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## NJ Bar Aims To Limit Disbarment Rule For Misusing Funds

By **Bill Wichert**

Law360 (September 27, 2021, 9:25 PM EDT) -- The New Jersey State Bar Association on Monday called on the New Jersey Supreme Court to limit the state's longstanding disbarment rule to cases where attorneys intended to steal from or defraud clients in knowingly misappropriating their funds, but the chief justice questioned taking such a narrow approach.

During a disciplinary hearing for an attorney facing potential disbarment for improperly using her clients' funds, NJSBA attorney Robert B. Hille of Greenbaum Rowe Smith & Davis LLP indicated that association members are worried about ethics authorities applying the so-called Wilson rule to matters that fall short of theft or fraud.

Without clarification from the state Supreme Court, members are concerned that the knowing misappropriation standard will be "pushed to its outer limits and the members will be subjected to more aggressive ... enforcement by the disciplinary authorities," said Hille, who represented the NJSBA as amicus curiae in the disciplinary matter of Dionne Larrel Wade.

In its amicus brief, the association had urged the justices "to reaffirm the original application of the Wilson automatic disbarment rule to those situations where the evidence demonstrates there is an actual fraudulent intent or purpose to commit a theft of a client's funds."

But Chief Justice Stuart Rabner on Monday pressed Hille about whether the association was concerned with having a standard that attorneys do not commit knowing misappropriation if they do not take time to learn the rules and balance their books but still take money from clients without their permission.

The justice noted that lawyers could make the argument that "I didn't know, I didn't look."

"Is that of concern to the bar if that becomes the standard and if that's what the public comes to see from lawyers in the state?" Justice Rabner asked, later adding: "Is the bar's position that if an attorney puts his head in the sand and looks the other way, yet takes client funds, that's not a disbarment case?"

Hille said the NJSBA is concerned about an enforcement approach by disciplinary authorities that "takes the term 'knowing' and tries to stretch that to its outer limits and its application where almost any conscious act can start coming before this court as a knowing violation, and that's what the bar is concerned about avoiding."

Justice Barry T. Albin, however, then pointed to the numerous instances where charges of knowing misappropriation came before the state Supreme Court and the court found the lesser violation of negligent misappropriation.

"This court knows the difference between the two," Justice Albin said.

The instant matter reached the Supreme Court following a unanimous recommendation by its Disciplinary Review Board that — based on the court's 1979 *In re: Wilson* decision — Wade should be disbarred for using client funds in her attorney trust account for improper purposes.

The board noted in its June 28 opinion, "As it stands today, the Wilson rule allows for no exceptions:

Attorneys who knowingly misappropriate clients' funds invariably suffer the disbarment penalty."

During Monday's hearing, HoeChin Kim of the state's Office of Attorney Ethics urged the court to adopt the board's recommendation, saying the positions of the NJSBA and Wade are "asking to erase at least 40 years of this court's jurisprudence regarding Wilson and all of its progeny."

Wade and her attorney, Donald M. Lomurro of Lomurro Munson Comer Brown & Schottland LLC, countered that she should not be disbarred, saying she mixed her own money with client funds and attributed her misconduct to a lack of training on how to manage an attorney trust account.

Wade maintained she wasn't stealing from her clients, saying she "would never do anything to hurt the people who have come to trust me so much."

Lomurro argued Wade did not commit a knowing misappropriation of client funds. Growing up, his children would say, "You don't know what you don't know," he noted.

"You can be willfully indifferent if you know it's wrong and you then look away. That's willful indifference. That's blindly doing it," Lomurro said. "I believe, in this particular case, the kids have it right: She didn't know what she didn't know."

The Office of Attorney Ethics is represented by HoeChin Kim.

Wade is represented by Donald M. Lomurro of Lomurro Munson Comer Brown & Schottland LLC.

Amicus curiae New Jersey State Bar Association is represented by Robert B. Hille of Greenbaum Rowe Smith & Davis LLP.

The case is In the Matter of Dionne Larrel Wade, An Attorney At Law, case number 085931, in the New Jersey Supreme Court.

--Editing by Janice Carter Brown.

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