SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-061
District Docket No. XII-2011-0040E

IN THE MATTER OF	
MELINDA D. MIDDLEBROOKS	
AN ATTORNEY AT LAW	

Decision

Argued: July 18, 2013

Decided: August 21, 2013

Karen E. Bezner appeared on behalf of the District XII Ethics Committee.

Andrew R. Turner appeared on behalf of respondent.

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

This matter was originally before us on a recommendation for discipline (admonition), filed by the District XII Ethics Committee (DEC). Respondent was charged, along with her law partner, Stuart M. Nachbar, with having engaged in a conflict of interest, when suing a present client for fees (RPC 1.7(a)). We originally considered the matters together and determined to

reprimand attorney Nachbar and to treat the present recommendation for an admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4). We determine to impose a reprimand in this matter.

Respondent was admitted to the New Jersey bar in 1985. She has no prior discipline.

In virtually identically worded complaints, respondent and Nachbar were charged with having engaged in a conflict of interest, when they filed suit against the grievants, Moses and Mauricia Tabin, to collect legal fees awarded to their law firm by a bankruptcy court. Later, wage executions were obtained against the Tabins. At the time, respondent and Nachbar were named bankruptcy counsel for the Tabins.

Respondent and Nachbar's answers were virtually identical to each other as well. They admitted all of the facts set out in the complaints, save one, the date of a bankruptcy hearing.

The undisputed facts are as follows:

On October 17, 2008, the Tabins retained respondent and Nachbar to file a Chapter 13 bankruptcy petition and to reorganize their debts through a Chapter 13 plan. The fee agreement provided for an initial fee of $3,000. The first $1,000 was to be paid upon retention, another $1,000 one week

later, and the remainder through monthly installments, to be paid through the Chapter 13 plan.

On October 31, 2008, respondent and Nachbar filed a Chapter 13 bankruptcy petition for the Tabins, in which they were named bankruptcy counsel.

Sometime thereafter, respondent and Nachbar filed a motion to "strip" a $52,000 second mortgage from the Tabins' property, due to the lack of equity in the real estate. The motion was unopposed. On February 26, 2009, the bankruptcy court granted it.

On July 15, 2009, respondent and Nachbar filed a fee application in the bankruptcy court for $6,413.74, representing additional legal fees, primarily for the extra legal work associated with the "stripping" motion, which was not included in the original $3,000 fee. By court order dated August 19, 2009, the fee application was granted in full. The bankruptcy order specified that the fees were to be paid "outside the plan," meaning, directly from the Tabins, instead of through the Chapter 13 plan.

Thereafter, respondent's law firm sent collection letters to the Tabins dated August 20, September 10, and November 4, 2009. The letters were signed by respondent.[1]

About a year later, under cover letter dated June 24, 2010, respondent's law firm filed a complaint against the Tabins, in Union County Superior Court, seeking the original $6,413.74, plus interest, for a total of $7,118.26. On January 3, 2011, judgment by default was entered against the Tabins, in the amount of $6,479.74. The pleadings were filed by other attorneys in the office.

On February 12, 2011, respondent and Nachbar made an application for wage executions against the Tabins. The application was granted by court order dated February 23, 2011.

Meanwhile, on February 18, 2011, respondent and Nachbar filed a motion in bankruptcy court to withdraw as the Tabins' bankruptcy counsel. On March 18, 2011, Moses Tabin filed a pro se objection to that motion and, days later, on March 23, 2011,

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[1] The letters invited the Tabins to contact the law office manager, if they wished to set up a payment plan.

filed a motion asking the bankruptcy court to reconsider the additional fees and expenses awarded to respondent and Nachbar.

Respondent and Nachbar filed a reply objection to the Tabin motion for reconsideration, along with a letter-brief, to which the Tabins submitted an additional reply, on March 31, 2011.

On April 13, 2011, Nachbar appeared at the hearing on the motion to withdraw. When the bankruptcy judge asked what had prompted the motion to be relieved as counsel, Nachbar replied, "We are having issues with our client with regard to being paid for our services as well as the client having filed other applications in State Court against us as well as with other organizations." The judge then asked Moses Tabin a few preliminary questions, before making the following remarks:

> And I have your handwritten objection in which you tell me that you would like to object to your counsel being withdrawn. You also tell me your counsel is garnishing your wages, that affects your bankruptcy plan, you've reported them to the ethics committee and the case is under investigation, right?
>
> . . . .
>
> Mr. Tabin, -- Are they really garnishing [your] wages?
>
> MR. NACHBAR: We have a court order, State Court order based on a special civil part judgment that says that we can garnish his wages and his wife's wages, absolutely.

THE COURT: What did you do, you took –

MR. TABIN: They are garnishing 50 percent of our wages.

. . . .

THE COURT: You took the order I signed awarding fees, took it to the State Court and had a garnishment issued?

MR. NACHBAR: After filing --

THE COURT: Against your own client, while you are representing them?

MR. NACHBAR: That is what my office did, Your Honor, yes.

. . . .

THE COURT: [] I just don't, I've never heard of lawyers suing clients in the middle of a case.

[Ex.O]

The judge then asked Nachbar to voluntarily withdraw the wage executions, and directed the entry of an order providing that they violated the automatic stay provisions of the bankruptcy code. The docket sheet for the Tabin bankruptcy, however, reflects no entry for such an order.

By orders dated April 14 and 28, 2011, the judge granted respondent and Nachbar's motion to be relieved as counsel and denied the Tabins' motion for reconsideration of the fee award.

At the DEC hearing, Moses Tabin testified that he had been surprised by respondent and Nachbar's law firm's suit to collect legal fees. He claimed not to have understood the meaning of the collection letters, all of which expressly called for him to pay the balance due or to contact the office for a payment plan.

Moses recalled that, only upon receiving the November 4, 2009 pre-action letter, which informed him about his right to utilize the fee arbitration process, did he understood that the letters pertained to a debt that he owed to the law firm, rather than something related to a creditor.

The presenter asked Tabin if he had understood the original fee agreement, which set forth the hourly rates to be charged for additional legal work:

> Q. Mr. Tabin, when Mr. Turner [respondents' counsel] was asking you about the retainer letter and the additional fees for the motion, you said that they didn't discuss those fees with you. Why do you feel they should have discussed those fees with you?
>
> A. Well, because like right now they got the money from us, the $6,000 and all this [sic] additional fees, that's the only time I realized that they charged me per hour. You know, they should have discussed to [sic] us beforehand, you know, because what they did, okay, our fixed fee is $3,000 and here, sign this, sign that, we never got the chance to read it. They never even explained it to us about the motion. Okay, probably after three

> months we'll have a motion to strip your lien and this will be the charges. They never told us anything, they just let us sign, sign this, sign that and for us, you know, we just sign everything because that's our lawyer and we thought that they are taking good care of us and we didn't know that they are robbing us point blank.
>
> Q. So you feel you should have had the opportunity to know when they were charging you by the hour as opposed by the fixed fee?
>
> A. Correct.
>
> [T89-16 to T90-17.][2]

Moses was asked why he did not take advantage of fee arbitration process. He recalled having thought that it would be too expensive. Moreover, he stated, by that time he no longer trusted his attorneys.

Moses also testified about his pro se participation in the Superior Court matter. He admitted having received the complaint, but explained that, by the time he was ready to act on it, "it was too late" because judgment had already been entered against them.

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[2] "T" refers to the transcript of the April 25, 2012 DEC hearing.

Moses recalled that, after the wage executions, he sent a pro se application to the bankruptcy court, addressed "to whom it may concern," seeking to re-open the $6,413.74 fee award. Moses did so because he feared that he and his wife could not pay one half of their salaries to a wage execution, with enough remaining income to make their required Chapter 13 payments to the trustee. Moses recalled that, at the hearing, the bankruptcy judge seemed angry "because this [was his] first time to see this type of case, you know, a lawyer suing his client." The judge denied Tabin's request to review the fees, but stretched out the Tabins' payment plan from three to four years, so that the additional fees were absorbed in their plan payments going forward.

Nachbar testified, at the DEC hearing, that respondent and he made the decision to sue the Tabins because they believed that the Tabins had sufficient assets to pay their legal fees. He stated that the Tabins

> could have used their Schedule C exempted assets, they could have used future tax returns, set up a payment plan of $25 a month. All they had to do was call, was call us and set something up, offer something, they did not. They ignored us. They ignored everything.
>
> [T125-6 to 13.]

Nachbar also recalled that he and respondent, as law partners, would meet periodically to discuss late-paying clients. Their policy was that, if a "30-day" letter was not replied to, the matter could go to suit. When they met about the Tabin situation, they did not believe that they had a conflict of interest, "at that point," because they had a federal bankruptcy court order for fees. Nachbar stated, "We waited over a year and we would send [Moses] — regular reminders to pay that bill and he never contacted us, never said anything, nothing after the [R.] 1:20 letter."[3]

Nachbar also conceded that he did not file a motion to be relieved as counsel, prior to filing the state court complaint:

> MR. VIDA [Panel Chair]: But the question is why didn't you file to be relieved of counsel before you filed the Complaint in State Court?
>
> THE WITNESS: Quite honestly I don't know other than the fact that we didn't see any conflict of interest.

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[3] The November 4, 2009 "pre-action" letter explained the fee arbitration process and the law firm's intent to sue, in the absence of either fee arbitration, full payment, or the Tabins' cooperation in setting up a payment plan.

[T135-4 to 9.]

Nachbar admitted that a wage execution outside the plan would eliminate funds that would have been used to fund plan payments and that, without the plan payments, the bankruptcy would fail. So, too, there was a possibility that the stripped mortgage would be reinstated.

The panel chair recited the bankruptcy judge's statement, from the bench, about the wage execution:

> MR. VIDA: If I may, on page seven line 11 the court responded, "Well, I'm not going to get into a lecture or a course on ethics but moving to withdraw as counsel is the typical standard and that's what I see constantly and that's what you do. I wish I had a dollar for every lawyer that didn't get paid for every dollar that they earned. The standard for relief typically is just to be discharged from the case, that's all."
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> [T144-11 to 19.]

Respondent was the final witness to testify at the DEC hearing. She, like Nachbar, stated that, at a meeting together, they had decided to sue for the fee, only after they had waited for over a year for payment. She recalled that they had sent the Tabins "reminder" letters to pay the fee or contact the office to set up a payment plan, but they had done neither.

Respondent had no personal knowledge of Moses' appearances in the Superior Court and bankruptcy court proceedings because other attorneys had handled them, but she expressed an understanding of the developments in the case, including the events after her direct involvement ended with the signing and sending of all three of the firm's collection letters to the Tabins.

Respondent, like Nachbar, did not believe that a conflict of interest arose that precluded the actions that they took. She testified:

> Now, did I have a conflict? I'm presuming that once I end up with a fee order in a bankruptcy and someone doesn't pay me, I have a nonappealable [sic] federal order that's supposed to be satisfied. You know, would it have been -- it certainly would have been much neater to do the motion to withdraw first but if there had been a resolve [sic] of the payment, you know, and even during this time we were obviously representing them but it would have resolved and then we would have continued, you know, and not asked to be withdrawn as counsel, does that make -- do you understand?
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> [T165-10 to 18.]

With regard to Moses' testimony that he was unaware that he was being charged for the "stripping" motion, respondent stated that, in "the normal course when we do an electronic filing, we

take the electronic filing sheet, put it on top of the pleading and we mail them out," along with the notice of hearing, which comes directly from the bankruptcy court.

When a panel member asked why they had not sought payment of their fees through the chapter 13 plan, respondent replied:

> THE WITNESS: Right. You know, sometimes the trustee will object when you try to put fees inside a plan, they will say the plan is not feasible so we usually do this as an accommodation. If when you crunch the numbers, they –
>
> MS. SUPLEE: I understand.
>
> THE WITNESS: I know you do. The plan payment would exceed what the debtor was originally showing as being their income so as an accommodation, sometimes we'll do our fees outside the plan so that it doesn't negatively impact the debtor's ability to be able to --
>
> MS. SUPLEE: I understand but you had a three-year plan payment when you had the possibility of being up to a 60 month, five-year plan payment. Out of sheer curiosity why did you not just throw it through the plan because that's apparently how it's being done right now.
>
> THE WITNESS: Right.
>
> [T169-10 to T170-8.]

Respondent further explained the reasoning for keeping their fees outside the plan:

Yes, and, you know, I guess because we're here on what would be considered a conflict of interest, I wonder whether that would be any different to come back and expose a client to a greater plan with more money when I've offered them something that would be less, you know, outside the plan. So, you know, no good deed goes unpunished. We decided we'll accept our fees outside the plan to allow the debtor to be able to -- if their goal was to finish their plan in three years so they are out of the bankruptcy and they have those two years without a second lien on their home so they are either able to refinance or sell it or whatever their intentions were, they're two years ahead of the curve. If I put my fees through the plan and extended it, that may -- that may not have met what they asked for so that's —

MS. SUPLEE: Did you discuss this with the client?

THE WITNESS: I did not because I do --

MS. SUPLEE: Do you know whether anyone in your office discussed this with the client and explained the actual dollars and cents of this?

THE WITNESS: I do not know but Mr. Nachbar handles the 13s and was very active on this case.

BY MR. TURNER:

Q. Again, follow up. Implicit I guess and the question is if you've reached out to the client via letter, is it your impression that the client would then have to respond to [sic] at least have these discussions?

A. Yes.

> Q. And in terms of the adverseness, if the fees were put into the plan, you know that you expose the client to an automatic extra $600 under the trustee's scheme; is that correct?
>
> A. Correct.
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> Q. Whereas your fee arrangements would not include an extra $600 carrying charge, I think you used the term you would be the bank; is that correct?
>
> A. Correct.
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> [T176-1 to T177-22.]

Finally, respondent conceded that "it would have been better to withdraw before the Complaint was filed, but we felt as though we would be able to resolve it and then move on from there."

Respondent offered an affirmative defense to her actions, namely, that the DEC's reliance on In re Simon, 206 N.J. 306 (2011), was misplaced, because that conflict of interest case was decided after the conduct here took place. Therefore, she argued, she was not on notice that her conduct was improper.

The DEC found respondent guilty of a conflict of interest, in violation of RPC 1.7(a)(2). The DEC reasoned that, in Simon, the Court not only established a "bright line prohibition of such suits in the future, but that it was applied

retroactively." Therefore, respondent's argument that she should not be held to a standard that was not in place at the time of their actions was unpersuasive.

With regard to the imposition of discipline, the DEC concluded that respondent was less culpable than Nachbar, for whom the DEC recommended a reprimand.

Based on a section of respondent's testimony, the DEC concluded that she was unaware that her law firm had performed a wage execution:

> We decided that we'll accept our fees outside the Plan to allow the debtor to be able to if their goal was to finish their plan in three years so they are out of the Bankruptcy and they have those two years without a second lien on their home so they are either able to refinance or sell it or whatever their intentions were, they're two years ahead of the curve. If I put my fees through the Plan and extended, that may--- that may not have met what they asked for so that's---
>
> [HPR14;T175-20 to 176-19.][4]

According to the DEC, the "absence of proof of participation in the garnishment served to distinguish the

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[4] "HPR" refers to the August 16, 2012 hearing panel report.

actions of Respondent, Middlebrooks" and her actions were confined to the commencement of the collection matter, for which, the DEC concluded, an admonition would be ample discipline.

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

Respondent and her law partner, Nachbar, were named bankruptcy counsel for the Tabins' Chapter 13 case. The Tabins were successful in having a three-year plan approved by the bankruptcy court, after which an issue arose that required additional legal work by respondent's law firm. The written fee agreement, signed by the Tabins at the inception of the representation, clearly established the hourly charges that they would incur for additional legal services.

It should be noted that, although Moses testified about being seemingly unaware of the supplemental fees associated with the "stripping" motion, respondent was not charged with any misconduct related to those fees, which were approved by the bankruptcy court. Therefore, the only ethics question for us involves the alleged conflict of interest.

Respondent conceded that, when the Tabins failed to pay the supplemental fees, she and Nachbar met and decided to file suit in Superior Court to collect the $6,413.74 fee. The bankruptcy order specified that the fees were to be paid by the Tabins directly, outside of the plan. They sought to leave intact the relatively short, three-year payment plan, after sending the Tabins a pre-action letter.

Although it is true that, after sending the Tabins a pre-action letter, respondent and Nachbar waited a year to file suit, when they did so, they were still the Tabins' attorneys of record in the Chapter 13. Both respondent and Nachbar testified that they had not sought to be relieved as counsel in the bankruptcy matter, before filing the state court collection action, believing that filing the complaint presented no concurrent conflict of interest with their clients.

When, in January 2011, their law firm obtained a default judgment against the Tabins, an application was made for wage executions against the Tabins. On February 18, 2011, respondent and Nachbar filed a motion to be relieved as the Tabins' bankruptcy counsel. However, on February 23, 2011, before the motion to be relieved was heard, the Superior Court ordered wage executions on the Tabins' salaries.

Apparently, those wage executions spurred Moses to action. He immediately filed an objection to the bankruptcy motion to be relieved as counsel and moved for reconsideration of the $6,413.74 in supplemental fees.

At the hearing, Judge Steckroth was stunned that respondent and Nachbar had sued their bankruptcy clients for fees in an ongoing case, while still representing them, and that they had reduced his court order to a wage execution, along the way. When, at the bankruptcy hearing, Nachbar asked what other remedies he and respondent could have pursued, the judge presciently stated, "Well, I'm not going to get into a lecture or course on ethics, but moving to withdraw as counsel is the typical standard and that's what I see constantly."

At oral argument before us, respondent's counsel argued that the law firm's "active representation" in the bankruptcy case had ceased over a year before the suit in Superior Court, intimating that the bankruptcy representation had, in effect, been concluded. Yet, the bankruptcy judge was clear that the representation had not been concluded. At the April 13, 2011 bankruptcy hearing on the parties' motions to withdraw and to reconsider the fee, the judge stated, "I just don't, I've never

heard of lawyers suing clients **in the middle of a case"** (emphasis added).

At oral argument before us, respondent's counsel ultimately conceded that, despite the lack of legal activity in the Tabins' bankruptcy matter, the case was still open, when respondent and Nachbar, the attorneys of record, sued the Tabins to collect the fee. It matters not that the actual pleadings in the Superior Court matter were filed by other attorneys in the law firm. They did so at the direction of respondent and Nachbar.

RPC 1.7(a)(2) states, in relevant part: "(a) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer."

Obviously, the collection of legal fees is "a personal interest of the lawyer." As seen below, attorneys create an impermissible concurrent conflict of interest when they sue a present client for fees. In this matter, it was made all the worse because of the wage execution. Had the wages actually been executed, it could have proven ruinous to the Tabins' Chapter 13 plan.

In In re Simon, supra, 206 N.J. 306, a reprimand case, the Court held that an attorney who sues a present client for fees creates an impermissible conflict of interest that requires termination of the representation. The attorney in Simon represented a client facing murder charges. Simon had generated pre-trial legal fees of over $70,000, plus expenses of $13,000, but had been paid only about $20,000 by relatives of the defendant. When Simon sent an invoice for the outstanding fees to the relatives, he was told that there was no more money available, even though they had promised Simon an additional $50,000 from the refinancing of a property that they owned. Instead, they sold the property and gave respondent only $10,000 of the proceeds. With $66,000 in fees still outstanding and a set trial date, Simon sent the family four letters, over the course of four months, seeking payment. Each letter contained a warning that, if the family did not arrange for payment, Simon would seek to be relieved as counsel. Other correspondence to them indicated that, if payment was not forthcoming, he intended to sue for it.

Hearing nothing, Simon filed a motion to be relieved as counsel. Although the prosecutor filed no opposition, the court denied that motion, without asking the defendant if he wished to

terminate Simon's representation. A trial date was set for four months later.

Thereafter, Simon appealed the trial court's decision. When he learned that the family had transferred a house to another family member for a nominal sum, he filed suit against them. He also named his client as a defendant in the suit, even though he claimed, at the DEC hearing, that he never expected to collect from the client. When the client learned about the suit, he contacted the court and asked that Simon be relieved as his counsel. The judge then entered an amended order stating that, because Simon had filed a lawsuit against his own client, any further representation by Simon would be "impossible."

When defending against the conflict-of-interest charge, Simon contended, at the DEC hearing, that he had done everything possible to protect his client, but ultimately had to sue him in order to prevent any further "fraudulent conveyances" of property by family members. The DEC, this Board, and the Court all found that Simon had violated RPC 1.7(a)(2) by suing a present client.

The Court did not hesitate to apply RPC 1.7(a)(2) retroactively to Simon's violation and quoted our decision that, "despite the paucity of rule or law on the subject – or

precisely because of it – the basic truth is that lawyers cannot sue present clients without immersing themselves in an untenable conflict of interest." In re Simon, supra, 206 N.J. at 311. The Court further stated that, "as the DRB points out, by filing suit against his client for unpaid fees while defending that client against murder charges, respondent violated RPC 1.7(a)(2) by placing himself in an adversarial relationship vis-à-vis his client and thus 'jeopardize[ing] his duty to represent [his client] with the utmost zeal.'" Id. at 318. The court continued: "respondent's arguments to the contrary are unpersuasive. Given the clarity of our *RPCs*, there can be no legitimate confusion about a lawyer's ability to sue an existing or current client." Ibid.

As previously stated, the Court imposed a reprimand for Simon's misconduct.

Since 1994, it has been a well-established principle that a reprimand is the standard measure of discipline imposed on an attorney who engages in a conflict of interest. In re Berkowitz, 136 N.J. 148 (1994). If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," then discipline greater than a reprimand is warranted. Id. at 148. See also In re Guidone, 139 N.J. 272, 277

(1994) (reiterating Berkowitz and noting that, when an attorney's conflict of interest causes economic injury, discipline greater than a reprimand is imposed; the attorney, who was a member of the Lions Club and represented the Club in the sale of a tract of land, engaged in a conflict of interest when he acquired, but failed to disclose to the Club, a financial interest in the entity that purchased the land, and then failed to fully explain to the Club the various risks involved with the representation and to obtain the Club's consent to the representation; the attorney received a three-month suspension because the conflict of interest "was both pecuniary and undisclosed") and In re Fitchett, 184 N.J. 289 (2005) (three-month suspension; the Court order noted that the "circumstances of [the attorney's] conflict of interest [were] egregious" and that his misconduct was "blatant and gross").

In special situations, admonitions have been imposed on attorneys who have violated the conflict of interest rules post-Berkowitz and Guidone. See, e.g., In the Matter of Cory J. Gilman, 184 N.J. 298 (2005) (attorney admonished for an imputed conflict of interest, among other violations, based upon his preparation of real estate contracts for buyers requiring the purchase of title insurance from a company owned by his

supervising partner; compelling mitigating factors present); In the Matter of Carolyn Fleming-Sawyerr, DRB 04-017 (March 23, 2004) (attorney admonished for, among other things, engaging in a conflict of interest when she collected a real estate commission upon her sale of a client's house; mitigating factors were the attorney's unblemished fifteen-year career, her unawareness that she could not act simultaneously as an attorney and collect a real estate fee, thus negating any intent on her part to take advantage of the client, and the passage of six years since the ethics infraction); In the Matter of Andrys S. Gomez, DRB 03-203 (September 23, 2003) (admonition for attorney who, among other things, engaged in a conflict of interest when she represented both driver and passengers in a motor vehicle accident; mitigating circumstances were the significant measures" taken by the attorney "to improve the quality of [her] practice"); and In the Matter of Victor J. Horowitz, DRB 01-091 (June 29, 2001) (on motion for discipline by consent, attorney was admonished for representing both driver and passengers in an automobile accident, a violation of RPC 1.7; the attorney's unblemished nineteen-year career was considered in mitigation).

Here, there are mitigating and aggravating factors to consider. In mitigation, respondent has no prior discipline

since her 1985 admission to the New Jersey bar. In aggravation, her actions placed her clients at great risk by obtaining wage executions against them. Had the fifty-percent (according to Moses) wage executions been completed, the entire Chapter 13 might have failed and the second mortgage might have been reinstated.

Respondent's alleged unawareness of the wage executions, a factor that the DEC considered in recommending an admonition, does not serve as mitigation, even if true. First, that portion of respondent's testimony cited by the DEC, in the hearing panel report, as dispositive of her knowledge about the wage executions is equivocal. Second, even assuming that respondent was, in fact, unaware of them, the critical factor in creating the conflict was the decision to sue the clients. Respondent and Nachbar admittedly met to determine how to proceed to collect their outstanding fees from the Tabins. Together, they decided to sue their clients in Superior Court to collect their fees. They knew, at the time, that they were still engaged as counsel of record in an ongoing bankruptcy representation. In short, both had equally active roles in the collection decision. The wage executions simply flowed from that unethical conduct.

Although, in conflict-of-interest cases, compelling circumstances may reduce the usual measure of discipline, a reprimand, to an admonition, such is not the case here. We do not find it a compelling circumstance that respondent might have been unaware of the wage executions. We, therefore, determine that respondent, like her law partner Nachbar, deserves a reprimand.

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: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Melinda D. Middlebrooks
Docket No. DRB 13-061

Argued: July 18, 2013

Decided: August 21, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			7			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel