SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DRB Docket No. 24-154
District Docket No. XIV-2018-0626E

In the Matter of Warren Barry Kahn
An Attorney at Law

Argued
September 19, 2024

Decided
January 8, 2025

HoeChin Kim appeared on behalf of
the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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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 recommendation for a censure filed by a special ethics adjudicator (SEA). The formal ethics complaint charged respondent with having violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985) (knowingly misappropriating escrow funds); RPC 1.7(a)(1) and (2) (engaging in a concurrent conflict of interest); RPC 4.1(a)(1) (making a false statement of material fact to a third person); RPC 4.1(a)(2) (knowingly failing to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1983 and to the New York bar in 1969. During the relevant timeframe, he maintained a practice of law in Montville, New Jersey. He has no prior discipline.

Facts

During the ethics hearing, respondent stipulated to most of the facts underpinning this matter but denied that his release of escrow funds constituted the knowing misappropriation of entrusted funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner.[1]

Respondent maintained an attorney trust account (ATA) and attorney business account (ABA) at Kearny Bank. In March 2018, the grievant in this matter, Shalon LaTour, spoke with respondent's son, Jeffrey Kahn,[2] about obtaining a $6 million loan to purchase CWS Wireline (CWS), an Oklahoma

[1] "S" refers to the OAE's undated Proposed Findings of Fact.
"Ex" refers to the OAE's exhibits entered into evidence during the ethics hearing.
"OAES" refers to the OAE's December 1, 2023 written summation.
"RS" refers to respondent's January 10, 2024 written summation.
"SEAR" refers to the June 11, 2014 report of the special ethics adjudicator.

[2] Although respondent shares a surname with his son, we refer to Jeffrey Kahn as "Kahn" and Warren Barry Kahn as respondent.

company. Kahn owned a business, Providence Capital, which later became Kahn Advisors, LLC, and he specialized in obtaining funding for loans and litigation. Kahn referred LaTour to respondent to serve as an escrow agent for the purchase of an insurance policy that LaTour purportedly was required to obtain before the loan could issue. LaTour testified that, although he had counsel that he typically used for his company, LaTour International, LLC, he had agreed to deposit the escrow funds for the insurance policy with respondent. LaTour explained that he had agreed to do so because, after researching respondent, he felt he could trust him based on respondent's unblemished forty-year-career at the bar. LaTour believed respondent to be an upstanding attorney.

To facilitate LaTour's transaction, respondent signed an escrow agreement[3] with Addys Walker, the designated officer of Providence Capital. The escrow agreement, dated March 23, 2018, provided that:

> the parties desire to execute this escrow agreement wherein the parties above referenced [Providence Capital and respondent] agrees to receive funds from Shalon Latour and SWLA, LLC and related companies in the amount of Four Hundred and Fifty Thousand Dollars and no cents ($450,000.00) with the Escrowee, for distribution based upon an authorization to be

[3] The Court has held that "an escrow agreement imports a legal obligation on the part of the depository to retain . . . documents until the performance of a condition or the happening of an event, at which time the . . . documents are to be delivered in accordance with the terms of the agreement." Innes v. Marzano-Lesnevich, 224 N.J. 584, 598 (2016). The same principle applies to funds required to be held, inviolate, until the performance of a condition precedent.

> signed by the designated individuals as indicated below[.]
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> [Ex.16.]

The agreement identified Kahn and Walker as the individuals authorized to direct the disbursement of the funds, and respondent as the escrow agent. The escrow agreement further provided that respondent would hold the funds in an escrow account until he "receives written authorization signed by the individuals designated below directing the [escrow agent] as to the distribution of such funds as designated." On March 23, 2018, respondent and Walker signed the escrow agreement; Kahn did not, despite being named as one of the individuals required for any disbursement. In fact, there was no signature block for Kahn on the escrow agreement. Moreover, although respondent drafted the escrow agreement, he did not include LaTour as a party to the agreement, despite LaTour's role as the source of the escrow funds and the party seeking a loan from Providence Capital.

Subsequently, on March 27, 2018, Kahn sent LaTour a letter informing him that Providence Capital's lending partner had approved a $6,720,000 loan for his purchase of CWS. Along with the letter, Kahn provided LaTour with a "LOAN CONTRACTAGREEMENT" [sic] from Jose Antonio Private Lending LLC & Partners. The terms of the agreement required LaTour to submit a

$450,000 fee for the loan and represented that the loan would close within twelve days of the letter. Kahn also provided LaTour with instructions to wire the funds to respondent's ATA.

The next day, Kahn sent an e-mail to both respondent and his paralegal, instructing them to prepare a letter regarding the loan and to send it to LaTour. Specifically, Kahn told respondent to:

> please state that you represent both LaTour International LLC and Providence Capital Holdings and its lending partner, Jose Antonio Lending. The insurance premium deposit for LaTour International LLC's loan of $6,720,000 loan [sic] $450,000.00 which will be held in your escrow account until the insurance policy is issued and the premium is due. If [for] whatever reason the insurance policy is not issued you are instructed to return the escrow amount back to LaTour International LLC.
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> [S¶52;Ex.21.]

On March 28, 2018, respondent sent LaTour a letter on his law firm's letterhead, essentially adopting Kahn's written instructions. In the letter, respondent advised LaTour as follows:

> This letter will acknowledge our understanding with regard to the loan to Shalon LaTour at LaTour International LLC. This office agrees to represent LaTour International and Providence Capital Holdings and its lending partner, Jose Antonio Private Lending with regard to this transaction. It is our understanding that prior to our release of the escrow deposit which

> will be held in our Attorney Trust Account and such funds are not to be released until an insurance policy is issued and the premium due on such policy of $450,000 as to the loan amount of $6,720,000. If for any reason the insurance policy is not issued, we will return to you the escrow amount held in our Attorney Trust Account.
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> [S¶53;Ex.22.]

The next day, LaTour and Kahn executed a financial services broker fee agreement which stated that, in consideration for Kahn financing LaTour's purchase of CWS, LaTour agreed to pay a four-percent commission at the closing of the loan. Also on March 29, 2018, LaTour sent a $450,000 wire to respondent's ATA.

On March 30, 2018, the day after LaTour wired the $450,000 to respondent's ATA, Kahn informed respondent that the insurance premium was only $400,000 and instructed him to refund $50,000 to LaTour. Via the same e-mail, Kahn instructed respondent to wire the remaining $400,000 to "Capital One Bank Account Holder – Jerry Hope" and provided an address in the Bronx, New York. Kahn did not attach any documents to the e-mail demonstrating that an insurance policy had been issued for LaTour's loan, or that LaTour was required to pay an insurance premium. Kahn also did not explain why he directed respondent to wire the $400,000 balance to the Capital One Bank account of an individual named Jerry Hope, rather than to an insurance company. Likewise,

respondent did not ask Kahn whether LaTour was issued an insurance policy before he released the funds, contrary to Kahn's written instructions not to release the funds if no policy had been issued. Respondent also failed to seek LaTour's permission to disburse the remaining $400,000 held in escrow to Hope's individual Capital One bank account. Respondent also failed to inform LaTour that he disbursed the funds to Hope, as Kahn had instructed. Instead, respondent's paralegal replied to Kahn's e-mail to request the address of Hope's Capital One bank.

On March 30, 2018, respondent initiated two wire transfers: one in the amount of $50,000 to LaTour, and one in the amount of $400,000 to Hope's Capital One account. LaTour acknowledged receipt of the $50,000 but expressed his understanding that the remaining $400,000 remained in respondent's ATA until "proof of policy was in hand or at closing."

The same day respondent sent the $400,000 wire to Hope's account, Hope began spending the funds. As of April 17, 2018, after steadily spending LaTour's $400,000 for his own purposes, Hope held only $14,597.77 in his account. Notably, between March 30 and April 17, 2018, Hope withdrew $87,000 in cash[4]

[4] Hope's cash withdrawals were as follows: April 2, 2018 ($15,000); April 3, 2018 ($20,000); April 5, 2018 ($1,000); April 13, 2018 ($20,000); April 16, 2018 ($10,000); and April 17, 2018 ($21,000).

from his account and initiated wires totaling $325,900 ($125,900 to Phoenix Trades and $200,000 to Henan Rebecca Hair Products). Hope spent the remainder of LaTour's funds at various retail establishments and eateries. On April 17, 2018, via a final cash withdrawal, Hope depleted the entirety of LaTour's $400,000 without having paid for an insurance policy.

On April 12, 2018, believing that respondent still held the $400,000 for the insurance premium, LaTour requested that Kahn increase the loan amount to $16 million. The next day, Kahn approved LaTour's request and sent him a new loan contract agreement. Kahn informed LaTour that the additional insurance premium was $60,000, but that respondent was out of the office and could not accept a wire to his ATA. Therefore, Kahn advised LaTour to send the additional $60,000 premium directly to the Kahn Advisors' account, representing that he would later wire it to respondent's ATA. Accordingly, on April 16, 2018, LaTour wired $60,000 to the Kahn Advisors' account at Chase Bank.

On the same date LaTour sent Kahn Advisors the $60,000 wire, Kahn transferred $40,000 from that account, which was newly created and had a $0 balance, to his personal Chase Bank account. The following day, Kahn initiated a $20,000 wire transfer to Settlement Express in Tallahassee, Florida. Kahn

failed to transfer the additional $60,000 to respondent's ATA and failed to advise LaTour that he personally depleted the funds.

Two days after LaTour sent Kahn the funds purportedly for the additional insurance premium, he requested a return of those funds if the loan closing did not occur by April 20, 2018.

Closing did not occur by April 20, 2018. However, in a May 4, 2018 e-mail to LaTour, Kahn advised that he wanted to reschedule a telephone call with the underwriter issuing the insurance policy so that the underwriter could "walk [LaTour] thru the policy and release it to Jose and Providence so we can fund your loan."

LaTour's reply to Kahn questioned the legitimacy of the insurance company and mused that, if Kahn could not "do the deal," that he should refund LaTour's money. Within twenty minutes, LaTour sent a second e-mail stating, "[a]ctually, I would like my money wired back today. Total amount of $460,000. If in the future you can secure policy I can resend." Despite being copied on the e-mail correspondence, respondent did not interject to express the fact that he already had disbursed LaTour's funds to Hope.

Four days later, on May 8, 2018, LaTour asked Kahn for the insurance company's contact information. He made the same request the following day.

Respondent was copied on both e-mails. On May 9, 2018, Kahn replied to LaTour and advised that he would send the insurance company's contact information within one hour. Respondent received a copy of Kahn's reply.

On May 18, 2018, LaTour reiterated his request for a refund, indicating that he had sent two wires, one for $450,000 and one for $60,000. He was seeking a refund of $400,000 (since respondent already had returned $50,000), as well as the $60,000 advanced for the additional premium. LaTour again requested the insurance company's contact information, along with "where said funds went and timeline." Respondent received a copy of that e-mail. Ten minutes later, Kahn informed LaTour he would provide the requested information as soon as possible.

LaTour expressed his dissatisfaction in a reply e-mail, with a copy to respondent, stating he had:

> tried to be understanding but this has gone on far enough. Month and a half, per letter from attorney money was not supposed to be released until policy was issued. No policy issued, I have asked about insurance company's name several times with no answer. I want a complete time line review of where funds went. This may be a small [amount] of money to some but this is my life savings. I assure you every document will be reviewed. Jose said he got money but it was not enough. I told him I wanted my money back and he kept saying loan will be done next week and hung up in my face.

[S¶114;Ex.43.]

Respondent did not reply or provide any information to LaTour.

Within ten minutes, Kahn sent a reply e-mail to LaTour stating "per our conversation I am glad we are on the same page and we will be moving forward with returning the money[.] I will send you what you need tomorrow and copy the insurance company as well." Respondent was copied on that e-mail. Shortly thereafter, Kahn sent another e-mail, this time advising that he would be "providing a release for [LaTour] to sign as well since the policy was issued and paid for so I will include that in my email to you tomorrow as well." Respondent was copied on that e-mail.

Despite their apparent understanding, LaTour replied to state:

> if you had documents showing issuance of a policy you should have sent it. I can understand hick-ups [sic], but leaving people in the dark leaves skepticism. You said Jose had money, for awhile he said No. Then today he said he had some money but policy was never done or started due [sic] you not sending him enough money. As a client tell me how would you take it.
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> [S¶117;Ex.46.]

Respondent, who was copied on LaTour's e-mail, again failed to correct any misperceptions LaTour may have had regarding his status as respondent's client or about the prior disbursement of LaTour's funds to Hope.

On May 24, 2018, after receiving no reply, LaTour sent another e-mail to Kahn, with a copy to respondent, stating that he had:

> asked for proof of wiring information and insurance company since last week. Jeff said I would have it last Saturday. If you do not get it by Tom at 9AM. [sic] I want my funds returned immediately. Jeff you and I had agreed to Tuesday but that was because you we[re] supposed to send docs. Again [i]f I do not get verification tomorrow the 25 of May at 9 Eastern time . . . I do not want to wait till Tuesday.
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> [S¶118;Ex.47.]

On May 25, 2018, more than twenty days after LaTour began sending questions via e-mail, and after Hope had depleted the funds, respondent sent LaTour an e-mail, advising him as follows:

> This will confirm that on March 30, 2018 [sic] we received an incoming wire of $450,000. On that same day, we received the attached instructions to wire $400,000 for insurance premiums to a Capital One Bank, as per the attached instructions, and $50,000 was return [sic] to you, as per the attached wire. Since releasing both of the wires in accordance with the written instructions, we have had no contact with either the insurance company or anyone else concerning this matter other than copies of correspondence that we have been included on.
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> [S¶119;Ex.48.]

The attachments that respondent referred to included Kahn's e-mail instructions, reply e-mails, wiring instructions, and confirmation of the wires. Respondent

neither addressed his statements to LaTour that he would hold the funds in his ATA until an insurance policy was issued nor why he had not returned the funds despite acknowledging LaTour's correspondence indicating that, in fact, no insurance policy had been issued.

Kahn's reply to respondent's e-mail, which copied LaTour, indicated that he also sent the information directly to LaTour and requested that the insurance company refund his premium. In reply, LaTour demanded that his money be returned and stated he was going to contact the Federal Bureau of Investigation (FBI) because his funds were supposed to remain in respondent's ATA until there was proof of an insurance policy. However, he had not received any documentation that an insurance policy had issued. LaTour added that nothing Kahn had said had been truthful because "first the insurance company was in California then Canada then Jose. Now I finally get proof of where some of my funds went and the [sic] Jerry Hope gives an address of a Bank of America [sic]."

On May 30, 2018, two months after he wired $450,000 to respondent's ATA, LaTour sent an e-mail to respondent asking where his money went. LaTour stated that "the money should have never left escrow until proof of policy. You had no proof or documentation to do so. I did not call FBI giving I tried to give one last chance. Tomorrow morning I will be calling in the FBI." At the same

time, LaTour sent Kahn multiple e-mails seeking information about Hope, asking where his additional $60,000 deposit went, and demanding the return of his funds.

Via a June 1, 2018 e-mail, respondent informed LaTour that he had:

> repeatedly mentioned to [him], I am not attorney for Providence Capital, and have not been involved at all in the issuance of the insurance [or] in the loan process. On the other hand, I will seek to try to get involved in assisting you in obtaining information as to the status of the return of your deposit and communicate with you. I currently have no information on the status or involvement with obtaining the funds, but, I will seek to obtain the information for you and communicate with you.
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> [S¶125;Ex.52.]

On June 6, 2018, LaTour sent respondent an e-mail containing a list of specific questions regarding the funds he provided to pay for the insurance premium. For example, LaTour asked for wire verification for the $60,000 he provided to Kahn. He also asked numerous questions, including the following: "was there ever any polic[y] issued or attempted to be issued in my name or company name? Jose said that the only thing sent to him was on behalf of Providence to obtain your own loan;" "who or where is the insurance company?;" "who is Jerry [Hope] that the first 400k went to? Have you been able to make contact with him? Why would you wire money for a polic[y] to an

individual not a Company?;" and "when funds are returned, will Providence be paying interest for the funds that have been held?" LaTour asked that respondent be honest with him and help him by answering the questions.

Rather than answer LaTour's specific questions, the next day, respondent replied to indicate it was his understanding that the funds were "now available to be wired back to you provided you sign a standard General Release. If you want this office to hold the signed Release in escrow pending your receipt of the funds I am willing to do so, otherwise there is nothing further that we can do."

LaTour signed the release that respondent had provided to him, but did not have it notarized. Consequently, respondent sent LaTour an e-mail stating that his signature must be notarized for the agreement to become binding. Respondent asked that LaTour, after getting the document notarized, send him the Federal Express mailing receipt and that respondent would "hold the Release in escrow pending receipt of the funds. Once we have confirmation of the notarized Release being sent to us, we will request that the funds be wired to you."

On June 8, 2018, LaTour signed the release before a notary. The same date, respondent's paralegal sent LaTour an e-mail stating "we will release the

funds based on your agreement and representation to send to us the original Release."

Later, in a June 22, 2018 e-mail to respondent, LaTour asked if respondent had any success in locating the insurance company. Respondent failed to reply.

On June 28, 2018, LaTour sent another e-mail to respondent, respondent's paralegal, and Kahn stating "I want to be clear. The hold up on refund is due to me not mailing the release form? If I send it I will get my money. Please verify." Later that day, LaTour provided the Federal Express tracking number, and told respondent and his paralegal that he expected his money to be returned within forty-eight hours after it arrived at respondent's law office. Kahn replied, "we will work on resolving this issue for you."

Also on June 28, 2018, LaTour informed respondent and Kahn that he spoke with CWS's owner and learned he needed $460,000 in order to close on the sale. LaTour indicated that CWS was relisting the company for sale and that LaTour would lose $15,000 in legal fees, along with future income from the company, which LaTour valued at approximately $30,000 per month. LaTour stated that he wanted respondent and Kahn to know what he stood to lose if he did not receive his promised refund quickly.

On June 29, 2018, Kahn sent an e-mail to LaTour and respondent stating that he spoken with LaTour, and they were working with Providence Capital "in getting his premium that was sent to the insurance company returned immediately." Kahn asked respondent to hold the release in his file until Kahn notified him to "show documentation when his premium has been issued to him."

Four days later, on July 3, 2018, Walker sent a letter to LaTour, on behalf of Providence Capital, stating his understanding that the funds LaTour had sent were placed directly in respondent's ATA. Walker elaborated that:

> based on the information from the CFO it was agreed by all parties that the money would be sent to Jose Cordero the selected funder for the deal. After all parties agreed, the money was sent to Mr. Cordero. Since then, it has been discovered that the funder has been engaging in illegal and nefarious business practices. Upon being made aware of the issues with Mr. Cordero, he was reported to the [FBI] who has now opened an investigation. Providence Capital Holdings, LLC is currently cooperating with the FBI and will keep all parties involved aware of any developing information.
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> [S¶145;Ex.66.]

Respondent did not reply to correct Walker's misstatement that he sent the funds to Cordero.

In reply to Walker's letter, with a copy to respondent, LaTour stated that he "did not agree to send any money to Jose. Money was not to leave escrow until proof of insurance policy was given, or until closing. It has been three months with zero documentation of certificate, or insurance company. I just now a week ago received an insurance company name that does not exist."

In an August 10, 2018 e-mail, LaTour informed respondent and Kahn that he intended to file litigation concerning the handling of his money and would submit a grievance to the OAE. He added that if his funds were returned immediately, he would "drop everything." LaTour did not receive a refund of his money; consequently, on August 20, 2018, he filed an ethics grievance against respondent.

Less than one month later, LaTour sent an e-mail to respondent, Kahn, and Walker, advising them that he was preparing to initiate civil litigation against respondent for malpractice because the "the money should not have left escrow, go back and read your documents. First document from your own hands stating this fact. Second document you made me sign a release form that [] states you would return the money after release was signed." LaTour told respondent he should contact his malpractice insurance carrier.

LaTour also retained Robyne LaGrotta, Esq., to assist him with obtaining a refund of his money. From October 2018 through March 2019, LaGrotta attempted to obtain a copy of the insurance policy purchased with LaTour's funds, a refund of the money, and a copy of respondent's errors and omissions insurance policy.

Also, during that time, LaTour's grievance against respondent was assigned to the District XB Ethics Committee (the DEC) for investigation. On September 28, 2018, respondent provided the DEC with a reply to the ethics grievance. On October 31, 2018, respondent provided a supplemental reply to the DEC. Ultimately, due to the nature of the allegations, the OAE assumed responsibility of the investigation.

On March 13, 2019, respondent sent LaGrotta language to include in a letter to ethics authorities. Included in his proposed language was that LaTour had received a full return of his funds; that LaTour filed his ethics grievance in order to seek an expedited return of his funds; that respondent "forwarded the funds from his escrow account to the insurance company for Kahn Advisors, LLC for the payment of the premium of a security policy to insure the loan" and that "such payment was with Mr. Latour's [sic] knowledge and consent in order to obtain the policy, but ultimately due to no involvement of Warren B. Kahn,

the negotiations for the loan from Kahn Advisors to Mr. Latour were not concluded;" and that LaTour had signed a release to respondent "acknowledging the full payment of his funds from his client, Kahn Advisors, LLC." Respondent's proposed settlement indicated that, once he received a release and a copy of a signed letter from LaTour to the OAE incorporating the suggested language, "the funds, in the amount of $515,000, representing $510,000 of Mr. Latour's funds plus $5,000 in interest will be immediately forwarded by our client in accordance with your written instructions as this office has no control or receipt of such funds."[5] LaGrotta prepared a letter incorporating respondent's language and added that "in light of the above, I am withdrawing my ethics complaint against Warren B. Kahn." During his April 3, 2019 demand interview with the OAE, respondent confirmed that he was the individual who requested that LaTour withdraw his ethics grievance.

[5] The $515,000 figure appears to be LaTour's initial $450,000 deposit in respondent's ATA, the $60,000 LaTour provided to Kahn Advisors' Chase Bank account, plus the offered $5,000 in interest. It is not clear from the record why respondent would offer to refund the entirety of LaTour's initial $450,000 deposit when there is no dispute that he refunded $50,000 to LaTour one day after LaTour wired the $450,000.

The Ethics Investigation

On April 3, 2019, the OAE conducted a demand interview of respondent. During the interview, respondent explained that he had a bachelor's degree in accounting but never sat for the examination to become a certified public accountant. However, based of his training as an accountant, he maintained an accounting practice within his law practice.[6]

Respondent explained that his work for Kahn Advisors consisted of serving as an escrow agent for transactions, and that he had done so numerous times. He confirmed that he drafted the escrow agreements he had with Kahn Advisors. Additionally, he elaborated that he would receive funds in his ATA as Kahn Advisors' escrow agent and, typically, received a fee ranging from $2,500 to $10,000 for accepting funds in and wiring them out of his ATA. Furthermore, he explained that, due to his background in accounting, he prepared the yearly tax returns for Kahn and Kahn Advisors. He denied having a fee agreement with Kahn Advisors and, further, denied that he kept track of any billable hours for the work he performed for Kahn Advisors.

With respect to Kahn Advisors, respondent explained that it functioned as a middleman for unsophisticated borrowers and banks. As the representative for

[6] R. 1:21-1B(a)(5) prohibits an attorney from housing a nonlegal practice within their law practice.

the borrowers, Kahn Advisors arranged for funding and frequently worked with Jose Cordero. Respondent explained that Cordero was a banker who arranged "high risk business loans," but was not sure whether Cordero was affiliated with any financial institution.

Regarding the LaTour transaction, respondent contended he never represented Providence Capital "other than these limited escrow things." When the OAE asked respondent who Hope was, he explained that Hope was one of the principals of the lender, and whom "he was told the lender had to make the payment because the – the insurance company goes – policy goes to the lender. That's what they're guaranteeing. So the payment has to come from the lender."

Respondent asserted that LaTour knew that he was going to disburse the funds to Hope's personal account. He claimed they had spoken on the telephone and respondent had explained to LaTour that Hope needed the funds in order to pay the insurance premium. When asked why, if that was a conversation he had with LaTour, he wrote in his March 28, 2018 letter that he would hold the funds until an insurance policy issued, respondent stated that he was told that Hope was the representative of the lender who would pay the premium. Therefore, according to respondent, LaTour's funds had to first go to Hope "because the insurance policy was coming from him." Respondent, again, stated that he spoke

with LaTour and that LaTour knew respondent was going to release the funds, and "was fine with it."

With respect to the March 28, 2018 letter, respondent denied the validity of the information it contained and said it was a mistake to copy and paste what Kahn wrote in his e-mail.

Ultimately, respondent told the OAE that he believed he acted in good faith pursuant to Kahn's instructions and "based upon what the understandings of the parties were and what he was being told." Respondent asserted that Kahn told him the insurance company received LaTour's funds. During the interview, the OAE asked respondent to produce "any evidence that may be out there demonstrating he had authority to release the funds," including proof that Hope sent the insurance company a check to pay LaTour's premium. Respondent never provided any document to demonstrate he had authority to release LaTour's funds or that he had actual knowledge that an insurance policy had been issued.

During its investigation, the OAE issued a subpoena to Capital One for Hope's bank statements. Additionally, LaTour provided the OAE with his AT&T telephone records for March 19 through April 18, 2018, which did not reflect a

telephone call with respondent before respondent disbursed the escrow funds.[7] Moreover, LaTour testified during the ethics hearing that he never spoke with respondent about his disbursement of the funds and, in fact, believed that respondent was still holding the remaining $400,000 in his ATA.

The Ethics Hearing

The ethics hearing spanned three years, beginning on November 15, 2021, and concluding on April 19, 2024.

At the commencement of the hearing, the SEA placed on the record his decision following a November 12, 2021 telephonic conference, wherein respondent's counsel moved to adjourn the hearing for an indefinite time because the FBI had arrested Kahn on criminal charges. Specifically, respondent argued that Kahn was a critical witness because Kahn was responsible for the transaction leading to the ethics complaint filed against him. The SEA explained that the matter originally was set to proceed to hearing in May 2021, but was adjourned because Kahn and his criminal defense attorney were involved in

[7] During the ethics hearing, LaTour testified that he uses only the one telephone number listed on the log for both his personal and business use.

discussions with prosecutors in Florida related to his testimony in a third-party matter.

Kahn was not granted immunity in that criminal proceeding and indicated that he would assert his Fifth Amendment right against self-incrimination during respondent's ethics proceeding. At some point, Kahn changed his mind and intended to testify; however, he was arrested the week before the November 15, 2021 hearing date. Consequently, respondent argued that, due to Kahn's incarceration, he was unable to assist respondent in preparing for the ethics hearing and, likewise, was unavailable to assist in cross-examining LaTour. The SEA determined that the matter would proceed and granted respondent the ability to call LaTour for further cross-examination, if requested.

On the same date as the telephonic conference, respondent also reimbursed LaTour $530,000[8] in connection with the funds he had disbursed to Hope more than three years earlier.

LaTour was the OAE's first witness. He testified that he spoke with Kahn about obtaining a loan to purchase CWS. Kahn told him an escrow deposit needed to be placed in "their escrow account" so Providence Capital could

[8] It is not clear from the record how respondent determined $530,000 was the appropriate figure to reimburse LaTour. However, in his August 6, 2024 submission to us, respondent explained that LaTour was fully repaid, including for the escrow funds, lost interest, and partial attorneys' fees.

demonstrate proof it had received the funds before it could obtain any policy prior to obtaining the loan. Kahn recommended that LaTour use respondent as an escrow agent. Although he agreed to use respondent as the escrow agent, LaTour was never provided with an escrow agreement. Nevertheless, based on respondent's March 28, 2018 letter, he understood respondent to represent his company in the transaction and, further, understood from respondent's letter that he would not disburse the funds until LaTour received an insurance policy. Moreover, after respondent provided a $50,000 refund to LaTour, he thought the remaining $400,000 remained in respondent's ATA because he was not concurrently provided with an insurance policy. LaTour repeated his belief that, if an insurance policy had not issued, respondent did not have his permission to disburse the $400,000 intended to purchase the insurance policy.

Regarding his desire to increase the amount of the loan he sought, LaTour explained that he had a verbal agreement that Kahn would "front" the additional funds needed to pay an increased insurance premium if LaTour provided $60,000 – the total amount of money available to LaTour. LaTour testified that Kahn informed him that if he wired the $60,000 into Kahn's account, Kahn would transfer the funds to respondent's ATA when respondent returned from vacation. Accordingly, LaTour testified that his understanding, as of April 13,

2018, was that his original $400,000 deposit for the insurance premium was still in respondent's ATA because LaTour was trying to get a larger loan, which would have increased the insurance premium he would have been required to pay beyond the initial $400,000.

Ultimately, LaTour lost the opportunity to purchase CWS a "couple" months after wiring the initial $450,000 to respondent's ATA and the additional $60,000 to Kahn. He testified that he was given "various reasons" for why the loan never closed and when he requested a refund of his money, he was "given excuse after excuse" as to why that could not occur. LaTour testified that the matter had been stressful, he lost an opportunity to make a purchase that was supposed to close in ten days, his "credit score tanked," and he did not believe he had been made whole by respondent's $530,000 reimbursement just days before the commencement of the ethics hearing.

LaTour explained that he had filed the ethics grievance because, despite his efforts, he was unsuccessful in obtaining a refund of his money. However, once he filed the ethics grievance, "things started to happen and the ball started rolling."

LaTour testified that when respondent required him to send to the OAE a second release and letter withdrawing his grievance, as a condition to precedent

to respondent's refund of LaTour's money, he readily agreed because he wanted his money. Further, at that point, he believed the OAE would proceed with its investigation into respondent's conduct. LaTour testified, however, that he was concerned about the letter LaGrotta was going to prepare because it represented the second release he had to sign in order to obtain a refund of his insurance deposit and, further, because respondent had failed to provide him with the funds after LaTour signed the first release. Nevertheless, LaTour asserted that either respondent drafted the release, or provided notes to LaGrotta to use in drafting the letter.[9]

The OAE investigator testified that he had tried to authenticate respondent's May 8, 2019 letter, which respondent had provided to the OAE during its investigation. Although the document indicated that, on April 2, 2018, there was a $400,000 transfer from Pacific Coast Bankers Bank to First National Bank, he could not verify the information for a myriad of reasons. First, the address identified on the document for "PLC Insurance Corp" was not accurate. Second, the routing number for Pacific Coast Bankers Bank was not accurate. Third, the incoming and outgoing wire transfer dates were not synchronized

[9] During his April 3, 2019 demand interview with the OAE, respondent admitted he had provided LaGrotta with the information to include within the letter. Notably, respondent included information that he possessed the insurance company's return of the premium, which was false for two reasons: (1) there was no insurance company involved, and (2) he did not have the funds.

because one was in April 2018, and one was in August 2018. Fourth, the originator of the transfer was North State Bank, located in North Carolina, and not Pacific Coast Bankers Bank. Fifth, the receipt indicated that Hope had wired $400,000 to PLC Insurance; however, Hope's bank statement did not reflect any such wire to PLC Insurance. Although the investigator detailed the many discrepancies with the document respondent had provided, he conceded that the OAE could not confirm that respondent was the individual who had falsified the document.

During the hearing, although respondent disputed, through counsel, that he had an attorney/client relationship with LaTour by virtue of the escrow agreement, he "[did] not deny he had a duty to Mr. Latour."

During the September 18, 2023 ethics hearing, two years after the OAE had concluded its case in chief, the SEA placed on the record that it was the date by which respondent was required to confirm whether Kahn was going to testify. Respondent, however, requested a further extension because Kahn's criminal trial date had been rescheduled to October 2023. Additionally, respondent, through counsel, stated that he was not going to testify during the ethics hearing and that Kahn would be his only witness (contingent upon what happened with Kahn's criminal trial).

On November 2, 2023, respondent again asked for an extension of time to present Kahn as his witness. The OAE noted that it had not previously objected to respondent's requests for extensions, but that it had been two years since it concluded its case in chief and the matter needed to reach a conclusion. The SEA noted that respondent "elected not to testify because the matter involving his son is not over and there's a possibility that he could be implicated in that matter and even charged even though he has said and believes that his son would exculpate him." To accommodate respondent's position, but also to ensure that the ethics proceeding progressed, the SEA determined to set a final briefing schedule, subject to Kahn's availability in that timeframe. Ultimately, during the January 26, 2024 hearing, respondent confirmed that Kahn would not be available to testify.

During the hearing, the OAE explained that it did not have an opportunity to cross-examine respondent because he had not testified on his own behalf. The OAE elaborated that it understood "it was not allowed to call him to testify. Because frankly, [the OAE] wanted to conduct a cross-examination of him. And typically, in ethics cases, respondents are required to testify about their conduct."

The SEA explained that, in order for respondent to have asserted a Fifth Amendment right, he would have needed to testify, on a question-by-question basis, that he was invoking his right against self-incrimination to "make a sufficient showing of the validity of the claim. We never got that far." The SEA clarified that he wanted there to be no misperception that he precluded the OAE from calling respondent as a witness. Consequently, the OAE moved to reopen the record so that it could cross-examine respondent as an adverse witness.

Respondent's counsel asserted that there had been discussion about the relevance of the Fifth Amendment as it pertained to respondent, particularly whether the SEA could draw a negative inference based on his refusal to testify. Respondent's counsel clarified that it did not offer respondent as a witness because "there is two feet of direct examination by the OAE of respondent before the tribunal was established," so he would have nothing more to add. Specifically, respondent's counsel maintained that "he received the money, he disbursed the money, the source of the money was established, the recipient of the money was established, the amount of the money is established, restitution is established."

The SEA granted the OAE's motion and, on March 13, 2024, the OAE called respondent as a witness. Respondent testified that he was in the process

of retiring. He stated that he lived part-time in Florida, sold his physical office space, and was trying to transfer cases to other attorneys. Regarding his law practice, he was negotiating with attorneys to try to work out arrangements for its sale.

When questioned about the source of the funds used to reimburse LaTour in November 2021, respondent explained that he did not "specifically recall, you know, where I – where I – you know, I got the funds. I know it was quite a lot of money."[10] The OAE asked respondent about a November 12, 2021 credit of $530,000 in his ABA – the same date respondent wrote a $530,000 check to himself out of the estate of Kenneth Parlee. He reiterated that he did not have a recollection as to where he obtained the funds used to reimburse LaTour, but conceded that the timing of his receipt as a payee of a check issued from an estate, in conjunction with a correlating deposit in his ABA might be "correct" timing, particularly because on that date, he also wired the money to his ethics counsel's ATA.

Respondent testified that he was the executor of Parlee's will and that the $530,000 represented funds he was entitled to as a part of administering the

[10] In his January 10, 2024 written summation, respondent admitted he used personal funds to reimburse LaTour.

estate of Kenneth Parlee, as well as Parlee's wife. He claimed that he had earned the funds because he was serving as executor, accountant, and attorney for the estate. He confirmed that both Parlees had passed away prior to July 16, 2020, within one week of another. He explained that, at the time of their deaths, their estate was worth about $10 million. As of November 2021, respondent had not yet finalized the estate and the formal sign-off from the surrogate remained outstanding.

When questioned about the legal work he had completed for the estate, respondent explained that he "administered" the estate but conceded that one need not be an attorney to administer an estate in New Jersey. When pressed, he clarified that the legal work he performed for the Parlee estate was selling their home, serving as the closing agent, and dealing with the title company on the buyer's side of the transaction.

Respondent testified that he had billed the estate, in writing, at an hourly rate of approximately $400 and submitted those bills to the estate. However, when asked whether he had submitted the bills to himself as executor of the

estate, he modified his testimony to explain that he did not send bills, but rather, kept time records for the legal work he had performed for the estate.[11]

Respondent testified that he maintained an account solely dedicated to matters in which he serves as escrow agent – which is related mainly to his accounting practice – and used it if some of his clients could not make their tax payments. In those situations, the client would send funds to respondent as escrow agent, and he would make the tax payment.

The Parties' Written Summations

The OAE's Summation

The OAE, in its December 1, 2023 written summation, argued that respondent knowingly misappropriated entrusted funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner, and, thus, should be disbarred.

Specifically, the OAE asserted that, in his March 28, 2018 letter to LaTour, respondent affirmatively stated that he represented LaTour's company, Kahn,

[11] N.J.S.A. 3B:18-14 provides that an estate administrator may charge a 5% commission on the first $200,000 of all corpus received by the fiduciary, 3.5% on amounts worth between $200,000 and $1,000,000, and 2% on any amount over $1,000,000. N.J.S.A. 3B:18-6 provides that, if an attorney serves as an administrator of an estate and performs "professional services in addition to his fiduciary duties," the attorney may apply to the court for a "just counsel fee." Respondent did not testify regarding any application he made to the court for a fee.

and the lender. Therefore, the OAE asserted that respondent violated RPC 1.7(a)(1) and (2) because his representation of all three parties to the loan transaction was an impermissible conflict of interest.

Moreover, in the same letter, on his law firm letterhead, respondent informed LaTour that he would hold his escrow deposit in his ATA and would not release it until – as an express condition precedent – an insurance policy was issued. Notably, respondent informed LaTour that he would return the escrow deposit if an insurance policy was not issued.

The OAE argued that Kahn's instruction that respondent wire $400,000 to Hope's account was "in direct contravention of his March 28, 2018" letter and that respondent failed to question Kahn about whether he received an insurance policy. The OAE also maintained that respondent failed to inform LaTour that he had released the escrow deposit. The OAE characterized respondent's wire transfer to Hope as "blindly [doing] the bidding of his son, despite his signed written assertions to [LaTour] indicating otherwise." Further, respondent's release of LaTour's funds from his ATA constituted knowing misappropriation, in violation of Wilson and Hollendonner, because he had no authority to release the funds other than for the purchase of an insurance policy. Stated differently,

he had not sought any consent or authority from the interested parties to release the funds to Hope.

Further, the OAE argued that respondent's failure to disclose to LaTour that he had disbursed the $400,000 escrow deposit to Hope allowed LaTour:

> to remain under a misapprehension that Kahn and Jose Cordero's procurement of a loan for $6M was legitimate. That silence imbued, wrongly, [LaTour's] confidence in Jeffrey Kahn such that [LaTour] paid the additional $60,000 sum to Kahn's (newly opened) Chase Bank account for payment toward an additional $400,000 premium for a $16M loan.
>
> [OAES7.]

Additionally, the OAE maintained that respondent's silence permitted LaTour to wrongfully believe that respondent was safeguarding the additional $60,000 in his ATA. Thus, the OAE argued that respondent violated RPC 8.4(a) and RPC 8.4(c) by failing to correct LaTour's false impression that he continued to hold the $400,000 escrow deposit in his ATA, which allowed Kahn to steal the additional $60,000 deposit.

Additionally, despite LaTour's specific demand to see the insurance policy and to learn who Hope was, respondent failed to provide that information. Instead, contrary to his own prior letter to LaTour, respondent asserted that he did not represent Providence Capital. According to the OAE, respondent's

misrepresentations continued when he told LaTour, in June 2018, that the funds were available for refund if LaTour would sign a release.

The OAE asserted that respondent's "continuing obdurate silence to [LaTour's] increasingly frantic questions about the status of his funds . . . and his incredible representation that funds were available to be returned" clearly violated RPC 4.1(a)(1) and (2), as well as RPC 8.4(c).

The OAE also argued that respondent inappropriately attempted to settle his ethics matter by conditioning a refund of the escrow deposit on LaTour withdrawing his grievance. The OAE maintained that respondent's direction to LaTour that he submit a letter to the DEC "specifically was intended to influence the investigator's conclusions as to whether respondent committed any unethical conduct in the handling of [LaTour's] escrow funds."

Specifically, the OAE asserted that his intent to sway the DEC investigator to dismiss the investigation:

> is borne out by his requests that [LaTour]: a) misrepresent that grievant already had received funds from Kahn Advisors (when $0 had been received); b) misrepresent that grievant had filed a grievance as a means to expedite the return of his funds only; c) misrepresent that grievant knew and authorized respondent to disburse $400,000 to a supposed insurance company, when grievant had no knowledge and did not consent to respondent's disbursing $400,000 to a man named Jerry Hope; and d)

> misrepresent that grievant received all his funds from Kahn Advisors and that respondent had not been holding any funds other than the $400,000 deposit, when in fact, Jeffrey Kahn had stated he would forward grievant's additional $60,000 sum to respondent's attorney trust account.
>
> [OAES11-12.]

The OAE added that, "to add insult to injury," even though respondent offered to refund LaTour's deposit to him if he withdrew his ethics grievance, he did not return the money even after LaTour sent the letter. Therefore, the OAE argued that respondent's attempt to settle his ethics matter was contrary to Advisory Committee on Professional Ethics Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (ACPE Op. 721) (determining that the negotiation of an ethics grievance constituted a per se violation of RPC 8.4(d) because it "thwarts the disciplinary system from serving its principal purpose," which is "protection of the public and preserving confidence in the bar"), a violation of RPC 8.4(d).

Last, the OAE addressed respondent's failure to testify in his own defense.[12] It noted that, pursuant to Hoffman v. U.S., 341 U.S. 479, 486 (1951), the invocation of the Fifth Amendment "must be confined to instances where the witness has reasonable cause to apprehend danger from a direct answer." The

[12] The OAE submitted its summation before respondent eventually testified in the ethics matter, three months later.

OAE argued that, in the attorney disciplinary context, respondents must assert the privilege against self-incrimination on a question-by-question basis and that a respondent's failure to testify about facts within his knowledge is "an important circumstance for the fact-finder's consideration." See In the Matter of James R. Lisa, DRB 00-220 (May 29, 2001).

According to the OAE, respondent's failure to testify at the ethics hearing made his statements during the April 2019 demand audit "much more critical in determining [his] state of mind and his conduct." The OAE argued that, during his April 2019 interview, he misrepresented to the OAE that LaTour's funds would be returned within one week. Additionally, the OAE argued that respondent misrepresented that he had spoken with LaTour prior to disbursing the funds; however, when pressed to explain his failure to make that assertion in any of his written responses to LaTour's grievance, "respondent had no clear explanation."

Consequently, for his knowing misappropriation of escrow funds, the OAE urged that respondent be disbarred.

The OAE's Supplemental Submissions

In its January 22, 2024 reply brief, the OAE reiterated that respondent's disbursement of LaTour's escrow funds violated Hollendonner and mandated his disbarment. The OAE argued that the cases upon which respondent relied, in which attorneys were not disbarred for their failure to safeguard escrow funds, were distinguishable because they involved one of the parties to the transaction receiving the funds, either early or without the other party's knowledge or consent. Here, the OAE noted that Hope was never a party to the escrow agreement and, thus, was never entitled to receive LaTour's escrow deposit. Moreover, the OAE argued that respondent's disbursement of LaTour's $400,000 to Hope was in contravention of the terms of the escrow agreement – that he would only disburse the funds upon the satisfaction of an express condition precedent, the purchase of an insurance policy.

On March 27, 2024, following respondent's testimony at the ethics hearing, the OAE submitted a supplemental letter in summation. In its letter, the OAE argued that respondent's testimony that he was still actively practicing law directly contradicted representations he had made to the OAE during the pendency of the ethics matter that he was no longer practicing law. Specifically,

the OAE pointed to respondent's testimony that the Parlee estate remained open and that he was actively managing other estate matters.

The OAE asserted that, based upon his representations during the investigation that he was no longer practicing law, it did not seek respondent's temporary suspension due to his knowing misappropriation of escrow funds However, the OAE contended that respondent's credibility was "damage[d]" because the ease with which he misrepresented the status of his law practice demonstrated a lack of candor with the SEA. Consequently, the OAE asserted that respondent's March 13, 2024 testimony was not credible, just as his written statements were not credible.

Respondent's Summation

In his January 10, 2024 summation brief, respondent did not dispute disbursing LaTour's funds, but argued that:

> the critical difference in the versions is the characterization of the conduct of Warren B. Kahn, Esq., in this matter. The Complainant describes that conduct as intentional, using a definition of the word that is the centerpiece in this Summation. The Defendant concedes the act, and result, but strongly disagrees with the characterization attributed.
>
> [RS1.]

Respondent maintained that his actions were "regrettable error" and were "based upon information available at the time of the transactions, and that he was swept into the same conspiracy to commit fraud by others that the Grievant was exposed to." Therefore, he argued that the sole issue left for the SEA's determination was the definition of "intentional."

Respondent denied any wrongdoing related to his repayment of LaTour's funds and denied that it was an attempt to "settle" the matter. He maintained that his "version of the story is that the effort was a genuine act of contrition for the error, an effort to make things right, and a request that the Grievant understand that the error was unintentional and capable of correction." He argued that his repayment "many months after the onset of these proceedings"[13] should be interpreted in his favor because, even though the OAE sought his disbarment, he "still made it right for the Grievant, with no benefit to himself for doing so."

Respondent argued against the application of a negative inference based on his refusal to testify during the ethics hearing. He characterized the attorney disciplinary process as an "open season, on the record . . . that is maintained and then cited to (in this matter particularly), over and over again." He contended

[13] Respondent repaid LaTour three days before the commencement of the ethics hearing, forty-four months after he had disbursed LaTour's funds to Hope.

that disciplinary hearings are not criminal proceedings and he, therefore, could not have invoked a Constitutional privilege.[14] Moreover, he maintained that he "simply opted to refrain from telling the story again that he had told in good faith, in a pervasive inquiry that he voluntarily participated in without even having been charged."

Respondent argued that the OAE did not present any information of a pattern of conduct or a series of defalcations "that would support the conclusion that this was a conscious and intentional act to defraud." He further asserted that, not only did the OAE fail to establish his participation in a widespread fraudulent scheme in order to benefit himself, but, in fact, he "'lost' a half million dollars in the wide perspective analysis."

Although respondent disputed that his letter to LaTour was a retainer agreement, he asserted that the letter was the "memorialization of that deposit and disbursement transaction [which] is more akin to an Escrow Agreement, where an independent party [respondent] would receive, and later disburse funds for the benefit of one or more parties to the agreement."

[14] R. 1:20-4(e)(5) provides that "[a]ll constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board." Here, respondent is referring to his Fifth Amendment right against self-incrimination.

Respondent argued that Kahn informed respondent about LaTour and the expected amount of his deposit. Furthermore, he asserted that Kahn:

> provided a dialogue in part in writing through emails as to timing of the escrow, use of the escrow and recipient and purpose of the disbursement. [Kahn] later ratified that dialogue with instructions that [respondent's] staff followed. The recipient of the disbursement did not follow the 'plan' described by [Kahn] and Grievant temporarily lost the funds, and the benefit that he hoped to gain by participating. His loss of funds was later mitigated by repayment from [respondent] using his own funds.
>
> [RS4.]

With respect to the criminal proceedings against Kahn, respondent explained that there were multiple delays which left the case unresolved and Kahn unavailable to be called as a witness in respondent's ethics matter. He contended that Kahn's criminal defense attorney indicated that Kahn would assert the Fifth Amendment on:

> any of the salient acts which comprise this OAE proceeding. Gone then is Respondent's opportunity to explore [Kahn's] role, or to obtain confirmation of his own statements that he exercised a good faith belief that his conduct was in fulfillment of his duty. Never to be known is [Kahn's] characterization of the role of [LaTour] in the escrow transaction or for that matter the overall finance plan.
>
> [RS5.]

Respondent argued that the OAE's accusation that he was wrong to listen to Kahn was misplaced, because, according to respondent, Kahn is his son and "the better question is why he wouldn't have followed the instruction. The escrow agreement identified the person who would direct the funds, and it is the same person who did so." Nevertheless, respondent conceded that a "better inquiry at that moment is the inquiry into the identification of the recipient of the funds a logical payee for insurance." Notwithstanding his concession that he took no action to ascertain to whom he was going to disburse LaTour's $400,000, respondent stated that was an after-the-fact inquiry and his failure to consider who Hope was at the time of disbursement was negligent, and not intentional.

With respect to the charged conflict of interest, respondent asserted that, because his role was as a stakeholder whom the parties mutually agreed would hold funds, any conflict was waivable.[15] Additionally, he argued that he did not engage in a conflict of interest because his actions mirror how real estate transactions are conducted.

Respondent asserted that the OAE did not respect the "breadth of the conspiracy that Grievant AND the Respondent got swept into." Similarly, he

[15] In his summation, respondent did not reconcile his statements that all parties agreed that he would hold LaTour's funds with his concurrent statement that, even as escrow agent, he acted without the knowledge or consent of all parties.

argued that he could not have knowingly misappropriated escrow funds because his mistake was negligent, he did not defraud LaTour, and he did not benefit from the transaction. He denied hiding from LaTour that he had disbursed the funds and contended that he "simply got it wrong, and even that assessment is after the fact, and based almost entirely on a supposed failure to better vet the payee."

With respect to his failure to seek permission from LaTour prior to disbursing the escrow funds, respondent argued that there was no requirement because "the path for disbursement and the triggering agent are the same as the ones that occurred. [Kahn] was to and did direct the conclusion of the escrow, and he is part of a charged conspiracy to commit criminal fraud against the Grievant and others, including [respondent]."

Ultimately, respondent denied violating any provision of RPC 1.15 because "all parties with an interest were aware of the deposit and the funds were disbursed in accordance with the escrow agreement and written instructions of the person orchestrating the transaction."

With respect to the allegations that he knowingly misappropriated LaTour's escrow funds, respondent argued that "to the extent the financial arrangement is couched in terms of an escrow holding involving Grievant and

the group who ultimately diverted the funds, New Jersey authority would support a reprimand in circumstances where the Respondent is also duped." To support his assertions, he cited In re Susser, 152 N.J. 37 (1997) (three-year suspension for an attorney who released $5,000 held in escrow without authorization); In re Spizz, 140 N.J. 38 (1995) (admonition for an attorney who, against a court order, released to his client funds escrowed for the fees of a former attorney, and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney asserted that the former attorney had either abandoned or waived her claim for the fee, and thus, his obligation to hold the funds had ended); In re Flayer, 130 N.J. 21 (1992) (reprimand for an attorney who made unauthorized disbursements against escrow funds); and In re Gifis, 156 N.J. 323 (1988) (the attorney blatantly used real estate deposits and settlement funds for his own purposes, claiming that he did not need both parties' permission to use the funds; the attorney contended that his use of the deposit was not knowing misappropriation because he was unaware of the Court's holding in Hollendonner, and because he honestly, but mistakenly, believed that the funds belonged solely to one of the parties; we rejected those arguments and recommended that the attorney be disbarred; the Court agreed).

Notwithstanding his earlier statements that he appropriately disbursed LaTour's funds upon Kahn's instructions, respondent argued that "there can be no dispute that holding the money under these circumstances, until the insurance coverage was obtained in within the nature of an escrow undertaking." Respondent conceded that Kahn "essentially dictated the agreement that would become the subject of these proceedings and the staff of [respondent], over whom he freely admits oversight responsibility, followed the form provided."[16]

Ultimately, respondent acknowledged that the insurance policy for which he purportedly disbursed funds was never issued. He contended that, with hindsight, he "should have had more involvement in vetting the payee, or in procuring the consideration for disbursement." Despite his admitted oversight, respondent argued that he did not mishandle LaTour's funds and did not benefit from receiving or disbursing the funds. Therefore, he maintained that the OAE had failed to prove his knowing misappropriation of escrow funds.

[16] There is no evidence or testimony in the record that respondent's paralegal drafted the March 28, 2018 letter that respondent signed.

Respondent's Supplemental Submission

In his March 31, 2024 supplemental summation, respondent asserted that, following any attorney's decision to cease the practice of law, there is a period of transition that included: (1) no longer accepting new clients, and (2) concluding or transferring existing files. Respondent asserted that, even before the ethics investigation began, he had begun his retirement process.[17] To that end, he contended that he offered to negotiate a resolution of this matter to surrender his law license. However, the OAE rejected his offer, maintaining that disbarment, either by consent or by the Court, was the only possible outcome.

Respondent asserted that, when he agreed to be the escrow agent for LaTour's transaction – a transaction his son was promoting – he "perhaps should have kept his defenses up a bit higher, but the short term of the project, its simplicity in a single deposit, single disbursement arrangement, and again the fact that it was his own son orchestrating the process combined to result in this proceeding." He urged the SEA to consider that respondent was not paid for serving as the escrow agent and, in fact, lost $500,000. Further, he stressed that the SEA should consider "the absence of any prior relationship, retention, or

[17] It is not clear from the record before us when respondent began the retirement process because there were only five months between his acceptance of LaTour's escrow funds and LaTour's ethics grievance.

even a handshake" with LaTour. Instead, respondent analogized his undisputed actions to those that a title agent or real estate broker would undertake, but when faced with the same outcome, would not face the "figurative death penalty of disbarment" and would need only pay restitution.

In his supplemental summation, respondent questioned whether the disciplinary system had "reached the point that ANY resulting loss to a grievant, regardless of circumstance, should result in the disbarment of an attorney and the termination of a career?" He urged that his "one time departure from optimum practice" should not warrant his disbarment.

The SEA's Findings

On June 11, 2024, the SEA issued his report and recommendation, concluding that the OAE had proven some, but not all, of the charged violations by clearing and convincing evidence. Importantly, the SEA found that the OAE had not proven, by clear and convincing evidence, that respondent knowingly misappropriated escrow funds in violation of Hollendonner. Accordingly, the SEA recommended the imposition of a censure.

Specifically, the SEA did not find that respondent's March 28, 2018 letter expressly required LaTour's approval before respondent disbursed the funds.

However, the SEA also found that the letter did not authorize respondent to disburse the funds upon Kahn's instructions unless Kahn presented proof that an insurance policy would issue upon payment of the premium. Thus, the SEA reasoned that, if respondent disbursed LaTour's funds "upon a good faith belief that the premium was due upon issuance of the policy, there would be compliance with the written terms of the agreement."

Regarding respondent's testimony during the ethics hearing, the SEA found there was no testimony about the transaction at issue because no party asked respondent any questions about it. Accordingly, the SEA noted that respondent's testimony surrounded his repayment of LaTour's funds.

The SEA acknowledged respondent's testimony that he was still managing several estates, notwithstanding his prior assertions that he was in the process of retiring. However, the SEA did not find that respondent's continued legal work on existing matters impacted his credibility because there was no evidence that respondent was accepting new clients. Therefore, the SEA did not find that respondent contradicted his prior statements about winding down his law practice. Likewise, the SEA concluded that he could not draw a negative inference based on respondent's failure to testify about the transaction at the

ethics hearing. Indeed, the SEA found that respondent discussed the matter, in detail, during the OAE's investigation, both in writing and orally.

However, the SEA was concerned about what respondent communicated – and did not communicate – to LaTour after he disbursed the $400,000. The SEA found that respondent's contemporaneous statements to LaTour were inconsistent with statements he had made to the OAE. Nevertheless, the SEA concluded that respondent:

> may have thought the premium was received by the carrier based on what he had been previously told about releasing the escrow; and I don't believe that Respondent would have said what he did because he thought Grievant would have simply turned his back and make no complaint if his money was released without issuance of a policy.
>
> [SEAR5.]

Consequently, the SEA concluded that, "although respondent did not honor his commitment, or act diligently, with respect to release of the escrow funds, and negligently failed to make diligent inquiries relating to his role as escrow agent or to whom the $400,000 was sent, he did not know how the funds would be used or misused by Hope or whoever received them."

The SEA determined that respondent violated his duty to protect escrow funds by failing to confirm the agreement of all parties before disbursing the

funds; nevertheless, the SEA concluded there was no clear and convincing evidence that respondent knowingly misappropriated funds. The SEA based his finding on the absence of evidence of any communication, other than Kahn's, that all parties approved respondent's disbursement of the funds to Hope and there was no evidence presented that respondent conspired to obtain funds for Kahn's benefit. To bolster this conclusion, the SEA pointed to respondent's initial return of $50,000 to LaTour. Likewise, the SEA found there was no testimony about any conversation respondent may have had with Kahn about inappropriately using LaTour's funds and no "direct evidence or sufficient inferences" that respondent was aware of Kahn's scheme.

The SEA framed the issue, in the context of the escrow agreement, as whether respondent had a:

> good faith or sincere belief that he was authorized to release the funds as he did, because the agreement did not expressly require Grievant's consent to, or approval of, the dispatch and because he followed the direction to release the funds from someone (Jeffrey) he believed to be authorized to give that direction.[18]
>
> [SEAR8.]

[18] We note that respondent drafted both the initial escrow agreement which listed only himself and Kahn as the parties to the agreement, as well as the superseding escrow agreement to LaTour indicating that respondent would release the escrow funds only upon the issuance of an insurance policy.

Moreover, the SEA found that respondent did not steal the funds, but rather, paid them to a third party he incorrectly believed to be the appropriate recipient.

With respect to LaTour's testimony during the ethics proceeding, the SEA found him to be credible – particularly when he testified that respondent had no communication with him prior to releasing the funds. Conversely, the SEA did not find respondent's testimony during his April 2019 interview with the OAE to be credible. In fact, the SEA found that respondent misrepresented facts regarding his communications with LaTour concerning his disbursement of the escrow funds. However, the SEA did not find that respondent's misrepresentations could result in a determination that respondent knowingly misappropriated funds "based on the dispatch to Hope."

Ultimately, the SEA found that:

> under the totality of the evidence, and in the absence of any additional testimony or evidence regarding communications between Respondent and his son (as Jeffrey asserted the Fifth Amendment, through his counsel, given the pending Federal criminal complaint against Jeffrey), and negligent as it may have been both to release the funds without actual approval by LaTour and not checking more with respect to the role of Hope, I cannot conclude that Respondent released and delivered the funds for reasons other than he stated or with knowledge of his son's criminal intent.
>
> [SEAR10.]

The SEA also found that the OAE had not proven, by clear and convincing evidence, that respondent violated RPC 1.7, noting that he was not retained by multiple parties or adverse parties. The SEA found that respondent was the escrow agent, LaTour did not pay him a fee, and that, under the circumstances, LaTour had no reasonable basis to believe there was an attorney-client relationship with respondent.

Similarly, the SEA found that the OAE had not proven by clear and convincing evidence that respondent violated RPC 8.4(a) or RPC 8.4(d), even if he was used to facilitate the fraud and theft of LaTour's funds.

However, the SEA found that respondent's attempt to settle the ethics matter with LaTour violated RPC 8.4(d) and was contrary to ACPE Op. 721. The SEA found that the evidence clearly and convincingly established that respondent requested that LaTour misrepresent facts in a letter to the DEC investigator in order to secure dismissal of the ethics matter.

More troubling to the SEA was that respondent "again engaged in advancing misrepresentations in an ethics investigation." Specifically, the SEA found that respondent's March 13, 2019 letter to LaGrotta contained numerous misrepresentations and, despite promising LaTour that he would receive his funds if he provided the requested letter to the DEC, respondent failed to return

the funds. Therefore, the SEA found that respondent's letter violated RPC 8.4(d) and that his false testimony to the OAE violated RPC 8.4(c).

The SEA was satisfied that respondent's winding down of his law practice was not an issue. However, respondent's:

> absolute failure to pay adequate attention to this matter, and relying merely on what he was told without asking any questions or checking how a transfer to a personal account of an individual, Hope, without any question about who he was and what his role was, and Respondent's lack of candor in the initial investigative interviews based on responses inconsistent with my findings, were, under the circumstances, totally inappropriate.
>
> [SEAR13-14.]

Consequently, the SEA recommended a censure.

The Parties' Positions to the Board

In its submission to us, the OAE disagreed with the SEA's determination that respondent did not commit knowing misappropriation because of his good faith belief that he was authorized to disburse LaTour's escrow funds. The OAE contended that the SEA's finding was flawed because he did not do an independent analysis as to the reasonableness of respondent's belief. See In re Li, 213 N.J. 523 (2013) (the attorney lacked a reasonable, good-faith belief of entitlement to the disputed funds and his use of the contested funds, therefore, constituted a knowing misappropriation of client funds for which disbarment is required).

The OAE argued that it was unreasonable for respondent to acquiesce to Kahn's direction to release the funds because Kahn was the individual who initially had instructed respondent to inform LaTour he would hold the funds in his ATA until an insurance policy was issued – and would return the funds if one did not. Consequently, the OAE asserted that respondent's failure to do his due diligence – such as inquiring who Hope was, whether he was associated with an insurance company, or whether LaTour obtained an insurance policy – was patently unreasonable under the circumstances and cannot be actions considered to be taken in "good faith." Furthermore, the OAE contended that the

unreasonableness of respondent's actions is highlighted by his subsequent silence in the face of LaTour's e-mails seeking information about his escrow funds and whether the condition precedent to the release had been satisfied.

Therefore, the OAE argued that, because respondent lacked a reasonable, good-faith belief that it was appropriate to release LaTour's funds, he must be disbarred for knowing misappropriation of escrow funds.

During oral argument before us, the OAE emphasized that respondent knowingly misappropriated escrow funds because he lacked LaTour's authority to disburse the funds and did not possess a reasonable, good faith, or sincere belief that Hope was associated with the condition precedent of purchasing an insurance policy.

The OAE argued that, if respondent had a sincere belief that Hope was instrumental to the purchase of an insurance policy, when LaTour began sending e-mails inquiring about his funds, respondent would have replied to inform him that he had disbursed the escrow funds to Hope. However, he did not do so and, instead, waited an inordinate amount of time before providing LaTour with any information at all.

During argument, the OAE also asserted that it was incumbent upon respondent, based on his own statements to LaTour, to confirm with all parties

that he was to disburse the escrow funds to Hope; however, he failed to do so. The OAE contended that, although respondent did not inform LaTour he would confirm with all parties prior to releasing the funds, the plain language of the letter stated that there was a condition precedent to the distribution of the funds, and respondent failed to verify that condition precedent. Further, respondent's multiple misstatements following his disbursement of LaTour's escrow funds, according to the OAE, evidenced consciousness of guilt and supported its theory that he knowingly misappropriated escrow funds, in violation of Wilson and Hollendonner, for which he should be disbarred.

In his submission to us, respondent agreed with the SEA's determination that the OAE had failed to prove, by clear and convincing evidence, that he knowingly misappropriated LaTour's escrow funds. Specifically, he denied that his conduct was intentional, that he benefitted from disbursing the funds, or that he was aware of the criminal scheme.

Respondent also agreed with the SEA's finding that he did not engage in a conflict of interest because, according to respondent, he was "correctly characterized as that of an escrow agent."

Respondent acknowledged the SEA's findings that he violated RPC 8.4(c) and RPC 8.4(d) but argued that he was not aware that negotiating settlements of

ethics matters was prohibited. Further, he apologized for any statements he made to the OAE that were "incorrect or unsupported."

In mitigation, respondent emphasized his lengthy, unblemished career and his goal of retirement. Additionally, he asserted that he had "surrendered," without prejudice, both his New York and New Jersey[19] licenses, in writing.

Analysis

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we determine that the SEA's finding that respondent committed unethical conduct is supported by clear and convincing evidence. However, we respectfully part ways with the SEA's conclusion that respondent did not knowingly misappropriate escrow funds. Rather, we find that respondent knowingly misappropriated escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner. Consequently, we recommend to the Court that he be disbarred.

As an initial finding, we conclude that respondent did not represent LaTour in the loan transaction. Respondent did not provide LaTour with a

[19] Respondent still has an active license to practice law in New Jersey. According to the New York State Unified Court System, respondent is still a registered attorney in that jurisdiction, as well.

retainer agreement and LaTour did not pay respondent any fee toward representation. Although respondent muddied the water by writing, in his March 28, 2018 letter, that he represented LaTour, Providence Capital, and the lender, de did so simply at the direction of Kahn and, based on the record before us, did not lead LaTour to conclude that respondent was, in fact, his attorney in the transaction.

Indeed, to commence the purported loan transaction, LaTour spoke with Kahn about the need for an escrow agent, and Kahn recommended respondent. Furthermore, LaTour independently negotiated the terms of the initial loan, as well as the increased amount of funds he ultimately sought from Kahn Advisors – actions that are contrary to an individual who believed he was represented by counsel in the purchase of a company. Therefore, because there was no representation, we agree with the SEA's determination that the OAE did not prove a conflict of interest, in violation of RPC 1.7(a)(1) and RPC 1.7(a)(2).

Regarding the RPC 4.1(a)(1) charge, respondent repeatedly informed LaTour that his escrowed funds were available to be returned to him, despite knowing that he had disbursed those funds. Consequently, as LaTour testified and the record repeatedly confirms, LaTour believed, for an extended period, that respondent was still holding the funds in escrow in his ATA. Likewise,

respondent falsely asserted that he disbursed LaTour's escrow funds toward the purchase of an insurance policy when he knew that, in reality, he had disbursed them to Hope's individual Capital One account, solely at his son's direction. Additionally, respondent failed to correct misstatements from multiple parties about his actions, which behavior constituted false statements by omission. As a sophisticated practitioner who frequently served as an escrow agent, had an accounting background, yet, conducted no due diligence, there was no reasonable basis for respondent to conclude that Hope had purchased the insurance policy required as a condition precedent of the escrow agreement. Furthermore, respondent does not dispute that he should have vetted Hope more, but the record reflects that he did not vet Hope at all or ask any questions regarding whether the preconditions to disbursement of the escrow funds had been satisfied.

However, the record does not reflect that respondent's failures in connection with the disbursement of funds to Hope violated RPC 4.1(a)(2). The OAE conceded that respondent was unaware of his son's criminal scheme and therefore, the record does not support that respondent knowingly failed to disclose facts that would have avoided criminal acts by a client.

With respect to RPC 8.4(a), we have historically rejected charges an attorney violated the Rule by virtue of their violation of other RPCs, determining instead that an attorney violates RPC 8.4(a) if they induce another to violate the Rules of Professional Conduct. Here, the OAE alleged that respondent violated RPC 8.4(a) because his silence permitted Kahn to steal LaTour's second escrow deposit of $60,000. However, there is no evidence in the record to demonstrate that respondent was aware of Kahn's criminal scheme such that his silence permitted Kahn's theft. Therefore, we dismiss the RPC 8.4(a) charge.

However, respondent's attempt to use LaTour to misrepresent to disciplinary authorities information surrounding his disbursement of LaTour's escrow funds clearly violated RPC 8.4(a), because he knew the information he requested LaTour provide to the DEC was false, itself a violation of RPC 8.1(a) and RPC 8.4(c). However, the OAE did not charge this theory of an RPC 8.4(a) violation, so we may only consider it in aggravation. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

Furthermore, respondent violated RPC 8.4(c) by lying to the OAE about communicating with LaTour prior to his disbursement of the escrow funds.

Unquestionably, respondent's request that LaTour withdraw his ethics grievance against him violated RPC 8.4(d). He admitted that he provided the proposed language to LaGrotta, so that she could draft the letter to the DEC investigator. The language he proposed was false, in violation of RPC 8.4(c). Worse still, he promised to refund the money if LaTour sent the letter to the DEC but failed to do so – yet another misrepresentation.

However, respondent's most egregious misconduct was his unauthorized disbursement of escrow funds, in violation of Hollendonner. To establish a knowing misappropriation of client or escrow funds, the evidence must clearly and convincingly demonstrate that the attorney used entrusted funds, knowing they belonged to a client or third party and knowing that the client or third party had not authorized them to do so. Intent to steal or defraud and dishonesty are irrelevant. So long as the attorney knows the funds are not the lawyer's and knows that the client or third party has not consented to the taking, the absence of evil motives, the good use to which the funds are put, the attorney's good character, and the lack of prior discipline, are all immaterial factors. Indeed, it is the act of respondent's unauthorized disbursement of the funds, despite the preconditions not being satisfied – a fact which he did not dispute – that constitutes the knowing misappropriation of escrow funds.

Even though LaTour was not his client, once respondent agreed to receive LaTour's escrow deposit in his ATA, he had a fiduciary obligation to hold the funds until the terms of the escrow agreement were satisfied. He admittedly failed to do so. Indeed, without asking any questions about the instructions Kahn had provided to him, and without confirming the disbursement with LaTour, respondent blindly transferred $400,000 to the personal bank account of an individual who was not a party to the transaction or to the escrow agreement. Respondent wholly abandoned his fiduciary obligation to hold the escrow funds, inviolate, until an express condition precedent had been satisfied – an insurance policy had been issued.

Respondent's claim that he only was following Kahn's instructions is sorely misplaced and, in fact, highlights the importance of an attorney's role in safeguarding escrow funds. The initial escrow agreement to hold LaTour's funds excluded LaTour as a party. However, respondent corrected the escrow agreement when he sent LaTour the superseding agreement, informing him that he would only disburse LaTour's funds upon the issuance of an insurance policy. The superseding escrow agreement correctly removed respondent as a party to the agreement and instead placed him squarely in the role of an escrow agent, holding escrow funds until a condition was satisfied.

LaTour testified that he felt comfortable utilizing respondent as an escrow agent because, after conducting research online, he determined that respondent, who lacked a disciplinary history, was trustworthy. Respondent informed LaTour that he would hold his escrow deposit until an insurance policy had been issued.[20] Consequently, LaTour testified that, after respondent refunded $50,000 to him, he believed that respondent still held the remaining $400,000 in escrow because LaTour had not received an insurance policy for the loan transaction. Unbeknownst to LaTour – because respondent failed inform him that he had already disbursed the funds – respondent was no longer holding the funds in his ATA.

Once LaTour began to ask questions about his escrow funds, respondent partially answered some of his questions, after more than one month, but even then, omitted key information. Additionally, the information respondent provided was not only inaccurate but was self-serving. Instead of honestly informing LaTour that he had disbursed the funds to Hope's personal account, despite the absence of an insurance policy, respondent perpetuated LaTour's misunderstanding that he had not disbursed the funds and that an insurance

[20] Based on our review of the record, respondent did not merely copy and paste the information Kahn provided. He edited it to take accountability for the information and advised LaTour regarding the future actions he would take in connection with the funds and insurance policy.

policy had been issued, and finally, that the funds were available to be refunded only if LaTour signed a release exonerating respondent of any wrongdoing.

In our view, the SEA's finding that, because respondent did not know how Hope would use LaTour's funds, he could not have committed knowing misappropriation, is incompatible. Because respondent did not know who Hope was or how Hope would use the funds, reciprocally, he knew that he was not disbursing the funds for an insurance policy, and thus, knowingly misappropriated LaTour's escrow funds by disbursing them contrary to their intended purpose.

Indeed, respondent's fiduciary duty to safeguard LaTour's funds was rooted in the March 28, 2018 letter he sent to LaTour, which became the operative escrow agreement of the transaction. Respondent, who drafted the letter, placed preconditions to his disbursement of LaTour's escrow funds. Notwithstanding his own escrow agreement, respondent disbursed the funds before the preconditions, which he had drafted, were satisfied.

Without obtaining proof that an insurance policy issued, respondent, without informing LaTour, transferred LaTour's escrow deposit to the personal account of Hope – an individual unconnected to the loan transaction. Indeed, despite respondent's fiduciary duty to safeguard LaTour's funds, he admittedly

failed to ask any questions about who Hope was or whether LaTour had been issued an insurance policy.

It is irrelevant that respondent did not benefit from his knowing misappropriation. The Court has long held that misappropriation is "any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." Wilson, 81 N.J. at 455 n.1.

In New Jersey, "[d]isbarment is mandated for the knowing misappropriation of clients' funds." In re Orlando, 104 N.J. 344, 350 (1986) (citing Wilson, 81 N.J. at 456). In Wilson, the Court described knowing misappropriation of client trust funds as follows:

> Unless the context indicates otherwise, 'misappropriation' as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.
>
> [Wilson, 81 N.J. at 455 n.1.]

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979),

> disbarment that is 'almost invariable' consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. . . . The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' – all are irrelevant.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986) (citation omitted).]

More than forty years after Wilson was decided, 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 Hollendonner, the Court extended the Wilson disbarment rule to cases involving the knowing misappropriation of escrow funds. The Court noted the

"obvious parallel" between client funds and escrow funds, holding that "[s]o akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the [Wilson] disbarment rule." Hollendonner, 102 N.J. at 28-29 (citation omitted).

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

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

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

Additionally, we have previously found that there "is no need for a formal escrow agreement or other writing to conclude that funds held by an attorney are escrow funds. Rather, the relationship between the relevant parties underpins the conclusion that particular monies constitute escrow funds." See In the Matter of Lyn P. Aaroe, DRB 19-219 (February 6, 2020) at 45-46. In that matter, we concluded that, collectively, the documents underlying the transaction functioned as an escrow agreement, because they bound the attorney to disburse

the funds in a particular manner. The Court agreed, and the attorney was disbarred for his knowing misappropriation of the escrow funds. In re Aaroe, 241 N.J. 532 (2020).

Regardless of whether the funds in question are held on behalf of a client or a third party, there must be clear and convincing proof of an attorney's knowing misappropriation to apply the ultimate sanction of disbarment. The burden of proof in disciplinary proceedings is on the presenter. R. 1:20-6(c)(2)(C).

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

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

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

> [t]hat which "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established," evidence "so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

[Id. at 585.]

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

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

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

misappropriated the carrier's funds; as an escrow agent, the attorney held the funds for the benefit of both his client and the carrier; he, therefore, needed the consent of both parties before he could borrow the funds; it was undisputed that the attorney did not seek or obtain the carrier's consent to borrow the money; the Court rejected as not credible Frost's contention that he reasonably believed that, once the carrier rejected the tender, it no longer had an interest in the funds).

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

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

Similarly, the burden of proof regarding defenses in disciplinary matters is on the respondent. R. 1:20-6(c)(2)(C). Such defenses must be established by clear and convincing evidence. R. 1:20-6(c)(2)(B).

Here, very similar to our analysis in Mason, respondent failed to offer credible evidence that he possessed a reasonable, good faith belief that he was authorized to disburse LaTour's $400,000. We also reject respondent's various defenses, which he failed to prove by clear and convincing evidence.

First, respondent extensively argued that he was a victim, along with LaTour, of Kahn's fraudulent scheme because he was required to reimburse LaTour with his own funds. We reject this wholly self-serving argument. If respondent had held the funds in escrow until an insurance policy had issued, as he represented to LaTour he would do, he would not have had to use his personal funds, nearly four years later, to reimburse LaTour for the money respondent improperly disbursed. His reimbursement of funds that he should not have disbursed in the first place fails to address the reasonableness of his belief regarding his authorization to disburse LaTour's escrow funds.

Second, respondent argued that he had no way of knowing that Hope would deplete the funds for his own personal use. Setting aside that Hope should never have received the funds in the first place, how a third party uses funds that were knowingly misappropriated is not determinative as to whether the knowing misappropriation occurred. Rather, the knowing misappropriation occurs when an attorney fails to hold, inviolate, entrusted funds. Here, respondent admittedly

failed to hold LaTour's funds, denied that it constituted knowing misappropriation because he did not benefit from his disbursement of the escrow funds (and, according to him, was a victim). His argument, however, is wholly inconsistent with well-settled precedent applying Wilson and Hollendonner and, thus, we reject it.

Third, we reject outright respondent's argument that he should not be disbarred for disbursing LaTour's funds because a title company, acting in a similar manner, only would have to pay restitution and would not face disbarment. In Wade, the Court reaffirmed that, in order to maintain the public's trust in the profession – a profession which requires the public to entrust their funds to a stranger – the public must have confidence that the attorney will not misuse those funds and those that do will be invariably disbarred. Here, LaTour explained that he initially felt comfortable with respondent serving as escrow agent for the loan transaction because he had researched respondent and determined that he was an "upstanding" attorney because he had not been disciplined in over forty years at the bar. This is precisely the confidence that the attorney disciplinary system seeks to protect, and which respondent shattered.

Fourth, respondent repeatedly asserted that Kahn had authorized him to disburse LaTour's deposit and provided the instructions to wire the funds to Hope's personal account. Respondent asserted, through counsel, that he trusted Kahn's instructions because Kahn is his son. Familial relationships, however, do not create per se good faith beliefs regarding an attorney's authorization to disburse funds. Specifically, the funds belonged to LaTour, not to Kahn. Accordingly, because Kahn did not provide respondent with an insurance policy, the condition precedent for the release of the funds, any authorization for use of the funds should have come from LaTour. In our view, as an admittedly seasoned escrow agent, it was wholly unreasonable for respondent to believe otherwise. Next, LaTour's understanding, based on respondent's express representations to him, was that respondent would hold the funds in his ATA until LaTour obtained an insurance policy and, if no policy was issued, he would refund the remaining $400,000 to LaTour. Respondent failed to obtain proof that an insurance policy had been obtained, disbursed the funds anyway, and failed to provide LaTour with any meaningful information about his disbursement. Thereafter, he took no action to correct what he characterized as a "mistake" and, instead, allowed the situation to fester, which effectively gave Hope two-and-a-half weeks to deplete LaTour's money.

Finally, respondent refused to testify on his behalf. Although he asserted that he had provided enough information during the course of the OAE's investigation and, thus, did not need to testify, such a position is misguided. Indeed, as described above, the information respondent provided during the investigation was deceitful and incomplete.

Respondent also attributed his refusal to testify to a desire to invoke the right against self-incrimination, despite never being criminally charged for his participation in his son's criminal scheme. Although respondent eventually did testify during the ethics hearing, the OAE focused its questioning on his repayment of the escrow funds to LaTour and his statements concerning his pending retirement from the practice of law. Neither the OAE nor respondent's counsel questioned him about his prior misrepresentations surrounding the loan transaction or any conversations he had with the parties to the transaction, including Kahn. Therefore, as the OAE aptly noted, respondent's statements during his April 3, 2019 interview comprise the totality of the information that he provided about the transaction.

Moreover, due to his criminal charges, Kahn, whom respondent indicated would be his only witness but for his own assertion of the right against self-incrimination, did not testify. Therefore, the record before us lacks any

information about what Kahn may have told respondent about the insurance policy. Nevertheless, pursuant to precedent, that was knowledge that respondent could have provided to the OAE during his April 3, 2019, or during the ethics hearing. He failed to do so. Notably, respondent failed to produce any documents demonstrating that Kahn provided him with proof that an insurance policy was issued, something he could have done without Kahn's testimony.

In sum, we find that respondent committed knowing misappropriation of escrow funds, in violation of RPC 1.15(a), and the principles of Wilson and Hollendonner; RPC 4.1(a)(1); RPC 8.4(c) (two instances); and RPC 8.4(d). We determine to dismiss the charges pursuant to RPC 1.7(a)(1); RPC 1.7(a)(2); RPC 4.1(a)(2); and RPC 8.4(a), for lack of clear and convincing evidence.

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, violations which mandate his disbarment. Regardless of any mitigating factors, because respondent knowingly misappropriated escrow funds that had been entrusted to him, disbarment is the only appropriate sanction.

Therefore, we need not address the appropriate quantum of discipline for his additional ethics violations.

Vice-Chair Boyer and Member Rodriguez voted to impose a one-year suspension and wrote a dissent.

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 Warren Barry Kahn
Docket No. DRB 24-154

Argued: September 19, 2024

Decided: January 8, 2025

Disposition: Disbar

Members	Disbar	One-Year Suspension	Absent
Cuff	X		
Boyer		X	
Campelo			X
Hoberman	X		
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez		X	
Spencer	X		
Total:	6	2	1

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