In re George Louis Acosta
Respondent-Appellant

Commission No. 2021PR00037

Synopsis of Review Board Report and Recommendation
(December 2022)

The Administrator brought a six-count complaint against Respondent, charging him with failing to safeguard client funds and engaging in dishonest conduct, in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct. The complaint alleged that Respondent intentionally took client funds without authority, totaling $86,000, relating to six client matters, in order to pay personal and business expenses, knowing that it was wrong to do so.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for one year.

Respondent appealed, challenging the Hearing Board's findings that Respondent engaged in dishonest conduct in violation of Rule 8.4(c). Respondent also challenged the Hearing Board's sanction recommendation and asked the Review Board to recommend a shorter term of suspension or a suspension stayed by probation, in whole or in part.

The Review Board affirmed the Hearing Board's findings that Respondent engaged in dishonest conduct in violation of Rule 8.4(c), and agreed with the Hearing Board's recommendation that Respondent be suspended for one year.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

GEORGE LOUIS ACOSTA,

Respondent-Appellant,

No. 6200430.

Commission No. 2021PR00037

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator filed a six-count complaint, charging Respondent with failing to safeguard client funds and engaging in dishonest conduct, in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct.

Following a hearing at which Respondent was represented by counsel, the Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for one year.

Respondent appealed, challenging the Hearing Board's findings that Respondent engaged in dishonest conduct in violation of Rule 8.4(c). He also challenges the sanction recommendation and asks this Board to recommend a shorter term of suspension or a suspension stayed by probation, in whole or in part.

For the reasons that follow, we affirm the Hearing Board's finding that Respondent engaged in dishonest conduct by intentionally taking client funds without authority, knowing that it was wrong to do so, in violation of Rule 8.4(c). We also agree with the Hearing Board's recommendation that Respondent be suspended for one year.

FACTS

The facts are fully set out in the Hearing Board's report and the Administrator's brief, including specific information concerning the funds that Respondent took. The facts are summarized only to the extent necessary here.

Respondent

Respondent was licensed to practice law in Illinois in 1989. Respondent has been a solo practitioner since 1996, with a focus on plaintiffs' personal injury law, and occasionally, commercial litigation. He has no prior discipline.

Respondent's Misconduct

Respondent was retained by the clients identified in this case to represent them in personal injury matters. Respondent had contingency fee agreements with the clients that entitled Respondent to a percentage of the clients' recoveries, plus costs and expenses.

During 2018 and 2019, over a period of 18 months, Respondent intentionally took client funds without authority totaling $86,000, relating to six client matters, in order to pay personal and business expenses. Respondent knew that it was wrong to take those client funds. On repeated occasions, Respondent withdrew client funds from his client trust account and caused the balance of that account to fall below the outstanding amounts owed to clients and third parties (hereinafter "lienholders"). Respondent did so without the knowledge or consent of those clients and lienholders.

In October 2019, Respondent issued a $950 check to a lienholder in one of the cases, but the check was returned because there were insufficient funds in the client trust account to cover the check. The bank notified the ARDC, and Respondent stopped taking client funds.

Specifically, during 2018 and 2019, Respondent intentionally took client funds, without authority, from the settlement proceeds received by six different clients, as set forth in the complaint:

Count	Type of Case	Settlement Amount	Funds Taken
1	Car accident	$45,000	$18,452[1]
2	Bicycle accident	$234,534	$6,732
3	Car accident	$117,000	$39,000
4	Jewel-Osco accident	$100,000	$3,854
5	Car accident	$25,000	$4,499
6	Bicycle accident	$25,000	$14,375
			Total: $86,912

In his amended answer to the complaint, Respondent admitted that he took client funds that belonged to the six clients listed in the complaint, without authority, and used those funds to pay for personal and business expenses, in violation of Rule 1.15(a). Respondent denied that he engaged in conduct involving dishonesty, in violation of Rule 8.4(c).

During his testimony at the disciplinary hearing, Respondent admitted that he intentionally took client funds from settlement proceeds in six separate cases without authorization, for his own benefit, knowing that it was wrong to do so. Respondent admitted that he caused the balance of his client trust account to fall below the amounts he should have been holding for clients and lienholders. Respondent admitted that he used the funds to pay business and personal expenses, including college loans, without notice to, or authority from, the clients or lienholders. At the disciplinary hearing, Respondent's testimony included the following:

- He took the client funds for his "own personal and business needs." (Tr. 51.)
- He knew that those funds did not belong to him, at the time he used those funds. (Tr. 51.)

- He took client funds from the trust account "a number of times … to meet some more pressing personal and business financial needs." (Tr. 81.)
- He took the client funds because "there was obviously a pressing financial need." (Tr. 104.)
- Taking the client funds was "inappropriate". (Tr. 104.)
- He did not think it was right, at the time he was transferring the client funds. (Tr. 104.)
- His use of client funds was not "per the rules, which I knew." (Tr. 105.)
- Taking the client funds "was an improper practice." (Tr. 125.)
- "I did this for my own personal … needs." (Tr. 126.)
- "I do know that it was wrong to do." (Tr. 126.)

Respondent testified, however, that he "never felt that what [he] was doing was dishonest," because he understood dishonesty to require "concealment and misrepresentation and defrauding people." (Tr.126.) Respondent testified that he did not plan to permanently deprive the clients or lienholders of the funds that he took, and he planned to repay the funds with fees he anticipated receiving from other cases in the future. (Tr. 124-26.)

Respondent attributed his misconduct to poor judgment; not having a business line of credit; not being accountable to anyone else; being able to transfer funds; and not being a good financial manager. (Tr. 128.) Respondent also testified that, in terms of revenue, 2018 and 2019 were probably the best years of his law practice because he had settlements in personal injury cases that totaled approximately $2.4 million. (Tr. 127.)

HEARING BOARD'S FINDINGS AND SANCTION RECOMMENDATION

Misconduct Findings

The Hearing Board found that Respondent violated Rule 1.15(a), which provides that a "lawyer shall hold property of clients or third persons that is in a lawyer's possession in

connection with a representation separate from the lawyer's own property." Specifically, the Hearing Board found that Respondent had deposited the settlement proceeds from six cases into his client trust account; also, Respondent had withdrawn funds from that account, on numerous occasions, which caused the balance in that account to fall below the amount he should have been holding for those six clients.

The Hearing Board also found that Respondent violated Rule 8.4(c), which prohibits attorneys from engaging in dishonest conduct. The Hearing Board found that Respondent intentionally used client funds for his own purposes, without authority, knowing that it was wrong to do so. This constituted dishonest conduct.

Mitigation and Aggravation Findings

In mitigation, the Hearing Board found that Respondent was active in bar associations; worked with charitable groups and service organizations including DuPage Court Appointed Special Advocates and Urban Youth ministries; provided *pro bono* services; participated in mission trips to Cuba; served as president of his church congregation and as a member of his church's executive committee; cooperated in his disciplinary proceeding; admitted his misuse of funds; presented impressive character testimony from four witnesses; Respondent had a long legal career with no prior discipline; no clients lost money; and Respondent took steps to correct his accounting procedures. The Hearing Board concluded that Respondent does not pose a threat to the public or the legal profession.

In aggravation, the Hearing Board found that Respondent engaged in a pattern of misconduct over a period of 18 months. Also, because Respondent had substantial experience handling personal injury matters, he should have been aware of his obligation to safeguard settlement proceeds. Additionally, one case involved a minor and the settlement was subject to

court approval; the court ordered that Respondent hold $79,000 of the settlement proceeds for his client. Instead of holding those proceeds for the client, as ordered, Respondent used $39,000 – approximately half of the settlement proceeds – for his own benefit, without informing the court or the client that he had done so.

Recommendation

The Hearing Board recommended that Respondent be suspended for one year.

ANALYSIS

The Hearing Board did not err in finding that Respondent engaged in dishonest conduct in violation of Rule 8.4(c) by intentionally taking client funds without authorization.

The Hearing Board's factual findings are entitled to deference and will not be disturbed on review unless against the manifest weight of the evidence. *In re Timpone*, 208 Ill. 2d 371, 380, 804 N.E.2d 560 (2004). A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding appears unreasonable, arbitrary, or not based on the evidence. *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106, 658 N.E.2d 450 (1995).

The Hearing Board's legal conclusions, including the interpretation of disciplinary rules, are reviewed *de novo*. *In re Thomas*, 2012 IL 113035, ¶ 56, 962 N.E.2d 454; *In re Morelli*, 2001PR00120 (Review Bd., March 2, 2005) at 10, *approved and confirmed*, M.R. 20136 (May 20, 2005); *In re Scroggins,* 94PR00638 (Review Bd., May 13, 1996) at 13, *approved and confirmed,* M.R. 10561 (Sept. 24, 1996).

Respondent's conduct was dishonest even though he intended to replace the funds.

On appeal, Respondent argues the Hearing Board erred in finding that he engaged in dishonest conduct in violation of Rule 8.4(c). Specifically, Respondent argues that he did not

engage in dishonest conduct because he intended to return the client funds he had taken. That argument is unpersuasive.

The key issue is whether Respondent intended to take the client funds, not whether he intended to return the money. By his own admission, Respondent intentionally and deliberately took client funds for his own purposes without authority. Respondent knew exactly what he was doing, and he knew that taking client funds was wrong. This is not a case where Respondent inadvertently took client funds or took them by mistake.

Respondent repeatedly took client funds to pay his own bills, rather than paying clients and lienholders all of the money they were owed. Respondent kept those client funds for weeks or months, depending on the instance, thereby depriving the clients and lienholders of money due them. Respondent knew that he had no right to take that money, and he received the benefit of those funds at the expense of the clients and lienholders.

Respondent testified that he deliberately took client funds that did not belong to him, to pay his expenses, without notifying his clients or obtaining their consent. He also testified that he knew taking those client funds was wrong, inappropriate, improper, and against the rules. (*See e.g.*, Tr. 51, 81, 104-05, 125-26.) By intentionally taking client funds that did not belong to him, Respondent knowingly engaged in dishonest conduct. *See In re Smith*, 2013PR00076 (Review Bd., July 7, 2015) at 4-5, *petition for leave to file exceptions denied*, M.R. 27563 (Sept. 21, 2015) ("we find that, as a matter of law, Respondent engaged in dishonest conduct" by taking client funds, "knowing that the funds did not belong to him," which violated Rule 8.4(c)).

Respondent's conduct was dishonest even though he paid restitution.

Respondent next argues that his repayment of the client funds shows that he did not intend to engage in dishonest conduct. That argument misses the mark.

The issue here is whether Respondent engaged in dishonest conduct by intentionally taking client funds in the first place (which he did), not whether Respondent returned the funds thereafter.

Respondent's repayment of the funds does not erase his intentional misuse of client funds or absolve him of his wrongdoing, and it does not change the fact that Respondent deliberately took client funds without authority. *See In re Rotman*, 136 Ill. 2d 401, 422-23, 556 N.E.2d 243 (1990) ("restitution does not purge the original wrongdoing", where an attorney intentionally took client funds for personal benefit, which is "a gross violation of an attorney's oath"); *In re Rolley*, 121 Ill. 2d 222, 234, 520 N.E.2d 302 (1988) ("it is well settled that restitution will not serve as a defense to a disciplinary action."). Thus, the Hearing Board was correct in finding that Respondent violated Rule 8.4(c) even though he repaid the client funds.

Respondent's conduct was deceptive and dishonest.

Respondent also argues that he did not engage in dishonest conduct because he did not deceive anyone or conceal anything. We disagree. "[D]ishonesty is defined broadly under the Rules to include any conduct, statement, or omission which is calculated to deceive, including the suppression of truth and the suggestion of what is false." *In re Gallo*, 2017PR00101 (Review Bd., Oct. 31, 2019) at 17, *petition for leave to file exceptions allowed*, M.R. 030139 (March 13, 2020) (citation omitted); *see also In re Edmonds*, 2014 IL 117696, ¶ 53, 21 N.E.3d 447 (the Rule prohibiting dishonest conduct "is broadly construed to include anything calculated to deceive, including the suppression of truth and the suggestion of falsity."); *In re Jankura*, 2018PR00052 (Hearing Bd., Oct. 22, 2020) at 9, *approved and confirmed*, M.R. 30583 (Feb. 11, 2021) ("Dishonesty is broadly construed to include anything calculated to deceive.") (citing *Edmonds*).

Here, Respondent deceived the clients and lienholders by failing to disclose to them that he was taking their funds. Respondent remained silent about his misuse of their funds; he did not reveal to them that he had taken their funds for his own benefit; and he did not tell them that their payments were delayed because he had used their funds to pay his bills. Respondent's silence and omissions were calculated to deceive the clients and lienholders.

Respondent also concealed his misuse of client funds by transferring money back into the client trust account, or leaving newly received attorney's fees in that account, on occasion, in order to repay client funds that he had taken. Respondent paid money that he owed to clients and lienholders directly out of the client trust account, instead of disbursing those funds from his personal or business accounts. By using the client trust account to distribute funds, Respondent made it appear falsely that he was properly paying money from the original settlement proceeds, thereby concealing his misuse of client funds and hiding the true source of the funds being distributed. *See Edmonds*, 2014 IL 117696, ¶ 55 (attorney attempted to deceive his client by depositing money from various sources into a trust account by making it falsely appear that payments from the trust account were from trust funds, which concealed the true source of the funds); *In re Loveless*, 2000PR00065 (Review Bd., May 19, 2003) at 9, *leave to file petitions allowed*, M.R. 18838 (Sept. 19, 2003) (attorney's transfer of client funds back into an escrow account "on the eve of the audit was an attempt to conceal his personal use of the funds"). Thus, Respondent's conduct was deceptive and dishonest.

<u>The case law does not support Respondent's argument.</u>

As discussed above, Respondent argues that his conduct was not dishonest because he intended to return the client funds and did so. Respondent's argument fails because it is not supported by case law.

The Hearing Board considered Respondent's argument and rejected it, stating that the "case law is clear that that evidence of a lawyer's knowing use of funds that did not belong to him is sufficient to establish dishonest conduct, even if there was no intent to permanently deprive clients or third parties of those funds." (Hearing Bd. Report at 8) (citing *In re Smith*, 2013PR00076 (Review Bd., July 7, 2015) at 4-5, *petition for leave to file exceptions denied*, M.R. 27563 (Sept. 21, 2015). We agree.

In *Smith*, the attorney misused funds belonging to third parties in three personal injury matters and a real estate transaction totaling approximately $9,700. Smith testified that he did not intend to keep anyone's money. The Hearing Board in *Smith* accepted Smith's testimony as being credible and concluded (erroneously) that Smith did not engage in dishonesty because he did not have the intent to permanently deprive anyone of the client funds that he took.

On appeal, the Review Board in *Smith* reversed that finding, stating that Respondent's misuse of client funds constituted dishonest conduct as a matter of law, even though Smith intended to return the funds. The Illinois Supreme Court affirmed the Review Board's decision. Specifically, the Review Board in *Smith* stated:

> Respondent agreed that he took the earnest money in the real estate transaction and the funds belonging to the medical providers in the three injury settlements, knowing that the funds did not belong to him. Accordingly, we find that, as a matter of law, Respondent engaged in dishonest conduct. *See, e.g., In re Tyler*, 98 CH 74 (Review Bd., May 17, 2000), *Respondent's petition for leave to file exceptions denied*, No. M.R. 16873 (Sept. 22, 2000) (…the knowing use of money withheld to pay medical providers constituted dishonest conduct violating Rule 8.4(a)(4)); *In re Bertha*, 2012PR00098 (Review Bd., Feb. 19, 2014), *Administrator's petition for leave to file exceptions allowed*, No. M.R. 26678 (May 16, 2014) (Respondent's conversion of settlement funds was dishonest as a matter of law when he knowingly gave the settlement funds to his father).

Smith, (Review Bd., July 7, 2015) at 4-5.

Respondent attempts to distinguish *Smith* from the instant case by arguing that (in Respondent's view) Smith did not intend to return the client funds, as evidenced by the fact that Smith did not pay any restitution for more than a year. That argument completely disregards the findings made by the Hearing Board and Review Board.

Contrary to Respondent's argument, the Hearing Board in *Smith* concluded that he intended to return the client funds. The Hearing Board stated, "The Administrator did not present evidence that proved Respondent intended to permanently deprive the [clients] … of their funds. We find credible Respondent's testimony that he did not intend to keep the funds[.]" *Smith,* (Hearing Bd., Feb. 6, 2015) at 6. On appeal, the Review Board concluded that even though Smith "did not have the intent to permanently deprive the respective parties of their funds, …. [he engaged in dishonest conduct by intentionally taking client funds,] knowing that the funds did not belong to him." *Smith*, (Review Bd., July 7, 2015) at 4.

Here, as in *Smith*, Respondent engaged in dishonest conduct by intentionally taking client funds that did not belong to him, even though he intended to return them. *See also In re Kosztya*, 2018PR00113 (Hearing Bd., Feb. 26, 2021) at 4, *sanction reviewed*, (Review Bd., Nov. 9, 2021), *petition for leave to file exceptions denied*, M.R. 031091 (April 15, 2022) ("While Respondent denies any intent to deprive [his clients of their funds], we find … that his conduct was dishonest … A lawyer who uses client funds knowingly and without authority engages in dishonest conduct …. This is not a case where Respondent mishandled client funds by mistake. He acted knowingly when he deposited the [clients' funds] into his business account.") (citation omitted); *In re Ogoke*, 2014PR00180 (Review Bd., March 11, 2019) at 11, *petitions for leave to file exceptions allowed*, M.R. 029836 (Oct. 21, 2019) ("This Board has repeatedly found, as a matter of law, that attorneys who have taken funds that they knew did not belong to them have

engaged in dishonesty …. [This] is not simply a case of sloppy bookkeeping …. he took money that he knew did not belong to him. That constitutes dishonest conversion as a matter of law.") (citing *Smith, Tyler, and Bertha, supra*); *In re Koenig*, 2020PR00076 (Hearing Bd., Aug. 20, 2021) at 4-5 *sanction reviewed*, (Review Bd., March 28, 2022), *petition for leave to file exceptions denied*, M.R. 031267 (Nov. 2, 2022) ("Respondent knew that the money belonged to [his client] and that he did not have authority to use those funds for himself. Therefore, Respondent engaged in dishonest conduct, in violation of Rule 8.4(c) …. [even though] Respondent stated he did not intend to permanently deprive [his client] of his funds."); *In re Gallo*, 2017PR00101 (Hearing Bd., Jan. 9, 2019) at 28, *findings of misconduct affirmed*, (Review Bd., Oct. 31, 2019), *petition for leave to file exceptions allowed*, M.R. 030139 (March 13, 2020) ("A lawyer who uses client funds knowingly and without authority engages in dishonest conduct.").

The Hearing Board correctly found that Respondent intentionally engaged in dishonest conduct, in violation of Rule 8.4(c), by knowingly taking client funds without authority. The cases cited by Respondent did not involve the intentional misuse of client funds.

Respondent cites three cases in support of his argument that he did not engage in dishonest conduct by intentionally taking client funds. Those cases are clearly distinguishable because, unlike Respondent, the attorneys in those cases made mistakes, were careless, or acted based on ignorance, and therefore did not intentionally engage in dishonest conduct. *See In re Karavidas*, 2013 IL 115767, ¶ 101, 999 N.E.2d 296; *In re Mulroe*, 2011 IL 111378, ¶ 22, 956 N.E.2d 422; *In re Edmonds*, 2014 IL 117696, ¶ 73, 21 N.E.3d 447.

In *Karavidas*¸ the attorney was the executor and trustee of his father's estate, and he took funds from the estate; the Court found that Karavidas did not fully understand his obligations as executor and trustee; he may have been given confusing legal advice; and, at most,

he was careless in his duties. In *Mulroe*, the attorney accidently misused client funds as a result of poor bookkeeping. In *Edmonds*, which did not involve taking client funds, the attorney believed he was providing truthful information to an investor. Consequently, unlike Respondent, none of the attorneys in those cases intentionally acted dishonestly. Those cases are inapplicable.

The Hearing Board properly considered Respondent's state of mind.

Respondent also argues that the Hearing Board erred by failing to consider Respondent's state of mind, because the Hearing Board used the phrase "Regardless of Respondent's intentions". That argument has no merit.

Respondent disregards the context and meaning of the Hearing Board's statement. The Hearing Board stated:

> Respondent contends his conduct was not dishonest because he always intended to replace the funds he advanced to himself and did replace them. Regardless of Respondent's intentions, he admittedly knew he was not authorized to transfer or use the funds but did so anyway. The case law is clear that evidence of a lawyer's knowing use of funds that did not belong to him is sufficient to establish dishonest conduct, even if there was no intent to permanently deprive clients or third parties of those funds.

(Hearing Bd. Report at 7-8) (citation omitted.)

Although the Hearing Board used the phrase "Regardless of Respondent's intentions," the context makes it clear that the Hearing Board was stating that Respondent violated Rule 8.4(c), regardless of his intentions *to replace the funds*; not regardless of whether Respondent intended to take the funds. The Hearing Board properly considered Respondent's state of mind concerning whether his misuse of client funds was knowing and intentional, rather than being inadvertent or accidental. The Hearing Board concluded that Respondent's misuse of client funds was intentional, and constituted dishonest conduct, because Respondent "admittedly knew he was not authorized to transfer or use the funds but did so anyway." (Hearing Bd. Report at 7.)

The Hearing Board also specifically stated that "Respondent failed to safeguard client funds and acted dishonestly when he **knowingly** used funds from his client trust account that did not belong to him." (*Id.* at 2) (emphasis added.) Additionally, the Hearing Board stated that "Respondent's misconduct was dishonest and **intentional.**" (*Id*. at 12) (emphasis added.) Thus, the Hearing Board properly considered Respondent's state of mind.

The Hearing Board did not rely solely on Respondent's amended answer

Finally, Respondent argues that the Hearing Board's finding that he violated Rule 8.4(c) was improperly based on Respondent's admissions in his amended answer, namely, that Respondent used client funds from settlement proceeds in six cases, for his own purposes, without notice to or authority from the clients or lienholders, in violation of Rule 1.15(a). Respondent argues that the Hearing Board erred by relying on those admissions as being admissions of dishonest conduct. That argument fails based on the evidence.

As a general matter, an attorney's admission that he took client funds, standing on its own, is not necessarily an admission that he engaged in dishonest conduct, in violation of Rule 8.4(c). The attorney may have inadvertently taken client funds by mistake or accident, or as a result of poor bookkeeping, ignorance, carelessness, a misunderstanding, or some other reason not involving intentional dishonesty. In order to establish that an attorney's misuse of client funds constitutes a violation of Rule 8.4(c), there must be evidence that the attorney intentionally took those funds without authority. *See Karavidas*, and *Mulroe*, *supra.*

Here, evidence was presented at the disciplinary hearing that Respondent's misuse of client funds was intentional and deliberate. As previously discussed, Respondent testified at the disciplinary hearing that he took the client funds intentionally, without authority, for his own benefit to pay bills, knowing that the funds did not belong to him, and knowing that it was wrong,

inappropriate, improper, and against the rules to take those funds. (*See e.g.*, Tr. 51, 81, 104-05, 125-26.) The Hearing Board properly based its finding of dishonesty on the evidence in the record, including Respondent's testimony and the financial evidence presented, and did not rely solely on Respondent's admissions in his amended answer.

In sum, for the reasons set forth above, we conclude that the Hearing Board was correct in finding that Respondent intentionally engaged in dishonest conduct in violation of Rule 8.4(c).

SANCTION RECOMMENDATION

The Hearing Board recommended that Respondent be suspended for one year. Respondent argues that a one-year suspension is too harsh and contends that the appropriate sanction is a shorter suspension, or a suspension stayed by probation. The Administrator responds that the one-year suspension recommended by the Hearing Board is appropriate and asks us to make the same recommendation.

We review the Hearing Board's sanction recommendations based on a *de novo* standard. *In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361. Finally, we seek to recommend a sanction that is consistent with sanctions imposed

in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the case's unique facts. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991).

We conclude that a one-year suspension is an appropriate sanction in this matter. We believe that imposing a lower sanction would fail to give sufficient weight to the serious nature of Respondent's misconduct and the aggravating factors in this case.

Respondent's misconduct warrants a one-year suspension.

A one-year suspension is appropriate in light of the serious nature of Respondent's misconduct. Intentionally taking client funds without authority, as Respondent did in this case, is unacceptable and unethical behavior that cannot be ignored, justified, or condoned, and it warrants a one-year suspension. Respondent deliberately took $86,000 of client funds for his own benefit over a period of 18 months, involving six separate client matters, without knowing exactly when those funds would be repaid; but Respondent knew that taking those funds was wrong. Respondent's misconduct was not an isolated incident or a momentary lapse of judgment. Respondent engaged in a pattern of wrongdoing and repeatedly taking client funds for his own purposes.

When Respondent was short of money, he used client funds to pay personal and business expenses. Using client funds to pay bills became simply a way of Respondent's doing business, highlighting his indifference to the need to safeguard client funds.

Respondent testified that running his law firm was financially "very difficult", because he primarily handled personal injury cases and he could not predict when cases would settle. (Tr. 65-66, 81-82.) Respondent addressed that difficulty by using client funds to pay bills while he was waiting for new settlement proceeds, when there was "a pressing financial need."

(Tr. 81-82, 104.) Because he did not have a business line of credit, Respondent used client funds to carry him over until he received additional funds. (Tr. 81-84, 126.)

The client funds that Respondent took included settlement proceeds that belonged to a minor. The court, which was supervising the case, had ordered Respondent to hold those funds for his client. Respondent took $39,000 of those funds, which was approximately half of the settlement proceeds that Respondent had been ordered to safeguard. Respondent's deliberate misuse of those funds, despite the court's order, underscores the gravity of his misconduct.

Respondent did not stop taking client funds until he was caught doing so, when one of his checks bounced and the ARDC was notified. The bounced check was drawn on Respondent's client trust fund and made payable to a lienholder whose funds Respondent had taken. Respondent still owed money to three lienholders at that time. Respondent stopped taking client funds because his wrongdoing was discovered.

Additionally, Respondent testified that he did not know that there were specific recordkeeping requirements concerning client funds until he took certain legal education courses in 2019. (Tr. 66-68.) We find it concerning that Respondent did not know or research the proper recordkeeping requirements before 2019, even though by that time he had been handling plaintiffs' personal injury cases for more than 20 years.

Respondent argues that he should be allowed to continue practicing law without any interruption to his practice because he planned to and did return the client funds. Accepting that argument would essentially establish a new standard concerning the protection of client funds. Applying that standard, attorneys would not be suspended for deliberately taking client funds whenever they wanted, as long as they planned to and did return the funds. They would not be suspended even though they took client funds for their own benefit without authority and doing so

delayed the distribution of those funds to clients or lienholders. We decline to establish such a standard.

The suspension should not be less than one year.

Respondent argues that he should receive a lower sanction because he was only taking short term loans and his misconduct was essentially harmless. We disagree.

A loan is a transaction between consenting parties. Here, the clients and lienholders were not consenting parties, and did not loan the funds to Respondent. He did not tell the clients and lienholders that he was taking their money or reach an agreement with them that he could use their funds.

Additionally, Respondent's use of those funds was not harmless. Payments to the clients and lienholders were delayed by weeks or months because Respondent was using their funds to cover his own bills instead of disbursing those funds. Respondent placed his own interests ahead of his clients' interests. Moreover, Respondent put those funds at risk by removing them from the client trust account, where they were safe and available to pay the clients and lienholders. Respondent's misconduct did not involve loans, and it was not harmless.

The suspension should not be more than one year

We believe, however, that a suspension of more than one year is not warranted given the extensive and compelling mitigation in this matter. Additionally, on appeal, the Administrator has not asked for a longer suspension.

Respondent had a lengthy and unblemished career, without any prior discipline; he provided extensive *pro bono* services; he engaged in bar association activities; he provided noteworthy service to the community and his church; he worked with charitable groups and service organizations; he paid full restitution, so no clients lost money; he cooperated in his disciplinary

proceeding; he admitted that he intentionally took client funds without authority; and he took steps to improve his accounting procedures.

Four character witnesses provided impressive testimony concerning Respondent's good character and his excellent reputation. Two of those witnesses – an attorney, and a retired associate judge – testified that Respondent is a credit to the legal profession. Another witness, who is a pastor, testified that Respondent is generous and caring.

Accordingly, we believe that the suspension should not exceed one year. We conclude, however, that the mitigating factors here are insufficient to justify either a shorter period of suspension or probation. We believe a one-year suspension is sufficient, but not longer than necessary, to serve the purposes of discipline, including to maintain the integrity of the legal profession.

The cases cited by Respondent did not involve the intentional misuse of client funds.

In support of Respondent's argument that he should receive a suspension of less than one year, Respondent cites five cases in which attorneys took client funds and received lower sanctions. Those cases, however, do not provide guidance in this matter because, unlike Respondent, the attorneys in those cases did not deliberately take client funds without authority; rather, they inadvertently took client funds as a result of poor bookkeeping practices, failure to maintain proper records, carelessness, or ignorance. Consequently, their conduct warranted a lower sanction. *See In re Parikh* 2019PR00005 at 2-3, 8, *petition for discipline on consent allowed*, M.R. 030572 (Feb. 11, 2021) (attorney did not maintain appropriate records and was not keeping track of the client funds or the legal fees being held in the client trust account); *In re Olavarria*, 2012PR00043 at 8, 11, *petition for discipline on consent allowed*, M.R. 25821 (March 15, 2013) (attorney failed to maintain adequate records relating to the funds he held in his trust account and

took client funds as the result of carelessness with that account); *In re Mulroe*, 2011 IL 111378, ¶22, 956 N.E.2d 422 (attorney took client funds as a result of sloppy and careless bookkeeping practices); *In re Cutler*, 2014PR00007 (Review Bd., March 17, 2017) at 8-9, 14, *approved and confirmed*, M.R. 028746 (Oct. 13, 2017) (attorney failed to maintain proper client trust account records, which resulted in his mishandling of the funds of two clients); *In re Jankura*, 2018PR00052 (Hearing Bd., Oct. 22, 2020) at 9, *approved and confirmed*, M.R. 030583 (Feb. 11, 2021) (attorney "clearly made an error in judgment but the evidence did not establish that he acted with dishonest or deceptive intent" when he used retainer fees before providing services to earn those fees, because he erroneously believed that he was entitled to keep the retainer fees). The cases cited by Respondent are inapplicable.

A one-year suspension is consistent with sanctions imposed for comparable misconduct.

We find that this matter is similar to *In re Koenig*, and *In re Miller,* in which the attorneys intentionally took client funds for their own benefit without authority and were suspended for one year. *See In re Koenig*, 2020PR00076 (Hearing Bd., Aug. 20, 2021), *sanction reviewed*, (Review Bd., March 28, 2022), *petition for leave to file exceptions denied*, M.R. 031267 (Nov. 2, 2022); *In re Miller*, 2014PR00134 (Hearing Bd., Feb. 5, 2016), *sanction recommendation adopted*, (Review Bd., Jan. 27, 2017), *petition for leave to file exceptions denied*, M.R. 028618 (June 8, 2017).

In *Koenig*, the attorney intentionally took $70,000 of client funds without authority, which he used to pay for personal and business expenses. Koenig admitted that he knew his actions were wrong. Koenig was found to have engaged in dishonest conduct, even though he testified that he always intended to return the funds he had taken. There was substantial mitigating evidence.

A comparison of *Koenig* and this case shows that: (1) both attorneys misused a substantial amount of money – $70,000 in *Koenig*, and $86,000 here; (2) both attorneys misused settlement proceeds deposited into their client trust accounts; (3) both attorneys admitted that, when they took the funds, they knew it was wrong, and they had no such authority; (4) both attorneys engaged in a pattern of misconduct by repeatedly taking funds; (5) both attorneys used the money to pay for personal and business expenses; (6) both attorneys testified that they intended to return the funds, and both attorneys made full restitution; (7) both attorneys continued to take client funds until a check drawn on their client trust accounts bounced and the ARDC was notified, at which point they each stopped taking client funds; (8) both attorneys attributed their misconduct to poor judgment; and (9) both attorneys presented substantial mitigating evidence, involving extensive community, volunteer, church, and bar association work, *pro bono* services, long legal careers with no prior discipline, and favorable character testimony.

In comparing the two cases, we also note that Respondent took more money than Koenig did, which included taking funds that belonged to a minor. Additionally, Respondent took funds from six client matters, and he did so over a period of 18 months, whereas Koenig took funds belonging to only one client over a period of four months. Moreover, Koenig took the client funds shortly after he had been diagnosed with stage-four prostate cancer, whereas, Respondent took the client funds at a time when his law practice was thriving, which made Respondent's decision to take client funds even more questionable. Nevertheless, we believe that Respondent's sanction should be the same as Koenig's.

In *Miller*, the attorney intentionally took $85,000 of client funds without authority, related to three separate client matters, over a two-year period, which he used to pay for personal and business expenses. Miller admitted that he knew his actions were wrong. Miller was found to

have engaged in dishonest conduct, even though Miller testified that he believed he could balance out everything, and Miller repaid the funds he had taken. There was also substantial mitigating evidence in *Miller*, including community and bar association activities and teaching at a law school; Miller acknowledged his wrongdoing and was remorseful; six character witnesses testified on his behalf; he took steps to improve his law practice; he suffered stress from family problems; and he had no prior discipline during his 50-year career.

Given the similarity between this matter and *Koenig* and *Miller*, we believe that a one-year suspension is appropriate here. *See also In re O'Dekirk*, 2014PR00165, *petition for discipline on consent allowed,* M.R 27911 (April 12, 2016) (one-year suspension for intentionally misusing $18,000 from escrow funds related to three real estate transactions over a two-year period, which the attorney repaid, and significant mitigation); *In re Saciuk*, 2014PR00075 (Review Bd., Jan. 20, 2016), *petitions for leave to file exceptions denied*, M.R. 27979 (June 8, 2016) (one-year suspension for intentionally taking $23,000 of client funds related to two client matters, which funds were used for extravagant personal expenses at a time when the attorney was in poor financial condition, and the attorney made restitution after the ARDC began its investigation; also with significant mitigation).

In sum, we recommend that Respondent be suspended for one year. Respondent's misconduct in this case was a flagrant violation of his obligation to honestly safeguard client funds. Imposing a lower sanction has the potential to erode the public's faith in the legal profession and the disciplinary system. If attorneys lose the trust of the public, the system breaks down.

We conclude that this sanction is commensurate with Respondent's misconduct and consistent with discipline that has been imposed for comparable misconduct. We find that a one-year suspension is sufficient to serve the goals of attorney discipline, including preserving public

confidence in the legal profession and deterring other attorneys, but it is not so harsh as to constitute punishment.

CONCLUSION

For the foregoing reasons, we affirm the Hearing Board's findings that Respondent engaged in dishonest conduct, in violation of Rule 8.4(c), and we recommend that Respondent be suspended from the practice of law for one year.

Respectfully submitted,

J. Timothy Eaton
R. Michael Henderson
George E. Marron III

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 28, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] The Hearing Board found that Respondent misused $18,452 as charged in Count I of the complaint. The Hearing Board rejected Respondent's argument that he misused less than $18,452 because he was owed additional attorney's fees. The Hearing Board concluded that Respondent's fee agreement did not entitle him to additional fees. Respondent has not raised that issue on appeal.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of: **GEORGE LOUIS ACOSTA,** Respondent-Appellant, No. 6200430.	Commission No. 2021PR00037

PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at 3161 West White Oaks Drive, Springfield, Illinois 62704 on December 28, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Thomas P. McGarry
Katherine G. Schnake
Chi (Michael) Zhang
Counsel for Respondent-Appellant
tmcgarry@hinshawlaw.com
kschnake@hinshawlaw.com
mzhang@hinshawlaw.com

Shelley M. Bethune
Counsel for Respondent-Appellant
sbethune@illinoiscourtscommission.gov

George Louis Acosta
Respondent-Appellant
Acosta & Associates
40W310 LaFox Rd., Suite H 2
St. Charles, IL 60175

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and

FILED

December 28, 2022

ARDC CLERK

correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson
By: Andrea L. Watson
Deputy Clerk

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