SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-318
District Docket No. IV-2015-0046E

IN THE MATTER OF	:
JEFF A. SCHNEPPER	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 16, 2017

Decided: February 27, 2018

Katrina Vitale appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation between the District IV Ethics Committee (DEC) and respondent, who stipulated to having violated RPC 1.6(a) (improperly revealing information relating to the representation of a client), RPC 1.7(a) (concurrent conflict of interest), and RPC 1.9(a) (representing a client in a matter and thereafter representing another client in the same or a substantially

related matter in which that clients' interests are materially adverse, without obtaining informed, written consent).

The DEC recommended the imposition of a censure or lesser discipline. For the reasons set forth below, we determine to impose a reprimand for respondent's conduct.

Respondent was admitted to the New Jersey bar in 1976 and the New York bar in 1977. He maintains a law office in Cherry Hill, New Jersey.

In 1999, respondent was reprimanded for failure to provide a client with a writing setting forth the basis or rate of the fee (RPC 1.15(b)), and for engaging in a conflict of interest (RPC 1.7 and RPC 1.9(a)(1)). In re Schnepper, 158 N.J. 22 (1999). In that case, respondent, who is also an accountant, represented George Anderson as a tax consultant for approximately ten years before Anderson and Joseph Dunn retained him to purchase a boat from a corporation. Anderson and Dunn acquired the boat as shareholders of a small corporation. Respondent did not provide Dunn, whom he had not previously represented, with a writing setting forth the basis or rate of his fee and did not obtain informed written consent to the dual representation. After the purchase took place, a rift developed between Anderson and Dunn. Although their interests became materially adverse, respondent continued to represent Anderson in the matter relating to the

transfer of shares of the small corporation and the ultimate sale of the boat.

The facts of this matter are as follow. On a date not mentioned in the stipulation, Dennis McLoughlin and his then wife, Noeleen McLoughlin, retained respondent for financial, estate, and income tax advice. Prior to 2008, Dennis had also retained respondent to provide such services to his businesses, "The Remedy Group" and, later, "Remedy Group." As the McLoughlins' and the businesses' tax attorney, respondent also provided legal advice. Respondent had an attorney-client relationship with both Dennis and Noeleen. He also provided "services" to the McLoughlins' children. In his capacity as financial, estate, and income tax attorney for Dennis and his companies, respondent was privy to their financial information. Noeleen had signed the retainer agreement on Dennis' behalf and, presumably, on her own behalf. Respondent did not disclose a potential conflict of interest to them and, thus, did not obtain a signed waiver of a conflict of interest.

Respondent was aware of the subsequent deterioration of Dennis and Noeleen's marriage, leading to their separation in 2009. Most of his contacts with "the McLoughlin Family" were through Noeleen. He recommended that they each retain their own matrimonial attorneys.

At the request of the McLoughlins, on October 26, 2010, respondent held a meeting at his law office to try to mediate their financial issues. Each was accompanied by independent counsel. Respondent acknowledged that he did not address N.J.S.A. 2A:23C-9 (mediator's disclosure of conflicts of interest).[1] Citing RPC 2.4 (lawyer serving as third-party neutral), the stipulation provided that respondent's role changed from dual representation of the McLoughlins to a divorce-related mediator, without

[1] N.J.S.A. 2A:23C-9(a) states

> Before accepting a mediation, an individual who is requested to serve as a mediator shall (1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party . . . .; and (2) disclose any such known fact to the mediation parties as soon as practicable before accepting a mediation.

Subsection (d) provides that a person who violates (a), shall be precluded by the violation from asserting a privilege under N.J.S.A. 2A:23C-4 (rendering a mediation communication not subject to discovery or admissible in evidence in a proceeding), but only to the extent necessary to prove the violation.

respondent having disclosed the inherent conflict of interest and without reducing to writing or otherwise explaining his new role.[2]

Respondent's communications during the course of the mediation included the discussion of financial information he had obtained "during his legal represention of [Dennis], Remedy Group and/or The Remedy Group with [Noeleen] and/or her matrimonial attorney." Noeleen had provided respondent with much of the financial information that was addressed during the mediation, which "related substantially" to Dennis' confidential financial information.

Respondent neither informed Dennis that a conflict of interest had developed, nor asked him to sign a waiver or release for the conflict. Respondent admitted that, through the "divorce-related mediation process, [he] continued to communicate information relating to his prior representation to [Noeleen] and her matrimonial attorney, which information he contends came originally from [Noeleen]."

---

[2] RPC 2.4(b) states that a lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as third-party neutral may include service as an arbitrator, a mediator, or in such capacity as will enable the lawyer to assist the parties to resolve the matter.

Dennis became upset by respondent's recommendations for a divorce settlement, and expressed distrust of the soundness of respondent's prior advice to him. According to respondent, his recommendations were prudent and "allegedly" undisputed, with the exception of his recommendation relating to alimony payments to Noeleen.

The stipulation added:

> Purportedly in response to Dennis McLoughlin's Motion to join [respondent] as a defendant in the matrimonial matter, [respondent] involved himself in the matrimonial action between Dennis McLoughlin and Noeleen McLoughlin, submitting correspondence to the Superior Court of New Jersey, regarding the merits of the matter and Dennis McLoughlin's credibility.
>
> [S4.][3]

In March 2012, a court-appointed evaluator performed an independent business valuation of Dennis' businesses. The matrimonial attorneys reviewed it and "in large part" Dennis and his attorney agreed with it.

Noeleen, however, submitted a sworn certification to the court, in the matrimonial action, admitting that her matrimonial attorney had requested an expert opinion from respondent with regard to Dennis' business valuation after she questioned the

[3] S refers to the July 6, 2017 disciplinary stipulation.

financial information that Dennis had provided to the business evaluator.

In April 2012, as "a purported expert," respondent provided an opinion disagreeing with the valuation.[4] "Without independent knowledge, but relying on information that Dennis had deferred collecting a $400,000 account receivable,"[5] respondent opined that the deferment would decrease the income of the business by $400,000 and reduce the value of that business by approximately $4 million. "[Respondent] allegedly perceived the Business Valuation as a 'fraud against the court' and felt compelled by In re Seelig, 180 N.J. 234, 248 (2004) and RPC 1.6(a)(2) to become involved, resulting in a very contentious meeting." The parties and their matrimonial attorneys were then unable to agree on the valuation performed by the court-appointed evaluator.

Respondent was not compensated during the period he rendered the opinion, or for legal services he provided during the

---

[4] According to the stipulation, respondent previously had testified in business valuation matters, taught business valuation at the graduate level, written professional articles on the subject, and authored The Professional Handbook of Business Valuation.

[5] We presume, from this language, that the source of respondent's knowledge of the income deferral was either Noeleen or Dennis himself.

pendency of the divorce.[6] The last check he received from Dennis was in December 2009. "[S]ince that time," respondent prepared the yearly taxes for Dennis' children, on a pro bono basis. In 2010, respondent prepared Dennis' income taxes and Dennis' employees' W-2s and W-3s, for 2009. Respondent had not submitted a bill to Dennis or to any member of his family since 2009.

The McLoughlins' divorce was finalized in June 2013. "At all relevant times, [respondent] continued to represent and advise [Dennis] and The Remedy Group." The stipulation does not clarify whether respondent continued to provide legal services or merely financial and accounting services to Dennis and his companies.

Respondent continued to prepare Noeleen's and her children's tax returns. He stipulated that, as a tax attorney, the work he performed for Noeleen was potentially adverse to Dennis, as the spouses' financial interests had become adverse during their highly contentious divorce.

Respondent stipulated to violating the following Rules:

1. RPC 1.6(a), by not consulting with Dennis before or during the mediation about obtaining his informed consent to reveal information relating to his and his companies' finances. As the tax attorney for the McLoughlin family and Dennis'

[6] The stipulation does not indicate the purpose of or to whom the legal services were provided.

companies, respondent was privy to their financial information. Much of the services he provided as a tax attorney overlapped with his services as a "financial/business/accountant/tax preparer." Respondent's participation in the divorce and mediation process resulted in his divulgence of information that he had obtained through his representation of Dennis. Finally, in response to Dennis' motion to join respondent as a defendant in the matrimonial matter, respondent submitted certifications that "[cast Dennis] in a very negative manner to the Court, followed by words to the effect, that 'the attorney-client privilege prevents further disclosure of facts.'"

2. RPC 1.7(a), by representing both Dennis and Noeleen and neither informing them about a conflict nor obtaining waivers from them. Respondent, nevertheless, continued to serve as Noeleen's and her children's tax attorney after problems arose in the McLoughlins' marriage. His continued representation of Noeleen was financially adverse to Dennis because of the contentious divorce that ensued.

3. RPC 1.9(a), by assisting Noeleen in the matrimonial matter when her interests were adverse to Dennis' interests. Respondent continued to offer legal advice during the mediation and advocated on Noeleen's behalf, by preparing a written opinion adverse to Dennis' interests. As a result of respondent's actions, Dennis suffered economic injury by incurring legal fees

to reply and defend against respondent's submission in the matter.

The stipulation cited, as aggravating factors, respondent's failure to provide a mediation retainer agreement to explain the conversion of his role from attorney to mediator, and his prior reprimand, also for a conflict of interest.

According to the stipulation, in mitigation, respondent's prior discipline involved similar violations, but was remote in time and, therefore, should be given little weight; respondent did not charge or receive compensation after 2009; he did not bill for the mediation; and he did not initiate his role as mediator or his involvement in the matrimonial matter.

The DEC recommended a censure or lesser discipline.

Respondent submitted a letter-brief in lieu of attending oral argument, due to health issues.

Although respondent accepted responsibility for his conduct, he maintained that his motivation was pure and that the representation was not undertaken for financial gain, as he never billed or collected fees in the matter. He recognized that he should have obtained "a written conflict waiver."

Respondent urged us to view the motivation for his actions in the context of three factors:

1. Respondent attempted to mediate the issues between the McLoughlins to minimize the costs of litigation. The only point of contention was the issue of support, as the parties had agreed to his other suggestions, including Dennis' retention of 100 percent of his business and Noeleen's retention of the marital home until the youngest child turned eighteen. Afterward, the house would be sold and the proceeds divided equally.

2. Dennis joined respondent as a defendant, believing that: (a) respondent had conspired with Noeleen to "steal" the marital home; and (b) respondent was the reason Noeleen had left him, until she moved in with someone else. Respondent, thus, challenged the "malicious and untrue allegations" contained in Dennis' motion.

3. In April 2012, Noeleen's attorney requested that he review the valuation of Dennis' business. He viewed the deferral of the $400,000 account receivable to be a fraud against the court and believed he was "mandated to become involved" under applicable law.

* * *

Following a full review, we find that the stipulation clearly and convincingly establishes that respondent's conduct was unethical. The stipulation, however, leaves some unanswered questions and blurs the lines between respondent's legal and

financial advice to his clients. It is not clear whether the opinion respondent provided at the request of Noeleen's counsel was purely an accounting opinion or whether it also contained legal elements. It is clear, however, that respondent should have distanced himself from the McLoughlins, once their marriage began deteriorating.

RPC 1.6 states, in relevant part:

> (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).
>
> (b) A lawyer shall reveal such information to the proper authorities, as soon as, and to the extent the lawyer reasonably believes necessary, to prevent the client or another person:
>
> . . . .
>
> (2) from committing a criminal, illegal or fraudulent act that the lawyer reasonably believes is likely to perpetrate a fraud upon a tribunal.

After respondent became embroiled in the matrimonial action, Noeleen's attorney requested that he provide an opinion on the business valuation. Respondent "perceived" Dennis' valuation as a 'fraud against the court' and, thus, reasonably believed that his disclosure of the account receivable deferral was required by RPC

1.6(a)(2). RPC 1.6(e) defines a "reasonable belief" as one "that is based on information that has some foundation in fact . . . ." Respondent's experience as a business valuation expert certainly provided a basis in fact for his concern in respect of what he believed was an artificial and seemingly gross undervaluation of Dennis' business. Therefore, we do not find clear and convincing evidence that respondent violated RPC 1.6(a), even though he neither consulted with Dennis nor obtained his consent before respondent revealed information.

RPC 1.9(a), provides, in pertinent part:

> A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent.

According to the stipulation, respondent violated this Rule by continuing to offer legal advice during mediation and advocacy by way of his written opinion, despite the adverse consequences to Dennis. Respondent, however, did not represent Noeleen in the matrimonial matter. Indeed, she was represented by independent counsel, as was Dennis. Moreover, the stipulation did not identify the nature of the legal advice respondent provided to Noeleen during the mediation "via his written opinion." If this referred to his expert opinion on the valuation, then it is not

clear whether respondent provided a legal opinion or an accounting opinion. Because we are unable to conclude that respondent was representing Noeleen in the matrimonial matter, we find that RPC 1.9(a) is not applicable and dismiss that alleged violation.

We do find, however, that respondent violated RPC 1.7(a), which provides, in relevant part:

> [A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
> (1) the representation of one client will be directly adverse to another client; or
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . or by a personal interest of the lawyer.

RPC 1.7(b) provides that an attorney may, nevertheless, represent a client when there is a concurrent conflict of interest if

> each affected client gives informed consent, confirmed in writing, after full disclosure and consultation . . . . When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved . . . .

Once the McLoughlins' marriage deteriorated and they separated, respondent served as the divorce mediator, at the parties' request, even though he continued to provide

financial/accounting services to the family and to Dennis' businesses. In so doing, he violated the conflict of interest rules by failing to advise them of the inherent conflict in his taking on the role of mediator, and by failing to obtain their informed, written consent after full disclosure and consultation.

Respondent's involvement in this matter appears to be unique in that his primary dealings with the parties, as described in the stipulation, appeared to be more of a financial nature than legal. Nevertheless, it is well-settled that cases involving conflict of interest, absent egregious circumstances or serious economic injury to the client, ordinarily result in a reprimand. In re Berkowitz, 136 N.J. 134, 148 (1994). See, e.g., In re Feldstein, 209 N.J. 512 (2010) and In re Pellegrino, 209 N.J. 511 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures, violations of RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (attorney filed an answer to a civil complaint against him and his client and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); In re Mott, 186 N.J.

367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); and In re Poling, 184 N.J. 297 (2005) (attorney engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

In a somewhat comparable situation to this case, In the Matter of Robert W. Taylor, DRB 09-343 (February 4, 2010), an attorney received an admonition for violating RPC 1.9(a) and RPC 1.16(a)(1) (representing a client when doing so will result in the violation of the Rules of Professional Conduct or other law). Taylor represented a client in a will contest against the client's brother over their mother's will. The attorney had previously represented the brother in legal and accounting matters, during which time he learned information about his finances, real estate holdings, wife's assets and employment, and

his relationship with his mother during her lifetime. The brothers' interests were adverse and the attorney did not obtain their written informed consent to the representation.

In imposing only an admonition, we considered that the will contest matter ultimately was settled, there was no evidence that the brother suffered economic injury from the attorney's conduct, and the attorney had an unblemished forty-five year legal career.

Here, the stipulation stated that Dennis suffered financial harm as a result of the conflict of interest because he was required to defend against respondent's communications to the court. However, we view Dennis' legal expenses as the ordinary and expected costs associated with contested divorce proceedings, particularly here, when Dennis moved to join respondent as a defendant. Thus, we do not view Dennis' expenses as "serious" economic injury requiring increased discipline.

The stipulation establishes clear and convincing evidence that respondent is guilty of violating only RPC 1.7, because he failed to disclose the inherent conflict of interest in serving as a mediator in a matter in which the parties asked him to participate. He failed to obtain the parties' informed, written consent to the conflict. We determine that a reprimand is adequate discipline, given respondent's cooperation with ethics authorities by consenting to discipline. Because of the eighteen-

year gap between this matter and respondent's previous discipline for similar conduct, we determine not to enhance the quantum of discipline.

Vice-Chair Baugh and Member Zmirich did not participate.

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: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeff A. Schnepper
Docket No. DRB 17-318

Argued: November 16, 2017

Decided: February 27, 2018

Disposition: Reprimand

Members	Reprimand	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich		X
Total:	7	2

Ellen A. Brodsky
Chief Counsel