SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-110
District Docket No. XIV-2006-171E

IN THE MATTER OF	:
ROBERT P. WEINBERG	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 16, 2009

Decided: August 25, 2009

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Leon B. Piechta and Joseph R. Press 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 respondent and the Office of Attorney Ethics ("OAE"). Respondent stipulated that, in the course of his representation of two businesses operated by the same individual, he violated RPC 1.5(b) by failing to memorialize the basis or rate of his fee, RPC 1.7(a)(2) and RPC 1.8(a) by making loans to a client and to an investor/employee of one of the businesses without observing the

safeguards of the conflict of interest rules, and RPC 1.15(a) by commingling personal and trust funds in his trust account.

The OAE recommends either a reprimand or a censure. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1967. On March 4, 2009, on a motion for discipline by consent filed by the OAE, he received a reprimand for negligent misappropriation and recordkeeping violations. The present matter involves the same client in that prior case, Robert Frankel. There, respondent neglected to record a $350,000 wire-transfer from his trust account, on behalf of Frankel. Because respondent did not regularly reconcile his trust account, the unrecorded transfer went undetected until there was an overdraft in the account. A reconstruction of the Frankel ledger card revealed a $254,018.93 shortage. Thereafter, respondent remedied that deficiency by depositing $225,000 in personal funds into the account. As of September 2008, respondent and Frankel were involved in litigation. In re Weinberg, 198 N.J. 380 (2009).

According to the stipulation, in October 2001, respondent began to provide legal services to Capital Note Corporation ("CNC"), a business engaged in purchasing distressed mortgage loans and working with the borrower and the borrower's creditors to bring the loan current. CNC was operated by Robert Frankel.

Although respondent had not represented either CNC or Frankel before, he did not prepare a writing specifying the rate or basis of his fee and defining the scope of his representation. In fact, the nature of respondent's representation changed over the course of his professional relationship with CNC, including the extent of the work to be performed and the amount of the legal fees. Respondent did not memorialize those changes. As a result, respondent and CNC became involved in controversies over those undocumented issues, which eventually led to litigation.

Respondent stipulated that the above conduct violated RPC 1.5(b) (when the lawyer has not regularly represented the client, the lawyer shall communicate the basis or rate of the fee to the client, in writing, before or within a reasonable time after the beginning of the representation).

Respondent also stipulated that he "participated in lending money to at least one client, Jose Perez, in connection with that client's real estate transaction, in violation of RPC 1.8(a)," (conflict of interest; business transaction with client), inadvertently cited as RPC 1.8(e). In a letter to Office of Board Counsel ("OBC"), dated July 8, 2009, which was deemed a supplement to the stipulation, the parties clarified that respondent placed in his trust account funds obtained from

his credit card and lent them to Perez. Perez was unaware that the loan had come from respondent. Perez had no connection with the Frankel mortgage business.

Respondent stipulated that he engaged in another conflict of interest by lending his own funds to Brian Rogalin. Rogalin and/or his family were investors in CNC. Rogalin was also an employee of Note Servicing Center, LLC ("NSC"), another business operated by Frankel. According to the stipulation, NSC "received and disbursed mortgage payments, and monitored all CNC mortgages."

Respondent admitted that he did not advise Perez and Rogalin to seek independent legal counsel and did not reduce the transactions to writing. Respondent stipulated violations of RPC 1.7(a)(2) (a lawyer shall not represent a client if a concurrent conflict of interest exists, that is, 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 . . . or by a personal interest of the lawyer) and RPC 1.8(a)(1), (2), and (3) (a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to the client, unless the transaction and terms are fair and reasonable to the client and are fully disclosed and transmitted in a writing to the client, the client is advised,

in writing, of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice, and the client gives informed consent, in writing, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction).

Respondent conceded one final violation: having placed in his trust account personal monies designed to fund the loans, a violation of RPC 1.15(a) (commingling trust and personal funds).

In mitigation, the stipulation cites respondent's cooperation with the OAE. Presumably in aggravation, the stipulation mentions respondent's prior reprimand.

Following a de novo review of the record, we find that the stipulated facts clearly and convincingly establish three distinct ethics improprieties: failure to memorialize the basis or rate of his fee, business transaction with clients, and commingling. Respondent stipulated that the above conduct violated RPC 1.5(b), RPC 1.7(a), RPC 1.8(a), and RPC 1.15(a). The only question is, thus, the suitable sanction for the above violations.

In recommending either a reprimand or a censure, the OAE pointed out that, although the current infractions overlapped with the transgressions in the matter that led to respondent's March 2009 reprimand, they are "separate and distinct from his

recordkeeping deficiencies." The OAE noted that respondent's "misconduct significantly contributed to substantial confusion in his relationship with Robert Frankel, with resulting civil litigation not only between him and Frankel, but between Frankel and his business associates as well."

For failure to prepare a writing specifying the basis or rate of the fee an admonition is appropriate. See, e.g., In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007); In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005); and In the Matter of Louis W. Childress, DRB 02-395 (January 6, 2003).

Commingling client and personal funds in the trust account, too, ordinarily merits an admonition. See, e.g., In the Matter of William P. Deni, Sr., DRB 07-337 (January 23, 2008); In re Kim, 191 N.J. 459 (2007); and In the Matter of Eric J. Goodman, DRB 01-225 (July 20, 2001).

Finally, cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, 136 N.J. 134, 148 (1994). See, e.g., In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his

interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); In re Poling, 184 N.J. 297 (2005) (attorney engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere); In re Nadel, 147 N.J. 559 (1997) (attorney represented a driver in a suit against the driver of another vehicle and then represented the passenger in a suit against both drivers); and In re Starkman, 147 N.J. 559 (1997) (attorney represented both the driver and two passengers involved in an automobile accident, withdrew from representing the driver, and then sued the driver, his former client, on behalf of the two passengers).

At times, a reprimand may still result if, in addition to engaging in a conflict of interest, the attorney displays other forms of unethical behavior that are not considered serious enough to merit a suspension. See, e.g., In re Kraft, 167 N.J. 615 (2001) (reprimand for attorney whose unethical conduct encompassed four matters; in one matter, he was found guilty of

a conflict of interest by failing to explain to the client the advantages or disadvantages of pursuing her case jointly or independently of the client's co-worker, who was also represented by the attorney; in another matter, the attorney failed to clearly explain to the client his legal strategy, thereby precluding her from making an informed decision about the course of the representation and the pursuit of her claims; in all four matters, the attorney exhibited lack of diligence and failure to communicate with clients; in one of the matters, the attorney failed to prepare a written fee agreement) and In re Castiglia, 158 N.J. 145 (1999) (on a motion for discipline by consent, the Court agreed that a reprimand was the appropriate discipline for an attorney who engaged in a conflict of interest by simultaneously representing various parties with adverse interests, repeatedly failed to communicate to his clients, in writing, the basis or rate of his legal fee, and witnessed the signature on a deed and affidavit of title, even though the documents had been signed outside of his presence).

Taken as whole, thus, respondent's infractions would probably merit no more than a reprimand. There is, however, his March 2009 reprimand to consider, in assessing the proper degree of discipline in this case. In the prior disciplinary matter, respondent was found guilty of recordkeeping violations and

negligent misappropriation of client funds. His overdisbursement of funds on behalf of Frankel caused a substantial shortfall of $255,000 in his trust account. The reason for the overdraft was respondent's failure to record a $345,000 wire transfer in June 2003. That irregularity remained undetected until December 2005, when the trust account showed a negative balance.

Another factor to be taken into account is the harm suffered by Frankel as a result of respondent's failure to memorialize the scope of the legal services that he was hired to perform and the amount of his compensation. As the OAE noted, such failure led to extensive litigation between respondent and Frankel, as well as among Frankel and his business associates.

In view of the above, we determine that a censure more adequately addresses the nature of respondent's conduct, as aggravated by the consequences that flowed therefrom and by his prior discipline.

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 Robert P. Weinberg
Docket No. DRB 09-110

Argued: July 18, 2009

Decided: August 25, 2009

Disposition: Censure

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel