

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-005  
District Docket No. XIV-2010-0161E

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IN THE MATTER OF  
JOSEPH JEROME FELL  
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2012

Decided: June 1, 2012

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.  
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 recommendation for  
discipline (reprimand) filed by the District XIII Ethics  
Committee (DEC). The complaint charged respondent with  
violating RPC 1.8(a)(2) (entering into a business transaction  
with a client without advising the client, in writing, of the  
desirability of seeking the advice of independent counsel) and

RPC 1.8(a)(3) (entering into a business transaction with a client without obtaining the client's written informed consent to the terms of the transaction).

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1992. He was admonished in 2011 for improper release of escrow funds. In the Matter of Joseph Jerome Fell, DRB 10-328 (January 25, 2011). Specifically, respondent received in escrow funds from the buyers of his client's interest in a business. He released funds to the client and others associated with the client, without first ensuring that the contracts and operating agreements had been signed by all parties and approved by the buyers' attorney.

Respondent has been ineligible to practice law, since September 26, 2011, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

The facts are as follows:

Respondent represented Jeffrey and Catherine Goldberg in several matters, between 1999 and 2008. In July 2004, during the period of the attorney/client relationship, respondent received a \$30,000 personal loan from the Goldbergs for renovations to his house. Respondent agreed to repay the amount

of the loan and \$10,000 interest in a balloon payment, on or before July 31, 2005. The loan was secured by a mortgage on respondent's home. On July 19, 2004, respondent signed a promissory note and a mortgage, agreeing to the terms.

Respondent did not advise the Goldbergs, in writing, of the desirability of seeking the advice of independent counsel, before entering into the transaction. Respondent contended that he did so advise the Goldbergs orally. Jeffrey Goldberg, who testified via telephone before the DEC, did not recall that conversation. The Goldbergs did not consent, in writing, to the terms of the transaction.

Respondent did not repay the loan. Rather, he made payments of \$15,000 and \$1,000, in April 2007 and July 2009, respectively.

In October 2009, the Goldbergs initiated litigation against respondent. They ultimately obtained a consent judgment against him, in the amount of \$45,710.95. As of the date of the DEC hearing, September 15, 2011, respondent had been making monthly \$500 payments to the Goldbergs, since November 2010.

Although respondent advised the Goldbergs that he would record the mortgage as a lien on his house, he failed to do so. Respondent explained that he was unable to finish the renovation

on his home, after a "situation" arose with the builder. Thus, a certificate of occupancy (CO) had never been issued. The title company he consulted advised him that he could not record the mortgage without the CO "because the mortgage required a modification to the title insurance policy." According to respondent, he has not attempted to record the mortgage because he was afraid that, without the CO, his family would not be permitted to live in the house. He claimed that he does not have the financial resources to complete the renovations or to hire an attorney to assist him.

In his testimony, respondent alluded to having medical/psychological issues, but did not provide any details about the timing of his problems or their nature, other than referring to "depression and alcohol."<sup>1</sup> He is involved with Lawyers Concerned for Lawyers.

The DEC found that respondent violated RPC 1.8(a)(2) and RPC 1.8(a)(3) by failing to advise the Goldbergs, in writing, of

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<sup>1</sup> In respondent's earlier disciplinary matter, the DEC noted that he had been suffering, at the time, from a depressive disorder that affected his ability "to stay on top of things." The period at issue in the earlier matter (approximately late 2008 to 2009) was well after the time of the loan from the Goldbergs, but was within the period that respondent was in litigation with them. It is, thus, unclear if the same problems are at issue.

the desirability of seeking the advice of independent counsel and by failing to obtain their written, informed consent to the terms of the transaction. In recommending the appropriate measure of discipline (reprimand), the DEC considered respondent's prior admonition for the improper release of escrow funds.

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Respondent admitted having violated RPC 1.8(a)(2) and RPC 1.8(a)(3). Whether he advised the Goldbergs orally to consult with independent counsel is of no moment. The rules require that the advice be given in writing.

When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition, unless other misconduct is present, the attorney has a history of discipline, or there are other aggravating factors. See, e.g., In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (admonition for attorney who made small, interest-free loan to three clients, without advising them to obtain separate counsel;

the attorney also completed an improper jurat; significant mitigation considered); In the Matter of April Katz, DRB 06-190 (October 5, 2006) (admonition for attorney who solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC 1.8(a)); In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (admonition for attorney who borrowed \$30,000 from a client to satisfy a gambling debt; the attorney did not observe the requirements of RPC 1.8(a)); In re Strait, 205 N.J. 469 (2011) (reprimand for attorney who, after being given use of a "companion" credit card of a close, longtime, elderly friend for whom he had provided legal representation in three "minor matters" within a twenty-five year period, ran the balance up to nearly \$50,000, which was beyond the credit limit, which he could not pay, and as to which he did not inform his friend, whose credit rating was compromised as a result; the attorney also had gained control over the friend's assets when she gave him a power of attorney and named him executor of her will; aggravating factors included the vulnerability of the friend, her "extremely close relationship" with respondent, the trust she placed in him, his failure to inform her of the accumulated debt, his false assurance to her that he would bring the account current, and

his failure to return her telephone calls that she made to him after she began to receive communications from a collection agency); In re Gertner, 205 N.J. 468 (2011) (reprimand for attorney who provided legal representation at the closings on houses that he and his business partner purchased and flipped, without complying with the requirements of RPC 1.8(a); the attorney also negligently misappropriated client funds on four occasions); In re Cipriano, 187 N.J. 196 (2008) (motion for discipline by consent; attorney reprimanded for borrowing \$735,000 from a client without regard to the requirements of RPC 1.8(a); he also negligently invaded client funds as a result of poor recordkeeping practices; two prior reprimands (one included a violation of the conflict of interest rules); and In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed \$3,000 from a client without observing the safeguards of RPC 1.8(a), did not memorialize the basis or rate of his fee, and did not adequately communicate with the client; aggravating factors were the attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record (a one-year suspension and a reprimand)).

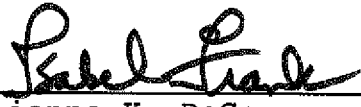
Here, there are no other violations at issue and, although the Goldbergs were harmed, an aggravating factor, respondent is attempting to make amends. An admonition for the underlying conduct would be appropriate, were it not for respondent's prior admonition, which is an aggravating factor.

As to any mitigation, although respondent was apparently suffering from some type of depression and possibly alcoholism, he supplied no specific information about his illness. Thus, taking into account respondent's prior discipline, we determine to impose a reprimand.

Member Doremus 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  
Louis Pashman, Chair

By:   
for Julianne K. DeCore  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Joseph J. Fell  
Docket No. DRB 12-005

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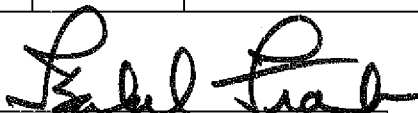
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Argued: March 15, 2012

Decided: June 1, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

  
By Julianne K. DeCore  
Chief Counsel