SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-278
District Docket Nos. XIV-2010-0020E and XIV-2010-0113E

IN THE MATTER OF

BRADLEY J. WEIL

AN ATTORNEY AT LAW

Decision

Argued: January 17, 2013

Decided: February 13, 2013

Melissa A. Czartoryski, Deputy Ethics Counsel, appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument.[1]

[1] On the day before oral argument in this matter, respondent, who is very ill, informed the Office of Board Counsel that, in the event that he did not appear, it was due to his illness. He did not request an adjournment.

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

This matter came before us on a recommendation for a reprimand filed by Special Master Cataldo F. Fazio, Esq., based on respondent's violation of RPC 1.15(a) (failure to safeguard funds), RPC 5.5(a)(1) (practicing while ineligible), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation). We agree with the special master's findings, but determine that a censure is the more appropriate discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1987. At the relevant times, he maintained an office for the practice of law in Wayne.

In 1999, respondent received a reprimand for misrepresenting the status of a non-lawyer former employee, a violation of RPC 8.4(c), and for representing both parties to a real estate transaction without making the required disclosures and obtaining the parties' consent to the dual representation, a violation of RPC 1.7. In re Weil, 162 N.J. 45 (1999).

Respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to

the New Jersey Lawyers' Fund for Client Protection (CPF) for the following periods: September 20 to 22, 1999; September 15 to 24, 2003; September 28, 2009 to March 3, 2010; and September 27 to December 14, 2010.

The special master presided over a two-day disciplinary hearing, which took place on August 1 and 4, 2011. He received testimony from respondent, OAE disciplinary investigator Mary Jo Bolling, and attorneys Paul G. Jemas and Pietro Cammarota.

The facts are as follows: As of February 4, 2009, Martin Quentzel owned a residential property on Old Homestead Road, in Wayne. On that date, the Township of Wayne Board of Special Assessments (Board of Special Assessments) issued a notice of a special assessment of "$6000.00 for each property benefited by the installation of the sanitary sewer and $4,000 for those benefited by the water line." The proposed assessment for Quentzel's property was $4000.

On May 12, 2009, Joseph and Joanne Duffy entered into an agreement of sale for the purchase of Quentzel's property. The Duffys were represented by Jemas. Quentzel was represented by Cammarota.

Jemas, a former mayor of Caldwell, testified that the Quentzel assessment would not be implemented until after the

governing body of the Township of Wayne (the Township) passed an ordinance adopting the proposed assessments. As of September 9, 2009, the date of closing on the Duffys' purchase of Quentzel's property, the Township had not passed an ordinance. Accordingly, the parties entered into an escrow agreement, setting aside $10,000.

The escrow agreement provided, in pertinent part:

> 3. Escrow Funds
>
> (a) Establishment of Escrow Funds. Seller and Buyers agree to establish a fund of money from which the Special Assessment is to be paid and that such fund of money is to be in the amount of Ten Thousand Dollars ($10,000.00) (referred to as the "Escrow Funds"). The Escrow Funds are to be held by Seller's attorney, Pietro Cammarota, Esq., Hallock & Commarota, Esqs., 600 Valley Road, Wayne, New Jersey 07470 (the "Escrow Agent") in a non-interest bearing attorney trust account. The payment of the Escrow Funds will be made by deducting such amount of money from the proceeds of sale due to Seller at closing of title. The Escrow Agent agrees to hold the Escrow Funds in Seller's attorney's non-interest-bearing attorney trust account in accordance with the terms of this Escrow Agreement and to disburse the Escrow Funds in accordance with the terms of this Escrow Agreement.

(b) Disbursement of Escrow.

(1) Disbursement Request. Upon the Township notifying Seller or Buyers of the notice of the Special Assessment (referred to as the "Township's Notice"), then the party receiving such notice will notify the attorney for the other party and will notify the Escrow Agent by the delivery of a copy of the Township's Notice together with a written request to release such portion of the Escrow Funds to Buyers as is necessary to pay the entire amount of the Special Assessment (Department of Assessments), with the balance of the Escrow Funds to be returned to Seller (referred to as the "Disbursement Request"), which Disbursement Request must be delivered in accordance with the notice provisions of the Contract.

(2) Notice of Objection. The Escrow Agent may make the payments to Buyers and Seller in accordance with the Disbursement Request unless Seller or Buyers deliver a written notice of objection to the disbursement of the Escrow Funds in accordance with the Disbursement Request to the Escrow Agent [sic] such a disbursement of the Escrow Funds to the Escrow agent (referred to as "Notice of Objection") no later than the fifth (5^{th}) business day next following the date on which [sic] Disbursement Request is delivered to the other party and the Escrow Agent as provided for in this Escrow Agreement (the "Notice of Objection Deadline Date"). Any Notice of Objection must include a reasonably detailed explanation of the reasons for such objection. If the Notice of Objection is not delivered to the Escrow Agent on or before the Notice of Objection Deadline Date, then Seller and Buyers understand and agree that the Escrow Agent may disburse the

> Escrow Funds in accordance with [sic] Disbursement Request. Upon delivery of Seller's Notice of Objection on or before the Notice of Objection Deadline Date, the Escrow Agent will hold the Escrow Funds pending a written agreement of Seller and Buyers or an order of a court of competent jurisdiction or the ruling of an arbitrator, as applicable.
>
> [Ex.3¶3(a)-(b).]

The escrow agreement was signed by the Duffys and by Cammarota, the escrow agent.

On September 28, 2009, the Department of Special Assessments informed Cammarota's office that $4000 had been assessed against the Quentzel property but that "this amount was never ratified by the municipal council, but is slated for the beginning of 2010 to go on the books." On October 2, 2009, Cammarota sent a copy of the communication to Jemas and requested his consent to the release of $6000 to Quentzel, with the understanding that $4000 would remain in escrow.

Jemas testified that his clients did not want any of the escrowed funds released until the assessment "was memorialized properly and notices went out." Thus, he sent the following written reply to Cammarota's request, on that same date, October 2, 2009:

In regard to the above referenced transaction and in response to Mr. Quentzel's (the "Seller") demand as delineated in your letter dated October 2, 2009, please take notice that Dr. and Mrs. Duffy (the "Buyers") object to the disbursement or release of any of the escrow funds to the Seller.

The most recent communication that we have reviewed from the Township of Wayne (the "Township") on this matter merely indicates that the special assessment charged to homeowners on Old Homestead Road for water service may be approximately $4,000.00. The Township has not . . . established the amount of the assessment and it appears that the assessment will not [sic] established until early 2010. Accordingly, the amount of the assessment is not determined and the purpose of establishing the escrow fund was to assure the Buyers that sufficient funds will be available to pay the assessment once it is established and to remove any and all risk to the Buyers in regard to same.

In view of the problems that we had to address during this transaction, you may understand the Buyers requiring that the agreed upon escrow fund be maintained pending the official and binding determination of the Township. It is unreasonable to release any of the escrow funds at this time and it is unreasonable for the Seller to shift the risk to the Buyers that the assessment may exceed the unofficial and non-binding estimated amount. Once again, in consideration of the practice of the Seller and the experience of the Buyers with the Seller and the terms of the agreement between them, the purpose of the

> escrow arrangement remains as bargained for by the Buyers.
>
> Please be aware that if the Seller is able to obtain and provide to [sic] the Buyers with written confirmation from the Township that the Seller's share of the special assessment is established for a sum certain and that the Township is bound by the assessment and may not impose a greater amount of assessment, the Buyers will be pleased to reconsider the Seller's request to disburse the escrow funds. The Seller should be guided accordingly.
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> [Ex.6.]

On December 23, 2009, respondent replaced Cammarota as Quentzel's lawyer. On December 30, 2009, Cammarota wrote to Jemas, informed him of the change in counsel, and asked Jemas to consent to the transfer of the escrow fund to respondent. On the same date, Cammarota faxed a letter to respondent, stating that he would not release the monies until all parties had authorized him to do so. The fax transmittal included the escrow agreement plus "all correspondence referable to the water and sewer assessment."

Cammarota testified that, in addition to those documents, the transmittal included his October 2, 2009 request-for-disbursement letter to Jemas and Jemas's letter of that same date, objecting to the request. Cammarota acknowledged that the

documents were not identified in his February 5, 2010 transmittal letter.

Respondent denied that these additional documents were included among the materials faxed to him by Cammarota on December 30, 2009. Indeed, he denied ever having seen the October 2, 2009 letters "until this proceeding."

On Friday, February 5, 2010, with Jemas's consent, Cammarota issued a $10,000 trust account check to respondent. In a letter of that same date, Cammarota directed respondent to hold the monies "in escrow pursuant to the terms of the Escrow Agreement dated September 9, 2009." A copy of the agreement was enclosed. Respondent picked up the check at Cammarota's office and deposited it into his attorney trust account on that same day.

In addition to Cammarota's claim that the October 2, 2009 letters had been faxed to respondent on December 30, 2009, Cammarota testified that, when respondent picked up the $10,000 trust account check, Cammarota gave him another copy of the letters.

According to Jemas, prior to February 5, 2010, he and respondent had had telephone conversations about Cammarota's October 2, 2009 notice and Jemas's objection, of that same date,

and Jemas had told respondent that the objection still stood. Respondent denied knowledge of the objection to the release of the escrow funds. He claimed that, if he had known of the objection, he would not have asked Cammarota to turn the funds over to him. Although respondent recognized that the funds had been in escrow for at least four months, he stated that he did not talk to either Cammarota or Jemas about the continued retention of the escrow monies.

According to respondent, Quentzel never told him why the escrow funds had not been released. Quentzel never told him of Jemas's objection to Cammarota's request for the release of the monies. Instead, Quentzel merely complained of the quality of Cammarota's representation and how he had "lost his shirt" in the underlying real estate transaction.

On the same date that respondent collected the $10,000 trust account check from Jemas, February 5, 2010, he sent an email to Jemas recounting a conversation that he had had with Dorothy S. Kreitz, the chair of the Department of Special Assessments. The email stated, in part:

> Notably. I took the initiative to speak with a lovely woman, Dorothy S. Kreitz, CTA Chairman, Bd of Special Assessments.

> I asked her if I may quote her verbatim in a correspondence to you. Accordingly, with her consent she has advised **"that Mr. Quentzel's water assessment totaled no more than $4000.00."**
>
> Furthermore, the Township Council's Attorney publicly scheduled and held hearings the subject of which were to hear complaints to the extent that the assessments were too high! Lastly and most importantly the township attorney has no recollection ever in which the Township council increased a "special assessment" **OVER THE RECOMMENDATION OF THE BOARD OF SPECIAL ASSESSMENTS[.]**
>
> **I see no reason for the withholding of Mr. Quentzel's $6,000.00[.]**
>
> **I have a constructive solution as to this $4000.00 matter . . . a substitution of collateral {A MINNESOTA LIFE ANNUITY} that my client has given me sole custody and control thereof until the water assessment[.]**
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> [Ex.13.][2]

Jemas testified that respondent's email was not proper "notice" under the terms of the escrow agreement because

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[2] As of December 2009, the annuity was valued at approximately $7800. Respondent recognized that the escrow agreement did not give him the authority to substitute collateral.

respondent had not delivered a Township notice and a disbursement request. Nevertheless, on February 5, 2010, Jemas replied to respondent's email, stating that he would discuss the matter with his clients. He claimed that he did not agree to the release of any escrow monies at that time or at any time thereafter.

According to respondent, Jemas's email made no reference to the October 2009 objection and, in addition, Jemas remained silent for the next eight days. Thus, in the absence of an objection, respondent believed that he was permitted to disburse the funds to his client.

On Tuesday, February 9, 2010, Quentzel cashed respondent's $6000 attorney trust account check no. 151, payable to Quentzel, which had been post-dated to February 10, 2010. Respondent testified that he did not give the check to Quentzel. Rather, unbeknownst to respondent, Quentzel simply took the check, which had been on respondent's desk, and cashed it, without respondent's authority, which "bothered" respondent and left him "pretty upset."

On February 12, 2010, respondent issued a $4000 trust account check to Quentzel and sent the following email to Jemas, on that same date:

> Pursuant to the Escrow Agreement and my prior notice to you Dated 2/5/10 and absent any "Notice of Objection" according to the proscribed [sic] Terms and Conditions of the Escrow Agreement, more specifically set forth at Paragraph, 3(b)(1) and 3(b)(2) I have this date turned-over [sic] the Escrow Funds to my Client, Martin D. Quentzel.
>
> As stated in my prior Communication to you, regarding this matter, I am in sole custody of the "Annuity" valued, as of this date, [sic] $7985.00.
>
> Although, not required to, my client and I, additionally agree to Hold/Harmless and Indemnify your Clients for the outstanding water and sewer assessments, if any, regarding the property in question up and until the date that your Clients took possession of the property in question.
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> [Ex.17.]

Jemas did not open respondent's February 12, 2010 email until the next day. In reply, he sent two emails to respondent. The first sought confirmation that Cammarota's $10,000 trust account check had been deposited into respondent's trust account, as well as information regarding any disbursement of those funds. The second email stated that the release of the escrow funds was a violation of the escrow agreement "and contrary to our discussions in this matter."

Respondent did not comply with Jemas's request for confirmation that the $10,000 had been deposited into his trust

account and did not provide Jemas with information about any disbursements that had been made. On February 15, 2010, Jemas wrote a letter to respondent and re-asserted his previous request for information regarding the deposit of Cammarota's $10,000 trust account check and the disbursement of funds from the escrow account. Three days later, respondent replied that Jemas had not timely objected to his request for substitution of collateral and that he had not "set forth any reasons whatsoever to [sic] my client's reasonable request for the turn-over of funds."

Respondent believed that the escrow agreement was "subject to reasonableness" and that the Duffys had been "unreasonable." He explained:

> I thought my letter of February 5 was reasonable. I thought that an annuity that was in my sole custody, it could be liquidated in twice the amount of what would be reasonable, and when Jemas hadn't gotten back to me until eight calendar days on a fax machine, on a Saturday, which I had received that following Monday, so that would have been -- the 13th was a Saturday, 14th is a Sunday, the 15th is Monday, so February 15th from my first letter of February 5, and through that inartfully drafted letter of February 12th, which I intended to state all the escrow funds are disbursed and mean that I have this date disbursed. I just didn't write it

> correctly. It should have been a little better, hindsight being 20/20.
>
> I really have nothing to add, except for the fact that I thought that a reasonableness guideline should have been adhered to in this contract situation, especially in light of Dorothy Kreitz and McNiff and the Township of Wayne and the $4,000 being the only amount that really was outstanding, and seeing after the fact that Cammarota even thought that should have been it, I thought that Jemas was being unreasonable and really just took to heart his hatred of Quentzel. Even looking now, I see I didn't wait the five business days. If I would have released the 10 on that Friday instead of on that Wednesday, I believe that I shouldn't have any Ethics problems, because I believe that it's a contract dispute, where one party is just being utterly unreasonable. However, I didn't release it on February 12th, I released it on February 10th.
>
> I have nothing further to say.
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> [2T50-12 to 2T51-22.][3]

On May 24, 2010, the Township finally issued a $4000 bill for the special assessment. It did so directly to the Duffys, who owned the property. The bill was to be paid by July 6, 2010. At the time the bill was issued, Jemas still had not

[3] "2T" refers to the transcript of the ethics hearing on August 4, 2011.

received any response to his requests for information from respondent.

When respondent informed Jemas about the bill, Jemas requested that he deliver a $4000 check to the Duffys so that the assessment could be paid. Respondent did not comply with Jemas's request. Instead, in early June 2010, he sent a $4000 check, drawn against one of Quentzel's accounts, directly to the Township in payment of the assessment because, he testified, Jemas had filed a grievance against him at this point.

At the ethics hearing, Bolling told the special master that, even assuming that respondent's February 5, 2010 email to Jemas constituted proper notice under the terms of the escrow agreement, paragraph 3(b) of that agreement permitted the buyers to object to the disbursement within five business days. Thus, she concluded, respondent's disbursement of the $6000 to Quentzel was premature. Moreover, because the $6000 check was dated February 10, 2010 and had been cashed the day before, respondent's representation, in his February 12, 2010 email to Jemas, that he had turned over the escrow funds to Quentzel that day was untrue.

Respondent acknowledged knowing that, when there is a dispute over escrowed funds, "you can't touch it without going

to court." He conceded that he had prematurely released the $6000 because he released it five calendar days after making his intention known, rather than five business days. Nevertheless, he believed that the release of $6000 was "totally correct," in principle. He waited to release the $4000 until after he had obtained the medallion for the annuity. He also had a power-of-attorney for the annuity, which would survive Quentzel's death.

As it turned out, respondent and Quentzel were more than attorney and client. They were, according to respondent, good friends, who also shared office space. Quentzel loaned money to respondent so that he could operate his business, after the divorce from his wife had concluded and he had been left without a law practice. Quentzel also gave him a credit card with a $10,000 limit. Respondent represented Quentzel in the escrow matter without charge.

Respondent testified that the divorce from his former wife was not amicable. In September 2007, he was locked out of the law office that he had shared with her. A receiver was appointed in October 2007. The receiver permitted respondent to be in the office for only twelve hours a week. Although the receiver collected more than $380,000, none of respondent's

bills were paid, causing him to declare bankruptcy, on either January 21, 2009 or 2010.

In October 2007, respondent left the marital home with nothing more than the clothes on his back. He turned to alcohol, attempted suicide three times, and went into a coma following a car accident, before he turned his life around.

It appears that, at about the time that Jemas was seeking information from respondent about the status of the $10,000 in escrowed funds, Jemas instructed his associate, Elise P. Rossbach, to contact the CPF and determine whether respondent was eligible to practice law. On February 18, 2010, the CPF wrote to Rossbach, stating that respondent had been ineligible since September 28, 2009.

Bolling testified that respondent was ineligible to practice law, due to his failure to pay the annual assessment to the CPF, from September 28, 2009 to March 3, 2010 and, again, from September 27 to December 14, 2010. When she interviewed respondent, on July 12, 2010, he had paid the annual CPF assessment, but he remained ineligible because he had failed "to file the proper papers with IOLTA" regarding his attorney trust account. After someone from the OAE explained it to him, he took care of the matter.

When Bolling asked respondent about the circumstances leading to his ineligibility for failure to pay the annual assessment, he told her that the CPF notices had been sent to his former marital residence and to his former law office and that his ex-wife had thrown away his mail. According to Bolling, respondent did not notify the CPF of a change in address until March 1, 2010.[4]

With respect to respondent's ineligibility, he testified that he did not know that, when he paid the CPF assessment in 2010, he was two years behind. Rather, he believed that he was current, when he made that payment. In light of his claim that his notices were thrown into the trash, respondent argued that he should be given "some leniency on the ineligibility status."

Respondent admitted that, during the ineligibility, he represented Quentzel in the real estate matter and other clients in PIP arbitrations. He estimated that he had appeared in six or seven arbitrations per month.

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[4] R. 1:28-2(a) provides that, for the purpose of annual assessment, all members of the bar shall report changes of address as they occur.

The special master determined that the OAE had proven, by clear and convincing evidence, that respondent had violated all charged RPCs, that is, RPC 1.15(a), RPC 8.4(c), and RPC 5.5(a). Specifically, respondent knew that the escrow funds were held subject to the terms of the escrow agreement and that the buyers would not consent to the release of the funds until the special assessment was ratified by the governing body of the Township. Respondent also knew that Quentzel had become impatient with the delay in the release of the funds and with Cammarota, who had complied with the terms of the escrow agreement. Moreover, respondent was eager to please Quentzel, who was his friend and benefactor. Quentzel loaned respondent the money required to operate his law practice, which included the use of a credit card. Quentzel had promised him business as the result of a venture in which he was involved.

The special master also recognized that, in addition to wishing to please Quentzel, respondent wanted to protect the Duffys. For example, he offered to post collateral for the $4000 and he and Quentzel also agreed to hold the Duffys harmless for the assessments.

With respect to the release of the funds to Quentzel, the special master noted that respondent's email was dated February

5, 2010. Thus, "under no circumstances was the Respondent permitted to release any of the escrow funds until after February 12, 2010." The special master concluded that respondent's release of funds prior to that date violated RPC 1.15(a).

The special master also found that respondent violated RPC 8.4(c) when he informed Jemas that the funds were released on February 12, 2010. In fact, Quentzel had cashed the $6000 check on February 9, 2010.

Finally, the special master found that respondent violated RPC 5.5(a) when he represented Quentzel during a period of ineligibility.

The special master considered, in aggravation, respondent's 1999 reprimand. In mitigation, he recognized that respondent's former law practice had operated under a receivership and that respondent believed that the receiver would pay the annual assessment. Moreover, CPF correspondence was sent to the marital home where respondent no longer resided and where his former wife threw out his mail. However, because respondent had been ineligible in the past, the special master determined that he should have had a "heightened . . . awareness of the need to

timely pay the annual assessments in order to avoid further ineligibility."

The special master acknowledged respondent's alcoholism, suicide attempts, and coma, but noted that respondent did not offer any corroborating evidence. Nevertheless, the special master found that these facts militated against a more severe penalty for the practicing-while-ineligible charge and that they did not relate to the RPC 1.15(a) or RPC 8.4(c) charges.

As indicated previously, the special master recommended the imposition of a reprimand.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

RPC 1.15(a) requires a lawyer to safeguard funds that are in his or her possession. Under this rule, a lawyer may not release any portion of escrow funds without the consent of all parties who share an interest in those monies. Respondent violated RPC 1.15(a) when he released the escrow funds to Quentzel, prior to February 12, 2010, in violation of the clear terms of the escrow agreement. See, e.g., In the Matter of Karl A. Fenske, DRB 98-211 (May 25, 1999) (admonition imposed on attorney who, although obligated to hold a real estate deposit

in escrow, released it to his client, the buyer, when a dispute arose between the parties; in mitigation, it was considered that there was some confusion as to the proper escrow holder and contractual dates).

Respondent also violated RPC 8.4(c) when he told Jemas that the escrow funds had been released to Quentzel on February 12, 2010. In fact, Quentzel had cashed the $6000 trust account check, which was dated February 10, 2010, three days earlier.

Finally, by his own admission, respondent violated RPC 5.5(a) when he practiced law while ineligible. He handled arbitrations during that time and represented Quentzel in the escrow matter, while he was on the ineligible list.

There remains for determination the appropriate quantum of discipline to be imposed for respondent's violations of RPC 1.5(a), RPC 5.5(a)(1), and RPC 8.4(c).

The improper release of escrow funds, without more, has generally resulted in discipline ranging from an admonition to a reprimand. See, e.g., In the Matter of Karl A. Fenske, supra, DRB 98-211 (May 25, 1999); In the Matter of Joel Albert, DRB 97-092 (February 23, 1998) (admonition for the release of a portion of escrow funds to pay college tuition costs of a daughter of a party to the escrow agreement, without first obtaining the

consent of the other party; the attorney had a reasonable belief that consent had been given); In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who, against a court order, released to the client funds escrowed for a former attorney's fees and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney relied on a legal theory to argue that the former attorney had either waived or forfeited her claim for the fee); In re Jeney, 208 N.J. 591 (2012) (reprimand imposed on attorney who, as escrow agent, disbursed escrowed funds, contrary to the clear terms of the parties' agreement); In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who was required to hold in trust a fee in which she and another attorney had an interest; instead, the attorney took the fee, in violation of a court order); In re Milstead, 162 N.J. 96 (1999) (attorney reprimanded for disbursing escrow funds to his client, in violation of a consent order); In re Margolis, 161 N.J. 139 (1999) (reprimand for attorney who breached an escrow agreement requiring him to hold settlement funds in escrow until the completion of the settlement documents; the attorney used part of the funds for his fees, with his client's consent); and In re Flayer, 130 N.J. 21 (1992) (reprimand for attorney who made unauthorized disbursements against escrow

funds; the attorney represented himself in the purchase of real estate).

In the cases where an admonition was imposed (Fenske, Albert, and Spizz), there had been some confusion about entitlement to the funds, or a belief that consent had been given for their release, or a theory that the other claimant to the funds had waived or forfeited that claim. In other words, the attorney had some belief, albeit mistaken, that there was no impediment to the release of the monies. The same cannot be said here.

Respondent had no basis for releasing any monies to Quentzel before February 12, 2010. Yet, he fully intended to give the $6000 to Quentzel on February 10, 2010, had Quentzel not taken the check and cashed it the day before. Based on these facts, a reprimand is in order for respondent's violation of RPC 1.15(a).

Similarly, when an attorney makes a misrepresentation to a third party, a reprimand is typically imposed. See, e.g., In re Lowenstein, 190 N.J. 59 (2007) (attorney failed to notify an insurance company of the existence of a lien that had to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien) and In re Agrait, 171

N.J. 1 (2002) (despite being obligated to escrow a $16,000 deposit in a real estate transaction, the attorney failed to collect it but caused it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

Practicing law while ineligible, without more, is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition, including the attorney's lack of knowledge of his ineligibility); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in

correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (while ineligible to practice law, attorney represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of a disciplinary history); and In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney practiced law while ineligible during periods ranging from one day to eleven months; the attorney also failed to communicate with the client, and delayed the payment of the client's medical expenses as well as the disbursement of the client's share of settlement proceeds; in mitigation, the attorney was suffering from depression at the time of the misdeeds and had no disciplinary history since his admission to the bar in 1983).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or

is aware of the ineligibility and practices law nevertheless. See, e.g., In re Austin, 198 N.J. 599 (2009) (during one-year period of ineligibility, attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey, receiving a $500 fee for each of the three matters; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record); In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Lucid, 174 N.J. 367 (2002) (attorney practiced law while ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence,

conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate with a client, and failure to prepare a written fee agreement); In re Hess, 174 N.J. 346 (2002) (attorney practiced law while ineligible and failed to cooperate with disciplinary authorities; the attorney had received an admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey); In re Ellis, 165 N.J. 493 (2000) (one month after being reinstated from an earlier period of ineligibility, the attorney was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal work for two clients; he had received a prior reprimand for unrelated violations); and In re Kronegold, 164 N.J. 617 (2000) (attorney practiced law while ineligible; an aggravating factor was the attorney's lack of candor to the Board about other attorneys' use of his name on complaints and letters and about the signing of his name in error). But see In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008) (although attorney knew of her ineligibility, compelling mitigation warranted only an admonition; in an interview with the OAE, the attorney

admitted that, while ineligible to practice law, she had appeared for other attorneys forty-eight times on a part-time, per diem basis, and in two of her own matters; the attorney was unable to afford the payment of the annual attorney assessment because of her status as a single mother of two young children).

In this case, respondent testified that he was unaware of his ineligibility because his former wife had thrown away the mail that was sent to him at their marital home and their law office. Presumably, this included the CPF notices regarding the annual assessment.

Respondent, who left both locations in the fall of 2007, never notified the CPF of a change of address until March 2010. Thus, although he was unaware of his ineligibility, it was the direct result of his failure to comply with R. 1:28-2(a), which requires an attorney to keep his or her mailing address current with the CPF, "at all times." Respondent may not now use his failure to comply with his duty to keep his address current with the CPF to justify his ignorance of his ineligibility to practice law. Thus, a reprimand is the appropriate measure of discipline for respondent's violation of RPC 5.5(a)(1).

In addition to respondent's violations of the RPCs in this case, he was disciplined in 1999 for conduct that included a

misrepresentation. In our view, when respondent's disciplinary history is considered together with the several transgressions in this case, each of which, standing alone, would result in a reprimand, a censure is the appropriate measure of discipline for his infractions.

Member Baugh 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: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bradley J. Weil
Docket No. DRB 12-278

Argued: January 17, 2013

Decided: February 13, 2013

Disposition: Censure

Members	Disbar	Censure	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

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel