relevant Firm records.

Respondent proffered multiple mitigating factors. He explained that he had four children, one of whom has special needs.[4] In 2017, his marriage of twenty-three years had ended in divorce and, subsequently, he had significant monthly alimony and child support obligations. He claimed that, after the Firm reduced his salary in 2019, he "felt compelled to supplement his income via the Outside Work, misguided as it was."

Respondent also described his struggles with alcoholism, his engagement in treatment starting as early as 2011, and his achievement of sobriety from March 2011 until late 2017, but for a 2014 relapse. In 2017, he suffered another relapse, "largely coinciding with [his] marital difficulties and economic pressures." He attributed his engagement in the Outside Work to "financial insecurity and the collapse of" his marriage and home life, "exacerbated by his alcoholism."

In June 2022, the Firm provided the OAE with eight invoices generated by respondent, reflecting seven different Outside Work matters for which he billed, in total, $11,415. As detailed in the table below, the earliest invoice was dated March 13, 2013. The others were dated between January 2018 and August 2019.

[4] As of October 2021, respondent's children's ages ranged from seventeen to twenty-three years.

Date of Invoice	Client or Matter	Amount
March 13, 2013	Walter Pardo, Wealth Financial Partners	2,590.00
January 18, 2018	Yeshiva Ins. Agency to Wealcatch	1,012.50
March 2, 2018	BHB Pest Elimination LLC re: Nieves Asset Purchase	675.00
September 21, 2018	Tri Colore LLC/Cupo, DeMarco, Delbecchi	900.00
May 31, 2019	North Street Comm., LLC v. DCB Tree & Landscape, Inc.	2,362.50
June 13, 2019	Cerulli v. Acosta	2,362.50
August 1, 2019	D&D Consulting/NYCIRB Audit	1,012.50
August 12, 2019	Cerulli v. Acosta	500.00

In addition to the invoices, the Firm provided the OAE other documentation relating to five of the seven matters. These documents revealed that respondent received or generated additional materials relating to matters that involved some of the parties listed above, although the Firm did not locate invoices corresponding to the dates of these additional materials. Finally, the Firm found a letter from respondent to one of the Firm's clients, providing notice of a personal injury suit that respondent claimed the Firm would be filing against its client, on behalf of respondent's mother.

We now turn to the matters corresponding to the invoices, as well as salient information from other documents provided by the Firm.

The Pardo Matter

In March 2013, respondent billed Walter Pardo for fourteen hours of legal services, provided between January 8 and February 26, 2013, at $185 per hour ($2,590 total). His invoice was sent on Firm letterhead, on which he was identified as "Partner." It is uncontested that respondent represented Pardo "in the sale or transfer of a PostalAnnex+ Service Center franchise[,] for which he sought personal payment."

In addition, the record of the Pardo matter included a letter addressed to Eugene Cerulli, dated April 30, 2013 and written on Firm letterhead, wherein respondent stated that he was enclosing "my check representing disbursement of the $3,000.00 escrow monies." According to the associated license-transfer agreement, the parties agreed to "open an escrow for the purpose of facilitating this transaction at the following Escrow Office, William C. Kelly, Esq." and that "Escrow will hold from Transferor [Cerulli] $3,000 for a period of 45 days after the Close of Escrow."[5]

[5] The record did not clarify how respondent held these escrow funds but made clear that, at the time, the Firm had no file open for either Pardo or Cerulli.

The Yeshiva Insurance Agency Matter

On January 18, 2018, respondent billed either Yeshiva Insurance Agency or Herman Wealcatch for four-and-a-half hours of legal services, purportedly provided between December 2017 and January 2018, at $225 per hour ($1,012.50 total). The Firm did not locate any other documentation pertaining to this matter.

The BHB Pest Elimination Matter

On March 2, 2018, respondent billed BHB Pest Elimination, LLC, for three hours of legal services provided in "April – March, 2018," in connection with the "Andy Nieves Asset[] Purchase," at $225 per hour ($675 total).

Additional documents provided by the Firm revealed that, between 2012 and 2020, respondent worked for BHB on several other matters. He "represented [BHB] as far back as 2012, in both a New York State Division of Human Rights matter, and in corporate transactions." Moreover, the managing partner alerted the OAE to a letter from respondent to BHB, dated November 14, 2012 and written on Firm letterhead, stating that respondent was "returning your check no. 4960 dated October 24, 2012." The managing partner theorized that this was "potentially because it was made payable to the firm instead of [respondent]." However, the letter itself contained no other information about the check, to

whom it was made payable, how respondent came to have it, or why he was returning it.

In each of the other BHB matters, the record contained no evidence of whether respondent billed BHB. It did, however, make clear that he put himself forward as acting on behalf of the Firm, despite never having opened a file for BHB with the Firm. In the 2012 matter, respondent misrepresented, in a verified answer to a complaint, that the Firm represented BHB and that he was acting under the Firm's auspices; issued multiple discovery demands under the Firm's name; and wrote letters to both the New York Division of Human Rights (in May 2012) and to the complainant (in August 2012), using Firm letterhead. In an April 2017 matter, in connection with an unidentified "Notice of Sale, Transfer, or Assignment" on BHB's behalf, respondent wrote to the New Jersey Department of Treasury, using the Firm's letterhead. Other documents reflected work apparently performed by respondent for BHB in 2014 (asset purchase agreement with Bug Doctor, Inc.), May 2017 (asset purchase by BHB from Tri-County Pest Control), and in or around August 2020 (additional or supplementary agreement between BHB and Nieves).

The Delbecchi/Tri Colore Matter

On September 21, 2018, respondent billed Mario and Patricia Delbecchi for four hours of legal services provided, in September 2018, in connection with their sale of an interest in Tri Colore, LLC, at $225 per hour ($900 total). According to the managing partner, "[respondent] may have represented the Delbecchis in a house closing, and a corporate resolution for Tri Colore, LLC."

The managing partner further stated that "[o]f particular concern is the June 20, 2018 letter requesting that a deposit check be made payable to 'William C. Kelly, Esq.'" Specifically, in the letter in question, prepared by respondent on Firm letterhead, he stated that "[c]onsistent with instructions from your attorney I am enclosing herein your [c]heck . . . in the amount of $5,000.00 . . . the initial deposit from [] Avenue[,] Springfield, NJ. I respectfully request that you re-issue the check made payable to 'William C. Kelly, Esq.'" The managing partner explained to the OAE that "[w]e are not aware of any circumstance where one of our attorneys should be requesting that a deposit check be made payable to that attorney personally."

The DCB Tree & Landscape Matter

On May 31, 2019, respondent billed DCB Tree & Landscape, Inc. for ten-and-a-half hours of legal services provided in May 2019, at $225 per hour

($2,362.50 total). The managing partner reported that respondent apparently had represented DCB Tree & Landscape, a third-party defendant, in an action pending in Westchester County, New York. The Firm "learned at or about the time of [respondent's] termination that he had appeared in the action." Subsequently, a member of the Firm "spoke with DCB's principal . . . who reported that [respondent] told him the case was over, as [respondent] had told the other parties that DCB had no insurance (and was presumably not worth pursuing)."

Additional documents in the record revealed that respondent misrepresented that he was acting on the Firm's behalf in a number of court filings, as well as in a subpoena duces tecum and correspondence with opposing counsel.

The Cerulli Matter

On June 13, 2019, respondent billed Eugene Cerulli for ten-and-a-half hours of legal services provided between January and June 2019, at $225 per hour ($2,362.50 total).[6] On August 12, 2019, he billed Cerulli for another two-

[6] As detailed above, respondent previously had communicated with Cerulli in connection with the Pardo matter.

and-a-half hours of work provided in July and August 2019, at $200 per hour ($500 total).

The managing partner stated that respondent "apparently represented Mr. Cerulli on a number of fronts. We learned that Mr. Cerulli provided an American Express card to another gentleman . . . who apparently ran up thousands of dollars in unauthorized charges, resulting in litigation against Mr. Cerulli."

The D&D Consulting Matter

On August 1, 2019, respondent billed D&D Consulting for four-and-a-half hours of legal services purportedly provided between February and July 2019, at $225 per hour ($1,012.50 total). The Firm did not locate any other documentation pertaining to the representation.

The Valeri Kelly Matter

By letter dated January 28, 2021, written on Firm letterhead, respondent advised ABF Freight System, Inc., that the Firm was "counsel to Valeri Kelly," respondent's mother, with respect to a motor vehicle accident involving his mother and an ABF vehicle. The managing partner stated that ABF was a client of the Firm, and that respondent sent the letter "without conducting a conflicts check as required or opening a file." The Firm "learned of the situation at or

about the time of [respondent's] termination" and advised him that "he/the firm absolutely could not pursue an action against a current client."

Subsequent Disciplinary Proceedings

After the Firm provided the OAE with the above documents, on July 6, 2022, the OAE interviewed respondent. Subsequently, by letter dated July 22, 2022, respondent, through counsel, provided the OAE with additional information requested during the interview and to respond to the letter and exhibits submitted by the Firm's managing partner. Respondent did not dispute the managing partner's allegations or supporting documents, all which he admitted he had "prepared or [were] related to files that he personally opened." Further, he reiterated that "he prepared all of the statements and invoiced clients personally without the knowledge or consent of the Firm." Addressing the documents dating to 2012 and 2013, which he had not mentioned to the OAE in his October 2021 response to the referral, respondent claimed he previously failed to identify these materials due to his inability to access his office or files.

Based on the forgoing facts, respondent stipulated to having violated RPC 1.15(a) and RPC 8.4(c).

The Parties' Positions Before the Board

In their written stipulation and during oral argument before us, the parties maintained that, despite respondent's knowing misappropriation of law firm funds, the appropriate quantum of discipline for respondent's misconduct is a two-year suspension and, further, that such suspension should be suspended, pursuant to R. 1:20-15A(b)(6).

As a threshold matter, the parties acknowledged that, under Siegel and In re Greenberg, 155 N.J. 138 (1998), "the knowing misappropriation of law firm funds, whether from a client or one's partners, will generally result in disbarment." However, relying on In re Sigman, 220 N.J. 141, 158 (2014), they urged that respondent's misconduct warranted discipline short of disbarment, asserting that the case at hand, like Sigman, featured numerous mitigating factors and, further, that the misconduct at issue in Sigman was more severe than that committed by respondent.

In Sigman, the Court declined to disbar an attorney who had received a thirty-month suspension in Pennsylvania based on disciplinary proceedings that "arose from his misappropriation of referral and legal fees that should have been paid, in whole or in part, to the law firm that employed him, his misuse of other resources belonging to his employer, and his false testimony regarding insurance proceeds issued in a real estate matter." 220 N.J. at 143.

More specifically, the attorney in Sigman, while an associate with a Pennsylvania law firm, repeatedly kept legal and referral fees for his own use. Id. at 145. Although the record contained no written employment agreement between Sigman and his firm, he admittedly "understood that he was barred from handling client matters that were independent of the firm or were not approved by George Bochetto, Esq. (Bochetto), of Bochetto & Lentz." Ibid. Nevertheless, he did so in several matters, including three that implicated the rule of Siegel and Greenberg.[7]

First, without obtaining Bochetto's permission, Sigman represented a client whose driver's license had been suspended. Although he recorded with the firm his time on the matter, he failed to share any portion of the resulting $600 fee with his firm, which was entitled to at least $432 pursuant to the fee-sharing agreement that governed his employment. Id. at 145-46.

Second, while representing a client in three matters, "[i]n accordance with the firm's requirements, [Sigman] recorded his time on the file and arranged for the initial legal fees to be paid by the client's father" but, subsequently, "admittedly instructed the client's father to write a $5000 check payable to [him]

[7] The OAE detailed in the stipulation and during oral argument each aspect of Sigman's misconduct, which spanned seven client matters. However, most relevant here, the Court in Sigman identified three matters in which the associate admittedly violated New Jersey's RPC 1.15(a) and RPC 8.4(c) and, by misappropriating law firm funds, brought to the forefront the dispositive issue before the Court: whether the rule of Siegel and Greenberg mandated the associate's disbarment. 220 N.J. at 154-55. Accordingly, we focus on these three matters.

personally, as payment for a portion of the legal work performed on the client's behalf." Id. at 147. Rather than turning the fee over to his firm, he "deposited the check in his account and spent the money on personal expenses." Ibid.

After Sigman had left his firm, his client's father contacted the firm and requested a refund of the legal fee, whereupon the firm discovered Sigman's diversion of the funds. Ibid. Bochetto then confronted Sigman, who lied in response, "claiming that the client's father had never sent a check for $5000, and then instructed the client's father not to contact his former firm." Ibid. Although he subsequently refunded $4,000 to the father, he retained the remaining $1,000, notwithstanding the firm's entitlement to eighty percent of the fee. Ibid.

In the third matter, Sigman "consulted with a potential client interested in asserting a slip-and-fall claim . . . and referred that client to another attorney." Id. at 148. Sigman conceded that he failed to secure Bochetto's approval before making the referral, but he asserted that Bochetto had "told him that 'it was a bad case' and instructed him to 'get rid of' the case." Ibid. About a month after Sigman left the firm, "the attorney to whom the slip-and-fall matter had been referred settled the matter, and paid [Sigman] $28,800 . . . as a referral fee." Sigman acknowledged that his agreement with the firm entitled it to $19,200 of this sum, and that he, nevertheless, "retained the entire $28,800 for his own use."

Ibid.

After the firm terminated Sigman's employment, but prior to the imposition of discipline in Pennsylvania, he successfully sued the firm, resulting in an arbitrator's determination that the firm owed him $123,942.93 in legal and referral fees. Id. at 151. During his Pennsylvania disciplinary proceedings, he admitted that his misconduct caused the firm losses totaling $25,468.18. Consequently, this amount was deducted from his arbitration award. Ibid.

For Sigman's violation of Pennsylvania Rules of Professional Conduct 1.15(b), (c), (d), and (e); 3.4(a); and 8.4(c) and (d), the Pennsylvania Supreme Court, citing substantial mitigation, suspended him for thirty months, as stated above. Sigman, 220 N.J. at 143, 146 n.1. Thereafter, the OAE filed a motion for reciprocal discipline, urging that we recommend his disbarment based on his misappropriation, during a two-year period, of more than $25,000 in fees from his employer, as well his as other misconduct. Id. at 151-52; In the Matter of Scott P. Sigman, DRB 13-411 (June 13, 2014) at 19-20.

A majority of our Members concurred that Sigman's misappropriation of law firm funds mandated his disbarment. Sigman, 220 N.J. at 152. Accordingly, and without addressing the quantum of discipline for Sigman's other misconduct, we recommended to the Court that he be disbarred. Ibid.

The Court disagreed, concluding that the rule of Siegel and Greenberg did not compel the Court "to diverge from the discipline imposed by our sister jurisdiction and disbar respondent." Id. at 160. Instead, consistent with the term of suspension imposed in Pennsylvania, the Court prospectively suspended Sigman's license to practice law in New Jersey for a period of thirty months. Id. at 162.

In the context of a motion for reciprocal discipline, the Court noted that New Jersey applies "discipline identical to that imposed by the foreign jurisdiction absent a showing by clear and convincing evidence that an exception applies." Id. at 154. The Court continued:

> [i]n that setting, we consider whether the OAE has proven by clear and convincing evidence that New Jersey law or the facts of respondent's case warrant the imposition of "greater discipline than that imposed in" Pennsylvania – in this case, the sanction of disbarment. R. 1:20-14(a)(4). As respondent has admitted, by misappropriating funds that belonged to his law firm as alleged in the first, third, and fifth matters[8] in the OAE complaint, he violated two New Jersey RPCs: RPC 1.15(a), which requires a lawyer to "hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property," and RPC 8.4(c), which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent's violations of these Rules unquestionably involved serious

[8] The first, third, and fifth matters in the complaint correspond to the three matters we described above.

> misconduct warranting substantial discipline. The question is whether the sanction for that misconduct must be disbarment.
>
> [Id. at 154-55.]

The Court determined that, "[n]otwithstanding [the] longstanding rule that a lawyer's misappropriation from a law firm may warrant disbarment . . . the circumstances of this case warrant discipline short of the ultimate sanction of disbarment." Ibid. In particular, the Court found "compelling mitigating factors" meriting a lesser sanction, in that Sigman:

> had no prior history of discipline in either Pennsylvania or New Jersey. As his supporting letters attest, he has made significant contributions to the bar and to underserved communities for many years. He cooperated with disciplinary authorities and admitted his wrongdoing. There is no allegation, let alone a finding, that [he] stole funds belonging to a client. Instead, [his] misappropriation of referral and legal fees occurred in the context of conflicting fee payment practices and a deteriorating relationship with his law firm – a relationship that ended in litigation over a different referral fee, in which he ultimately prevailed. Indeed, it was only after [his] conflict with his former firm over referral fees that his misconduct was reported to ethics authorities. These factors distinguish this case from the circumstances of Siegel and Greenberg.
>
> [Id. at 160-61.]

Further, the Court noted that Sigman's misappropriation of law firm funds "[was] not inherently different" from the misconduct at issue in four earlier

matters – In re Bromberg, 152 N.J. 382 (1998); In re Glick, 172 N.J. 319 (2002); In re Spector, 178 N.J. 261 (2004); and In re Nelson, 181 N.J. 323 (2004) – in which the Court "recognized circumstances that warrant[ed] a lesser sanction than that imposed in Siegel and Greenberg." Sigman, 220 N.J. at 158-62. As in those matters, the Court observed, Sigman's ethics matter likewise "arose in a business dispute between the attorney and [the attorney's] firm. Id. at 162.

Here, the parties acknowledged that respondent, like Sigman, "took money that he was not entitled to receive." They also conceded that respondent's misconduct "did not arise in the context of a business dispute with his firm." Moreover, the OAE recognized that it had "not previously requested lesser discipline than disbarment in a case in which an attorney has taken legal fees owed to their firm where there was no business dispute between the attorney and their firm," while clarifying that its "submission of this Disciplinary Stipulation is not meant to convey that the OAE is recommending that in all instances where an attorney has taken legal fees that were due to their firm . . . the lawyer should receive a two-year suspended sentence." Nevertheless, the OAE and respondent recommended a two-year suspension "based on the unique facts presented in this case."

Addressing the contrast between Sigman, where the associate had an ongoing business dispute with his firm, and the present matter, where there was

no business dispute, the parties pointed out that, in Sigman's Pennsylvania disciplinary proceedings, he admitted that his former firm had lost more than $25,000 due to his misconduct. Thus, although he successfully demonstrated that his firm owed him more than $123,000, he had taken law firm funds "to which he was clearly not entitled, even after giving him credit for legitimate fee issues he had with his employer."

In addition, they pointed out that Sigman, in an insurance dispute connected to his representation of the seller in a real estate transaction, falsely testified in an affidavit and a deposition and, further, made misrepresentations to his supervising attorney. Sigman, 220 N.J. at 150. Moreover, whereas Sigman admittedly lied to his firm when confronted about his diversion of a legal fee, id. at 147, respondent "did not . . . make any misrepresentations to his firm once his Outside Work was discovered." They also highlighted respondent's cooperation with the OAE.

Further, the parties emphasized respondent's financial obligations and the impact of the salary reductions that he experienced in 2019 and 2020. They alleged that "[t]he dissolution of a 23-year marriage coupled with Respondent's salary being reduced lead him to feel compelled to supplement his work by taking on outside work which he did not report to the Firm." Although he did not offer his personal situation as a defense, the parties asserted it shed light on

his desperation to support his family, including four children, one of whom has special needs. "[Although] not a business dispute like the situation present in the Sigman case, [respondent] certainly felt a strong impact" and "significant stress" when the Firm lowered his salary, and he could neither negotiate nor prevent these reductions.

Respondent acknowledged the impropriety of "providing outside legal services under the Firm's name, on matters for which he did not open files at the Firm." The parties emphasized, however, that he did not have a partnership or written employment agreement with the Firm, and "the Firm did not have a written policy governing the provision of legal services under the Firm's name without the Firm's authorization." Further, he neither took money owed to a client nor took money from the Firm's trust account.

The parties also advanced, in mitigation, respondent's alcoholism, which culminated in his 2021 hospitalization, and his subsequent success in treatment, continuing sobriety, residence in a sober house, and regular attendance at Alcoholics Anonymous (AA) meetings. Respondent clarified that he was "not relying on an intoxication defense or any other psychiatric defense" but asserted that, when he "acted unethically and exercised poor judgment" in committing the misconduct at issue, "he was under the throes of alcoholism, which . . . is

reflective of his poor judgment which he represents was without evil intent to harm any Outside Clients or the Firm."

In additional mitigation, the parties asserted that respondent admitted that he had engaged in the misconduct at issue and committed the charged violations of the Rules of Professional Conduct; entered into the underlying disciplinary stipulation; cooperated with the OAE and his Firm; displayed remorse; following his termination from the Firm, secured and retained employment as an insurance defense attorney in New York; and provided service to his community by serving as treasurer to the mayor of his town and as a board member of the town's recreation committee and lacrosse club, volunteering as a member of the high school marching band's "pit crew," and actively participating in his faith community.

Relying on In re Chechelnitsky, 232 N.J. 331 (2018), the parties' argued that respondent should receive a suspended suspension. In that matter, the attorney was found to have violated RPC 8.4(b) (committing a criminal act that reflects adversely on the honesty, trustworthiness or fitness as a lawyer) "based on her criminal convictions of creating a dangerous condition, in violation of N.J.S.A. 2C:33-2(a)(2); third-degree possession of a weapon for an unlawful purpose, in violation of N.J.S.A. 2C:39-4(d); fourth-degree aggravated assault on a law enforcement officer, in violation of N.J.S.A. 2C:12-1(b)(5)(a); and

third-degree aggravated assault on a law enforcement officer, in violation of N.J.S.A. 2C:12-1(b)(5)(a)." Id. at 331. The attorney, who suffered from alcohol addiction, received a six-month term of suspension, which the Court suspended, subject to certain conditions. Ibid.

The OAE and respondent asserted that here, as in Chechelnitsky, a suspended suspension was appropriate due to respondent's alcohol dependency issues and other mitigating factors. They also urged that respondent engaged in less egregious misconduct than that of the attorney in Chechelnitsky, who had multiple arrests and convictions; threatened her spouse with a knife; assaulted police officers; and faced charges of endangering the welfare of her children.

Finally, the parties urged that discipline short of disbarment was appropriate because the Court had not disbarred attorneys "in certain cases which arguably present more serious unethical conduct th[a]n [w]as present in the case at bar." In support, they cited three cases involving attorneys who were convicted of theft and related crimes, but whose misconduct did not include knowing misappropriation: In re Campbell, 257 N.J. 27 (2024); In re Del Tufo, 233 N.J. 100 (2018); and In re Pariser, 162 N.J. 574 (2000).

The parties did not expressly stipulate to any aggravating factors. However, respondent acknowledged that his conduct in providing legal services

in the Firm's name, without opening the matters at the Firm, "was harmful both to the Firm, and the clients he represented."

For his part, respondent, through counsel, acknowledged that his conduct was "unconscionable" and "unexcusable." In addition to the mitigating factors set forth above, he also clarified that currently, he has one child still in college and another whose plans remain in flux. In his own remarks before us, respondent expressed remorse, stated that he had "not measure[d] up to the standards not only . . . set for me professionally, but also morally and ethically," and asked that we permit him to continue to practice law rather than recommend his disbarment.

As conditions of respondent's suspended suspension, the parties recommended that he be required to provide, within sixty days of the Court's Order, a certification from an OAE-approved medical professional regarding his fitness to practice law; and that, throughout his term of suspension, he provide quarterly certifications demonstrating continued attendance at AA meetings and also take part in random alcohol monitoring.

Analysis

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the stipulated facts in this matter clearly and convincingly support respondent's admitted violations of RPC 1.15(a) and the principles of Siegel, and RPC 8.4(c).

Specifically, respondent violated RPC 1.15(a) and the principles of Siegel by knowingly misappropriating law firm funds when, as a salaried partner of the Firm, he directly billed clients for legal services in the following client matters: Pardo; Yeshiva Insurance Agency; BHB Pest Elimination; Delbecchi/Tri Colore; DCB Tree & Landscape; Cerulli; and D&D Consulting. In none of the matters did he inform the Firm of the work he was performing for the clients. On the contrary, he intentionally bypassed the Firm's standard invoicing and conflicts procedures to conceal his conduct.

The fact that respondent did not have a partnership or written employment agreement, and the Firm did not have a written policy governing the provision of legal services under the Firm's name without the Firm's knowledge, does not prevent us from concluding that he misappropriated law firm funds. He conceded that he had no business dispute with the Firm. His description of his status as a non-equity partner and of his salary clearly established that he knew he was being renumerated for his work through a salary, the amount of which

was specified on an annual basis, and which he continued to receive throughout the relevant period.

In addition, his first documented improper invoice dated from 2013 (roughly five years after he joined the Firm as a non-equity partner) and the final improper invoice dated from 2019 (roughly eleven years after he joined the Firm). Under these circumstances, he surely would have had knowledge of the Firm's billing practices. Further, he understood Firm standards well enough that he ultimately achieved a more than twelve-year tenure as partner. Nevertheless, contrary to the Firm's established practices for opening client matters and collecting client fees, between 2013 and 2021, respondent knowingly provided legal services under the Firm's name without the Firm's authorization and collected fees for these services directly.

Based on the uncontested facts, respondent's taking of fees in the Outside Work matters constituted the knowing misappropriation of law firm funds, in violation of RPC 1.15(a) and the principles of Siegel.

In addition, respondent violated RPC 8.4(c) on numerous occasions between 2012 and 2021. Specifically, in January 2013, he began completing work in the Pardo matter under the Firm's auspices but without the Firm's knowledge, devoting fourteen hours to the matter within seven weeks, then invoicing the client directly for total fees of $2,590. On at least four occasions

between 2012 and 2020, he performed legal services for BHB, yet never opened a BHB file with the Firm; although the Firm located only one invoice for his recurring representation of this client (and thus, only one instance of knowing misappropriation can be ascribed to the BHB representations), the volume and duration of work he undertook for this client suggests a long-term disregard for his duty to the Firm. With equal disdain for the Firm's interests, he informed ABF – one of the Firm's clients – that the Firm would be filing suit against it on behalf of his mother. In the course of these myriad activities, respondent misrepresented that he was acting under the Firm's auspices in verified court filings, litigation documents, and correspondence with government agencies, his own clients, and other parties.

In sum, we find that respondent violated RPC 1.15(a) and the principles of Siegel, and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

As the parties observed, respondent knowingly misappropriated law firm funds and not client funds. In Siegel, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. 133 N.J. at 168. During a three-year period, the attorney, a partner

at his firm, converted more than $25,000 in funds from his firm by submitting false disbursement requests to the firm's bookkeeper. Id. at 165. Although the disbursement requests listed ostensibly legitimate purposes, they represented the attorney's personal, luxury expenses, including tennis club fees, theater tickets, and sports memorabilia. Ibid. The payees were not fictitious; however, the stated purposes of the expenses were. Ibid.

Although we did not recommend Siegel's disbarment, the Court agreed with our dissenting public Members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." Id. at 166-67. The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and "will generally result in disbarment." Id. at 170.

In Greenberg, the Court refined the principle announced in Siegel. There, the attorney was disbarred after misappropriating $34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. Greenberg, 155 N.J. at 158. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Id. at 141. Per the attorney's instructions, the client then

issued checks for legal fees directly payable to the attorney. Ibid. Additionally, the attorney falsified disbursement requests and used those proceeds to pay for personal expenses. Id. at 141-42.

In mitigation, the attorney asserted that a psychiatric condition, which he attributed to childhood development issues and depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Id. at 160-61. Additionally, he submitted more than 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Id. at 161.

Determining that the attorney appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158. In so doing,

> the Court reaffirmed its holding in Siegel, which it characterized as an application of the Wilson rule regarding misappropriation of client funds. It recognized "'no ethical distinction between a lawyer who for personal gain willfully defrauds a client and one who for the same untoward purpose defrauds his or her partners.'" [155 N.J.] at 153 (quoting Siegel, 133 N.J. at 167). The Court construed the "Wilson rule, as described in Siegel," to mandate the disbarment of lawyers found to have misappropriated firm funds "'[i]n the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.'" Ibid. (quoting Siegel, 133 N.J. at 167-68 (citations omitted)).
>
> [Sigman, 220 N.J. at 157.]

Most recently, as described above, in Sigman, the Court declined to impose disbarment despite concluding that an associate of a law firm had committed the knowing misappropriation of firm funds, citing "compelling mitigating factors." Id. at 144, 161.

Following Sigman, the Court summarized the rule of Siegel and Greenberg as follows:

> Knowing misappropriation of law firm funds can lead to disbarment under In re Siegel, 133 N.J. 162, 170 (1993), and Greenberg, 155 N.J. at 140, but disbarment has not been an absolute requirement in those instances. In re Sigman, 220 N.J 141, 158.
>
> [In re Wade, 250 N.J. 581, 598 (2022).]

Here, the parties asserted that discipline short of disbarment is warranted in light of the Firm's significant and non-negotiable reductions of respondent's salary in 2019 and 2020; his 2017 divorce; his role and obligations as primary financial provider for his family; his alcoholism, which he was in "the throes of" during the relevant period; his continuing success in treating that condition following his February 2021 hospitalization; his acceptance of responsibility for his misconduct and cooperation with the OAE; his entry into a disciplinary stipulation; his admission of wrongdoing when confronted by the Firm; his lack of disciplinary history; and his service to the community.

After carefully considering the facts specific to this case, we determine that respondent "presented a significant showing of compelling mitigating factors," such that "the circumstances of this case warrant discipline short of the ultimate sanction of disbarment." See Sigman, 220 N.J. at 144. Specifically, respondent did not have a partnership agreement or written employment agreement with the Firm. Although he was a named partner, he received an annual salary and did not otherwise share in the Firm's profits or earnings. Moreover, the record did not show that he took existing clients from the Firm or that the Firm would have taken on the Outside Work matters. Similarly, the record contained no evidence that his engagement in the Outside Work had a negative effect on either his clients at the Firm or his Outside Work clients. Finally, we accord significant consideration to the fact that the Firm did not seek to recover any funds from him.

Also in mitigation, respondent admitted his wrongdoing when confronted by the Firm and throughout the OAE's investigation; cooperated with disciplinary authorities; expressed remorse; and entered into a disciplinary stipulation.

Respondent also is to be credited for his unblemished disciplinary record, which encompassed not only the years since his 2005 admission to the New Jersey bar but also since his admissions to the New York, Connecticut, and

Pennsylvania bars, in the early 1990s. However, attenuating the weight we accord this factor, we note that his prolonged and serious misconduct, including the misappropriation of law firm funds as early as 2013, stands in stark contrast to the superior understanding of an attorney's ethical responsibilities that we would expect of an attorney with decades at the bar.

We also note that the firm-wide salary reductions, which the Firm made known to respondent in early 2019 and implemented in the same year, do not account for his misconduct, prior to 2019, in four of the seven Outside Work matters. We determine that his challenging financial circumstances, family obligations, and divorce came well within the scope of the Court's guidance, in Siegel and Greenberg, that "[m]any lawyers have suffered far worse without stealing from . . . their partners," and the corresponding conclusion that personal hardships do not excuse the misappropriation of funds. Greenberg, 155 N.J. at 159; Siegel, 133 N.J. at 171.

Regarding respondent's struggles with alcoholism: in disciplinary matters where attorneys have "demonstrate[d] a causal link" between their mental health diagnoses and their misconduct, we and the Court "consistently have recognized – particularly in recent matters – the mitigating effect of mental health issues." See In the Matter of Keith Michael McWhirk, DRB 21-027 (September 17, 2021) at 24, so ordered, 250 N.J. 176 (2022). Here, however, the record fell

short of establishing a nexus between his alcoholism and the misconduct at issue. To the contrary, respondent's ability to provide legal services in the Outside Work matters, as well as his success in evading the Firm's detection of his illicit billing for unauthorized work, indicated that, notwithstanding his addiction, he carried out a practiced scheme with enough legal skill to provide satisfactory services to his clients.

Considering the unique facts detailed above, we determine that the compelling mitigating factors in this record warrant a sanction short of disbarment and that the lesser sanction of a three-year suspension will adequately protect the public and preserve confidence in the bar.

We reject, however, the parties' arguments that a suspended term of suspension is appropriate for respondent's misconduct. In New Jersey, a suspended suspension "constitutes an exceptional form of discipline." In re Schaffer, 140 N.J. 148, 158 (1995). Thus, in Schaffer, the Court held that in "a case in which an attorney has been convicted of a possessory crime relating to controlled dangerous substances," a term of suspension should not be suspended "even when, prior to the imposition of discipline, the underlying addiction has been zealously addressed by the attorney and rehabilitation has been accomplished." Ibid.

In In re Alum, 162 N.J. 313, 317 (2000), the Court authorized a suspended suspension based on "the length of time that ha[d] passed since [the attorney's] transgressions, his otherwise unblemished career as an attorney, and his exemplary service to the community." There, more than a decade had passed since the attorney's misconduct. Id. at 315. Further, the Court weighed that he had been admitted to the bar for only five or six years when he undertook the misconduct. Ibid.

More recently, the Court suspended a six-month suspension in Chechelnitsky, 232 N.J. at 331, which came before us on a motion for final discipline following the attorney's multiple arrests and convictions, during a four-year period, for alcohol-fueled misconduct. In the Matter of Yana Chechelnitsky, DRB 17-043 (July 24, 2017) at 15. During the disciplinary proceedings, she presented proof of her successful completion of inpatient treatment but "offered no assurances from a mental health professional that, with continued treatment, she will not, once again, commit similar offenses." Id. at 19-20. Thus, the OAE recommended a three- or six-month suspension. Respondent, for her part, argued for discipline short of a suspension, emphasizing (among other mitigating factors) that her alcohol abuse was precipitated by her spouse's physical, psychological, and emotional abuse of her. Id. at 12. She further emphasized her recent treatment; contended that her

domestic discord had been abated by divorcing her abusive spouse; and argued that a suspension would "have a 'disastrous affect' [sic] on her life, which she has been slowly piecing together." Id. at 11-12.

Taking account of the attorney's "considerable efforts toward rehabilitation and the hardships that a suspension may cause at this juncture," we determined to impose a six-month, suspended term of suspension, "conditioned on [the attorney's] continued sobriety and good behavior." Id. at 19. The Court agreed, imposing a suspended suspension on condition "that if during the suspended suspension, respondent engages in similar conduct that results in her arrest, then on the filing of a certification with the Court by the Office of Attorney Ethics, respondent should be suspended for a period of six months." Chechelnitsky, 232 N.J. at 331-32.

Here, respondent has not put forward the type of circumstances that support imposition of the "exceptional" discipline of a suspended suspension. Whereas the attorney in Alum established a decade-long "exemplary record" between the dates of his misconduct and entry of the final Order of discipline, here, respondent's last admitted act of knowing misappropriation occurred in 2019, and the record contained uncontested evidence that, as of 2021, he continued to undertake work purportedly on the Firm's behalf but without informing the Firm. Whereas the misconduct at issue in Chechelnitsky was

"fueled by alcohol," here, there is no evidence that alcoholism fueled respondent's wrongdoing. Moreover, his family difficulties are not on a par with the domestic abuse described by the attorney in Chechelnitsky. Further, in our view, where respondent repeatedly put his license to practice law to misuse by holding himself out as a law firm partner while undertaking work unauthorized by the Firm and taking the fees for himself, permitting him to continue to practice law in New Jersey, without a period of suspension, would fail to protect the public and would undermine confidence in the bar.

Conclusion

On balance, in view of the compelling mitigation, we determine that a three-year suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Rivera voted to recommend respondent's disbarment. In her view, there was no meaningful distinction between respondent's misconduct and the misconduct of other attorneys disbarred for taking law firm funds directly from clients while falsely claiming to act with their firm's authorization.

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. Mary Catherine Cuff, P.J.A.D. (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 William C. Kelly
Docket No. DRB 24-140

Argued: September 19, 2024

Decided: December 11, 2024

Disposition: Three-year suspension

Members	Three-Year Suspension	Disbar	Absent
Cuff	X		
Boyer	X		
Campelo			X
Hoberman	X		
Menaker	X		
Petrou	X		
Rivera		X	
Rodriguez	X		
Spencer	X		
Total:	7	1	1

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