

**BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS**

**IN THE MATTER OF
RICHARD BRUCE LIVINGSTON
STATE BAR CARD NO. 12440000**

§
§
§

CAUSE NO. 51880

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Richard Bruce Livingston, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 20 Great Hills Terrace, Short Hills, New Jersey 07078.

3. On or about March 28, 2014, a Decision (Exhibit 1) was filed in the Supreme Court of New Jersey Disciplinary Review Board in a matter styled, *In the Matter of Richard B. Livingston, an Attorney at Law*, Docket No. DRB 13-327, District Docket No. XIV-2010-0381E. The Decision established that Respondent knowingly misappropriated escrow funds and other monies held in his trust account, failed to keep proper records and failed to cooperate with disciplinary authorities.

4. On or about June 3, 2014, an Order (Exhibit 2) was filed in the Supreme Court of New Jersey in a matter styled, *In the Matter of Richard B. Livingston, an Attorney at Law, (Attorney No. 266211971)*, that states in pertinent part as follows:

...The Disciplinary Review Board having filed with the Court its decision in DRB 13-237, recommending that Richard B. Livingston of Springfield, who was admitted to the bar of this State in 1971, be disbarred for violating RPC 1.15(a) (failure to safeguard and knowing misappropriation of escrow funds), RPC 1.15(d) (record keeping violations), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and the principles of In re Hollendonner, 102 N.J. 21 (1985);

And Richard B. Livingston having been ordered to show cause why he should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that Richard B. Livingston be disbarred, effective immediately, and that his name be stricken from the roll of attorneys;...

Certified copies of the Decision and Order are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of the hearing in this case.

5. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme of New Jersey and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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Chief Disciplinary Counsel

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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Richard Bruce Livingston by personal service.

Richard B. Livingston
20 Great Hills Terrace
Short Hills, New Jersey 07078



Rebecca (Beth) Stevens

**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is reasonably calculated under all the circumstances to apprise the respondent of the proceeding and to give him or her reasonable time to appear and answer. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this Rule and may be issued without a written opinion.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters And Legal Malpractice Cases

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal respectively as provided in TRCP 18b.

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and reporter's record to be included in the record on appeal by written stipulation filed with the custodian of records of the evidentiary panel.

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

- (1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.
- (2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.
- (3) The clerk's record should be in the following form:
 - (i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

(e) **Reporter's Record.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the reporter's record, designating the portion of the evidence and other proceedings to be included. A copy of such request shall be filed with the evidentiary panel and BODA and be served on the appellee. The reporter's record shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to apply presumptions against the appellant.

(b) **If No Record Filed.**

- (1) If the clerk's record or reporter's record has not been timely filed, the BODA clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and the evidentiary panel.
- (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a reporter's record; or
 - (ii)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

(c) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the CDC or the official court reporter.

Rule 4.05 Copies of the Record

The record shall not be withdrawn from the custody of the BODA clerk. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure to File a Brief.** If the appellant fails to timely file a brief, BODA may:

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure and the appellee is not significantly injured by the appellant's failure to timely file a brief; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(c) **For Filing Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall request that the respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer but thereafter appears at the hearing, BODA may, at the discretion of the chair, receive testimony from the respondent relating to the merits of the petition for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds pursuant to TRDP 2.17P(2) or the CDC believes pursuant to TRDP 2.14C that a respondent is suffering from a disability, the rules in this section shall apply to the District Disability Committee *de novo* proceeding held pursuant to TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee shall be filed with the BODA clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA chair may appoint a substitute member.

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

(a) The notice to the respondent that a District Disability Committee has been appointed and the notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) The party seeking to establish the disability must prove by a preponderance of the evidence that the respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition shall affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall be given reasonable notice of the examination by written order specifying the name, address and telephone number of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-327
District Docket No. XIV-2010-0381E

IN THE MATTER OF
RICHARD B. LIVINGSTON
AN ATTORNEY AT LAW

Decision

Argued: February 20, 2014

Decided: March 28, 2014

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa appeared on behalf of respondent.

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 Master Melinda Singer, based on her finding that respondent knowingly misappropriated client funds, a violation of RPC 1.15(a) (failure to safeguard funds) and the principle set forth in In re Wilson, 81 N.J. 451 (1979).

Exhibit
|

The special master also found that respondent failed to comply with the recordkeeping rules (RPC 1.15(d)) and failed to cooperate with disciplinary authorities (RPC 8.1(b)).

We note that the formal ethics complaint charged respondent with knowing misappropriation of trust funds, citing both Wilson and In re Hollendonner, 102 N.J. 21 (1985). The funds at issue were, in one case, ordered to be kept in escrow, in respondent's attorney trust account, until further order of the court. Yet, he removed the funds and spent them without such an order. In two other cases, the funds were real estate deposits, which required the consent of both parties to the transactions before respondent could use the monies for an unrelated purpose. Therefore, Hollendonner, rather than Wilson, is applicable in this matter. With the exception of the special master's characterization of the escrow funds as client funds, we accept her findings, and recommend respondent's disbarment.

Respondent was admitted to the Texas bar in 1970, the New Jersey bar in 1971, and the New York bar in 1972. At the relevant times, he maintained an office for the practice of law in Springfield, New Jersey. He has no disciplinary history.

On October 13, 2010, the Office of Attorney Ethics (OAE) conducted a demand audit of respondent's attorney books and

records, which was prompted by a \$1,436.63 overdraft in respondent's attorney trust account. A second audit took place in March 2011.

As a result of the audits, the OAE issued a two-count complaint, charging respondent with recordkeeping violations, failure to cooperate with disciplinary authorities, and knowing misappropriation of trust funds. Prior to the disciplinary hearing, respondent stipulated the first two charges, though he insisted that "most" of them were "technical" in nature. He admitted that he failed to prepare three-way reconciliations of his trust account on a monthly basis; maintain receipt journals; include all debits and credits or a running balance in his disbursements journal, which was not fully descriptive; maintain separate client ledgers for all client funds held in trust; take his fees from the trust account within a reasonable time; and made cash withdrawals from the trust account.

As to the failure-to-cooperate charge, on February 8, 2011, the OAE instructed respondent to provide three-way reconciliations of his attorney trust account and a current list of clients and the amounts held in the trust account for each of them. As of the date of the disciplinary hearing, March 18, 2013, respondent had not complied with the OAE's directive.

Indeed, as of oral argument before us, respondent had not produced the reconciliations to the OAE, though he claimed that he was, and had been, performing them.

As stated previously, the complaint also charged respondent with knowing misappropriation of trust funds, specifically, real estate deposit monies in real estate transactions involving clients Jay Meegoda and Slawomir and Noelle Pajka, as well as escrow funds that were subject to a court order, in litigation between respondent's client, Rivermount Developers, LLC (Rivermount), and Artan Dauti. As shown below, the Rivermount misappropriation was discovered only as the result of the OAE's review of respondent's bank records subpoenaed by the OAE.

At the disciplinary hearing, respondent detailed the history of the Rivermount litigation. He testified that he represented Rivermount in the sale of three Chatham residential properties, which had taken place on different dates. The first closing was trouble-free. Closing on the second property, located at 692 River Road, was scheduled for May 6, 2008. Prior to that date, a dispute arose between Rivermount and Dauti, who claimed that he had lent monies to Rivermount and was, therefore, entitled to repayment from the proceeds of the sale.

The dispute was eventually settled and memorialized in a stipulation of settlement. The closing then went forward.

One of the settlement terms governed the disposition of certain proceeds from the sale of the third property, located at 820 Fairmount Avenue. Specifically, upon the sale of that property, all sums due to James Ferrentino, the holder of a second mortgage on that property, would be paid to him before any proceeds would be disbursed to Dauti.

The Fairmount Avenue property was sold on June 26, 2009. Two days before, Dauti had obtained an order to show cause, which provided, in pertinent part:

3. **ORDERED**, that all net closing proceeds otherwise payable to Defendant James Ferrentino on account of the mortgages held by Defendant Ferrentino which encumber the property, which are derived from the sale of 820 Fairmount Avenue, Chatham, New Jersey, after payment of closing costs and liens detailed in the draft HUD-1 attached to the certification of Richard B. Livingston, Esq. dated June 23, 2009, be placed in escrow in the attorney trust account of Richard B. Livingston, Esq. until further order of this Court. A copy of the actual HUD-1 for the closing shall be furnished to all counsel within two days of closing of title; and it is further

4. **ORDERED**, that of the \$20,000 counsel fee shown on line 1107 of the HUD-1 settlement statement attached to the certification of Richard B. Livingston, Esq.

dated June 23, 2009, \$5,000 of that amount shall be retained in escrow by Richard B. Livingston, Esq. until further order of this Court. . . .

[Ex.9.]

On June 23, 2009, the day before the court issued the order to show cause, respondent submitted a certification to the court, stating, in pertinent part:

As a result of the transaction I am presently holding \$297,846.48 in my trust account. From this, \$750.00 is being held for the resolution of issues between the Seller and Buyer as to the condition of the house; \$5,000.00 of my attorney's fee and \$23,180.84 (the expected payoff of the Chatham Boro assessments), thus leaving \$268,915.64 in satisfaction of the James Ferrentino mortgages.

[Ex.10¶3.]

Respondent conceded that the court order required him to hold the monies in his attorney trust account.

On March 31, 2010, Dauti's lawyer, Alice Beirne, wrote a letter to respondent, informing him that a court-initiated settlement conference would take place on April 5, 2010. Beirne requested that respondent "confirm the exact amount in your trust account" from the proceeds of the sale of the Fairmount Avenue property. At the bottom of Beirne's letter was the following typewritten notation: "The amount of \$ is being

held in my trust account as described above." Underneath that language was a signature line, with respondent's name typed below.

Respondent provided the requested information at the bottom of Beirne's letter and faxed it back to her. In the space between the text and the signature line, respondent wrote the following:

FERRENTINO - 268,946.48
RBL att fee -- 5,000
TOTAL \$273,946.48

[Ex.11.]

On April 29, 2010, Ferrentino filed a motion for summary judgment, seeking, among other things, the release of the \$268,000. In support of his motion, Ferrentino offered a certification from respondent, dated April 29, 2010. There, respondent represented to the court that, as a result of the June 24, 2009 court order,

I am holding in escrow the aggregate amount of \$292,096.48 from the sale of 820 Fairmount Avenue, which is allocated as follows: \$5,000 is reserved for my legal fees per the Order of Judge Langlois; \$18,150 is allocated as an amount which may have to be applied in whole or in part to a property tax obligation payable to the Township of Chatham (that issue is unresolved as of this date[]), and if any portion of the \$18,150 does not have to be

paid over to the Township of Chatham, it is available for release as ordered by the Court in this matter; and \$268,946.48 is unallocated and available for release as ordered by the Court.

[Ex.13¶11.]

On July 19, 2010, the court ordered respondent to release the funds that he "held in escrow." Specifically, \$268,915.64 was to be disbursed to Ferrentino; \$5000 was to go to respondent for his attorney fees; and the difference between the \$18,500 escrowed for the potential municipal assessment and the actual amount paid to the municipality was to go to Ferrentino. The next day, respondent disbursed \$287,415.64 to Ferrentino.

As stated previously, respondent's certification of April 29, 2010 represented to the Court that he was holding "in escrow" an aggregate amount of \$292,096.48. According to OAE disciplinary auditor Gary Stroz, however, respondent's trust account statement for the month of April 2010 reflected a balance of only \$38,663.05, on April 29, 2010.

On April 30, 2010, respondent withdrew \$7000 from his trust account and deposited \$4000 in his business account, which, at the time, had a \$2,468.91 balance. The \$4000 deposit raised the balance to \$6,468.91. According to Stroz, if respondent had not deposited the \$4000, the business account would have had a

negative balance of \$50, when the checks issued between the date of the deposit, April 30, 2010, and May 4, 2010, would have been presented for payment.

Stroz further testified that, between June 1 and 8, 2010, respondent did not maintain sufficient funds in his trust account for the Rivermount escrow. For example, on June 1, 2010, the trust account balance was only \$63,709.56. On June 8, 2010, it was \$77,267.63, or way less than the amount that respondent was required to hold in trust, as ordered by the court.

Stroz testified that, in addition to the monies that respondent should have had available in his trust account for the Rivermount litigation, as of April 29, 2010, he should have been holding \$4000 for his clients, the Johns, \$6,737.50 for a client named Cocuzi, and \$3050¹ for a client named Goldberg.² Thus, on April 29, 2010, the total trust account balance should have been \$305,883.98. Yet, because the balance was only

¹ The ledger showed \$3090, but that was a recording error.

² The complaint did not charge respondent with the knowing misappropriation of these clients' funds.

\$38,663.05, there was a \$267,220.93 shortage in the account.

Stroz testified that other trust funds, too, were invaded. They represented real estate deposits received from Meegoda and the Pajkas, the buyers, in separate real estate transactions. Specifically, on May 20, 2010, respondent received \$34,000 from Meegoda.³ According to Stroz, this amount should have remained intact in respondent's trust account through June 23, 2010. Yet, as of June 1, 2010, the trust account balance was only \$23,709.56. Because the Rivermount funds should have been intact as well, respondent was out of trust to the tune of \$267,986.92. By June 2, 2010, the trust account shortage was \$98,041.18, as the balance was now \$233,655.30. Meegoda told the OAE that respondent was not authorized to use the deposit monies for any purpose other than the real estate transaction.

Furthermore, on May 30, 2010, respondent deposited the Pajkas' \$25,000 deposit in his trust account. From June 3, 2010 through at least June 8, 2010, these monies should have remained inviolate. Thus, between June 3 and 8, 2010, respondent should

³ The actual date of the deposit, as demonstrated by the bank records, was May 13, 2010. Erroneously, respondent recorded it on the ledger as having occurred on May 20, 2010.

have held \$356,696.48 for the Meegoda and Pajkas real estate transactions and the Rivermount litigation. Yet, he did not. On June 3, 2010, the trust account balance was \$258,655.30, leaving a \$98,041.18 shortage. Between that date and June 8, 2010, the trust account remained short, with the lowest balance dipping to just over \$77,000. Noelle Pajka told the OAE that she and her husband had not authorized respondent to use their deposit for any reason other than the real estate transaction.

During this time period, that is, June 1 through 8, 2010, respondent transferred monies out of the trust account for his own purposes. Specifically, on June 2, 2010, respondent transferred \$4400 to his business account, at a time when the balance in that account was \$572.69. Yet, more than \$4000 in outstanding items were about to be presented for payment. Stroz testified that, without that transfer, respondent's business account would not have had sufficient funds to cover those outstanding checks.

As stated previously, on July 19, 2010, the court ordered respondent to release the Rivermount funds. By then, respondent

had been replenishing the trust account deficiencies with personal funds for more than a month.⁴ Because the balance in the account exceeded \$400,000 by that date, respondent was able to write a trust account check for \$287,415.64, which was posted the next day.

Despite respondent's claim to the court, in his July 2009 certification, that he was holding the \$297,000 in Rivermount funds in his trust account, upon questioning by the special master, he admitted that the funds were "not being held directly" in his trust account, although they were "being held . . . in escrow," at that time. Moreover, he claimed, the monies were in his trust account as of the date of his April 29, 2010 certification.⁵

Despite respondent's claims to the special master that the funds were being held in escrow, between his receipt of the

⁴ It appears that respondent's deposits of personal funds were characterized on the trust account statements as "SPEC DEP," presumably meaning "special deposit."

⁵ Respondent's trust account statement for April 2010 reflected a balance of more than \$700,000 on April 28, 2010. The balance on April 29, 2010, however, was only \$44,099.26.

Rivermount monies, in June 2009, and July 19, 2010, when he was ordered to release them, he admitted that he had removed those monies from the trust account and had used them for his own benefit. He testified that the funds, which were transferred into a joint checking account with his wife,⁶ were used for the payment of household and personal expenses, such as the \$3100 monthly mortgage, because his business "wasn't doing so well at that time."

Even though respondent admitted taking the Rivermount funds and using them to pay personal expenses, he maintained that his April 29, 2010 certification's reference to having the monies in escrow was true. He explained that, when he was put on notice, in April 2010, that the court would be asked to release the Rivermount funds, he placed \$338,000 into his trust account, rather than \$279,000, because he "wanted to make sure that there was enough" and "didn't want any problems with checks not clearing."

⁶ Respondent and his wife held joint accounts with PNC Bank, Hudson City Savings Bank, Valley National Bank, and Bank of America. Respondent also maintained an individual IRA account with Morgan Stanley.

Upon questioning by the special master, respondent stated that, despite the withdrawal of the Rivermount funds, he "considered it always held in escrow and always maintained a more than sufficient balance to cover it." He defined an escrow account broadly, to include monies that he had "control over," that is, his personal accounts. In other words, he contended that he could freely use the Rivermount monies because he had enough funds in his personal accounts to "cover" them, when the time came to turn them over:

THE WITNESS: I would -- it was my thinking that if I started putting [the Rivermount monies] into those accounts, I would never keep anything straight, whose was what. And I had a total and I knew I had another total. And I knew it was always there, so that I was always safe with my clients.

In other words, I knew those [personal] accounts were always there with the monies. Those were accounts that were never used. In other words, we didn't -- they were never used for anything. It was just money that was -- that stayed put. So that it was a consistent [sic] money. If I -- in other words, if I had used my personal checking account, that money keeps going up and down and sideways.

[SPECIAL MASTER]: But that's where you took the trust monies-- the trust money withdrawals went into--

THE WITNESS: But I knew--

[SPECIAL MASTER]: -- that account.

THE WITNESS: But I know--

[SPECIAL MASTER]: -- into the personal account.

THE WITNESS: And the business account. But I knew the total that had to be. And I knew that the [personal] accounts -- the other accounts had that total in, so that I was never worried over --

[SPECIAL MASTER]: I'm going to go way off for a second, but I just want to ask a question. When you and your wife opened up these accounts -- and there's no testimony on this -- these other accounts and we'll call them from your exhibit numbers, probably 40 -- Mr. Londa's letter is starting on Exhibit 46 through and including I think 50, those accounts I would assume were for your retirement with your wife; is that correct? You were amassing, you can see the Valley National Bank book, it looks like a savings book. And it's from the year 2006 and there are incremental monetary deposits on a pretty regular basis. So I'm guessing those other accounts that you call them were really for the purpose of your retirement; is that correct?

THE WITNESS: They --

[SPECIAL MASTER]: They weren't to pledge against something in the business, meaning something --

THE WITNESS: Well, I had -- I was not-- my business wasn't doing so well at that time. So that I would have had to take money out of those [personal] accounts to

live on. If I had done that, then the Rivermount money would have stayed in there.

[T186-12 to T188-14.]

Respondent also offered another reason for removing the Rivermount funds from the trust account, that is, his fear that Sovereign Bank, where he kept his trust account, might fail, in some respect, and that the Rivermount monies would be lost because the amount on deposit exceeded the amount insured by the FDIC. He explained:

And at that time, the country and the banking system was [sic] in turmoil.

As I understood the situation at that time was that bank accounts were only insured up to \$100,000 in one name. I, in order to protect these monies, because Sovereign itself was having issues

[T117-23 to T118-4.]

Respondent's statement was cut off by a lengthy discussion of a hearsay objection.

Respondent continued:

A. Because I was afraid that there was a problem with the bank and the money would not be there when it was necessary. So that I maintained all monies, both personal and business, at as low under the hundred thousand dollars as possible. My trust account did go over the hundred thousand dollars numerous times. But they were short

periods of time because the monies were in and out.

[SPECIAL MASTER]: Next question.

Q. And what did you --

MR. LONDA: Thank you.

Q. And what did you do with respect to the money that you had on account of the Rivermount deposit?

A. It was -- I maintained sufficient monies in various accounts in order to protect this money and to be available at a moment's notice to distribute it.

And in July of 2010, I knew that -- I knew in July that the money was going to have to be distributed. So I brought it back to the account at that time because the situation was better with Sovereign, the situation -- I brought it back. And then I received a phone call the day before the court order that the -- that they were expected to receive a court order from the Court as a result of the trial.

I received the court order, I issued the trust check to Mr. Ferrentino for his monies spent, except for approximately \$4,500, which I retained in my trust account because I had some questions of whether he owed me some money. And I asked him to come in on a regular basis. And finally, he came in in November, we resolved it. And I wrote him out a check and I maintained it on my statements, the \$4,500, I believe.

[T120-25 to T122-11.]

Respondent testified that, despite his concern with the solvency of Sovereign, he did not go to a different bank or use multiple accounts because he simply did not trust any bank with an account balance of more than \$100,000:

And then I had the chance, in my mind, of losing it all. And then how was I going to explain it if I lost the money, if the bank went belly up for some reason?

[SPECIAL MASTER]: So you thought it was a better idea to take it out of the trust account, put it into the business account and personal accounts --

THE WITNESS: I thought the business -- I thought the trust account was only covered for a hundred thousand dollars. I had no idea that each individual accounts -- I thought if I had a trust account with segregated accounts, sub-accounts, I had that once, I tried to maintain that. And I had that at Broad National. I had a big book of checks and sub-accounts and deposits. And it went absolutely nowhere and I got crazy keeping it up.

[SPECIAL MASTER]: When you first received the deposit in 2009 and you saw that it was a large amount, did it come into your mind to perhaps place that deposit in a separate bank, if you were so concerned about this viability of your banking institution? In other words, right then and there, you got a deposit because that came out of the court order that was 2009, that was the very beginning of the Rivermount monies, didn't it occur to you at that point in time, in the year 2009, to go put it in a

separate account, if you were that concerned about—

THE WITNESS: It didn't occur to me because [sic] two reasons. One, I didn't think of it. And two, it still would have been over the 250 or of [sic] the hundred thousand.

[SPECIAL MASTER]: Did it occur to you that maybe you could have divided it up into two different deposit amounts?

THE WITNESS: Never crossed my mind.

[T188-14 to T189-25.]

Respondent acknowledged that he had removed the Rivermount funds in amounts ranging from \$1500 to \$23,000. When asked why he had not removed the monies in one lump sum, if he feared that they might be lost, he replied that he did not know what he would have done with the entire sum.

Respondent continually referred to a \$100,000 FDIC limit, but was confronted with the fact that, in 2009, the trust account would have been insured up to \$250,000 per client. He claimed, however, that he thought that this only applied to segregated accounts, which he did not have. He did not review the FDIC rules.

Although the Rivermount ledger card reflected monies that respondent received, he acknowledged that it did not reflect the

removal of the monies that were "placed in escrow." He conceded that he "should have done it that way, but [he] didn't." Moreover, the Rivermount ledger card was not maintained with the ledger cards for his other client matters because, he said, "this money had been removed to protect it from the trust account." Nevertheless, respondent contended, the monies were "kept in escrow" until they were paid, "as the card says."

At this point, the special master interjected: "I have no idea what you mean by escrow, what do you mean? What is escrow?" Respondent explained:

In other words, I kept it under my control until there was [sic] further order of the court as to what I was to do with it and that was in July. I did not keep it in the trust account because I was afraid of [sic] situation with Sovereign and the banks. If you look at all my accounts, they're all under a hundred thousand dollars.

[T124-16 to 23.]

On cross-examination, respondent conceded that none of the accounts in which he was holding the funds were escrow accounts. He reiterated that, by removing the Rivermount funds from the trust account, he "thought [he] was protecting the money."

Stroz testified that the Rivermount funds were not identified in any of the records that respondent produced at the

first audit, in October 2010. The OAE learned about the funds when it obtained respondent's firm and personal records from Sovereign Bank. The firm bank records included a \$287,415.64 trust account check issued as a result of the Rivermount litigation.

Respondent was questioned about the check at the second audit, in March 2011. Until then, he "never brought it up." He claimed that the Rivermount ledger card was not with the other ledger cards that were provided to the OAE because it was in the Rivermount file, which had been closed.

According to Stroz, respondent stated that funds moved from the trust account to the business account represented expenses and fees. Further, Stroz testified that respondent never told him that he had removed the Rivermount funds from the trust account because he was concerned about Sovereign Bank's solvency.

In an effort to show that he had sufficient funds in his personal accounts to cover the Rivermount escrow, respondent testified that a PNC joint account with his wife had a balance of \$47,372.95 for the one-month period encompassing May 28 to June 26, 2009. According to respondent, those funds were in the account prior to May 28, 2009 and they "had been put in over

years of [his] earnings or however [he] got [his] money." A Hudson City joint account had a balance of \$36,597.86, as of May 29, 2009, which grew to \$39,712.81 by June 30, 2010. The Valley National Bank joint account reflected a \$50,000 balance as far back as 2006, which was maintained up through July 30, 2010.

In sum, respondent asserted that he always maintained, within his control, an amount of money in these accounts that either equaled or exceeded the amount of money that he was to hold for the Rivermount litigation, despite his withdrawals from the trust account. When asked why he had not simply used the personal funds, respondent replied:

Because I -- it would confuse me completely to take money out, put it into these accounts, take money -- I would never keep anything straight. So this money was kept straightforward and protected. And that -- and I knew the total of the Rivermount money.

[T131-20 to 25.]

As for the trust monies placed into his IRA, respondent conceded that the value of that account was tied to market conditions. He denied that his wife would ever empty the joint checking account, even though he acknowledged that she would be able to do that, legally. He "never thought about" the fact that, if he and his wife died at the same time, no one would

ever know that the money in their accounts was subject to the court order in the Rivermount litigation. Nevertheless, he insisted that the funds were secure in those various accounts. Stroz testified that, after respondent disbursed the Rivermount funds, on July 19, 2010, respondent continued to remove funds from the trust account and put them into his personal accounts, up through the end of the year. He continued to make cash withdrawals, during the same period, and continued to make direct transfers into the business account.

In mitigation, before the special master, respondent detailed the pro bono work that he performed, mostly in guardianship matters, exceeding the twenty-five hours per year requirement for attorneys.

In the special master's report, which she delivered on the record, she accepted respondent's stipulated violations of RPC 1.15(d) and RPC 8.1(b), as charged in the complaint. She also found that respondent knowingly misappropriated trust funds, noting Stroz's testimony that, during one of the audit interviews, respondent stated that he had removed and used monies from the trust account for his own benefit. The special master noted, too, that, when respondent realized that he was

going to be short in the trust account, he began to infuse the account with personal monies.

With respect to the Rivermount litigation, the special master pointed out that respondent never mentioned that matter to Stroz, until Stroz questioned him about it. Moreover, he never provided the OAE with a client ledger card for the Rivermount matter. In the special master's view, respondent's explanation for his failure to produce the ledger card, that is, that it was not kept with the other cards, was "not credible whatsoever."

Further, according to the special master, after respondent was alerted by Bierne, in March 2010, that a settlement conference was scheduled for April 5, 2010 and was asked to confirm the amount of the funds that he was holding in his trust account for the Rivermount matter, respondent replied that he was holding \$273,946.48. In fact, respondent's trust account balance was only \$38,663.05 at that time. Finally, respondent admitted that the funds were not kept in the trust account.

The special master also found that respondent invaded funds belonging to Goldberg, John, Cocuzi, Meegoda, and the Pajkas. As to the Pajkas' funds, the special master noted that, from June 3 to at least June 10, 2010, respondent was required to

have \$25,000 of the Pajkas' monies in his trust account.⁷ The special master also noted that, as of April 29, 2010, the total amount of monies held for Rivermount, Cocuzi, Goldberg, and John should have been \$305,883.98. Yet, the trust account had a shortage of \$267,220.93 on that date.

As to Meegoda, who had given respondent \$34,000 to be held in trust until June 23, 2010, the special master observed that, as of June 1 and 2, 2010, the trust account balance should have been \$331,696.48, including the Rivermount funds. Yet, the trust account balance, on June 1, 2010, was only \$23,709.56, with a shortage of \$267,986.92. By the next day, the shortage was \$98,041.18.

The special master also reviewed certain withdrawals from the trust account, made on two occasions: one in April 2010 and the other in June 2010, which were made for the purpose of funding respondent's joint checking account, thereby providing respondent with cash and, most significantly, preventing checks issued against his business account from bouncing. Indeed, the

⁷ The special master did not mention that the trust account balance was short during this time.

special master noted that, between June 26, 2009 and July 19, 2010, respondent "invaded his client funds repeatedly," causing his trust account balance, seventy-four times, to fall below what he should have been holding with respect to the Rivermount transaction.

The special master identified a number of factors demonstrating that respondent's actions were knowing. The special master rejected respondent's explanation that he had removed funds from the trust account due to a fear that Sovereign Bank, as well as other banks, might fail. The special master noted that, despite respondent's concern, his trust account balance was as high as \$2 million at times. In addition, his claim that the total amount of Rivermount funds exceeded the amount insured by the FDIC was not only incorrect, but he had no idea what the FDIC regulations provided in this regard and had made no effort to ascertain that information, at the time of his alleged concern. Moreover, respondent never mentioned to the OAE this concern about Sovereign's solvency or the FDIC regulations and that he had transferred funds to personal accounts, in order to protect them. Based on the foregoing, the special master found respondent's claim that he

removed the funds to protect them to be "without any merit and . . . not credible."

Also, the special master remarked, if respondent were truly concerned about a potential bank failure, he would have removed the Rivermount funds in one lump sum and placed them in other banks, rather than make withdrawals over time, in amounts ranging from \$1500 to \$23,000. The special master pointed to respondent's testimony that he had used the trust account funds to live on, at a time when his practice "was not doing so well."

The special master concluded that respondent's claim that any account over which he had control could be an escrow account was simply wrong. For example, some of respondent's personal accounts were joint accounts with his wife, who could have withdrawn the funds, thereby dissipating the Rivermount monies. Also, the value of his IRA, as respondent acknowledged, could go up or down, depending on market conditions.

The special master concluded that, when respondent's business was doing poorly and he needed the money to live on, he knowingly misappropriated the Rivermount funds and the trust funds belonging to Cocuzi, Goldberg, John, Meegoda and the Pajkas. The special master recommended respondent's disbarment.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical was fully supported by clear and convincing evidence.

The clear and convincing evidence establishes that respondent violated RPC 1.15(d) and RPC 8.1(b) and that he knowingly misappropriated the Rivermount escrow funds, as well as the real estate deposit monies held in his trust account for Meegoda's and the Pajkas' real estate transactions. We do not consider whether the evidence establishes that respondent knowingly misappropriated funds belonging to Cocuzi, Goldberg, or the Johns, because the complaint did not charge him for these defalcations. Moreover, although the evidence demonstrates a "shortage" in the funds held for these individuals, there was no evidence that the shortage was caused by respondent's unauthorized use of their monies.

As mentioned previously, however, in the case of Meegoda and the Pajkas, the OAE spoke directly to them and learned that they had not authorized respondent to use their monies for any purpose, other than that for which they had been given to him, that is, for the purchase of real estate.

According to respondent's own records, on May 13, 2010, he deposited into his trust account \$34,000, representing Meegoda's

deposit in a real estate transaction, the closing for which took place on June 23, 2010. Yet, on June 1, 2010, the trust account balance was only \$23,709.56. At the same time, respondent should have had Rivermount's \$297,846.48 in the account.

On June 3, 2010, respondent deposited into the trust account \$25,000, representing the Pajkas' deposit in a real estate transaction that took place later that month. Yet, at a time when the account should have held Rivermount's \$297,846.48, the Meegoda \$34,000 deposit, and the Pajkas' \$25,000 deposit, for a total of \$356,846.48, the balance was as low as \$77,267.63, on June 7, 2010.

Respondent admitted that he used the trust account funds for personal expenses, during this time, because his business was doing poorly. Unquestionably, thus, he knowingly misappropriated trust funds.

Respondent's claim that he was concerned with the bank's solvency at the time is undercut by the fact that he mentioned this for the first time at the ethics hearing and that he admitted not knowing what the FDIC rules and regulations were with respect to the insured limits on bank accounts. If respondent were truly concerned about the safety of the monies in the trust account, he would have removed the funds, in one

lump sum, and placed them in a trust account at another bank, instead of taking them out, in "dribs and drabs," "to live on," as he so readily admitted.

Moreover, respondent's argument that, despite his depletion of the trust account, the monies were still in escrow because he had personal accounts that contained enough funds to "cover" the shortages is meritless. First, he was required to maintain those funds in an attorney trust account, pursuant to R. 1:21-6(a)(1). Second, the accounts that respondent had jointly with his wife were not under his complete control and, therefore, were not exempt from depletion. The same is true for the IRA account, which was subject to fluctuations, based on market conditions. Third, his personal accounts, on occasion, did not, in fact, have enough monies to "cover" the total amount of funds that should have been held in the trust account.

In short, respondent used the Rivermount funds and the deposit funds tendered by Meegoda and the Pajkas for his own expenses, without a court order (in the Rivermount case), or consent (in the case of the Meegoda and Pajka transactions). That the funds could be replenished with personal monies, as respondent claimed, is of no moment. Restitution or availability of other funds, even if available, is not a defense to knowing

misappropriation. See, e.g., In re Blumenstyk, 152 N.J. 158, 161 (1997) (attorney disbarred for using trust funds for personal expenses, such as a family vacation and his son's Bar Mitzvah, and to avoid overdrafts in his business account; although he replenished the trust account with personal monies in order to make restitution, the Court noted that "restitution does not alter the character of knowing misappropriation and misuse of clients' funds"); In re Barlow, 140 N.J. 191, 198-99 (1995) (intent to repay funds or otherwise make restitution is not a defense to knowing misappropriation); and In re Noonan, 102 N.J. 157, 160 (1986) (noting that, under Wilson, it makes no difference that the lawyer "intended to return the money when he took it").

At oral argument before us, counsel for respondent stated that "what happened should not have happened." Nevertheless, he pointed out, respondent never intended to injure any client, whatever was required to be paid was paid, and respondent has practiced law for more than forty years, without incident.

It is of no moment, of course, that respondent did not intend to harm anyone whose funds were entrusted to him. As the Court observed in In re Noonan, 102 N.J. 157, 160 (1986):

The misappropriation that will trigger automatic 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 was 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.

Moreover, counsel suggested that the Court's recent decisions in In re Wigenton, 210 N.J. 95 (2012), and In re Malvone, 216 N.J. 10 (2013), militate against disbarment in this case. We are unable to agree. In Wigenton, for example, the Supreme Court adopted our determination that the attorney had engaged in the negligent, not knowing, misappropriation of trust and escrow funds. Therefore, it was proper to consider mitigating factors, such as the absence of harm and an

unblemished disciplinary record, when determining the appropriate measure of discipline. In this case, we have determined that respondent knowingly, not negligently, misappropriated trust and escrow funds. Thus, no amount of mitigation may be considered.

We are also unable to agree with counsel's argument that the facts of Malvone are "a far cry from this case" because, in Malvone, the attorney was engaged in a conspiracy to defraud his client's spouse, by hiding assets from her. As quoted above, "the relative moral quality of the act . . . is irrelevant." In re Noonan, supra, 102 N.J. at 160.

Finally, the division among the members of the Malvone Court does not, as respondent's counsel suggested, signify that "the time has come" for the Wilson rule to be re-examined. The majority in Malvone concluded that the attorney had conspired with his client to defraud the client's spouse in divorce proceedings and that he had knowingly misappropriated marital funds in which the client and the client's spouse had an interest. The dissenting justices, including the Chief Justice, agreed on a three-year suspension, as determined by us. We had made that determination based on our findings that, although the attorney conspired with this client to hide funds from his

client's wife, there was no clear and convincing evidence that the client directed the attorney, or that the attorney agreed, to place the monies in the law firm's trust account. Moreover, the client's checks were made out to "cash" and, thus, we did not find that the exchange of funds fell within the attorney/client relationship regarding keeping funds separate.

In conclusion, respondent must be disbarred for his knowing misappropriation of escrow funds. In re Hollendonner, supra, 102 N.J. 21. We so recommend to the Court.

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
Bonnie C. Frost, Chair

By: _____


Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard B. Livingston
Docket No. DRB 13-327

Argued: February 20, 2014

Decided: March 28, 2014

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Gallipoli	X					
Hoberman	X					
Singer	X					
Yamner	X					
Zmirich	X					
Total:	9					



Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY

D-94 September Term 2013

074148

IN THE MATTER OF

RICHARD B. LIVINGSTON,

AN ATTORNEY AT LAW

(Attorney No. 266211971)

FILED

JUN 05 2014

O R D E R

CLERK

The Disciplinary Review Board having filed with the Court its decision in DRB 13-327, recommending that **RICHARD B. LIVINGSTON** of **SPRINGFIELD**, who was admitted to the bar of this State in 1971, be disbarred for violating RPC 1.15(a) (failure to safeguard and knowing misappropriation of escrow funds), RPC 1.15(d) (recordkeeping violations), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and the principles of In re Hollendonner, 102 N.J. 21 (1985);

And **RICHARD B. LIVINGSTON** having been ordered to show cause why he should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that **RICHARD B. LIVINGSTON** be disbarred, effective immediately, and that his name be stricken from the roll of attorneys;

ORDERED that **RICHARD B. LIVINGSTON** be and hereby is permanently restrained and enjoined from practicing law; and it is further

Exhibit

2

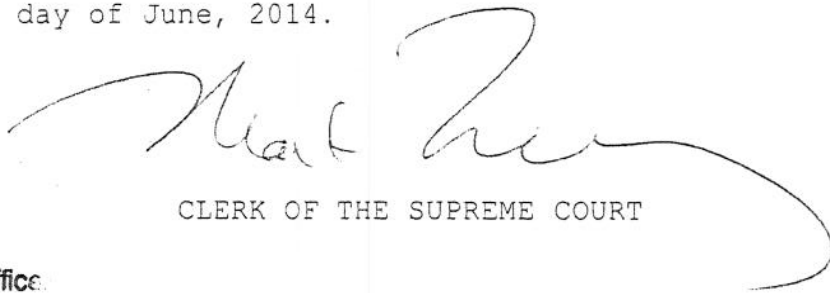
ORDERED that **RICHARD B. LIVINGSTON** comply with Rule 1:20-20 dealing with disbarred attorneys; and it is further

ORDERED that all funds, if any, currently existing or hereinafter deposited in any New Jersey financial institution maintained by **RICHARD B. LIVINGSTON** pursuant to Rule 1:21-6 be restrained from disbursement except on application to this Court, for good cause shown, and shall be transferred by the financial institution to the Clerk of the Superior Court, who is directed to deposit the funds in the Superior Court Trust Fund pending the further Order of this Court; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

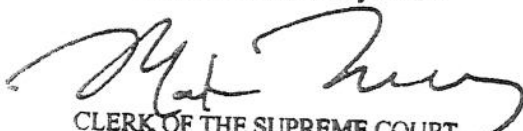
ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice,
at Trenton, this 3rd day of June, 2014.



CLERK OF THE SUPREME COURT

The foregoing is a true copy
of the original on file in my office.



CLERK OF THE SUPREME COURT
OF NEW JERSEY