Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-061
District Docket Nos. XIV-2020-0087E
and IV-2022-0900E

In the Matter of	:
Steven Jay Jozwiak	:
An Attorney at Law	:

Decision

Argued: June 21, 2023

Decided: August 3, 2023

Collen L. Burden appeared on behalf of the Office of Attorney Ethics.

Gary C. Chiumento 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 disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal

fee); RPC 1.7(a) (engaging in a concurrent conflict of interest); RPC 1.15(a) (engaging in negligent misappropriation of client funds); and RPC 1.15(b) (failing to promptly deliver funds to a client).

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1983 and to the New York bar in 1984. He has no disciplinary history in New Jersey. At the relevant times, he maintained a practice of law in Cherry Hill, New Jersey.

The disciplinary stipulation, dated February 27, 2023, sets forth the following facts in support of respondent's admitted ethics violations.

Sometime prior to 2012, Amine Bouchenafa managed a gas station that Jerald Mirrow previously had sold to a group of investors. Also prior to 2012, Amine contacted Mirrow and requested help financing the purchase of a pizzeria (the pizzeria business) in Philadelphia, Pennsylvania. Mirrow agreed to provide Amine a $75,000 loan towards the purchase of the pizzeria business. Following Amine's acquisition of the pizzeria business, Mirrow purchased the property where the business was located (the pizzeria property). Thereafter, Amine paid rent to Mirrow in connection with his operation of the pizzeria business; however, he never repaid the $75,000 loan Mirrow had advanced.

Meanwhile, from August 2012 through 2020, Mirrow retained respondent in connection with various unrelated commercial real estate transactions.

In or around October 2012, Rafik Bouchenafa purchased the pizzeria business from his brother, Amine, for $225,000. In connection with his purchase of the pizzeria business, Rafik agreed to assume responsibility for the outstanding debt Amine owed to Mirrow, which, by that time, had increased to $125,000.

Additionally, between 2012 and 2018, Mirrow provided Rafik two unsecured loans, totaling $40,000, which enabled Rafik to travel for his wedding and to repair the pavement outside of the pizzeria business. In August 2018, Mirrow provided Rafik a third loan, for $70,000, which enabled Rafik to renovate the pizzeria business. Mirrow used a line of credit at Wells Fargo Bank to fund the $70,000 loan, which was secured, via a UCC-1 financing statement, by the pizzeria business's assets.[1] Respondent represented Mirrow in connection with the $70,000 loan and prepared the loan documents for the transaction.

On April 13, 2019, Mirrow sent Rafik an e-mail proposing that Rafik sell the pizzeria business to Joon Choi and use the sale proceeds to pay off both the

[1] A UCC-1 is a "required filing under the Uniform Commercial Code used to provide notice that a creditor has a security interest in a debtor's personal property." Black's Law Dictionary 1754 (10th ed. 2014).

$70,000 in secured debt and the "balance of [the] personal loan" that Rafik still owed to Mirrow. Mirrow proposed that, in exchange, he would sell Rafik a 49% interest in the pizzeria property for $70,000, which sum Mirrow suggested Rafik pay "over [a] time period that makes you comfortable at 6%." Mirrow also noted that Rafik would "be entitled to [50%] of the rent."

On April 14, 2019, Rafik agreed to the proposal and requested that Mirrow arrange for respondent to prepare an agreement regarding the 49% sale of the pizzeria property. Later that same date, Mirrow informed Rafik, via e-mail, that, before he would instruct respondent to prepare an agreement regarding the 49% sale of the pizzeria property, Rafik would need to provide a sale contract between himself and Choi regarding the sale of the pizzeria business. Specifically, Mirrow informed Rafik that "[w]ithout the proceeds from the sale of your business, there is no sale of the property."

On April 15, 2019, Mirrow sent respondent and Rafik an e-mail outlining the plan to sell Rafik's pizzeria business to Choi, the funds from which would be used to pay off "the Wells Fargo line of credit and the balance [Rafik] owe[d] . . . on the loan [Mirrow had] extended to [Rafik] in the past." Mirrow also advised respondent of his intent to sell 49% of his interest in the pizzeria property to Rafik for $75,000 "to be paid out over 10 years at 6% interest."

Mirrow told respondent that "we need you to do the various agreements and the new lease with the buyer."

That same date, respondent sent Mirrow a reply e-mail inquiring whether the "deal [was] dependent on Rafik selling [the pizzeria] business to a third party" and whether Mirrow and Rafik "intend[ed] to transfer title" of the pizzeria property to "an LLC owned by you and Rafik?"

Also on April 15, 2019, Rafik sent Mirrow a text message noting that the outstanding balance on the $125,000 debt that he had assumed from Amine was now $31,573. Rafik's text message also contained a spreadsheet of twenty-one prior payments that he had made to Mirrow towards the $125,000 debt. Additionally, the spreadsheet contained a list of three upcoming payments. Rafik drew a circle around the notation on the spreadsheet reflecting his current $31,573 balance.

Following respondent's receipt of Mirrow's April 15 e-mail, Rafik retained respondent in connection with the sale of his pizzeria business to Choi. Respondent, however, who previously had never represented Rafik, failed to communicate the basis of his flat $1,250 legal fee in writing, as RPC 1.5(b) requires.

On May 8, 2019, respondent sent Rafik an e-mail containing the closing documents that he had prepared in connection with the sale of the pizzeria

business to Choi. Later on May 8, 2019, Rafik sent respondent an e-mail requesting that he "finish the agreement between me and [Mirrow]" regarding the sale of the pizzeria property. Rafik noted that he wished to sign the agreement regarding the sale of the pizzeria property by the next day, given that he was scheduled to "travel" and "leave" the area. One minute later, respondent replied that he could not finish the agreement within the span of one day and requested that Rafik "talk to [Mirrow] directly to get whatever comfort level you want."

On May 12, 2019, Rafik sent respondent an e-mail requesting that he "draw [up] a simple agreement between me and [Mirrow]" because Rafik planned on "leaving on [May 17, 2019] . . . for three weeks."

On May 13, 2019, Mirrow sent respondent an e-mail enclosing a copy of Rafik's April 15, 2019 text message and spreadsheet regarding the remaining $31,573 balance on the original $125,000 debt that Rafik had assumed from Amine. Mirrow's e-mail contained no further instructions for respondent.

On May 14, 2019, Rafik and Choi executed a written contract for the sale of the pizzeria business for $220,000. The agreement (1) noted that Choi previously had paid Rafik a $5,000 deposit; (2) required that Choi bring $115,000, via cash or certified check, to the closing; and (3) required that the

remaining $100,000 "be evidenced by a note payable to [Rafik] within four years from the date of closing."

Later on May 14, 2019, respondent, Rafik, Mirrow, and Choi attended the closing on the sale of the pizzeria business. Choi brought to the closing a $100,000 cashier's check, made payable to respondent's attorney trust account (ATA), and $15,000 in cash. Respondent deposited the $100,000 check in his ATA while Rafik retained the $15,000 in cash.

On May 15, 2019, Rafik sent respondent an e-mail inquiring whether respondent "need[ed]" anything from him regarding the formation of an LLC in connection with Mirrow's partial sale of the pizzeria property. Later that same date, respondent replied to Rafik and asked whether he would make any down payment towards his partial purchase of the pizzeria property. In response, Rafik expressed his intent to make a $5,000 down payment and to name the business "R&J Real Estate, LLC." In reply, respondent asked Rafik whether he had discussed the name of the business with Mirrow, to which Rafik replied that Mirrow was "good with it."

On May 16, 2019, Mirrow sent Rafik an e-mail requesting that he execute a "pay off agreement" to allow respondent to "use some of the funds that were given to him" in connection with closing of the pizzeria business "to pay off"

the $70,000 secured loan, which Mirrow previously had funded via the "Wells Fargo line of credit." The proposed one-sentence pay off agreement stated:

> I, Rafik Bouchenafa agree to have my attorney [respondent] pay off the Wells Fargo Line of Credit . . . in the name of Jerald Mirrow which was used to remodel the [pizzeria business].
>
> [Ex.17.][2]

Mirrow's e-mail to Rafik concluded by stating "we need to get together to finalize the balance of my loan." Later on May 16, 2019, Rafik executed the pay-off agreement.

Following Rafik's execution of the pay-off agreement, Rafik sent respondent two May 16, 2019 e-mails inquiring whether respondent had prepared the agreement regarding Mirrow's partial sale of the pizzeria property. In his first e-mail, Rafik told respondent that "[i]f the deal doesn't go forward, it will fall on you since we [have] been dragging it since the beginning of April." In his second e-mail, Rafik instructed respondent to prepare the agreement between himself and Mirrow by "early next week."

On May 17, 2019, respondent sent Rafik reply e-mails claiming that he would circulate "the draft [agreement] to all parties next week" and that "it will be done when it gets done."

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[2] "Ex." refers to the exhibits appended to the disciplinary stipulation.

Also on May 17, 2019, respondent sent Mirrow the May 16, 2019 e-mail from Rafik accusing respondent of delaying the partial sale of the pizzeria property. In reply, Mirrow told respondent "Wow!! He has a lot of guts after you did such a clean closing on the sale of his business. That's what I'm afraid of if he becomes my partner."

On May 20, 2019, Mirrow provided respondent with Rafik's executed pay-off agreement in connection with Mirrow's $70,000 secured loan funded by the Wells Fargo line of credit. Following his receipt of the executed pay off agreement, respondent issued a $100,000 ATA check, made payable to Mirrow, representing all Rafik's funds from the sale of the pizzeria business that respondent had been safeguarding since the May 14 closing. The memo line of respondent's $100,000 ATA check contained the phrase "For: Payoff J&R Pizza line of credit + loan." Additionally, respondent's handwritten entry describing the transaction on Rafik's client ledger card stated "Jerald Mirrow – Payoff J&R Line of Credit + Loan."

Although respondent had Rafik's permission to disburse $69,000[3] of his funds to Mirrow, pursuant to the pay-off agreement, respondent did not have Rafik's permission to disburse the remaining $31,000. Respondent, however,

[3] The $69,000 amount constituted the remaining balance on the $70,000 secured loan that Mirrow had funded via the Wells Fargo line of credit.

mistakenly believed that he had such authority, based on Mirrow's representation that he was entitled to Rafik's entire $100,000 in pizzeria business sale proceeds. Nevertheless, respondent never confirmed with Rafik whether he had authorized the disbursement of his entire funds to Mirrow. Moreover, respondent did not inform Rafik that he had disbursed his funds.

On May 22, 2019, Mirrow sent Rafik an e-mail noting that he was "having second thoughts" about "selling 49% of the [Pizzeria] [P]roperty" to Rafik. In reply, Rafik told Mirrow that he could not change his mind because they "had a deal." Mirrow, however, replied to Rafik that "a deal is not a deal until it is signed, sealed, and delivered."

On May 23, 2019, at 11:14 a.m., Rafik sent respondent an e-mail stating that he intended "to pick up my check" in connection with the sale of his pizzeria business to Choi. At 1:39 p.m., Rafik sent respondent another e-mail requesting that respondent now "hold [his] money" until he and Mirrow consummated their "deal" and "[i]n case things don't go as promised." In reply, respondent, without notifying Rafik that he already had disbursed his $100,000 in sale proceeds to Mirrow, requested an update on "the latest arrangement with [Mirrow] as to buying him out?"

On May 24, 2019, Mirrow sent an e-mail to Rafik, who had discovered that respondent had disbursed his $100,000 in sale proceeds to Mirrow. In his e-

mail, Mirrow told Rafik that, of the $100,000 in sale proceeds, he used $69,000 to satisfy the Wells Fargo line of credit, pursuant to the pay-off agreement, and kept the remaining $31,000 in light of Rafik's April 15, 2019 text message acknowledging that he owed Mirrow an additional $31,573, which amount constituted the remaining debt that Rafik had assumed from Amine. In reply, Rafik told Mirrow that respondent had "no right to give the escrow money away without [his] permission," and that he had hired respondent "to be my lawyer but he seems to be working for you and I'm paying for it. There is A BIG CONFLICT OF INTEREST."

On May 30, 2019, Mirrow sent Rafik an e-mail stating that Rafik still owed him a total of $47,900 in remaining debt from all prior loans. Mirrow also expressed his intent to return the $31,000 to respondent in exchange for Rafik's execution of a three-year promissory note in favor of Mirrow for $47,900, which amount would be secured by the remaining $100,000 that Choi owed to Rafik in connection with the sale of the pizzeria business.

On June 1, 2019, Rafik sent respondent an e-mail demanding the return of his $31,000 in sale proceeds that respondent previously had disbursed to Mirrow, without Rafik's express authorization. Following his e-mail to respondent, Rafik retained Liam Y. Braber, Esq., to pursue the return of his funds.

On June 13, 2019, Braber sent respondent a letter demanding that he return the $31,000 to Rafik within eight days. Respondent provided Mirrow with a copy of Braber's letter and expressed his view that he "thought [Rafik had] authorized the release of the full $100,000." In reply, Mirrow told respondent that Rafik had "acknowledge[ed] his $31,[000] debt[,] via" his April 15, 2019 text message. Respondent, however, told Mirrow that he was "concern[ed]" that Rafik never expressly authorized the release of the $31,000. In response, Mirrow claimed that, "[i]n my mind[,] Rafik's handwritten account of his debt where he circled $31K is his authorization for the payment. That is what I presented to you when I asked for the $100K." Respondent replied that "[t]his puts me in a difficult position."

During his June 29, 2020 interview with the OAE, Rafik claimed that Braber "was unsuccessful" in securing the return of his $31,000 from Mirrow.

Based on the foregoing facts, respondent stipulated that he violated RPC 1.7(a) by representing Mirrow in connection with his intent to sell 49% of his interest in the pizzeria property to Rafik, when that transaction was contingent on the successful sale of the pizzeria business in which respondent concurrently represented Rafik. Respondent conceded that he failed to secure from Mirrow and Rafik a written waiver acknowledging the conflict of interest and waiving

their right to consult with independent counsel before engaging in the conflicted representation.

Respondent stipulated that he further violated RPC 1.7(a) by concurrently representing Mirrow, as the seller, and Rafik, as the buyer, in connection with the unsuccessful partial sale of the pizzeria property. Respondent conceded that Mirrow's interest as the seller and Rafik's interest as the buyer "were inherently adverse to each other."

Moreover, respondent stipulated that he violated RPC 1.5(b) by failing to set forth, in writing, the basis of his legal fee in connection with his representation of Rafik in the sale of his pizzeria business to Choi.

Additionally, respondent stipulated that he violated RPC 1.15(a) by negligently misappropriating Rafik's $31,000 in sale proceeds by improperly disbursing those funds to Mirrow. Respondent, however, emphasized that he mistakenly believed, based on Mirrow's representations, that Mirrow was entitled to those funds. Similarly, respondent stipulated that he violated RPC 1.15(b) by failing to promptly provide Rafik with his $31,000 in proceeds from the sale of his pizzeria business.

The OAE noted, however, that it could not prove, by clear and convincing evidence, that respondent committed knowing misappropriation, in violation of the principles of In re Wilson, 81 N.J. 451 (1979), in connection with his

improper disbursement of Rafik's funds to Mirrow. Specifically, the OAE stated that respondent had a reasonable belief that Mirrow was entitled to the entire $100,000 based on his knowledge of Rafik's indebtedness to Mirrow. Thus, in the OAE's view, respondent "did not believe" that "the funds belonged to" Rafik "at the time of disbursement."

In recommending the imposition of a reprimand or an admonition, the OAE analogized respondent's improper disbursement of Rafik's escrow funds to that of the reprimanded attorney in In re De Clement, 214 N.J. 47 (2013), who, as detailed below, mistakenly released a portion of the funds that he had agreed to hold, in escrow, in connection with a joint venture agreement between his client and a third party. The OAE argued that, like De Clement, who mistakenly disbursed the escrow funds without obtaining the third party's consent, respondent mistakenly disbursed Rafik's $100,000 in sale proceeds to Mirrow based on his assumption that Mirrow was entitled to those funds. The OAE emphasized, however, that respondent failed to contact Rafik to verify whether Mirrow was entitled to entirety of those funds.

The OAE did not identify any aggravation but urged, as mitigation, respondent's remorse and contrition, the lack of personal gain resulting from his misconduct, and his otherwise unblemished forty-year career at the bar.

At oral argument and in his brief to us, respondent urged the imposition of an admonition based on the mitigating circumstances underlying his misconduct and his lack of prior discipline in his lengthy career at the bar.

Specifically, although respondent conceded that he failed to set forth, in writing, the basis of his $1,250 flat legal fee in connection with his representation of Rafik in the sale of his pizzeria business, respondent emphasized that Rafik otherwise understood and agreed to the amount of respondent's fee.

Additionally, despite his concurrent representation of Rafik and Mirrow in connection with the partial sale of the pizzeria property, respondent stressed that he, ultimately, never prepared the agreement for that transaction, which was never consummated. Respondent also claimed that he was "motivated by a desire to help both sides" and that he did not "inappropriately place[] the benefit of one client ahead of another."

Moreover, respondent argued that he had a sincere belief that Rafik had authorized him to disburse $100,000 of his pizzeria business sale proceeds to Mirrow based on the parties' written instructions to pay off Rafik's debts. Respondent, however, conceded that he should have obtained more specific instructions from Rafik before disbursing his funds. Respondent further

emphasized that he did not use Rafik's funds for his own purposes but rather disbursed them pursuant to his understanding of the parties' instructions.

Respondent urged, as mitigation, his full cooperation with the OAE, his remorse and contrition for his misconduct, and his lack of prior discipline in his forty-year career at the bar. Respondent also submitted two character reference letters from his colleagues attesting to his honesty and professionalism as a lawyer.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed all but one of the charges of unethical conduct.

As the Court observed in In re Berkowitz, 136 N.J. 134, 145 (1994), "[o]ne of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients. From that duty issues the prohibition against representing clients with conflicting interests." (Citations omitted).

In that vein, RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists not only if "the representation of one client will be directly adverse to another client[,]" but also if "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." Under RPC 1.7(b), however,

"[n]otwithstanding the existence of a concurrent conflict of interest under paragraph (a)," a lawyer may represent a client, if:

> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation;
>
> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (3) the representation is not prohibited by law; and
>
> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, respondent violated RPC 1.7(a) by representing Mirrow in connection with his intent to sell 49% of his interest in the pizzeria property to Rafik while concurrently representing Rafik in connection with the sale of his pizzeria business to Choi. As the parties stipulated, Mirrow's partial sale of the pizzeria property to Rafik was contingent on the successful sale of Rafik's pizzeria business. Specifically, based on Mirrow's April 15, 2019 e-mail to him, respondent knew that the sale proceeds of Rafik's pizzeria business would be applied to pay off both (1) a prior personal loan that Mirrow had made to Rafik, and (2) the balance of the Wells Fargo line of credit, which Mirrow had utilized to fund the $70,000 secured loan to Rafik to renovate the pizzeria business. As

Mirrow had advised Rafik, the parties were aware that, without the sale proceeds from Rafik's pizzeria business, Mirrow would not agree to the sale of the pizzeria property.

Rafik's and Mirrow's competing interests in the allocation of the pizzeria business sale proceeds created a significant risk that respondent's representation of each would be materially limited by his responsibilities to the other. Compounding the conflict, respondent also knew that he previously had represented Mirrow in connection with the very same $70,000 secured loan that Mirrow sought to payoff via Rafik's pizzeria business sale proceeds. Respondent, however, failed to secure from Mirrow and Rafik a written waiver acknowledging the conflict and waiving their right to consult with independent counsel before engaging in the conflicted representation.

Respondent further violated RPC 1.7(a) by concurrently representing Mirrow, as the seller, and Rafik, as the buyer, in connection with the unsuccessful partial sale of the pizzeria property. As the parties stipulated, Mirrow's interest as the seller and Rafik's interest as the buyer "were inherently adverse to each other." Indeed, the concurrent representation of a buyer and a seller in a real estate transaction constitutes a non-waivable conflict. See In the Matter of Maria J. Rivero, DRB 14-310 (June 9, 2015) at 25-26 (noting that the

interests of the buyer and the seller "are diametrically opposed"), so ordered, 222 N.J. 573 (2015).

Respondent's non-waivable conflict was compounded by the fact that he appeared to abdicate his responsibility to communicate with Rafik, on at least one occasion, by referring Rafik to Mirrow in connection with the details of the partial sale agreement. Specifically, on May 8, 2019, after Rafik had requested that respondent complete the agreement regarding the partial sale of the pizzeria property by the next day, respondent told Rafik that he could not complete the agreement within that timeframe and requested that he confer with Mirrow "directly to get whatever comfort level you want." Respondent, thus, left Rafik to discuss the terms of the partial sale agreement with Mirrow, a directly adverse party.

Additionally, respondent violated RPC 1.15(a) by negligently misappropriating Rafik's $31,000 in pizzeria business sale proceeds. Specifically, based on Mirrow's April 15, 2019 e-mail, respondent knew that a certain sum of Rafik's pizzeria business sale proceeds would be applied to pay off both Mirrow's "Wells Fargo line of credit" and a separate loan that Mirrow had provided to Rafik "in the past." Weeks later, on May 13, 2019, Mirrow provided respondent a copy of Rafik's April 15, 2019 text message and spreadsheet, wherein Rafik acknowledged the remaining $31,573 balance that

he owed to Mirrow in connection with the original $125,000 debt that Rafik had assumed from Amine. Moreover, on May 20, 2019, Mirrow provided respondent with Rafik's signed pay off agreement, wherein Rafik authorized respondent to use his pizzeria business sale proceeds to pay off Mirrow's Wells Fargo line of credit. Although respondent previously had represented Mirrow in the procurement of the line of credit, which Mirrow had used to fund the $70,000 secured loan to Rafik, the signed payoff agreement did not note the remaining balance of the line of credit.

On May 20, 2019, respondent disbursed to Mirrow, via ATA check, Rafik's entire $100,000 in sale proceeds. At the time he disbursed the check, respondent knew (1) that Rafik had authorized him to utilize his pizzeria business sale proceeds to satisfy the Wells Fargo line of credit; (2) that Mirrow had advised him that an additional portion of the sale proceeds would be applied to pay off a prior loan that Mirrow had made to Rafik; and (3) that Rafik owed Mirrow more than $31,000 from a prior loan.

Respondent, however, had Rafik's authorization to disburse only $69,000 of his sale proceeds to Mirrow to satisfy the line of credit. Rafik never authorized respondent to disburse his remaining $31,000 to Mirrow. Although respondent appeared to have a good faith belief, based on his review of the parties' communications, that Mirrow was entitled to the entire $100,000 in sale

proceeds, respondent failed to obtain Rafik's express authorization to disburse the entirety of his funds to Mirrow. Indeed, as respondent noted in his June 13, 2019 e-mail to Mirrow, Rafik never expressly authorized respondent to utilize his sale proceeds to satisfy his $31,573 in personal debt, despite his prior acknowledgment that he owed such debt in his April 15, 2019 text message to Mirrow. Additionally, Rafik's signed pay off agreement did not specify the remaining balance of Mirrow's Wells Fargo line of credit, creating further confusion regarding the amount that Rafik had authorized respondent to disburse to Mirrow on his behalf.

Finally, respondent violated RPC 1.5(b) by failing to set forth, in writing, the basis of his flat $1,250 legal fee in connection with his representation of Rafik in the sale of his pizzeria business to Choi. Although Rafik may have understood the fee arrangement, because he had not previously retained respondent in any prior matters, RPC 1.5(b) expressly required respondent to communicate the basis of his fee in writing.

However, we determine to dismiss the RPC 1.15(b) charge as duplicative of the RPC 1.15(a) charge. Specifically, the parties stipulated that respondent violated RPC 1.15(b) by failing to promptly provide Rafik with his $31,000 in sale proceeds. Although respondent failed to obtain Rafik's express authorization to disburse the entirety of his proceeds to Mirrow, the fact remains

that respondent promptly disbursed those funds based on his understanding of the parties' intent. Respondent's improper disbursement of Rafik's funds, thus, is more precisely encapsulated by the RPC 1.15(a) charge.

In sum, we find that respondent violated RPC 1.5(b), RPC 1.7(a), and RPC 1.15(a). We dismiss the RPC 1.15(b) charge as duplicative of the RPC 1.15(a) charge. The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct.

Here, respondent engaged in a concurrent conflict of interest by representing both Rafik and Mirrow, as buyer and seller, in connection with the sale of the pizzeria property. Additionally, the sale of the pizzeria property was contingent on the successful sale of Rafik's pizzeria business, in which respondent also represented Rafik. It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See also In re Lewinson, 252 N.J. 416 (2022) (the attorney represented a wife in a divorce proceeding, which resulted in a final judgment that required the parties to equally split the proceeds of their marital home; sixteen years later, the attorney represented the wife's former husband, who sought to enforce the terms of the final judgment; the attorney immediately withdrew from the conflicted representation upon the filing of an ethics grievance; we accorded minimal

weight to the attorney's disciplinary history of a reprimand and two terms of suspension, given that the attorney had been without formal discipline for more than twenty years).

Harsher discipline, including terms of suspension, have been imposed when an attorney's conflict of interest has caused serious economic injury or egregious circumstances exist. See In re Ianetti, 237 N.J. 585 (2019) (censure for attorney who simultaneously represented the straw seller of a residential property and the straw seller's father, who had decisional control over the disbursement of the sale proceeds; the attorney had maintained a longstanding friendship with the straw seller's father and had represented him in at least one legal matter and some business ventures, which were ongoing; we found that a significant risk existed that the attorney's representation of the straw seller would be materially limited by his responsibility to the straw seller's father, as well as the attorney's personal interest in maintaining his relationship with the father; in aggravation, we found that the attorney's concurrent, conflicted representation of the straw seller and his father involved "egregious circumstances;" however, we weighed, in mitigation, the passage of almost ten years since the misconduct had occurred); In re Gilbert, __ N.J. __ (2021), 2021 N.J. LEXIS 952 (three-month suspension for attorney who concurrently represented the buyer and seller in a failed commercial real estate transaction,

which resulted in significant financial harm to the prospective buyer, who canceled the deal after discovering serious issues with the property and business; thereafter, the seller sued the buyer for $3 million in damages, based on the buyer's alleged default; during the litigation, the buyer discovered an undisclosed $900,000 loan, inaccuracies in the business's books, and the underreporting of sales and underpayment of state and federal taxes; in our split decision, the Members who voted for a censure weighed, in mitigation, (1) the passage of nine years since the underlying conduct, (2) the attorney's nearly unblemished thirty-nine-year career at the bar, with the exception of a 1996 reprimand for unrelated misconduct, and (3) that the attorney's behavior was unlikely to recur; the Members who voted for a three-month suspension weighed, in aggravation, that the attorney (1) had engaged in a known conflict of interest to further his pecuniary interest, as both the buyer and seller owed him legal fees, (2) encouraged the transaction even after the buyer could not obtain conventional financing, (3) suggested that the transaction take place as a stock sale, with bootstrap financing, and (4) directed a junior lawyer to work on the matter, thus, embroiling him in the conflict).

Moreover, respondent improperly disbursed Rafik's $31,000 in sale proceeds to Mirrow based on a mistaken belief that Mirrow was entitled to those funds. Generally, the improper release of trust or escrow funds will result in an

admonition or a reprimand, depending on the reasonableness of the attorney's mistaken belief in disbursing the funds. See, e.g., In the Matter of A. Randall Drisgula, DRB 19-010 (March 29, 2019) (admonition for attorney who served as the escrow agent to a real estate transaction in which his client was the seller; the escrow agreement required the attorney to hold $5,000 pending repairs to the property and to disburse the remaining balance to his client upon the completion of the repairs; the buyers filed suit against the client after the repairs could not be resolved; in the interim, the attorney was in the process of closing his law office and relocating to South Carolina; meanwhile the client, who was acting pro se in the buyers' lawsuit, directed the attorney to release the entire escrow amount to her based on her assurance that she would pay any judgment "out of pocket;" the attorney disbursed the escrow funds to the client without obtaining the buyers' consent or otherwise notifying the buyers' counsel of the disbursement; the attorney had retired from the practice of law and had no prior discipline in his forty-seven-year legal career); In re De Clement, 214 N.J. 47 (2013) (reprimand for attorney who failed to safeguard funds in which a client or third party had an interest, and released a portion of the $75,000 that he had agreed to hold, in escrow, in connection with a joint venture agreement between his client and a third party, without first obtaining the third party's consent; no escrow provision governed the attorney's actions, but the $75,000 check

deposited by the attorney included a notation identifying it as an escrow deposit, and the joint venture agreement identified the attorney as the "escrow attorney;" the attorney, however, never received a copy of the joint venture agreement, and improperly relied on his client's assurance that he could use a portion of the escrow funds to cover expenses associated with the joint venture); In re Bassetti, 213 N.J. 41 (2013) (reprimand for attorney who released escrow funds in violation of a contract without a reasonable belief that the disbursement was permitted; we noted that the distinguishing factor between imposing an admonition or a reprimand is often the reasonableness of the attorney's belief that the disbursement was permitted).

The quantum of discipline is enhanced, however, if an attorney's improper release of escrow funds was the result of reckless behavior. See In re Alfano, 238 N.J. 239 (2019) (censure for attorney who, in her capacity as an escrow agent for funds that a third party had advanced to her client, agreed to disburse the funds to the third-party upon the closing of title to a real estate transaction; the attorney, without seeking authorization from the third party or confirmation that the business arrangement between the client and the third party had been modified, disbursed the entire escrow amount to various parties, pursuant to the client's instructions, for the benefit of the client; we observed that the attorney's wholesale reliance on the representations of her client was reckless).

Finally, respondent failed to set forth, in writing, the basis of his $1,250 flat legal fee in connection with his representation of Rafik in the sale of his pizzeria business. Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See In the Matter of Robert E. Kingsbury, DRB 21-152 (October 22, 2021) (the attorney failed to set forth the basis of his $1,500 flat legal fee in writing; the attorney also mishandled the client's matter for almost three years before the client retained substitute counsel to complete her matter; in mitigation, the attorney completely refunded the client, who suffered no ultimate financial harm; no prior discipline).

Here, like the attorney in Gilbert, who received a three-month suspension for representing both the buyer and seller in a failed commercial real estate transaction, respondent engaged in a known conflict of interest by representing Rafik, as the seller, and Mirrow, as the buyer, in connection with Mirrow's intent to sell a portion of his interest in the pizzeria property to Rafik. Respondent engaged in a further conflict by representing Rafik in the sale of his pizzeria business when he knew that a significant portion of the sale proceeds would be allocated to repay Mirrow, his other client, who conditioned the sale of the pizzeria property on his receipt of Rafik's business sale proceeds.

However, unlike the buyer in Gilbert, who suffered significant financial harm, and who faced a $3 million lawsuit from the seller after canceling the deal, the harm to Rafik was far less egregious. Specifically, respondent improperly disbursed $31,000 of Rafik's business sale proceeds to Mirrow, without the express authorization of Rafik, who, as of his June 2020 interview with the OAE, had not recovered his funds from Mirrow. Nevertheless, it appears that Mirrow applied those proceeds towards Rafik's outstanding personal debt, as the parties had agreed when they discussed the allocation of Rafik's business sale proceeds, in April 2019.

Additionally, unlike Gilbert, who, in an attempt to collect upon his unpaid legal fees, encouraged the real estate transaction to take place as a stock sale, with bootstrap financing, after the buyer could not obtain conventional financing, respondent's misconduct did not appear to be motivated by any improper pecuniary gain.

Moreover, like the reprimanded attorney in De Clement, who improperly disbursed a portion of the funds that he had agreed to hold, in escrow, without the consent of the third party who had an interest in those funds, respondent improperly disbursed a portion of Rafik's pizzeria business sale proceeds to Mirrow, without Rafik's express authorization. However, unlike De Clement, who relied only on his client's assurances in connection with the improper

disbursement of the escrow funds, respondent appeared to have a reasonable belief that the disbursement of Rafik's $100,000 in sale proceeds to Mirrow was permissible. Specifically, at the time he disbursed the funds to Mirrow, respondent had received Rafik's authorization to utilize his business sale proceeds to satisfy Mirrow's Wells Fargo line of credit. Respondent also knew, based on his review of Mirrow's April 15, 2019 e-mail to him and Rafik, that a portion of Rafik's sale proceeds would be used to pay off a prior loan that Rafik had received from Mirrow. Finally, respondent knew that Rafik had acknowledged to Mirrow, via text message, that he owed Mirrow $31,573 in personal debt.

However, although respondent reasonably understood the parties' intent to apply Rafik's business sale proceeds towards his outstanding debt, respondent failed to notify Rafik of the specific amounts that he intended to disburse to Mirrow. In that vein, respondent not only failed to confirm the amount of the Wells Fargo line of credit that Rafik had agreed to pay off, but also failed to confirm with Rafik whether he had authorized the disbursement of his remaining funds to satisfy his personal debt. Had respondent not engaged in the conflicted representation of both Mirrow and Rafik, the improper disbursement of Rafik's funds likely would have been avoided.

In conclusion, respondent engaged in a clear conflict of interest in connection with his concurrent representation of Rafik and Mirrow regarding the sales of the pizzeria business and the pizzeria property. Respondent's conflicted representation created competing duties of loyalty regarding the allocation of Rafik's sale proceeds, a portion of which respondent improperly disbursed as a collateral consequence of his decision to engage in the conflict. Consistent with disciplinary precedent for conflicts of interest and the improper disbursement of escrow funds, and considering respondent's otherwise unblemished forty-year career at the bar, we determine that a reprimand is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven Jay Jozwiak
Docket No. DRB 23-061

Argued: June 21, 2023

Decided: August 3, 2023

Disposition: Reprimand

Members	Reprimand
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Rodriguez	X
Total:	9

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