SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-213
District Docket No. XIV-2015-0397E

In the Matter of Rodrigo Sanchez
An Attorney at Law

Argued
January 16, 2025

Decided
March 17, 2025

Darrell M. Felsenstein appeared on behalf of the
Office of Attorney Ethics.

Marc D. Garfinkle appeared on behalf of respondent.

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Introduction

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

This matter was before us on a recommendation for disbarment filed by Special Ethics Adjudicator Edwin H. Stern, P.J.A.D. (ret.) (the 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) (four instances – knowingly misappropriating client or escrow funds); RPC 1.5(a) (charging an unreasonable fee); RPC 1.15(a) (two instances – commingling client and personal funds); RPC 1.15(a) (failing to safeguard client funds); RPC 1.15(b) (two instances – failing to promptly deliver client funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.3(a) and (b) (failing to supervise nonlawyer staff); RPC 5.3(c) (rendering a lawyer responsible for the conduct of nonlawyer staff that would be a violation of the Rules of Professional Conduct if engaged in by the lawyer under certain circumstances); RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2001. At the relevant times, he maintained a practice of law in Elizabeth, New Jersey. He has prior discipline in New Jersey.

Sanchez I

On November 18, 2010, the Court censured respondent for his violation of RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c). In re Sanchez, 204 N.J. 74 (2010) (Sanchez I).

In that matter, a client retained respondent in connection with injuries he allegedly sustained during a bar fight involving a professional basketball player. In the Matter of Rodrigo Sanchez, DRB 10-102 (June 24, 2010) at 2. The client claimed to possess a videotape depicting the basketball player assaulting another person. At one point, the client informed the basketball player's agent that he

would provide the videotape to the media unless the basketball player paid him $3,000,000. Although respondent was not present when his client made this threat, he later repeated the threat to the basketball player's attorney. These incidents took place in New York, and, ultimately, respondent pleaded guilty to one count of attempted grand larceny in the fourth degree, a class A misdemeanor in that jurisdiction. Id. at 5. In determining that a censure was the appropriate quantum of discipline for his misconduct, we considered numerous mitigating circumstances, including his naivete, inexperience, and failure to understand that his actions constituted involvement in a criminal scheme. Id. at 18.

Sanchez II

On October 11, 2013, the Court reprimanded respondent for his violation of RPC 1.3 (lacking diligence), RPC 1.16(d) (failing to protect a client's interests on termination of the representation), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In re Sanchez, 216 N.J. 84 (2013) (Sanchez II).

In that matter, which proceeded as a motion for discipline by consent,[1]

[1] Respondent proceeded pro se in Sanchez II. The District Ethics Committee docketed the investigation in 2012. As described below, it was during this time that respondent was addicted to opioids and suffering from medical issues.

respondent represented a tenant in a landlord-tenant dispute. In the Matter of Rodrigo Sanchez, DRB 13-108 (October 9, 2013) at 2. On the date of trial, respondent attended mediation but, after mediation failed, left the courthouse prior to the commencement of trial that afternoon because his child required an emergent dental procedure. As a result, the court dismissed his client's case, without prejudice. The court later reinstated the case on the condition that respondent pay $1,500 to the landlord's attorney. Respondent, however, failed to comply with the court's order and, consequently, the court, again. dismissed his client's complaint. Id. at 2. In July 2012, respondent attempted to pay the $1,500; however, the attorney who had represented the landlord was no longer involved in the case and refused payment. Thereafter, respondent failed to take any steps on his client's behalf. Ibid.

The client filed a small claims complaint against respondent and, when he failed to appear, was awarded $750. Ultimately, respondent paid his client the $750 judgment and the $1,500 for attorney's fees. Ibid. In recommending a reprimand, we noted that, although respondent's absence from the landlord-tenant trial may have been excusable due to his child's emergency, his subsequent failure to pay the imposed attorneys' fees demonstrated a disregard for his client's welfare.

Sanchez III

On May 17, 2024, the Court reprimanded respondent for his violation of RPC 1.15(a) (negligently misappropriating client funds) and RPC 1.15(d), in connection with recordkeeping violations that occurred in the midst of the investigation underlying this matter. In re Sanchez, 257 N.J. 357 (2024).

In that matter, on May 5, 2021, Wells Fargo Bank notified the OAE that respondent had overdrawn his attorney trust account (ATA) by $10.57. In the Matter of Rodrigo Sanchez, DRB 23-184 (February 22, 2024) at 4. Consequently, the OAE directed respondent to provide a written explanation for the overdraft. In reply, respondent explained that, on April 12, 2021, he had deposited the proceeds of the sale of his home, which had been handled by his law firm, in his ATA. Two weeks later, he wired additional funds to his ATA to cover the closing costs. The same date, respondent wired the proceeds of the sale, along with the additional funds, out of his ATA, believing he had sufficient funds to cover the amount plus an outgoing wire fee. However, respondent and his staff were unaware that the bank had assessed a $15 incoming wire fee for his transaction earlier that day. As a result, he overdrew his ATA by $10.57. Id. at 4-5. At the time of the overdraft, respondent held no client funds in his ATA. Id. at 5.

In reply to the OAE's directive to produce his financial records,

respondent provided some, but not all, of the requested documents. The OAE later directed him to correct six deficiencies it had identified from the limited records he had produced.

Regarding a $7,300 deposit in his ATA, respondent explained that, on January 29, 2019, he had undergone a major medical procedure and had arranged for another attorney at his firm, his nonlawyer office manager, and his accountant to continue operating his office in his absence. Id. at 9. The day after his medical procedure, his office received a $100,000 settlement check. The firm's legal fees in that matter totaled $32,949.52. Respondent stated that he had "met with and instructed [his] office manager to disburse the [settlement proceeds] and to take a portion of [the firm's] legal fees and place it in a savings [account] for any unforeseen issues that may arise while [he] was recovering." Ibid. On February 1, 2019, two days after his medical procedure, respondent issued a check to the firm, for its legal fees. The mistaken $7,300 transfer from his ATA happened the same date and invaded the funds of fourteen clients. Seventeen months later, respondent cured the shortages by depositing $7,300 in his ATA. Id. at 10.

On two additional occasions, prior to the overdraft of his ATA, respondent invaded client funds he was required to hold inviolate. Specifically, on December 26, 2019, he incurred a $31 stop payment fee, thereby exceeding the

$24 he held in his ATA for bank charges, resulting in the invasion of the funds of two clients. Ibid. Four days later, respondent issued himself a $28.51 check from his ATA, representing a payment from a client on whose behalf he was holding no funds. That disbursement also exceeded the $24 he held in his ATA for bank charges and resulted in the invasion of the funds of three clients. Nearly two years later, on September 16, 2021, at the OAE's direction, respondent cured the shortages. Ibid.

In determining that a reprimand was the appropriate quantum of discipline, we considered, in mitigation, that respondent had admitted his misconduct and promptly replenished his ATA once he became aware of the shortages. Further, no client had been harmed by his misconduct. Id. at 14. In aggravation, we considered his prior discipline but accorded it minimal weight because it was dissimilar. Ibid.

As conditions to his discipline, the Court required respondent to complete an OAE-approved recordkeeping course within sixty days of the Court's disciplinary Order, and to submit to the OAE, on a quarterly basis, monthly three-way reconciliations of his financial accounts, for two years. Sanchez, 257 N.J. 357.

We now turn to the matter before us.

Facts

During the relevant time, respondent maintained the following bank accounts in connection with his practice of law:

- ATA1 at Wells Fargo (open December 2016 to present);
- ATA2 at Wells Fargo (January 2012 to present);
- attorney business account (ABA1) at Wells Fargo (September 2015 to December 2015);
- ABA2 at Wells Fargo (November 2015 to February 2016);
- Hawkins Estate account at Wells Fargo (August 2013 to present);
- ATA3 at TD Bank (April 2007 to December 2016);
- ATA4 at TD Bank (September 2014 to December 2016);
- ABA3 at TD Bank (September 2014 to present);
- ABA4 at TD Bank (April 2007 to October 2014); and
- Johnson Estate account at TD Bank (May 2013 to October 2015).

The Johnson Estate Matter

On August 25, 2012, Theodosia Johnson (Theodosia) passed away.[2] Theodosia was the beneficiary of the Estate of Jeanne Lenhardt (the Lenhardt Estate), who had been one of her relatives. When the administration of the

[2] Because the Johnsons share a last name, we refer to the parties by their first names to avoid any confusion. No disrespect is intended by the informality.

Lenhardt Estate commenced, Theodosia was alive; however, she passed away before any inheritance funds were distributed to her. Consequently, the Lenhardt Estate funds were disbursed to Theodosia's estate (the Johnson Estate).

Theodosia was the grandmother of brothers Theodore Johnson (Theodore) and Michael Johnson (Michael). On October 2, 2012, Theodore retained respondent to administer the Johnson Estate and agreed to pay him a $7,000 flat fee for the representation. Approximately six months later, on April 11, 2013, Michael also retained respondent and agreed to pay him a $5,000 flat fee. Respondent explained that Theodore's flat fee was higher than Michael's because he needed to visit him in prison. Thus, respondent's total fee for representing the Johnson brothers in connection with the Johnson Estate matter was $12,000.

The Johnson Estate received two distributions from the Lenhardt Estate. Specifically, on May 12, 2013, the Johnson Estate received $91,600 and, on October 9, 2013, it received $13,000. Respondent deposited the funds, totaling $104,600, in the Johnson Estate account.

After depositing the first distribution from the Lenhardt Estate, respondent disbursed to himself the $12,000 flat fee, via three separate payments. Specifically, on June 5, 2013, respondent issued a $10,000 check to himself for "Legal fees for Michael & Theodore Johnson;" on June 18, 2013, he issued

another $1,000 check to himself for "Legal Fees;" and, on June 21, 2013, he issued an additional $1,000 check to himself for "Jail Visit – Attorney Expenses – Traveling."

On October 14, 2013, notwithstanding having paid himself the Johnson $12,000 flat fee four months earlier, respondent issued another check from the Johnson Estate account, in the amount of $20,000, payable to Rodrigo H. Sanchez, Jr., Esq., PC, with the notation "Legal Fees" in the memo line. On October 15, 2013, respondent deposited the funds in his ABA4, which increased ABA4's account balance to $24,199.57. Within three days, respondent had depleted the entire $20,000 from ABA4.

After disbursing to himself the $12,000 total flat fee for representing Michael and Theodore, respondent thereafter disbursed an additional $56,670.50 (inclusive of the $20,000 in additional legal fees) from the Johnson Estate to himself for expenses and unexplained disbursements. Specifically, on November 14, 2013, respondent issued himself another check from the Johnson Estate for $3,000, with a memo line of "Reimbursement-Expenses," which he cashed. On February 7, 2014, three months before respondent disbursed any funds to the Johnson brothers, he deposited a $4,100 check in one of his Wells

Fargo ABAs; the check was designated "for TJ," but contained a memo line "Legal Fees."[3]

On March 27, 2014, respondent issued a $3,000 check from the Johnson Estate to his employee, Martha Salas, with a memo line of "expenses." Also on March 27, 2014, respondent issued a $23,125 check payable to ATA3 with the memo line "expenses." The same date, respondent issued a $23,125 check from ATA3 payable to his commercial landlord, Nevada Cart Realty, with a memo line "rent for November, December, January, February and March."

The above-described disbursements occurred from October 2013 through January 2015. Ultimately, after paying himself the $12,000 flat fee for the Johnson brothers' representation, respondent had disbursed to his own business and personal accounts $15,869.97 more than he had disbursed to the Johnson brothers from ABA1.[4]

In May 2014, respondent disbursed $800 to Michael from ABA1 and in June 2014, he disbursed $3,000 to Theodore from ABA1. Between his disbursement of $20,000 to himself as legal fees, and his $800 disbursement to

[3] It is not clear from the record which ABA he deposited the funds because the entire account number was redacted from the exhibits.

[4] According to the distribution schedule respondent prepared, inclusive of his $12,000 flat fee, he disbursed $102,235 to the Johnson brothers. However, the total estate was $104,600. Therefore, respondent omitted his additional disbursements to himself when he prepared the distribution schedule during the OAE's investigation.

Michael, with the exception of one day (November 20, 2013), respondent held less than $20,000 in ABA4 and even had a negative balance (-$2,573.35). However, according to respondent, on June 2, 2014, "Theodore authorized my office to transfer monies from trust to our business account to disburse to him regularly in my absence." It is unclear from the record why respondent was unable to disburse Theodore's funds to him directly from his ATA or the Johnson Estate account. It is also unclear why Theodore provided this authorization one year after he already had authorized respondent to provide him and Michael with funds.

During the OAE's investigation, respondent submitted a distribution schedule for the Johnson Estate (the Johnson Schedule). The Johnson Schedule reflected that respondent had disbursed $47,300 to Michael and $42,935 to Theodore. Further, according to the Johnson Schedule, respondent had designated $54,075 as "Transfer for TJ" from the Johnson Estate account to ABA4.

On October 24, 2016, respondent submitted an amended Johnson Schedule to the OAE, which included $1,665 for bonding and court fees, as well as an additional $1,155.53 distribution to Theodore.

In his amended verified answer, respondent claimed that, on June 5, 2013,[5] Theodore had provided him written authorization to advance funds to Michael for living expenses, as well "on behalf of Theodore while he finished his time in prison."

Nevertheless, respondent stated that, from June 2013 through December 2014, his office manager, Vilma Torres, "periodically disbursed monies to Michael Johnson at his request for he and his brother from the monies owed to them." Respondent asserted that, once Michael received his final payment in December 2014, he could not thereafter reach him; however, Theodore was released from prison around the same time respondent lost contact with Michael. Once out of prison, Theodore visited respondent's office periodically for payments.

Respondent explained that, when Theodore began visiting the office, Torres initially would make him "wait until she could reach [respondent's] approval to pay Theodore from the trust account."[6] Nevertheless, respondent explained that after Theodore "authorized us to move monies to our business account on his behalf accounting became a problem and [Torres] inadvertently

[5] June 5, 2013, is the same date respondent disbursed to himself $10,000 in legal fees.

[6] Respondent's statement that Torres contacted him before issuing trust checks is consistent with his statement to the OAE that he granted Torres authority to issue trust checks.

used monies to pay office expenses and continued to pay the brothers with our funds."

The Sanders Matter

On December 14, 2012, Franklin Cedeno, Esq., an associate at respondent's firm, filed a personal injury complaint on behalf of Lawrence Sanders. On March 12, 2013, Cedeno settled the Sanders matter for $225,000.

Although respondent produced only a "skeleton file" to the OAE, which did not include a settlement statement or retainer agreement, the OAE was able to identify $689.81 in expenses respondent had incurred in the course of the representation. Thus, the OAE determined that, if respondent had charged a standard 33% contingent fee in Sanders' personal injury action, the firm would be entitled to $74,770.06 in attorney's fees and Sanders would have received a $149,540.13 gross settlement ($225,000 settlement less $689.81 in expenses and $74,770.06 in attorney's fees).

However, there were two liens on Sanders' settlement funds. Specifically, Kessler Institute for Rehabilitation (Kessler) held a $4,700.42 medical lien, and the Joint Welfare Fund, Local No. 164, IBEW (the Fund) held a $103,280.42 Employee Retirement Income Security Act (ERISA) lien. Thus, beginning on March 12, 2013, when he received the Sanders settlement check, respondent was

required to hold $107,980.84 in escrow to satisfy both liens on Sanders' behalf. Also on March 12, 2013, respondent owed Sanders a net payment of $41,559.29.

However, according to respondent's client ledger card for the Sanders matter, between March 13, 2013 and February 9, 2014, respondent disbursed the following payments, via ATA checks, totaling $161,720:

- Payee Sanders: $48,875.29
- Payee respondent: $97,552.46
- Payee Pre-Settlement Solutions: $2,930
- Payee Cedeno: $9,862.25
- Payee Jessica Rodriguez: $2,500

Following the disbursements, the Sanders balance was $81,610, $26,370.84 less than the amount respondent was required to hold, in escrow, to satisfy the Kessler and ERISA liens. Respondent did not have permission from Kessler or the Fund to use the escrow funds.

On February 10, 2014, respondent's firm retained an ERISA specialist, David New, Esq., to assist with negotiations to reduce the ERISA lien. Sanders signed a new retainer agreement with respondent that specifically addressed reducing the ERISA lien. Additionally, Sanders signed an authorization permitting respondent to utilize $3,500 of the funds being held to satisfy the

Kessler lien to pay New. Thus, on the same date, respondent issued an ATA check, payable to New, in the amount of $3,500.

Between February 10 and August 14, 2014, respondent disbursed additional funds, totaling $10,207.72, in the Sanders matter as follows:

- Payee Sanders: $2,600
- Payee Tesco: $2,000
- Payee Cedeno: $1,000
- Payee SDK Towers: $1,499
- Payee SDK Garden: $3,108.72

Respondent conceded that these payments invaded the escrow funds he was required to hold to satisfy Sanders' liens.

On August 14, 2014, the Fund agreed to reduce the ERISA lien from $103,280.42 to $82,624.32. However, on that date, respondent held only $73,160.28 in ATA3 and, thus, he could not satisfy the ERISA lien. Respondent's ATA3 balance also was $31,320.56 less than what he was required to hold on behalf of Sanders alone.

Despite the negotiated reduction in the ERISA lien, respondent failed to pay the lien for five weeks. On September 2, 2014, respondent prepared an ATA check in the amount of $82,624.34, along with a cover letter to the Fund. However, he did not send the check to the Fund. On that date, although the

balance of ATA3 balance was $90,892.56, sufficient to satisfy the reduced ERISA lien, it was $13,587.44 less than what respondent was required to hold on behalf of Sanders alone.

On September 8, 2014, New sent Cedeno a letter requesting that Cedeno process payment for the ERISA lien. Cedeno then spoke with respondent, via telephone, regarding the payment of the ERISA lien. Respondent advised Cedeno that he would mail the check in satisfaction of the lien on September 16, 2014. Consequently, on September 16, 2014, Cedeno informed the Fund's counsel, in writing, that respondent would place the check in the mail that day. However, respondent failed to send the check to the Fund until October 1, 2014.

Between the date the Fund agreed to reduce Sanders' ERISA lien and the date respondent eventually issued a settlement check to the Fund, he noted the following four withdrawals on the Sanders client ledger: August 26, 2014 ($8,600 cash); August 26, 2014 ($1,497 to a TD Bank account respondent held with his father); August 26, 2014 ($20,000 to the TD Bank account held with his father); and August 28, 2014 ($8,134.68 to ABA1).

In his amended verified answer, respondent stated that Sanders was a friend of his whom he had referred to Cedeno, the personal injury attorney in his firm. Respondent maintained that he knew the matter had settled, and that

there was a lien placed on the settlement. He claimed that the settlement funds "sat in our account for about a year until the lien was settled."

Thereafter, respondent asserted that he had transferred funds to a separate estate trust account for his client, Clarence Hawkins (discussed in greater detail below). After Hawkins passed away, and after conducting a "thorough accounting," he "realized the money we transferred in error belong[ed] to Lawrence Sanders." After explaining the error to both Sanders and Michael Hawkins (Michael), respondent transferred the funds "back to the original Trust account. This was all I knew about Sanders. If his money was inadvertently used to pay bills in my absence it was done in error by my office manager."

The Williams and Ingram Matters

On August 21, 2014, Walter Piccolo, Esq., an associate of respondent's firm, represented Courtney Williams and Cynthia Ingram as plaintiffs in a personal injury matter. On August 21, 2014, Piccolo settled the Williams and Ingram matters for $15,000 each.

On September 3 and September 5, 2014, respondent deposited the Williams and Ingram settlement checks in his ATA2.

By letters dated September 4, 2014, NJM Insurance Group (NJM) provided Piccolo with confirmation of the $15,000 settlement for Williams and

Ingram and advised that NJM agreed to accept $6,000 from each plaintiff for full reimbursement of the Section 40 liens[7] it held in each matter.

Piccolo prepared settlement disbursement statements for both matters and requested that respondent issue checks in accordance with the statements. Both statements acknowledged the $6,000 NJM liens. Williams' costs were $202.64 and the legal fees she owed were $4,932.45. Ingram's costs were $158.12 and the legal fees she owed were $4,447.30.

On September 19, 2014, respondent issued a $6,000 check to NJM to satisfy only Ingram's Section 40 lien.

However, the Williams ledger card reflected that, ten days earlier, on September 9, 2014, respondent had issued a $2,000 ATA check payable to himself. Instead of depositing the $2,000 check in his ABA1, respondent made another entry on the Williams ledger indicating that the $2,000 was a wire transfer of her legal fee.

On September 10, 2014, the balance of ABA1 was negative (-$659.13); however, the same date, respondent electronically transferred $2,000 from Williams' settlement funds to his ABA1.

[7] A Section 40 lien is a statutory lien that attaches against a settlement to prevent a double recovery for injuries a worker sustains and is comprised of medical bills, temporary disability, or permanent disability payments that already had been paid before the date of the settlement payment. See N.J.S.A. 34:15-40.

Later, on September 12, 2014, respondent issued four ATA checks in the Williams matter, as follows:

- $3,864.91 to Williams as her portion of her settlement;
- $2,466.22 to Piccolo as his share of the legal fees;
- $10 to Signature Information Solutions for costs; and
- $192.64 to himself for costs.

[C¶71;S¶71;Ex.78-81.][8]

Thus, as of September 12, 2014, in the Williams matter, respondent had disbursed $4,466.22 in legal fees to himself and Piccolo, leaving a balance of $466.23 in legal fees due to the firm. As of that date, respondent had not satisfied the lien in the Williams matter and, thus, was required to hold $6,000 for NJM's benefit.

[8] "C" refers to the formal ethics complaint, dated October 31, 2017.
"A" refers to respondent's amended verified answer to the formal ethics complaint, dated February 21, 2018.
"S" refers to respondent's prehearing factual stipulations/admissions, dated November 2, 2020.
"Ex" refers to the OAE's exhibits entered into evidence during the ethics hearing.
"SEAa" refers to Tab A appended to the special ethics adjudicator's report exhibits in the record.
"1T" refers to the transcript of the hearing held on July 12, 2023.
"4T" refers to the transcript of the hearing held on July 24, 2023.
"OAES" refers to the OAE's January 30, 2024 written summation.
"RS" refers to respondent's January 30, 2024 written summation.
"SEAR" refers to the August 23, 2024 report of the special ethics adjudicator.
"GB" refers to respondent's November 25, 2024 submission to the Board.
"OAEsr" refers to the OAE's December 9, 2024 sur-reply to respondent's November 25, 2024 submission to the Board.

Five days later, on September 17, 2014, respondent issued himself a $2,466.23 check in the Williams matter for legal fees. Because he had not yet issued a check to NJM to satisfy the Section 40 lien in the Williams matter (having already satisfied the Ingram lien), the excess $2,000 in legal fees invaded the funds respondent was required to hold for the NJM lien. Further, by paying himself an additional $2,000 in legal fees, respondent invaded the funds of eighteen other clients whose funds he held in ATA2 at the time.

Almost one year later, on September 4, 2015, respondent issued a $6,000 check from ABA1 to NJM to satisfy Williams' Section 40 lien.

In his amended verified answer, respondent stated he was not familiar with the Williams matter because Piccolo was the personal injury attorney at the firm brought in by respondent's then-partner Darryl Saunders, Esq. Respondent explained that Torres had paid a $6,000 lien to Worker's Compensation but that Piccolo subsequently left Torres a note requesting that she pay NJM $6,000. Respondent believed that Torres got confused due to the identical sums and, thus, was under the impression that she already had paid NJM the $6,000 it was owed.

Respondent stated that it was not until approximately one year later when Piccolo told Torres that two $6,000 payments were required to satisfy the NJM liens in the Williams and Ingram matters. Thereafter, respondent explained that

his office staff "began contacting me and advising me that there was a lien on the Courtney Williams file that needed to be paid and they could not figure out what happened with the second lien payment in the trust account." Thus, respondent contended:

> to get the lien paid I instructed the office manager to pay it from our business account until we figured out what happened [sic] I instructed payment to be made from the business account on September 4, 2015. I later learned after doing an accounting, that the Williams Lien money was in the trust account the whole time and we had lost track of it. Therefore, in December of 2015 I reimbursed myself the $6000.00 payment.
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> [A,p14.]

Respondent did not address the excess $2,000 in legal fees he took in the Williams matter.

The Hawkins Matter

On July 10, 2011, Clarence Hawkins retained respondent to recover funds and property from his daughter, Ann Johnson, who resided in Georgia. On July 21, 2011, Johnson wired $240,000 to respondent's ATA3, on behalf of Hawkins. On February 20, 2012, Hawkins passed away.

Between July 22, 2011 and November 5, 2012, respondent issued checks from ATA3, on Hawkins' behalf and totaling $158,223.70, for the following purposes: (1) Hawkins' personal expenses; (2) legal fees to a Georgia attorney

for representation in the Johnson dispute; (3) funeral expenses; (4) disbursements to Hawkins' family members; and (5) distributions to Hawkins' beneficiaries. During the same time, respondent paid himself $61,346.34 in legal fees and expenses.

On August 30, 2013, when he opened the Hawkins Estate account, respondent issued a check from ATA3 for $115,137.46, despite only holding $20,429.96 on behalf of Hawkins, thereby causing a $94,707.50 negative balance in ATA3. Consequently, the shortage resulted in his invasion of the funds respondent held on behalf of seventeen clients.

On September 11, 2013, respondent withdrew $19,841.50 in cash from the Hawkins Estate account, in violation of R. 1:21-6(c)(1)(A). The next day, respondent purchased a $19,841.50 cashier's check from Wells Fargo and deposited it in ATA3. On an unknown date, respondent submitted a letter to the OAE, dated September 11, 2013, purportedly signed by Michael (Clarence Hawkins' son), in which Michael stated that Torres had met with him to review the Hawkins Estate account and he was aware that respondent had transferred funds from ATA3 that exceeded what respondent was required to safeguard for Hawkins. In the letter, Michael stated he had agreed to the $19,841.50 cash withdrawal. Michael also wrote that respondent was going to do a "complete review" of the Hawkins file because "it appears a [sic] significant more money

was spent than accounted for." The letter indicated that, after his review, respondent would "review his findings with [Michael] to obtain [his] approval to transfer the money back."

Also at an unknown time during the OAE's investigation, respondent submitted a letter from Michael, dated February 3, 2014, in which Michael stated that he had met with respondent and Torres that day to discuss the Hawkins Estate. Respondent explained to Michael that, after Hawkins had passed away:

> the amount of money that was transferred to the [Hawkins Estate account] was in error. After a careful review of all of my father's expenditures and legal fees the number originally transferred over was significantly more than what he had spent. I have reviewed these entries with Mr. Sanchez and agree with his accounting. I know of these expenses because at the time we lived together and I was present for many of the times that he made these requests for funds and for legal services. As a result [sic] Mr. Sanchez has advised me that the sum of $69,699.33 has to be transferred back to the original trust account where my father held his money.
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> [Ex.99.]

The OAE alleged that, after respondent received its September 10, 2015 demand audit letter, he directed his then-office manager, Shirley Sanchez (Shirley), to prepare a backdated letter, on old firm letterhead, on behalf of Michael, stating that he had met with Torres concerning the $19,841.50 cash withdrawal. The OAE did not allege that the February 3, 2014 letter Michael signed had also been prepared by Shirley. Respondent denied that he instructed

Shirley to prepare the September 11, 2013 letter and claimed that Shirley "never did any work for me directly. I had a personal paralegal. Michael Hawkins can verify when [sic] letter was written and that it was authorized."[9]

Four days later, on February 7, 2014, respondent issued a $69,699.33 check from the Hawkins Estate account and deposited it in ATA3. The September 2013 and February 2014 withdrawals, which totaled $89,540.83, resulted in a $5,166.67 shortage of funds respondent was required to hold in order to have a $0 balance on the Hawkins' ledger card.

Pursuant to the retainer agreement, Hawkins had agreed to pay respondent a $10,000, non-refundable fee and that respondent would bill him at a $300 per hour rate for "Civil Law Suit [sic] against Ann Johnson & Mr. Johnson." According to the retainer agreement, the hourly billing rate for respondent's two associates was $250 and his paralegal's rate was $100. Pursuant to the agreement, respondent also was required to provide Hawkins with periodic statements for services and disbursements.

[9] During the July 25, 2023 ethics hearing, Ashley explained that, approximately one week earlier, Michael attended a concert in a park and was "hit over the head from the back and knocked out – knocked unconscious and spent the night in the hospital." Respondent relayed to Ashley that Michael was not ready to testify but Ashley anticipated calling him as a witness at the September hearing date. Michael ultimately did not testify at the ethics hearing.

As depicted in the below chart, from July 2011 through May 2012, respondent deposited in ATA3 checks he had issued to himself for legal fees in the Hawkins matter, totaling $61,346.34.

Date Check Issued	Amount
July 25, 2011	$5,000
August 5, 2011	$5,100
August 15, 2011	$3,000
August 26, 2011	$5,000
September 9, 2011	$5,000
September 30, 2011	$10,000
October 7, 2011	$6,000
November 9, 2011	$10,000
November 11, 2011	$246.34
December 8, 2011	$10,000
April 13, 2012	$500
May 2, 2012	$1,500
Total	$61,346.34

The OAE alleged that respondent had failed to send Hawkins or Michael any statements for services and disbursements and failed to keep any billing records for 2011 through 2013. Rather, the OAE alleged that respondent's billing records began on September 20, 2013, and were handwritten. Similarly, the OAE alleged that the only information respondent had provided to Hawkins and Michael consisted of a letter stating that, "as a follow up to our discussion, I have reviewed the file and we are owed an excess of attorney's fees for work performed on your case," and respondent would then insert the amount of fees

he planned to withdraw from the Hawkins Estate. Those letters correlate to the dates respondent withdrew fees from July 2011 through May 2012.

However, respondent denied that he failed to send Hawkins or Michael statements and denied that he failed to keep billing records for the years 2011 through 2013. Rather, he appended to his amended verified answer typewritten documents titled "Time-Sheet: Attorney Fees," documenting work purportedly done on the matter from June 10, 2011 through March 11, 2013. Some of the timesheets were not signed, although some contained the signature of "Clarence Hawkins," or "Clarence M. Hawkins,"[10] or "C.H."

The Hawkins Estate records revealed that, as of September 4, 2015, respondent had disbursed to himself a total of $105,368.56 in legal fees, which often correlated with low balances in his ABA.

Check Number	Date Check Issued	Amount
99	October 22, 2013	$5,000
1005	February 27, 2014	$1,000
1006	September 24, 2014	$9,000
Cash	September 30, 2014	$13,000
3	August 12, 2015	$1,022.22
4	August 19, 2015	$5,000
5	August 27, 2015	$4,000
6	September 4, 2015	$6,000
Total		$44,022.22

[10] Clarence M. Hawkins is Michael, and he appears to have signed the timesheets even prior to Hawkins' passing.

For example, respondent's October 22, 2013 withdrawal of $5,000 from the Hawkins Estate account, and subsequent deposit of $5,000 in ABA4, increased ABA4's balance from $36.67 to $5,036.67.

Additionally, on September 11, 2014, respondent deposited $25,000 in the Hawkins Estate account, comprised of $10,000 in cash and a $15,000 check from the personal TD Bank account he shared with his father. Respondent wrote "repay loan" in the reference section of his personal check.

In another example of respondent transferring funds when his accounts had low balances, on September 24, 2014, when respondent withdrew $9,000 in legal fees from the Hawkins Estate account, ABA4 had a negative balance of (-$494.42). Despite ABA4's negative balance, he deposited the $9,000 in ABA1 the same date. The next day, on September 25, 2014, respondent issued a $9,000 check from ABA1 to A&A Auto Leasing. Respondent testified that A&A Auto Leasing was a company that Hawkins used to purchase a car for one of his sons; he was unsure why the check would have been issued from his ABA instead of the Hawkins Estate account.[11] It is not clear from the record why respondent would issue himself $9,000 in legal fees and then use the funds to purchase a car for one of Hawkins' sons.

[11] Hawkins passed away two years before respondent purportedly issued a check for Hawkins to purchase a car for one of his children.

Just five days later, on September 30, 2014, respondent withdrew $13,000 in cash from the Hawkins Estate account. Respondent did not deposit the $13,000 in any of his personal TD Bank or Wells Fargo accounts.

With respect to the Hawkins matter, respondent stated that Hawkins had retained him to retrieve funds, automobiles, and other belongings he had left with Johnson in Georgia. Hawkins purportedly left Georgia, "where he resided with his daughter [Johnson] because he was concerned she may have been exploiting him and using his money."

After respondent recovered Hawkins' $240,000, Hawkins asked respondent to hold the funds until respondent had completed work he needed done. Respondent explained that Hawkins was a person with impairments and that Michael helped Hawkins get around. Respondent also assisted Hawkins with "opening a bank account, getting an apartment, obtaining clothes and furniture, preparing a will and medical directive, transporting vehicles from Georgia, flying to Georgia to obtain his jewelry and sell his gun collection." Respondent stated that Hawkins also wanted his assistance "in filing a suit against his daughter in Georgia as he believed she had defrauded him of $500,000.00 and three vehicles he believed he owned."[12]

[12] There is no evidence in the record that respondent filed this lawsuit or that he recovered the $500,000 on behalf of Hawkins or the Hawkins Estate.

Respondent contended that, from June 10, 2011 through February 2012, Hawkins "was the focus of the office . . . [a]ll of this work is documented and was approved by the client." Respondent stated that each month, Hawkins and Michael "would come to my office where we would review his bill and expenses and have his son [Michael] sign off on the work performed." Respondent admitted that "with my absence from the office we did lose track of the amount of money Mr. Hawkins had spent."[13]

Upon Hawkins' passing on February 20, 2012, respondent was appointed the executor of the Hawkins Estate. More than one year later, on August 30, 2013, respondent opened the Hawkins Estate account and transferred $115,137.46 from his ATA to the account. Respondent asserted he later realized that he had transferred more money to the Hawkins Estate account than he held for Hawkins; accordingly, he transferred $89,510.83 (via two transfers) back to his trust account, representing the amount respondent had calculated as the overpayment.

Respondent stated he contacted Michael, reviewed the accounting errors with him, and explained to him that he would need to transfer the funds back to his trust account because they belonged to other clients; Michael then authorized

[13] Respondent did not offer an explanation as to how, if he met with Hawkins and Michael monthly, and had them sign off on monthly bills and expenses, he lost track of how much money he had provided to Hawkins to spend.

the return of the $89,510.83 to respondent's trust account. It is not clear whether this conversation is the same conversation to which Michael referred in his September 11, 2013 letter, wherein he stated that respondent had told him he mistakenly over-disbursed $69,699.33 from the Hawkins Estate.

Recordkeeping Violations

On September 19, 2012, the OAE conducted a demand audit of respondent's trust and business accounts. The audit revealed the following recordkeeping deficiencies:

- Failure to prepare monthly three-way reconciliations;
- Failure to maintain ATA receipts and disbursements journals;
- Failure to maintain running ATA checkbook balances;
- Failure to maintain separate client ledger cards for all client funds held in ATA;
- Inaccurate and incomplete client ledger cards;
- Cash withdrawals from the ATA;
- Electronic online transfers from the ATA without proper written documentation; and
- Personal funds commingled in the ATA.

Additionally, during its investigation, respondent told the OAE that he had instructed Torres to sign ATA checks with no supervision and that he permitted Torres to make electronic withdrawals from his ATA. Furthermore, respondent told the OAE that he permitted Torres to commingle client funds with non-client funds in his ATA.

Respondent denied the OAE's allegation that he failed to look at his bank statements or ledger cards to ensure client funds were being protected; rather, he claimed that he "periodically reviewed" them.

Respondent's Health Issues

In his amended verified answer, respondent explained that, in 2010, he was hospitalized for two weeks after experiencing "excruciating" pain in his lower back and was diagnosed with Polycystic Kidney Disease (PKD). According to respondent, PKD is a condition in which cysts grow on his kidneys, and which would ultimately require dialysis and, later, a kidney transplant. Occasionally, the cysts spontaneously ruptured and caused pain. Respondent was, again, hospitalized for three weeks in 2011, due to the severity of the pain he suffered when his cysts ruptured.

Respondent explained that "the pain became routine and when it happened it rendered [him] immobile and he would have to lay in bed for days until the

pain subsided." Eventually, his physicians prescribed medication to address the pain, and he grew addicted to opioids. His addiction lasted for a few years until, at his then-fiancé's request, he began to receive treatment.

Respondent contended that:

> most, if not all of operational and ethical problems that happened in the office occurred because Mr. Sanchez was unable to be present and when he was present he was not in the 'correct' frame of mind due to the opioid addiction. In 2011-2013 I was absent from the office about 50% of the work days. In 2014 I was absent some 33% of the time, which decreased in 2015 to about 25% of the time and in 2017 to about 20% of the time.
>
> [A,p.11.]

In 2013, Kevin Brister, C.A.D.C., began treating respondent for his substance abuse. As of February 25, 2013, Brister noted that respondent was concerned about his employment as an attorney and was attempting to reduce his usage of opioids. Indeed, Brister's treatment plan notes throughout 2013 indicated that respondent had been reducing his reliance upon opioids. Brister's notes also reflected that, during their monthly meetings, respondent was "coherent" and "lucid." Brister additionally noted that respondent had a "realistic understanding of how his addiction is affecting all facets of his life. Children, health, love[,] relationships[,] and work."

Notably, Brister's notes from his meeting with respondent on September 19, 2014 reflected that respondent "was in good spirits and seems to be

maintaining positive lifestyle and abstinence." The same date, Brister also wrote that respondent's pain gradually was subsiding.

In his February 13, 2015 treatment plan review, Brister noted that respondent had told him he had been "free of use for 'longer than he can remember."' However, respondent expressed that he was having financial difficulties.

Due to his PKD, respondent eventually was treated with dialysis and, on January 29, 2019, received a kidney transplant. See Sanchez III.

Included among the evidence that Ashley submitted on respondent's behalf after the ethics hearing in this matter had concluded was an expert report from Dr. Alexander Ivanov, M.D., dated July 16, 2018. Respondent did not offer Dr. Ivanov's testimony regarding the report.[14]

In preparation of his report, Dr. Ivanov reviewed a January 15, 2018 report from Brister, and Brister's treatment notes from January 25, 2013 through 2015. Dr. Ivanov also reviewed respondent's medical and nephrology records from 2011 through the date of his evaluation.

[14] In his October 14, 2020 prehearing report, Ashley asserted that one of the issues in the matter was "whether Respondent's debilitating medical condition, which was treated through the use of prescribed opioids, rendered and debilitated his mental faculties to the point he was unable and incapable of rationale clear thought and the exercising of his ethical and legal duties to his clients as an attorney." Ashley identified respondent's treating physician, as well as Dr. Ivanov, as witnesses that were going to testify on his behalf at the ethics hearing.

During his evaluation with Dr. Ivanov, respondent explained that, in the throes of his addiction to opioids, he "started to encounter financial problems" and began taking more opioids than prescribed. Respondent's physician did not increase his daily dose of opioids; consequently, "in order to relieve the pain and [to] increase his professional productivity Mr. Sanchez started to buy Oxycodone on his own."

In 2012, respondent's PKD "underwent spontaneous recovery and pains due to cysts' ruptures had decreased in frequency and intensity." Unfortunately, by that time, respondent was already addicted to opioids and "further personal and business problems resulted from his growing addiction."

However, respondent:

> neglect[ed] his professional responsibilities. He still would continue to excuse his absence from work by persistent pains. Financial status of his business still remained very unstable. He blamed himself for lack of 'will power' and 'betraying' his employees. At the same time he would avoid being involved in solving business problems.
>
> [SEAa,p4.]

Dr. Ivanov wrote that respondent:

> told me that around that time because of irregular flow of income he later learned that his dedicated office manager, who worked for him for many years, started to use money from the client's Trust Fund in order to mitigate periodic lack of available money on the business account without his knowledge. She felt sorry

> for his suffering. She also apparently would notice his inattention to solving business problems on his own.
>
> [Id.]

Respondent also told Dr. Ivanov that "he avoided both paying attention to business problems and assumed if there was not enough finances eventually he would learn the business was closed or staff could not be paid."

Respondent told Dr. Ivanov that he has been abstinent from any opioids since November 2014.

With respect to the use of opioids, Dr. Ivanov opined that, in his professional experience, opioids can evoke a feeling of "all problems being taken care of," which he described as an "anti-anxiety effect." Although opioids may infrequently cause temporary sedation, which "may interfere with an individual's functioning," Dr. Ivanov explained that "it is also [a] known fact that opioid-containing substances *per se* do not adversely affect any bodily functions 'below brain level.'" Yet, opioids may impact a user's appearance and hygiene, so-called "self-neglect."

However, Dr. Ivanov opined that, when an individual takes opioids strictly for pain management, "they very rarely lead to opioid addiction" and can take opioids for decades without needing to increase their dose. However, individuals who take opioids to "improve their mood" and achieve a sense of euphoria, or

alternatively reduce symptoms of anxiety or depression, usually need to rapidly increase their dose of opioids. Thus, Dr. Ivanov wrote that it was his:

> professional opinion somewhere in 2010 and 2011 Mr. Sanchez started to suffer from quite a significant degree of chronic anxiety and later depression. Growing family and business problems and worrying about the future caused anxiety. At that time he also was diagnosed with Hypertension, which most likely also manifested as a result of chronic stress. Due to his personality traits Mr. Sanchez did not seek psychiatric help. He considered pain to be his main problem.
>
> [SEAa,p4.]

Dr. Ivanov opined that, as of the time he evaluated respondent, his psychiatric condition was not interfering with his professional performance.

The Ethics Proceeding

Procedural History

On October 31, 2017, the OAE filed a formal ethics complaint against respondent. On January 18, 2018, respondent filed a non-conforming answer to the ethics complaint. Consequently, the OAE directed him to file an amended, conforming verified answer. On February 21, 2018, respondent filed an amended verified answer to the formal ethics complaint. Thomas R. Ashley, Esq., respondent's counsel at the time, signed the amended verified answer and

attached the required verification, signed by respondent and dated January 30, 2018.

The Ethics Hearing

In his amended verified answer, stipulation, and throughout the ethics hearing, respondent did not deny that the underlying financial transactions occurred, but insisted, for nearly each transaction, that he "did not cause or permit this; it was done solely by my office manager without my knowledge." However, during his testimony, respondent specifically acknowledged signing checks related to the Sanders matter.

Indeed, during the ethics hearing, respondent testified that he knew, under the Court Rules, that Torres was not permitted to sign ATA checks; respondent testified that he also knew Saunders was not authorized to sign ATA checks and that he had not granted him signatory authority. Respondent explained that, "without me being there, no, I don't know how" his office rent would have been paid, since he was the only one with signatory authority over his ATAs.

However, respondent also conversely testified that he had authorized Saunders to sign ATA checks and to oversee trust account usage. He also told the OAE, during its investigation, that he granted Torres authority to issue ATA checks.

Additionally, respondent testified that, notwithstanding his illness, either his office staff would bring him ATA checks to sign or he would sign them when he was physically present in the office. Respondent elaborated that, with respect to the Kessler and Fund liens in the Sanders matter, even though Cedeno worked on that matter, Torres "came to me. And I am guilty of not fully understanding the distributions. But I did sign them. Not with the intention to deprive or to – to invade a fund, but they came to me with the checks for – to satisfy this estate and I signed off on them." Respondent did not offer any evidence or explanation as to why Torres would approach him to sign only some client checks but would independently write and forge respondent's signature for other client matters.

Regarding the frequency with which respondent was physically present in his office, he testified that it was between thirty and fifty percent of the time because he had Spanish-speaking clients and met with Saunders to "go over things." During those meetings, Saunders "advised [him] that they needed money, and [respondent] did give them some money." However, respondent denied that the firm was having financial troubles at the time. The record does not resolve the tension between the firm requiring funds at the same time it was doing well financially. Nevertheless, respondent testified that he understood that "invasion" meant "when another – other clients' funds are deprived due to either error or intentional – an intentional act of using their money. [. . .] I look at the

bank records and I can see that the money was taken out, and it shouldn't have been." Furthermore, the timesheets respondent provided in the Hawkins matter alone reflected he was either physically in the office or working on cases on a regular basis.

However, respondent testified that, despite his condition, he learned in the summer or fall of 2013 that, by transferring funds from his ATA to the Hawkins Estate account, he had invaded the funds of seventeen other clients. Respondent did not notify any of the seventeen clients whose funds he had invaded. Respondent explained that he did not inform the clients because he was "limited in [his] capacity" and relied on Saunders, but did not know whether Saunders informed the clients of the invasions. There is no evidence in the record demonstrating that respondent followed up with Saunders during any of their meetings to ensure Saunders informed the clients of the invasions. Yet, respondent testified that Torres or Saunders brought the invasions to his attention and respondent "started looking into it trying to figure out how to fix it with Mr. Saunders." Respondent also testified that, when he learned of the overdraft, he "continued digging" into how it occurred and had both Saunders and Torres helping him. Respondent contended at that time, he "didn't know if it was a mistake that maybe [Torres] had done, but then after – you know, I wasn't sure." Furthermore, respondent testified he would meet regularly with

Saunders because Saunders would call him, visit him at his home, or respondent would go to the office. While in the office, respondent would meet with Torres and they would "go over not just these files. As you can see, there are a lot of other monies in the account. We would just discuss issues. And that's – that's what we did."

Although respondent acknowledged he had instructed Torres to return $19,841.50 to ATA3 from the Hawkins Estate, and acknowledged that the transaction occurred, he denied instructing Torres to withdraw the funds in cash or to purchase a cashier's check with the cash withdrawn from his ATA.

With respect to the work his firm completed on the Hawkins matter, respondent testified that, even if another attorney worked on the file, he billed Hawkins at his own higher hourly rate, something respondent characterized as an "oversight."

Regarding his silence to the OAE concerning Saunders and his purported role in overseeing respondent's trust and business accounts and firm at the time of the alleged misconduct and incapacitation, respondent testified that he did not mention Saunders to the OAE because after the OAE began investigating, he, too:

> started investigating and I spoke to Darryl and Vilma and other staff, I realized what happened. And at that time, I was not going to throw Darryl under the bus because he was doing me a favor. I – but I can – I mean,

> I'm being forthright. I did not authorize this. It doesn't – it doesn't even look like something an attorney would do. But I did not authorize it.
>
> [4T17.]

When asked to clarify what he did not authorize, respondent testified: "That was – I was owed money. Remember, my father and I loaned money to the office. I don't know if they were trying to pay me back. I never got a straight answer. But I did not authorize them to deposit this money in that account." Respondent did not identify who deposited the Sanders ATA checks in the personal account he held with his father. Furthermore, when he was asked why he failed to mention Saunders to the OAE during its investigation, respondent testified that Saunders:

> came to me when Covid started and he – he came to my house and he told me that he wanted – he didn't feel right that I was going through this and he wanted to talk to someone at the OAE. And I said, well, you know, we discussed what. He said, I want to tell them what really happened. And I – I never told him not to. I didn't – I didn't compel him to do it. He wanted to do it voluntarily, you know. And I said that's fine. So I said, you know, talk to them.
>
> [4T76.]

However, the OAE had already interviewed Saunders at least five years earlier, in 2015. Saunders told the OAE that he was an associate who worked in the firm.

Additionally, respondent testified that, after the OAE commenced its investigation, he tried to speak with Torres about whether she was the one who signed the checks at issue, but that "she didn't really want to discuss it." Notwithstanding his testimony that Torres did not wish to discuss the checks with him after the OAE commenced its investigation, respondent clarified that, when he learned, in the summer of 2013, that his accounts had been overdrawn, even though Torres was no longer working at the firm, he spoke with her, and:

> she didn't outright say this, but she alluded to the fact that she wasn't being supervised, she was all of a sudden responsible for a staff of six or seven, and she really didn't think it was a big deal to, like I said, borrow from Paul to pay Peter. She said, Rod, I never stole anything, but, you know, I wasn't getting much guidance.
>
> [4T29.]

Additionally, respondent testified that he and his father had loaned money to the office, but that if he "needed money, Darryl would you know, give me money from the office." It is not clear from the record why respondent, who did not grant Saunders signatory authority on the firm accounts, would ask Saunders for funds from the office when he needed money, instead of merely issuing himself funds to which he was entitled.

With respect to the recordkeeping violations, respondent admitted that his books were deficient; however, he maintained that, from 2016 through the present, he had reconciled his books and ensured proper bookkeeping.[15]

Saunders also testified during the ethics hearing. During his July 24, 2023 testimony, he stated that respondent was a friend of his and that he continued to work on cases for respondent.[16] Saunders explained that, during respondent's illness, he was present in respondent's firm on a more permanent basis because respondent was not frequently in the office. However, Saunders himself was rarely in the office because he "was in court literally every day. If [he] got an office day or two in a month during the year, it would have been a holiday for [him]." Nevertheless, Saunders testified that he volunteered to supervise

[15] Respondent did not mention that, at the time of his testimony, the OAE had investigated a 2021 overdraft in his account, identified six deficiencies, and had filed a formal ethics complaint based on deficient recordkeeping, for which he was ultimately reprimanded. See Sanchez III. Notably, in that matter, just as in the instant matter, respondent claimed that he arranged for his office manager and another attorney at the firm to continue operating the firm in his absence, and that the office manager mistakenly transferred too much money from his ATA to his ABA, resulting in the invasion of client funds in fourteen matters. Three days after testifying he had maintained proper bookkeeping since 2016 in this matter, respondent signed an amended verified answer in Sanchez III admitting he violated R. 1:21-6. Despite six additional days of ethics hearings in the instant matter, respondent did not seek to correct his testimony.

[16] Effective April 2, 2020, the Court temporarily suspended Saunders for his failure to pay a fee arbitration award. See In re Saunders, 241 N.J. 222 (2020). He has not sought reinstatement from that temporary suspension. Effective May 24, 2021, he was temporarily suspended again due to his failure to pay a second fee arbitration award. See In re Saunders, __ N.J. __ (2021). Four months later, on September 13, 2021, the Court suspended Saunders for three months for mishandling a client's matter. See In re Saunders, 248 N.J. 273 (2021). Finally, on May 30, 2023, less than two months before his testimony, the Court suspended Saunders for six months, effective June 19, 2023, for his violations of RPC 1.3; RPC 1.16(d); RPC 8.4(b); and RPC 8.4(c). See In re Saunders, 254 N.J. 49 (2023).

respondent's office staff because he had been a partner in a different firm and believed he could manage respondent's office. However, Saunders testified that, "after looking at the charges, and I don't know, these four – two, three, four cases out of hundreds that we had at the time, I dropped the ball."

Saunders testified that he "read every inch" of the complaint against respondent, denied that he had watched Torres write any checks, but stated that he knew the checks went out and "the lights stayed on. I know that nobody lost any money. I mean, that's what I can say." Saunders clarified that he did not "stand over" Torres when she wrote checks, but they spoke on the telephone, and she would say to him "this is what I need. I said go ahead, get the checks out, and she did it." Saunders denied knowing that Torres signed trust account checks but explained that he would not have known at the time that she was prohibited from issuing checks from the firm's trust accounts. Saunders testified that, at the time, he trusted Torres "implicitly, completely, and I still do."

Walter Piccolo, Esq., also testified during the hearing. Piccolo testified that he worked for respondent from approximately 2012 through 2016 and that, during those four years, they also socialized outside of the office. Piccolo testified that respondent "looked fine" to him and that he never noticed anything out of the ordinary. Furthermore, Piccolo testified that respondent was in the

office "pretty much every day." Piccolo was aware respondent had issues with his kidneys, but never knew that respondent had been hospitalized.

Eventually, Piccolo left the firm. He also instructed Torres to make payments in his personal injury matters and witnesses that when she did, she issued business account checks, which he believed was a "big red mark on the firm." Finally, Piccolo testified that, whenever the Johnson brothers would appear at the office for their payment, that was respondent's "cue to leave the office" and Piccolo "would get left dealing with" them.

To rebut Piccolo's testimony, respondent called Tara Villanueva as a witness. She worked in respondent's office, spending half of her time as a receptionist and the other half handling police reports. Villanueva testified that respondent usually was in the office every day, but that changed in 2012. Although Villanueva did not specify how frequently respondent was absent from the office beginning in 2012, she testified that it was around the same time that his appearance changed, his communication became unclear, and she had to ask Saunders or Torres for things. She believed that respondent was abusing substances because his presentation was similar to her brother, whom she knew to abuse substances.

The OAE investigator testified during the ethics hearing that, as a part of the investigation, he had interviewed respondent twice – once in 2015 and once

in 2016. The investigator testified that respondent told the OAE that he had "instructed Ms. Torres to issue whatever trust account checks she needed in the daily running of the business." Even though the OAE asked respondent to explain the overall operation of his office, the investigator denied that respondent spoke about Saunders except to mention that he was an associate who had once worked at the firm and with whom he later formed a partnership. The investigator denied that respondent ever told the OAE he granted Saunders supervisory authority over office staff.

Additionally, the investigator testified that respondent did not mention any kidney problems during the interviews; rather, the OAE learned about respondent's PKD after it filed a formal ethics complaint and he provided his medical records. After receiving the medical records, the investigator did not attempt to reconcile the dates of respondent's illness with the dates of the alleged misconduct.

Respondent offered as mitigating factors that he had one prior fee arbitration matter and one disciplinary matter;[17] that he was relatively inexperienced;[18] he did not cause financial harm to any client; he was no longer

[17] Prior discipline is an aggravating, not mitigating factor. Furthermore, at the time the complaint in this matter was filed, respondent already had been disciplined twice, not once.

[18] The misconduct described herein began one year after respondent received a censure, ten years after he was admitted to the New Jersey bar.

dependent upon pain medication; there was a lengthy period of time between his drug abuse and the ethics charges; at the time of the misconduct, his capacity was diminished due to his drug abuse and any misappropriation was not knowing; he made restitution "immediately" upon discovering the misappropriations; and he had a history of volunteer and mentoring activities.

The Parties' Post-Hearing Submissions

Respondent's Post-Hearing Submission

In October 2023, after the OAE and respondent rested their cases and the record was closed, Ashley submitted over 1,600 pages of respondent's medical records. Indeed, on October 27, 2023, Ashley indicated that, within thirty days, he could produce a medical professional to evaluate respondent's medical records and Dr. Ivanov's July 16, 2018 report. Initially, the OAE objected to respondent's submission of the medical records but, ultimately, consented to the admission of a revised submission of 293 pages of medical records, as well as Dr. Ivanov's report. Specifically, the OAE noted that Ashley had not "appropriately sought to admit the medical records and the OAE does not waive its right to include in its closing brief, among other things, inferences to be drawn and relevance." However, the OAE conceded that, if Dr. Ivanov had been

called to testify during the hearing, his report would have been admitted into evidence. Therefore, Dr. Ivanov's report was admitted into evidence.

The OAE's Written Summation

The OAE, in its January 30, 2024 written summation, argued that respondent had knowingly misappropriated client and escrow funds, in violation of RPC 1.15(a), Wilson, Hollendonner, and In re Skevin, 104 N.J. 476 (1986), which warranted his disbarment. The OAE relied on the facts set forth in its complaint, as well as the admissions respondent made in his stipulation and amended verified answer.

Specifically, the OAE argued that respondent's repeated admissions that financial misconduct had occurred, but that Torres had acted without his knowledge, was belied by the admissions in his amended verified answer, as well as prehearing stipulations, that he had instructed or allowed Torres to sign ATA checks with no supervision. The OAE also contended that Dr. Ivanov's report supported its argument that respondent intentionally avoided paying attention to his business problems, which constituted willful blindness under Skevin.

The OAE asserted that respondent's firm was "an anything goes operation," and that he used "client monies to pay bills and expenses, with Respondent intentionally turning a blind eye to the goings on in his firm."

Relying on Skevin, the OAE argued that, in knowing misappropriation cases, knowledge can be inferred if an attorney is willfully blind or ignorant to the risk of the misappropriation of client funds. The OAE argued that respondent failed to provide any medical evidence that his PKD or substance abuse issues caused a "loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful." Thus, the OAE asserted that respondent failed to satisfy the test as set forth in In re Jacob, 95 N.J. 132, 137 (1984) (a demonstration by competent medical proofs that the attorney "suffered a loss of competency or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful"). Furthermore, the OAE contended that respondent offered no evidence to demonstrate he "could not appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong." See In re Cozzarelli, 225 N.J. 16, 31 (2016) ("[a] mental illness that impairs the mind and deprives [an attorney] of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong").

Additionally, the OAE relied on In re Cavuto, 160 N.J. 185, 196 (1999) (noting that the circumstantial evidence clearly and convincingly established that the attorney knew or had to know that he had repeatedly invaded client funds that were to be kept inviolate), to argue that circumstantial evidence can lead to a finding that an attorney knew, or had to know, client funds were being invaded.

The OAE maintained that, under Wilson, to establish that respondent committed knowing misappropriation, it must prove three elements. Specifically, the OAE asserted that it must prove that the attorney took client money that was entrusted to the attorney; that the attorney knew it was client money; and that the attorney knew the client did not authorize the taking. The OAE emphasized:

> respondent does not dispute that he took client funds and therefore the first element of knowledge is established. Further, Respondent does not dispute that he did not have the authority to use the client funds and the third element is therefore established. At issue is the second element of knowledge: whether Respondent knew that the money that he was taking was client funds.
>
> [OAES,p36.]

To that end, the OAE argued respondent's denials were "incredible" and not fatal to a finding that he knowingly misappropriated client funds. The OAE contended that respondent and his firm had used client funds as if they belonged to the firm and he failed to implement any controls to protect the client funds he

held in trust. Instead, the OAE argued, he used client funds "as if they were his own personal piggy bank, with contempt for the Rules of Professional Conduct [sic] and indifference to the possible consequences." The OAE rejected respondent's "feigned ignorance of his responsibilities." Rather, the OAE insisted respondent was willfully blind to the fact that client funds were being invaded.

Thus, the OAE argued it had proven, by clear and convincing evidence, that respondent knowingly misappropriated escrow and client funds, which necessitated his disbarment under Wilson and Hollendonner.

Respondent's Written Summation

In his January 30, 2024 summation brief, respondent stated that he never gave trust account authority to any firm attorney or employee. Despite retaining trust account authority for himself, respondent contended Torres "would borrow money and sign Mr. Sanchez's names to trust account checks in order to pay for firm expenses and overdue bills including payroll. Ms. Torres also replenished the missing funds by depositing future earned income into the account." Further, respondent argued he was a "victim of circumstances only partially of his own doing" due to his PKD and addiction to opioids.

Contrary to his own testimony during the ethics hearing, respondent asserted it was after the OAE randomly audited his records[19] that he became aware of Torres' accounting errors. Respondent repeated he was "totally unaware" of any irregularities in his ATAs until the OAE's 2015 random audit.

With respect to the factual allegations contained in the OAE's complaint, respondent mirrored his statements in his stipulation – that the financial misconduct occurred but was done without his knowledge.

However, respondent argued that he had proven, by clear and convincing evidence, that his "grave medical condition was causally connected to the purported accounting errors." Respondent contended his testimony, along with the medical records submitted, created a "total defense" to the allegations that he knowingly misappropriated client funds. Respondent explained:

> during the relevant time period [respondent] suffered from the extremely serious kidney disease of Polycystic Kidney Disease (PKD) which caused him great pain. This disease led to his addiction to prescription opioids which clouded his judgment and prevented him from properly keeping the appropriate check-and-balances on his law firm. The addiction was the direct result of the prescriptions given by the hospital and doctors after the diagnoses of PKD (this was in the midst of the opioid crisis in America).
>
> [RS,p78.]

[19] Respondent testified he had become aware of the invasion of seventeen client's funds in the summer of 2013.

Respondent contended that he had appointed Saunders to manage his firm while he recovered from his health and substance abuse issues; however, Saunders "made no attempts to keep Mr. Sanchez well informed as to what was happening with the firm and he let the office manager Ms. Torres do whatever she pleased with the trust account."[20]

In disputing his own willful blindness to abuses of his ATAs, respondent argued that "it was Mr. Saunders' willful blindness and lack of keeping an accurate accounting that led to the 'misappropriation' of client funds. It was Mr. Saunders' failure to keep Mr. Sanchez apprised as to the accounting procedures utilized that led to accounting irregularities."

Respondent contended his original accounting practices were "good," and that Saunders and Torres misrepresented to him that "everything was fine" with the firm's trust accounts. Thus, respondent argued, based on the facts of this matter, to punish him would be contrary to Wilson because Wilson "was not meant to overlook an attorney such as Mr. Saunders who is actually at fault for any misappropriation and to punish an incapacitated attorney such as Mr. Sanchez who placed Mr. Saunders in place to prevent what happened from happening."

[20] During the ethics hearing, respondent repeatedly testified that he had met with Saunders in the office, spoke with him via telephone, or Saunders visited him at home to keep him updated about cases and presented him with trust account checks to sign.

Consequently, respondent urged that, if he received discipline at all, it should be minimal.

Post-Hearing Arguments Relating to Respondent's Answers

Background

Three years before the ethics hearing in this matter commenced, Ashley provided the OAE and the SEA with respondent's "PREHEARING FACTUAL STIPULATIONS/ADMISSIONS," dated November 2, 2020. The document generally reflected the same information contained in respondent's amended verified answer and bore an electronic signature of "/s/."

Once the ethics hearing began, on July 12, 2023, at the outset of the OAE's questioning of respondent, it referred to the admissions he had made in his February 21, 2018 amended verified answer. When asked to confirm that he had admitted paying himself $56,670.50 more than he was entitled for legal fees in the Johnson Estate matter, respondent replied that "the one I have shows – says, 'Denied.'" Ashley then clarified that "there were two answers" and that respondent was looking at his:

> initial answer to the initial complaint which really alleged the same thing. That's what I think. And I'm not – you know, I just say that because there are two different answers to the same paragraph. And I think that that's maybe the source of the – of his at least

> statement that appears to be different from his initial response.
>
> [1T65.]

The OAE indicated that if respondent had two answers, "that creates a problem," but Ashley indicated that "it could be a mistake. But I'm just saying that that's – whether it's a knowing contradiction or whether it was a mistake." Ashley further elaborated that:

> on January 31st, 2018, there's a document which was filed on behalf of Mr. Sanchez from my office which is entitled, verified answer to ethics complaint. [. . .] And in that, the answer to Number 15 is denied. [. . .] So then we have a second answer which is now directed to [the OAE]. This is dated February the 21st, 2018. And – and this, again, is please accept the within as constituting the amended verified answer. And that's the one to which the Office of Attorney Ethics counsel is referring. And there it says 15 is admitted. And so just for the record, and I'll have Mr. Sanchez explain himself when I cross-examine him, but for the record there are in effect two answers. One is – both are verified. One is where it says admitted and one where it says denied.[21]
>
> [1T65-1T67.]

After a break in the hearing, the OAE confirmed that respondent had initially provided a non-conforming verified answer to the ethics complaint, and

[21] The OAE filed its formal ethics complaint on October 31, 2017, thus, under R. 1:20-4(e) and (f), respondent's first, non-conforming answer was filed past the twenty-one days allotted by the Rule.

later submitted the February 21, 2018 amended verified answer. Ashley, who prepared the amended verified answer, asked "So who said it was noncompliant?" When the OAE replied, stating that it had provided him with correspondence indicating the January 31, 2018 answer was non-conforming, Ashley indicated "Oh, so that's what it was. Okay."

Also during the break, the OAE provided respondent with a copy of his amended verified answer. Respondent indicated he discussed it with Ashley and that any admissions contained in the amended verified answer were an error because he "was not the causing agent." He indicated that his signature on the verification page was a mistake and that the document had been prepared by someone else.

Nevertheless, throughout its questioning of respondent during the ethics hearing, the OAE relied upon his February 21, 2018 amended verified answer.

During the ethics hearing and thereafter, respondent took varying positions with respect to his answer, amended answer, and stipulations that he submitted during the nearly nine-year-long ethics matter.

Pursuant to R. 1:20-4(e) and (f), respondents are required to file conforming, verified answers to formal ethics complaints within twenty-one days after service of the complaint or within ten days of receiving notice that an answer is non-conforming and that a failure to do so deems that failure as an

admission that the allegations in the complaint are true. In this matter, the OAE asserted that respondent's original answer was non-conforming, and thus, instructed him to submit an amended, conforming answer. On February 21, 2018, he did so. Two years later, on November 20, 2020, which was nearly three years prior to the commencement of the ethics hearing, Ashley submitted prehearing admissions and stipulations on behalf of respondent, which generally adopted the admissions respondent made in his amended verified answer. At no point before the hearing did respondent or Ashley seek to correct or repudiate any perceived inaccuracies in either document. Moreover, after each party rested their case, neither Ashley nor respondent filed a formal motion seeking relief with respect to the amended verified answer.

Despite the confusion on the first day of the ethics hearing regarding whether respondent's original or amended answer controlled, throughout the proceedings, the OAE relied upon respondent's amended verified answer, due to the original answer not conforming to R. 1:20-4(e).

Indeed, notwithstanding respondent's post-hearing assertions that the amended answer or stipulation did not reflect his testimony during the hearing, his testimony during the hearing was consistent with the general position he took in his stipulation – that the alleged conduct occurred, but that he believed his office manager and/or Saunders engaged in the financial misconduct.

Written Submissions

In his February 12, 2024 brief, submitted in response to the OAE's written summation, respondent, through Ashley, disputed the OAE's characterization that he had admitted many of the essential facts in his amended verified answer and stipulation. Respondent argued the OAE incorrectly stated Torres had no supervision because he thought Saunders was supervising her.

With respect to the initial confusion, seven months earlier, regarding respondent's answer to the formal ethics complaint, Ashley wrote that following the ethics hearing, "it became apparent that Mr. Sanchez had never received or reviewed and/or signed the Amended Verified Answer." Ashley explained the amended verified answer was prepared by a paralegal, Chris Alevras,[22] who also owned CGA Associates, "who worked independently in Mr. Ashley's Office in assisting in the preparation of briefs and responses to the various complaints. Specifically in this case he was tasked with the responsibility of preparing the Amended Answer to the complaint."[23] In his letter reply, Ashley accused Alevras of attaching the signature page from respondent's original answer to the

[22] In his post-hearing summations, Ashley referred to Alevras as a paralegal, but also an associate at his firm. However, CAMS does not reflect Alevras has ever been licensed to practice law in New Jersey.

[23] The record does not contain an explanation as to whether Ashley supervised Alevras' conduct or reviewed the amended verified answer he assigned to Alevras prior to its submission to the OAE.

amended answer. Thus, Ashley asserted any mistakes in the amended answer were made by Alevras.[24]

Respondent contended the OAE's reliance upon Skevin was misplaced because "there was no willful blindness here." Further, respondent objected to the OAE's statement that he failed to satisfy the Jacob standard, citing his own statement from his January 30, 2024 brief that his medical condition was causally connected to the purported accounting errors.

The same date that respondent submitted his reply brief, the OAE sent the SEA a letter objecting to the portions of respondent's reply brief that referenced Alevras' alleged negligent preparation of respondent's amended verified answer. The OAE argued the information was outside the record and requested that it be stricken.

On March 15, 2024, the SEA heard argument on the OAE's objection to respondent's February 12, 2024 brief. The OAE maintained that, if respondent wished to repudiate his amended answer, it would request that the matter proceed via a default under R. 1:20-4(f), since his original answer was non-conforming.

[24] Ashley did not offer an explanation as to why those same admissions, which he characterized as mistakes, were made on November 20, 2020.

Accordingly, by letter dated March 27, 2024, the OAE identified the portions of respondent's February 12, 2024 reply brief that were not based on the testimony or evidence admitted during the hearing and which it argued should be stricken. Appended to the OAE's letter was a copy of respondent's February 12, 2024 brief, containing redactions for the portions the OAE wanted stricken from the record.

Subsequently, the SEA struck the information contained in respondent's brief that was outside the record. Nevertheless, on April 1, 2024, Ashley sent a letter to the SEA seeking to "clarify answers that were set forth in the amended verified answer to the ethics complaint [sic] dated February 21, 2018." Ashley, again, asserted that respondent's original answer should control in the ethics matter because it was consistent with his testimony at the hearing. Indeed, in his April 1, 2024 letter, Ashley reiterated his position that the statements of "admitted" in the amended verified answer were "erroneous" or "incorrect."

In the letter, respondent urged the SEA to consider only his original answer because the amended verified answer "contains obvious errors which are not contained in the original answer." Further, Ashley mistakenly argued the SEA "decided [he] did not want to hear respondent's position with respect to the reasons why the Amended Verified Answer differs from the original answer." That statement ignored the SEA's explicit statement during the July 12, 2023

hearing that Ashley would have an opportunity to develop that line of testimony during the hearing. However, he did not do so. Instead, in the April 1, 2024 letter, Ashley contended that the original answer and amended answer differed due to the twenty-one-day interval between filings, and thus "it is doubtful that the respondent's original answer would have so radically changed in 21 days."

On April 26, 2024, the OAE replied to respondent's letter, arguing "there was no noted opposition to the requested portions of the prior brief to be stricken," so the OAE considered the issue concluded. The OAE asserted that, in his letter, respondent inappropriately urged The SEA to exclusively consider his original, non-conforming answer.

The OAE maintained that respondent's persistent attempts to "argue these purported issues post-hearing is wholly inappropriate and inconsistent with the well-established disciplinary precedent which prohibits gamesmanship in connection with the filing of answers to disciplinary complaints." Indeed, the OAE argued that respondent waived his right to have the sufficiency of his original answer adjudicated by a special ethics adjudicator or hearing panel. The OAE cited In the Matter of David Richard Cubby, Jr., DRB 20-304 (August 3, 2021) to argue that, after the OAE informed him in 2018 that his original answer

was non-conforming, he could have requested a hearing.[25] He failed to do so and, instead, filed an amended verified answer, which negated any legal effect of his original answer.

Further, the OAE noted that respondent's November 20, 2020 stipulation mirrored his amended verified answer and, prior to the commencement of the ethics hearing, the OAE had submitted a binder to Ashley containing the exhibits that the OAE intended to rely on during the hearing, which included respondent's amended verified answer. The OAE noted that respondent did not object to the OAE's exhibit binder and, instead, on the first day of the ethics hearing, confirmed the admissions in his stipulation.

Later, on June 29, 2024, despite being represented by counsel, respondent submitted a pro se letter to the SEA in support of his original answer. In his letter, respondent explained that he had reviewed both answers, as well as the stipulation that Alevras, whom he referred to as an associate at Ashley's firm, prepared. Respondent asserted that both contained significant mistakes. He maintained that "in the Original Answer I was consulted and advised by Mr.

[25] We decided Cubby more than three years after respondent filed his original and amended verified answers. However, the procedure we recognized in Cubby was consistent with the precedent set in In the Matter of Peter Jonathan Cresci, DRB 17-270 (October 23, 2017), wherein we determined that the OAE may not deem an attorney to be in default because his or her answer failed to comply with In re Gavel, 22 N.J. 248 (1956), and R. 1:20-4(e). Rather, the more appropriate course of action is to assign the matter to a special ethics adjudicator or ethics panel, who may schedule a prehearing conference where the sufficiency of the attorney's answer may be addressed.

Alevras, who I believed to be an attorney, that admitting to some charges was necessary because it occurred at my office and I was ultimately responsible whether I had knowledge of the accusations or not." Respondent maintained he "never saw, reviewed, or signed the Amended Answer nor the stipulation." He asserted that at that time, he was difficult to reach because he was on dialysis and later had a kidney transplant.[26] Respondent sent the letter, via e-mail, to the SEA with a courtesy copy to Ashley and the OAE.

Respondent's pro se letter did not address Ashley's performance during the ethics hearing and did not request an opportunity to supplement the record with any evidence – medical or otherwise. Respondent also did not request that the SEA reopen the record to discuss the issue of Alevras' preparation of his answer. To the contrary, respondent wrote that Ashley had "since submitted my a [sic] response to the charges that I acknowledge and accept responsibility."

Via a July 1, 2024 e-mail, the SEA indicated he had received the letter but believed he should not communicate directly with respondent because he was represented by counsel. The SEA invited the parties to submit comments in reply to respondent's pro se letter to resolve "whether and/or how to handle" respondent's pro se repudiation of the stipulations.

[26] Respondent received his kidney transplant almost one year after submitting his amended verified answer. See Sanchez III.

Accordingly, on July 8, 2024, nearly one year after the ethics hearing commenced, Ashley submitted another letter reaffirming his request that respondent's original answer control in the ethics matter against respondent. Ashley argued his April 1, 2024 letter was a repudiation of both the amended verified answer and stipulation because they were inconsistent with respondent's position throughout the hearing. Notably, neither respondent nor Ashley filed a motion to vacate his answer or challenge its sufficiency under the Cresci procedure, which occurs prior to a matter proceeding to hearing.

By letter dated July 11, 2024, the OAE reiterated its position that respondent's amended verified answer legally superseded his original answer and thus, his original answer should not be considered in the ethics proceedings. Consequently, the OAE urged that the ethics matter come to a conclusion.

In his July 15, 2024 reply, Ashely again asserted that Alvares had mistakenly prepared the amended verified answer. Ashley maintained that, if respondent had admitted to the facts, as set forth in the stipulation, there would have been no need for a hearing. Further, Ashley explained he did not object to his client's stipulations and admissions "because Respondent and Counsel assumed that the Stipulation would reflect the positions set forth in respondent's original Verified Complaint [sic] and his testimony. We reviewed both during the hearing for the first time, and attempted to address the discrepancies and the

reasons for same." Thus, Ashley argued that, based on respondent's testimony and his original answer, there was no way the SEA could conclude that respondent was complicit in any transaction that would have violated Wilson.

The SEA's Findings

On August 23, 2024, the SEA issued his report and recommendation, concluding that the OAE had proven, by clear and convincing evidence, that respondent's willful blindness led to the knowing misappropriation of client funds, which required his disbarment.

Preliminarily, the SEA found that respondent's amended verified answer superseded his original answer. He also found that respondent's stipulations reflected his amended answer. Importantly, the SEA noted he did not wish to decide a knowing misappropriation matter on procedural technicalities, but he did:

> not believe that the OAE should be prejudiced by its reliance on an Amended Verified Answer as opposed to the original one, and the Stipulation of Admissions that were not repudiated until after the production of evidence was completed. In fact the Stipulation was not repudiated until June 29, 2024 when Respondent himself wrote a letter after the record was closed. [. . .] In any event, given my conclusions even without consideration of the Amended Verified Answer and Stipulation, I need not decide the procedural question.
>
> [SEAR,p3.]

The SEA found that, notwithstanding respondent's attempted repudiation of his amended answer and stipulation, there was no disagreement that the underlying financial transactions had occurred and, further, that:

> the undisputed proofs regarding transfer and use of trust funds, together with the evidence, including testimony, presented at the hearings lead me to conclude, by clear and convincing evidence, that there was a violation of RPC 1.15(a) as a result of 'willful blindness,' and that the disbarment requirement of In re Wilson applies."
>
> [SEAR,pp5-6.]

In the SEA's view, respondent's knowledge, in the summer or fall of 2013, that client funds had been invaded and his failure to do anything about it was dispositive. The SEA credited respondent's testimony that he regularly spoke to and met with both Saunders and Torres, "but apparently asked nothing about the reasons for the 'invasion' and did nothing about it because 'all 2013 was not a good time for me.'"

The SEA also credited the OAE investigator's testimony regarding respondent's admission to the OAE that he had authorized Torres to sign trust account checks. The SEA found the investigator's testimony "extremely significant," particularly in light of respondent's testimony denying that he had granted Torres that authority and that he didn't know Torres was signing the checks.

Furthermore, the SEA found that, in addition to his misappropriations in the Hawkins and Williams matters, respondent had received legal fees in the Johnson Estate matter before he had disbursed funds to the beneficiaries. In addition, with respect to the Sanders matter, the SEA concluded that entrusted funds that he was required to hold, inviolate, to satisfy the outstanding liens, had been used to pay office expenses, thereby creating a shortage in the trust account. In fact, respondent ultimately used his personal funds, from the bank account he held with his father, to pay the two liens on Sanders behalf.

With respect to respondent's medical condition, the SEA acknowledged that, from 2012 through 2014, respondent was in the office less frequently than he previously had been. However, the SEA concluded that, even before respondent was diagnosed with PKD, and, subsequently, suffered the opioid addiction, he was not attentive to his recordkeeping obligations. Indeed, in the SEA's view, respondent's failure to maintain proper records reflected his cavalier "attitude about such things and about his supervisory responsibility, which I believe had to have had [an] impact on Ms. Torres' attitude and understanding of her role to make sure that, in some way or other, bills and expenses would get paid."

The SEA also concluded that respondent's physical condition did not preclude him from addressing the invasions he had learned about in the fall of

2013. Indeed, the SEA noted that, even if respondent's medical condition had limited his ability to address the invasions at the time he learned of them, he failed to address the problems until two years later, following the OAE audit. Moreover, not only did respondent fail to correct the misappropriations when he learned of them, he "did nothing to prevent continuing problems," which led to the knowing misappropriation of funds in connection with the Williams matter.

Although he sympathized with respondent's unfortunate medical condition, the SEA stated that he was unable "escape the conclusion that the aggregate of facts inescapably demonstrates that [the] OAE sustained its burden of proving 'willful blindness.'"

Moreover, the SEA reasoned that, despite respondent's inconsistent testimony regarding the trust account authority that he may, or may not, have granted to Saunders and Torres, he unequivocally testified that he physically was in the office, at least part of the time, during his illness and that:

> he should have known that trust funds had to be paid to clients or on their behalf, and if others were not authorized to pay them, he should have realized he had to sign more checks than he did. In my view, his attitude at times when he was able to practice law, contributes to the finding of willful blindness.
>
> [SEAR,pp19-20.]

Importantly, too, the SEA emphasized respondent's own testimony that he had conferences with Torres and Saunders and, occasionally, had looked at ATA statements, even during his illness.

Further, the SEA credited Piccolo's testimony that, between 2012 and 2016, he had socialized with respondent and did not observe him to be incoherent.

With respect to Dr. Ivanov's report, the SEA concluded that it lacked any suggestion that respondent was debilitated, medically or psychiatrically, such that he could find the medical condition or addiction was a mitigating or causal factor for respondent's misconduct. Thus, the SEA determined that respondent had failed to present medical evidence sufficient to satisfy the Jacob standard. More specifically, the SEA found there had been no demonstration by competent medical proofs or expert testimony that respondent:

> suffered the loss of his ability, competency or comprehension to excuse his knowing misappropriation or his responsibility for the affairs of his office even after learning of improper transactions with the trust account. Here the misappropriations were not so directly the result of Respondent's own affirmative acts, but particularly as a result of conversations and discussions he had in the summer of 2013, it is clear that he knew what was going on and chose not to address or do anything to prevent it.
>
> [SEAR,p30.]

In conclusion, the SEA determined that the OAE had proven, by clear and convincing evidence, that respondent knowingly misappropriated client and escrow funds and, thus, recommended his disbarment.

The Parties' Positions Before the Board

Respondent did not initially provide us with a written submission despite the Office of Board Counsel (the OBC) having sent the parties a standard scheduling letter with a briefing schedule.[27] However, on October 29, 2024, the OBC received a letter from Marc Garfinkle, Esq., providing a notice of appearance and requesting an adjournment because respondent planned to travel to South America to join his elderly father, who was going to undergo significant medical procedures. The OBC granted respondent's adjournment request.

On November 25, 2024, respondent, through his new counsel, submitted a brief requesting that we remand the matter for a new hearing on the merits. In support, he argued that he had been "deprived of the effective assistance of counsel in preparing his case," and, thus, due process and fairness required a remand.

[27] Respondent's brief was due on October 24, 2024. However, on October 1, 2024, Ashley submitted his oral argument form and requested more than ten minutes for argument. The OBC contacted Ashley, via e-mail, several times to inquire as to how much time he required for argument, but he did not provide a reply.

Specifically, respondent argued that Alevras, the individual from Ashley's office who had been assigned to handle his case, "was not, in fact, an attorney." Ashley had introduced respondent to Alevras as someone who worked in his office and, according to respondent, Alevras "dressed and acted as a lawyer, and created that impression." Indeed, it was Alevras who prepared the pleadings on respondent's behalf and who had prepared the case and respondent for trial. Respondent claimed that he only learned that Alevras was not an attorney after the ethics hearing had commenced. Ashley told respondent that he had fired Alevras and, subsequently, respondent "performed an internet search and discovered that Alevras had a long criminal history, including many years in prison, and that he was no[t] a member of any bar."

Garfinkle, on respondent's behalf, argued that Ashley had failed to recommend the appropriate expert to establish that respondent's use of opioids had rendered him incompetent. Instead Alevras had "sent Respondent to a[n] addiction-relief specialist. Respondent offered no medical testimony at his hearing."

Further, Garfinkle argued that a "substantial amount of [the hearing] transcript addresses confusion concerning Ashley's submission of a Verified Answer and an Amended Verified Answer." Garfinkle stated that, although respondent's signature appeared on both verified answers, "he claims that he

had never seen [the Amended Verified Answer] before and that he had not been told about it. There was no evidence to the contrary."

Garfinkle also alleged that Ashley had engaged in an "illegal business relationship" with respondent. Quoting information respondent apparently provided to Garfinkle, respondent indicated:

> At some point during my preparation for my hearing with Mr. Alevras, he asked me if I could close out some civil files with for [sic] him because the clients were Spanish-speaking and he was having problems communicating with them. [. . .] During COVID, I pretty much lost communication with Mr. Alevras and the office until I got a call from the office in 2023 advising me they had set a hearing date for my matter. I asked about [Alevras], and [Ashley] advised me he had to let him go. I asked [Ashley] what firm he went to, and [Ashley] then told me Mr. Alevras was not, in fact, an attorney.
>
> [GB,p4.]

Because of Ashley's alleged errors during the ethics hearing, respondent argued that "any discipline imposed as a result of that hearing would constitute a denial of due process to Respondent" and urged us to remand the matter for a new hearing.

On December 9, 2024, the OAE submitted a sur-reply, arguing that respondent had failed to provide "anything close to prima facie evidence of Mr. Ashley's malpractice and has not attempted to offer an Affidavit of Merit on the

purported malpractice." Rather, the OAE characterized respondent's arguments as "mere speculation."

The OAE emphasized that there is no constitutional right to counsel in attorney disciplinary matters. However, by way of analogy, the OAE considered the two-prong ineffective assistance of counsel test set forth in Strickland v. Washington, 466 U.S. 668 (1984), which provides that, to determine whether counsel failed to provide effective assistance, a defendant must demonstrate (1) that counsel's representation was deficient, i.e., fell below an objective standard of reasonableness; and (2) the defendant must show a reasonable probability that the result of the proceeding would have been different but for counsel's deficiencies. New Jersey adopted the Strickland test in State v. Fritz, 105 N.J. 42, 58 (1987).

The OAE contended that respondent's argument that he was deprived of the effective assistance of counsel was belied by the SEA's decision commending Ashley for the "excellent representation" he provided respondent and, thus, he failed to satisfy the first prong of the Strickland test. Next, the OAE argued that respondent failed to satisfy the second prong of the Strickland test because it would "allow Respondent to now advance arguments that are simply not true." For example, the OAE noted that respondent wishes to produce evidence demonstrating he was incompetent. The OAE asserted that:

> perhaps [that evidence] was not offered because it was not true, and any reading of the record will show that Respondent simply turned a blind eye to what was happening in his office. [. . .] An example of this selective review is that although new counsel argues that Respondent submitted no expert analysis, that position is belied by the record, where a report of a psychiatrist was accepted into evidence and considered.
>
> [OAEsr,p2.]

Further, the OAE argued that the SEA had given respondent "full opportunity" to address any issues surrounding the initial answer and the amended verified answer and that respondent had failed to do so. In fact, even in the absence of the amended verified answer, the OAE emphasized that respondent's own testimony at the hearing, along with the documentary evidence, clearly and convincingly established his willful blindness to the knowing misappropriation of his clients' funds.

Finally, on December 15, 2024, respondent, through counsel, submitted a rejoinder to the OAE's sur-reply. In his rejoinder, respondent argued that, contrary to the OAE's assertion that expert testimony was required to demonstrate Ashley's legal malpractice, he did not believe that we required expert testimony at this juncture because (1) the purpose of expert testimony is to help the finder of fact to make a determination, and (2) in his view, we, as the Board, are "composed of experts in the field of attorney competence and attorney malfeasance."

Accordingly, respondent urged us to conclude that Ashley had committed "malpractice beyond a reasonable doubt" due to his (1) admission that Alevras had forged his signature on the pleadings, and (2) acknowledgement that he had not seen the amended verified answer or stipulation prior to the hearing. In fact, respondent asserted that he had not seen the amended verified answer or stipulation until the first day of the hearing.

Nevertheless, respondent, through his counsel, argued that his ethics case had been prepared by a non-attorney, Alevras. Respondent "learned for the first time at the hearing that the 'attorney' that had been representing him and preparing him for the hearing was not licensed to practice."[28]

Moreover, respondent argued that Ashley failed to "produce competent medical evidence linking his bad behavior to his psycho/medical condition, per Strickland v. Washington." Respondent asserted that the SEA had implored Ashley to bring in "a doctor to testify and interpret the medical records he had submitted." Although Ashley produced thousands of medical documents at the close of the ethics proceeding, respondent asserted that Ashley "never proffered a doctor's name or attempted to produce Respondent's treaters. The documents

[28] This conflicts with the statements from respondent that Garfinkle included in his November 25, 2024 brief, specifically that respondent claimed to have learned in 2023, when he received notice the ethics hearing had been scheduled, that Alevras was not an attorney.

he had submitted, then, were useless to Respondent's defense. Proper presentation of the medical evidence would have satisfied the first prong of Strickland."[29]

Furthermore, respondent asserted that, if a competent attorney was preparing his case, that attorney would have produced respondent's "drug counselor and a qualified physician or psychopharmocologist [. . .] to explain the effects of Respondent's drug addiction on his professional activity. Had that occurred, a different outcome may have been achieved."

Thus, respondent urged that we find, in the absence of expert testimony, that Ashley committed legal malpractice and that no party would suffer if we granted "the unusual remedy of a retrial" of respondent's ethics matter.

The OAE, for its part, first addressed respondent's argument that, as a result of Ashley's ineffective assistance of counsel, due process required a remand. The OAE argued there was no entitlement to counsel in disciplinary proceedings and, even if Ashley had made mistakes or erroneous strategic decisions, the clear and convincing evidence comprising the record in this case did warrant a "do-over." Further, the OAE expressed skepticism that respondent now would be able to obtain an expert report stating that, more than a decade

[29] In addition to submitting Dr. Ivanov's report, Ashley submitted two years of treatment notes from Brister, the substance abuse counselor respondent began seeing in early 2013 to treat his opioid addiction.

ago, he was unable to discern the difference between right and wrong sufficient to satisfy the Jacob standard. Indeed, the OAE cited Dr. Ivanov's 2018 conclusion that respondent did not suffer a loss of competency due to his opioid use.

The OAE contended that respondent had a full, fair, and meaningful hearing and that the only appropriate outcome for his knowing misappropriation of entrusted funds was his disbarment.

During oral argument, respondent's counsel urged us to provide his client with due process and fairness. He argued that if we viewed the disciplinary proceeding through respondent's eyes, we would conclude that he had been deprived of the effective counsel because his attorney, in fact, was not an attorney at all.[30] He argued that Ashley merely had to present competent medical evidence in respondent's defense; yet, he failed to do so. Although he speculated that, perhaps, no expert would opine that respondent's opioid addiction had rendered him incompetent, he maintained that respondent should be granted the opportunity to try to obtain such an expert evaluation.

Respondent's counsel argued that, based on Ashley's ineffective representation, we did not have the benefit of a "science-based" report

[30] At oral argument, respondent's counsel conceded that respondent could have represented himself.

concerning how respondent's opioid addiction affected his behavior. Although respondent's counsel admitted that respondent's behavior created problems for himself, and that he was stuck in a "web of disbarrable offenses," he argued that respondent had been deprived of the opportunity to offer a Jacob defense. In response to our questioning, respondent's counsel conceded that it likely would take several months to obtain an expert evaluation to opine as to respondent's competency during 2011 through 2014, but asked that we accept the possibility that his capacity was diminished during that time.

Also during oral argument, respondent addressed us directly. During his statements to us, contrary to his testimony during the ethics hearing, he denied having signed any of the checks in the record and, further, asserted that it was not his signature on the checks. Further, he denied granting Saunders or Torres authority to sign trust account checks but, rather, only had granted authority over business account checks.

On February 20, 2025, nearly six weeks after he addressed us during oral argument, respondent sent us a pro se letter (notwithstanding his represented status), seeking to correct statements he, as well as his counsel, had made during oral argument before us. First, he clarified he had worked with Alevras for eleven years, and not two years as was represented during argument, without knowing he was not a licensed attorney. The length of time, according to

respondent, created a sense of trust that his case was being managed with expertise. It was not until after June 2023 that he discovered, "upon further investigation," that Alevras had been criminally charged for "impersonating an officer of the court."

Next, respondent clarified that he was still in contact with his medical team and drug counselor, but that he was "denied the opportunity" to have his physicians or substance abuse counselor testify on his behalf. In his view, their testimony is critical because only they could "define the nature of [his] condition that led to addiction, and the behavior that ensued."

Finally, respondent asserted that he had "hastily testified" before us that he did not sign "any business checks." However, upon reflection, he realized that he misspoke. Specifically, he conceded that he had signed ABA checks that Cedeno presented him in 2012. Respondent denied that he made a knowing misrepresentation to us in this respect.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review of the record, we find that the SEA's conclusion that respondent committed unethical conduct is supported by clear and convincing evidence. Specifically, we determine that, in the Johnson;

Sanders; Williams; and Hawkins matters, respondent knowingly misappropriated entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

Specifically, in the Johnson Estate matter, there is no dispute that respondent's retainer agreement with the two brothers provided for a flat fee totaling $12,000. Yet, despite having already paid himself the $12,000 fee, he subsequently issued an ATA check to himself for $20,000; another check for $4,100; a third check for expense reimbursement for $3,000; a fourth check for $3,000 to a firm employee, purportedly for expenses; and, notably, wrote himself a $23,125 check for expenses the same day he issued a $23,125 check to pay the rent for his office space.

Next, in the Sanders matter, respondent was entitled to $74,770.06 in legal fees and was required to hold in escrow $4,700.42 to satisfy the Kessler lien and $103,280.42 to satisfy the Fund's lien. As he carefully documented, respondent knowingly invaded the Kessler lien by authorizing a $3,500 payment to New, from the Kessler funds, in order to retain New to negotiate a reduction of the Fund's lien. Furthermore, despite being entitled to $74,770.06 in legal fees, respondent paid himself $32,644.65 more than what he was entitled to, thereby knowingly invading entrusted funds. Respondent was obligated to hold the escrow funds, inviolate, unless both parties to the transaction authorized the

release or disbursement of those funds, and Kessler did not authorize respondent to use its funds to pay New.

After Cedeno successfully negotiated a reduction in the Fund's lien, respondent could not issue an ATA check to satisfy the lien because he was holding less than he was required to in the Sanders matter. Five weeks passed before respondent was able to acquire sufficient funds to replenish his ATA and satisfy the Fund's lien.

Respondent again knowingly invaded escrow funds in connection with the Williams matter by paying himself $2,000 more in legal fees than he was entitled to receive and, by doing so, he invaded the funds he was required to hold to satisfy NJM's $6,000 lien. Respondent was obligated to hold the escrow funds, inviolate, unless both parties to the transaction authorized the release or disbursement of those funds. and he did not have NJM's authorization to pay himself $2,000 more in additional legal fees from those funds.

Finally, in the Hawkins matter, respondent again knowingly misappropriated client funds. Specifically, respondent recovered $240,500 on Hawkins' behalf and issued to himself approximately forty-three percent of those funds ($105,368.56) for legal fees. After the OAE began investigating respondent's conduct, however, he returned either $69,699.33 or $89,510.83 to the Hawkins Estate, leaving for himself $35,669.23 or $25,626.63 in legal fees,

substantially less than the more than $105,000 he had paid himself during the representation.

Notably, Hawkins was a person with accessibility needs and was visually impaired. Respondent asserted that, because of this, he met with him on a monthly basis to explain the legal work he had performed and, further that Hawkins' son, Michael, signed off on the monthly time and expense sheets in the case. Yet, despite claiming to have provided Hawkins with a detailed monthly expense report, respondent inconsistently asserted that he had lost track of Hawkins' funds. In our review, respondent cannot have it both ways, and his return of either $69,699.33 or $89,510.83 to the Hawkins Estate is telling.

Misappropriation of client trust funds is defined as:

> any unauthorized use by the lawyer of clients' funds entrusted to [the lawyer], including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not [the lawyer] derives any personal gain or benefit therefrom.
>
> [In re Wilson, 81 N.J. 455 n.1.]

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable' . . . consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer

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

More than forty years after Wilson, the Court re-affirmed its "bright-line rule . . . that knowing misappropriation will lead to disbarment." In re Wade, 250 N.J. 581 (2022). In Wade, the Court observed that "[w]hen clients place money in an attorney's hands, they have the right to expect the funds will not be used intentionally for an unauthorized purpose. If they are, clients can confidently expect that disbarment will follow." Id. at 601.

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

the good use to which the funds are put, the attorney's good character, and the lack of prior discipline are all irrelevant.

The Wilson rule also applies to other funds that the attorney is to hold inviolate, such as escrow funds. Hollendonner, 102 N.J. at 28-29. The Court's decision in Hollendonner 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." Id. at 28-29.

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

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

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

Hollendonner, thus, stands for the proposition that an attorney who uses escrow funds, either for the attorney's benefit or the benefit of another, without

obtaining the consent of the parties to the escrow agreement, will be guilty of knowing misappropriation and will face the Wilson disbarment rule.

Here, in connection with the Sanders matter, we conclude that the record clearly and convincingly establishes that respondent was obligated to hold, in escrow, sufficient funds to satisfy, on Sanders' behalf, the liens held by Kessler and the Fund. Further, in connection with the Wilson matter, respondent was required to hold, in escrow, funds sufficient to satisfy, on Wilson's behalf, the NJM lien. Respondent did not have permission from Kessler, the Fund, or NJM to use the escrow funds and, thus, when he did so, he knowingly misappropriated entrusted funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner.

We reject respondent's various defenses, which he failed to prove by clear and convincing evidence. "The burden of proof in proceedings seeking discipline . . . is on the presenter. The burden of going forward regarding defenses . . . relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

Throughout the entirety of the ethics proceedings, respondent's defense has never been that the knowing misappropriation of client or escrow funds did not occur. Rather, he has focused his defense on his PKD and opioid use.

However, the misconduct alleged in the complaint and established during the ethics hearing occurred prior to, and following, his opioid addiction.

First, concurrent with respondent's PKD diagnosis and resultant opioid addiction, respondent represented himself before us in Sanchez II regarding his violations of RPC 1.3, RPC 1.16(d), and RPC 8.4(d). Instead of asserting as a defense in Sanchez II that he was in the throes of addiction and bedridden due to the pain caused by kidney cyst ruptures, respondent instead asserted that his misconduct in that matter was due to the need to take his child for an emergent dental procedure. His behavior contemporaneous with the misconduct described in the instant matter belies his argument that his illnesses rendered him incapacitated or unable to discern it was wrongful.

Second, in this matter, respondent has not offered any competent, expert medical testimony that the pain from his PKD, or that his opioid addiction, incapacitated him to such a degree that he could not appreciate his conduct. To the contrary, respondent's own proofs and testimony clearly demonstrate that he was regularly working on cases, meeting with the individuals he had designated to run his office in his absence, and aware of trust irregularities.

Furthermore, Dr. Ivanov's report and Brister's treatment notes reflect that respondent, although addicted to opioids, was lucid and coherent. Moreover,

Piccolo testified that, when respondent was present in the office, he did not appear to be under the influence of any substances.

Third, just as in Sanchez III, which was before us while the OAE was investigating the instant matter, respondent inappropriately bestowed trust account responsibilities to his office manager, and then blamed her when things went wrong. Shockingly, despite the OAE investigating him for at least six years at the time of Sanchez III, respondent failed to conform his recordkeeping to R. 1:21-6. Thus, we share the SEA's concern that respondent's nonchalant attitude toward his fiduciary obligations predated his PKD diagnosis and contributed to an office mindset that the bills must be paid no matter the circumstances or the source of funds. Indeed, the evidence, including respondent's own statements to Dr. Ivanov and Brister, reflect that he was having financial difficulties at the time of his misconduct.

Fourth, respondent testified that, when he learned in the fall of 2013 that Torres' and Saunders' management of his firm's trust account had resulted in the invasion of seventeen client funds, he began his own investigation and spoke with both Torres and Saunders. Notably, even before learning of the invasions, respondent was adamant that he regularly met with both Torres and Saunders, who kept him abreast of what was happening with the firm and presented him with ATA checks to sign. Nevertheless, in the course of his own investigation

in 2013, respondent spoke with Torres, who explicitly told him she did not think it was a "big deal [to] borrow from Paul to pay Peter. She said, Rod, I never stole anything, but, you know, I wasn't getting much guidance." Rather than provide her with the guidance she admittedly lacked, respondent took no action, left Torres and Saunders purportedly in charge of the firm's accounts, and looked the other way. Moreover, as the OAE investigator credibly testified, respondent had told him during the investigation that he had authorized Torres to issue ATA checks as necessary.

Finally, not all of respondent's financial misconduct occurred while suffering from his PKD pain and opioid addiction. Respondent achieved sobriety in September 2014, yet he continued to knowingly misappropriate funds in the Johnson Estate, Sanders, and Hawkins matters. Furthermore, respondent's knowing misappropriation in the Williams matter began after he had achieved sobriety, in September 2014.

Consequently, we reject all of respondent's defenses as falling well short of clear and convincing evidence.

It is well-settled that mental illness serves as a defense only where the illness reduces the mental state of the attorney beyond that required to establish the charged violations of the Rules of Professional Conduct. The Court has

explained that such a defense is not established where, as here, an attorney does not:

> furnish any basis grounded in firmly established medical facts for a legal excuse or justification for respondent's [misconduct]. There has been no demonstration by competent medical proofs that respondent suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful.
>
> [In re Jacob, 95 N.J. 132, 137 (1984).]

Further, the medical evidence respondent submitted during the ethics hearing does not demonstrate that respondent was afflicted by "[a] mental illness that impair[ed] the mind and deprive[d] [him] of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong." In re Cozzarelli, 225 N.J. 16, 31 (2016). To the contrary, the record reflects that, despite his physical affliction and opioid addiction, consistent with Dr. Ivanov's opinion regarding the psychopharmacological effects of opioids, he was lucid, appreciated how his illnesses impacted his employment as an attorney, and knew that his trust account was being abused. Indeed, he determined to investigate wrongful transactions, thereby demonstrating that he knew right from wrong at the time of the financial misconduct, yet he chose not to take corrective or preventative measures to ensure client funds were held inviolate.

Furthermore, in 2012, in the midst of his addiction, respondent represented himself in connection with Sanchez II, a motion for discipline by consent, thereby demonstrating that his addiction did not render him incompetent. See In re Hartman, 253 N.J. 556 (2023) (finding that the record, as well as the attorney's own statements, negated her assertion that, under Jacob, her mental illness had rendered her unable to appreciate her actions).

The Court has "indicated that there may be circumstances in which an attorney's loss of competency, comprehension, or will may be of such magnitude that it would excuse or mitigate conduct that was otherwise knowing or purposeful." In re Goldberg, 109 N.J. 163, 168 (1988). However, the Court has observed that, "[a]lmost invariably," it will:

> find that the attorney has not lost comprehension or competency but rather has yielded to the compulsion, and whether the compulsion is due to drugs, gambling, or alcohol, dependent attorneys retain an area of volition sufficient that we cannot distinguish these attorneys from those who yield to the equally human impulse to avert shame, loss of respect, or family suffering.
>
> [In re Bock, 128 N.J. 270, 273 (1992) (citation omitted).]

Consequently, the Court has noted that, although "compulsive behavior may lead to misconduct, we will not allow the public to go unprotected." Ibid. See also In re Lobbe, 110 N.J. 59 (1988) (the attorney knowingly

misappropriated client funds to sustain his gambling addiction; although the Court found that the attorney's compulsive gambling was a "but for" cause of the misappropriation, the Court nevertheless disbarred the attorney).

Here, there is simply no evidence in the record that respondent's loss of competency rose to the level that he could not appreciate his wrongful conduct. Although respondent's new counsel has argued that Ashley deprived respondent of the effective assistance of counsel because of Ashley's purported failure to submit competent medical evidence, the record does not reflect that as reality. To the contrary, Ashley did submit medical evidence, which did not support that respondent's willful blindness to the knowing misappropriation of entrusted funds that was occurring in his law office was causally linked to his medical conditions.

The Court has recognized that the right to counsel attaches when an indigent defendant faces "imprisonment in fact or other consequence[s] of magnitude without first having had due and fair opportunity to have counsel assigned without cost." Rodriguez v. Rosenblatt, 58 N.J. 281, 295 (1971). In New Jersey Dept. of Children and Families v. L.O., 460 N.J. Super. 1, 10-12 (2019), the Appellate Division catalogued when the Rodriguez "consequence of magnitude" requirement triggered the right to counsel in noncriminal contexts, including when a parent risks losing custody of their child in Division of Child

Protection and Permanency matters, when a defendant faces incarceration for failing to pay child support, Megan's Law tier classification matters, involuntary civil commitment proceedings, contempt of restraining order proceedings, motor vehicle matters when license suspension is at issue, and matters in which significant fines may be imposed.

However, in New Jersey, as well as other jurisdictions, there is no right to counsel in attorney disciplinary matters because respondent-attorneys do not face a deprivation of liberty, as they would in criminal matters. See, e.g., In re Harris, 49 P.3d 778 (2002) (an attorney facing disbarment was not denied due process when counsel was not appointed; the attorney argued that because he was facing disbarment, which was the equivalent sanction to a "criminal prosecution," he should have been appointed counsel under the Oregon Constitution; the Oregon Supreme Court disagreed and found that attorney disciplinary proceedings did not result in punishment of the attorney for the commission of a crime); Statewide Griev. Comm. v. Carpenter, 2002 Conn. Super. LEXIS 3002 (2002) (finding that an attorney disciplinary matter was neither a civil nor criminal proceeding because the purpose of the proceeding was not punishment, but rather, protection of the public from attorney misconduct; therefore, the Court declined to apply the Sixth Amendment right to effective assistance of counsel in disciplinary matters); In re McCord, 722

N.E.2d 820 (2000) (the Indiana Supreme Court found there is no right to the appointment of pauper counsel in an attorney disciplinary matter; the fact that an attorney was denied pauper counsel did not mean the attorney was denied due process in the hearing); In re Eisenhauer, 689 N.E.2d 783 (1998) (finding an attorney did not have a right to counsel in a disciplinary proceeding because the proceeding was not criminal; the fact that Massachusetts Board of Bar Overseers may assist an indigent attorney with obtaining pro bono representation did not establish a constitutional right to representation in a disciplinary matter); State ex rel. Oklahoma Bar Ass'n v. Minter, 961 P.2d 208 (1998) (the Oklahoma Supreme Court noted that attorney disciplinary matters are sui generis because they have elements of both criminal and civil proceedings, but concluded that due process merely contemplated the opportunity for an attorney to have representation if desired); Walker v. State Bar, 783 P.2d 184 (1989) (holding there was no constitutional right to counsel in disciplinary matters; the attorney, who was facing disbarment, argued he was denied effective counsel and that he lacked mental capacity, but the California Supreme Court found that he was cognizant of his conduct despite his pancreatitis, alcohol and drug addiction, and paranoid delusions).

Indeed, R. 1:20-4(g)(2) concerns respondents' counsel and provides: "A respondent may be represented by counsel admitted to practice law in New

Jersey or admitted pro hac vice by the Board, or may appear pro se." (emphasis added). The Rule also permits an indigent respondent the ability to apply to the Assignment Judge of their vicinage for appointment of counsel. Thus, the plain language of the Rule does not require that a respondent be represented by counsel; it is a permissive Rule. Respondent has twice exercised his option to retain counsel, and neither attorney has argued that the knowing misappropriation of client funds did not occur. Rather, they both have argued respondent's medical condition rendered him unable to appreciate the wrongful conduct. Furthermore, despite retaining two different attorneys to represent him in these proceedings, he has submitted pro se letters arguing his position that his medical condition excused his misconduct.

In our view, even if respondent's chosen counsel had implemented a different legal strategy during the ethics hearing, the evidence still would overwhelmingly demonstrate that he was competent, knew of trust account defalcations (going so far as to conduct his own investigation), but ultimately took no corrective or preventative action. Therefore, respondent's actions and inactions, not Ashley's trial performance, support our disbarment recommendation. Indeed, the Court has held "[i]t is no defense for lawyers to design an accounting system that prevents them from knowing whether they are using clients' trust funds. Lawyers have a duty to assure that their accounting

practices are sufficient to prevent misappropriation of trust funds." See In re Fleischer, 102 N.J. 440, 447 (1986).

First, respondent is a sophisticated client – an experienced attorney in his own practice, and familiar with the disciplinary process by virtue of having been before us three times prior to the commencement of the ethics hearing in this matter. To suggest that he was unaware that he needed to file a conforming answer, or to ensure his counsel filed a conforming answer after the OAE filed its complaint in 2017, simply is not credible and, in fact, is another example of his willful blindness. Furthermore, in Sanchez II, which was before us at the same time respondent was suffering from PKD and his opioid addiction, he represented himself and failed to assert, in mitigation, that his medical condition affected his conduct. In Sanchez III, which proceeded to us nearly at the same time as the ethics hearing in the instant matter, respondent was represented by counsel other than Ashley, demonstrating respondent is aware that he is not tethered to one attorney for his ethics matters.

Moreover, respondent wrote the SEA a pro se letter almost one year after the ethics hearing commenced. In that letter, he did not seek to submit medical evidence to support a finding that he satisfied the Jacob standard, presumably because he knew his counsel had already submitted medical evidence which he argued established a causal link between his medical condition and his unethical

conduct. Additionally, in his letter, respondent accepted his amended verified answer and accepted responsibility for the defalcations. Consequently, any current attempt, at the eleventh hour, to repudiate his counsel's performance is inconsistent with respondent's own statements.

Second, respondent's argument that Ashley's performance deprived him of the ability to present a defense that his PKD or opioid addiction rendered him incompetent ignores the fact that Ashley submitted an expert psychiatric evaluation of respondent and contemporaneous treatment notes from respondent's substance abuse counselor. Those documents conclusively established that respondent was not so incompetent that he could not appreciate the wrongfulness of his conduct. Thus, a remand for a new hearing in which respondent would submit expert medical evidence is simply unnecessary.

Third, we review records of ethics hearings de novo and, in this instance, we have reviewed the medical evidence that respondent submitted. Respondent's medical evidence establishes that he was aware of the knowing misappropriation of client funds in his law office and, although he was competent and capable to do so (going so far as to initiate his own investigation into Torres' ATA check-writing even before the OAE commenced its

investigation), chose to remain willfully blind and take no action. Moreover, after our review, the Court also reviews the record de novo.[31]

Given respondent's testimony and the medical records already in evidence, it is hard to imagine that, if we remanded the matter for a retrial, respondent successfully would obtain an expert to opine that, more than ten years ago, his opioid addiction rendered him incapacitated and unable to appreciate the misuse of his trust account – particularly considering his contemporaneous treatment notes do not reflect incapacity, and the fact that the knowing misappropriations continued after respondent achieved sobriety. Even if he were to obtain such a report, we would be in the same position as we are now – considering what weight to give that report and what weight to assign to Dr. Ivanov's report and Brister's treatment notes. In our view, the outcome would remain the same.

Therefore, the evidence clearly and convincingly establishes that respondent's misconduct evidenced both knowing misappropriation and willful blindness and, pursuant to Skevin, he should be disbarred.

Consistently, the Court has rejected the argument that poor accounting procedures prevented an attorney from knowing the amount of their own funds

[31] Furthermore, under R. 1:20-4(e), all constitutional questions, such as due process requiring counsel in an attorney disciplinary matter, shall be held for consideration by the Court.

in the trust account. In Skevin, the attorney was out of trust in amounts ranging from $12,000 to $133,000. The attorney admitted the shortages but pointed out that he had deposited $1 million of his own funds in the trust account to cover personal withdrawals.

The Court found that, because the attorney did not maintain an accounting or running balance of his personal funds in the account, each time he made withdrawals for himself and for clients before the receipt of corresponding settlement funds, there was a "realistic likelihood of invading the accounts of another client since respondent had no way of knowing what the balances were." Skevin, 104 N.J. at 485. The Court, thus, equated "willful blindness" to knowledge:

> The concept arises in a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist. Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases [citations omitted].
>
> [Id. at 486.]

The attorney was disbarred. Skevin is considered the seminal willful blindness case.

Another applicable decision is In re Pomerantz, 155 N.J. 122 (1998), in which the Court found that the attorney "had used her client's funds for her own purposes without authorization." Id. at 133. The Court explained:

> Her juggling of funds between her personal, business, and trust accounts belies her claimed lack of knowledge that she was out-of-trust. Respondent's behavior demonstrates that she was aware of shortfalls in her accounts. For example, respondent paid D'Esposito from the trust account rather than the business account when the business account did not contain enough money to cover the amount due D'Esposito. We have previously observed that when an attorney makes a loan to a deficient trust account, it indicates that the attorney may be "personally aware on that date that his handling of the trust account had produced the deficit result."
>
> [Ibid.]

The attorney's defenses constituted willful blindness, in the Court's eyes, because knowledge that the invasion of client funds is likely as a result of an attorney's conduct constitutes "a state of mind consistent with the definition of knowledge in our statute law." Ibid. In other words, the Court found that "even if" it had accepted Pomerantz's contentions that "she was unaware that she was out-of-trust, her 'willful blindness' satisfie[d the Court] that she knowingly misappropriated client funds." Id. at 135.

The Court has continued to disbar willfully blind attorneys in more recent cases. In In the Matter of Thomas Andrew Clark, DRB 16-111 (January 11, 2017) at 59, we observed:

> Although abominable recordkeeping practices may remove a case from the realm of knowing misappropriation, the Court has rejected the notion that an attorney "who just walks away from his fiduciary obligation as safekeeper of client funds can expect an indulgent view of any misappropriation." In re Johnson, 105 N.J. 249, 260 (1987). Rather, the Court "will view 'defensive ignorance' with a jaundiced eye." Ibid. Consequently, "[t]he intentional and purposeful avoidance of knowing what is going on in one's trust account will not be deemed a shield against proof of what would otherwise be a 'knowing misappropriation'." Ibid. In so ruling, the Court was confident that, "within our ethics system, there is sufficient sophistication to detect the difference between intentional ignorance and legitimate lack of knowledge." Ibid.

See also In re Clark, 228 N.J. 521 (2017).

Considering that line of disciplinary precedent, we determine that, even if respondent had not been so clearly and demonstrably aware of his invasion of entrusted funds, the OAE also proved that he was indefensibly and willfully blind to his invasion of those funds, in violation of Skevin.

In addition to his knowing misappropriation of entrusted funds in the Johnson Estate; Sanders; Williams; and Hawkins matters, respondent committed additional misconduct.

RPC 1.5(a) provides that a lawyer's fee shall be reasonable. Unquestionably, in connection with the Hawkins matter, respondent violated this Rule by charging Hawkins and the Hawkins Estate his hourly rate of $300,

even though the associates in his firm had lower hourly rates and had worked on the Hawkins matter.

Next, respondent negligently invaded and, thus, failed to safeguard, client funds, in violation of RPC 1.15(a), by allowing his ATA balances to repeatedly drop below the amounts he was obligated to hold, inviolate, on behalf of each client.

Further, respondent commingled client funds with his personal funds in the Hawkins and Johnson matters by haphazardly transferring funds among his four ATAs, four ABAs, and the Hawkins Estate account, in violation of RPC 1.15(a).

Next, respondent violated RPC 1.15(b) by failing to promptly deliver client funds in the Johnson Estate and the Sanders matters when, for an extended period of time, he failed to disburse their settlement funds to them. Notably, he did not hesitate to pay himself legal fees in both matters.

Additionally, there is no question that respondent failed to supervise his nonlawyer staff, in violation of RPC 5.3(a) through (c). Rather, his failure to supervise his employees was the crux of his defense – that the underlying financial transactions occurred but he had no knowledge of them.

Respondent also committed numerous recordkeeping violations, in violation of RPC 1.15(d). We reject, as disingenuous, respondent's argument

that he corrected his recordkeeping deficiencies because he clearly did not, as he admitted and we found in Sanchez III.

Although the OAE charged respondent with having violated RPC 8.1(a) and RPC 8.4(c) by allegedly instructing his then-office manager to backdate letters from Michael to justify disbursements he had made in the Hawkins matter, the record lacks clear and convincing evidence that respondent did so. Thus, we dismiss the RPC 8.1(a) and RPC 8.4(c) charges.

Finally, despite the procedural irregularity of respondent attempting to repudiate his amended verified answer following the ethics hearing, we decline to entertain such a position. There is no question that respondent's amended verified answer was the controlling pleading in this matter. When the OAE informed him that his original answer was non-conforming, respondent did not elect to challenge the OAE's determination under Cresci but, instead, submitted an amended verified answer admitting that the conduct occurred, but asserting that due to his medical condition, he had no knowledge of the trust account abuses.

Importantly, notwithstanding the admissions in the amended verified answer, the documentary evidence, as well as respondent's own testimony, establish that he knew client funds were being used to pay bills – signing off on multiple checks himself – and knew that client funds were being invaded as a

result. He took no action to ensure his clients' funds were protected, and, instead, treated the money he held in trust as a slush fund to use as he saw fit. Indeed, he testified that when he needed money, he would ask Torres or Saunders for money, and they would issue him a check using client funds.

In sum, respondent committed knowing misappropriation of client and escrow funds, in violation of RPC 1.15(a) and the principles of Wilson and Hollendonner (four instances); RPC 1.5(a); RPC 1.15(a) (negligent misappropriation); RPC 1.15(a) (failure to safeguard); RPC 1.15(a) (two instances – commingling); RPC 1.15(b) (two instances); RPC 1.15(d); and RPC 5.3(a) through (c). We determine to dismiss the charges pursuant to RPC 8.1(a) and RPC 8.4(c).

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

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

Member Spencer was recused.

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 Rodrigo Sanchez
Docket No. DRB 24-213

Argued: January 16, 2025

Decided: March 17, 2025

Disposition: Disbar

Members	Disbar	Recused	Absent
Cuff	X		
Boyer	X		
Campelo			X
Hoberman	X		
Menaker	X		
Modu	X		
Petrou	X		
Rodriguez	X		
Spencer		X	
Total:	7	1	1

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