SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-414
District Docket No. XIV-06-366E

IN THE MATTER OF	:
ROLAND G. HARDY, JR.	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 20, 2008

Decided: May 7, 2008

Michael Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us pursuant to R. 1:20-6(c)(1), which provides that "[a] hearing shall be held only of the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation." Here, respondent's

answer admitted conduct violating RPC 1.8(a) (improper business transaction with clients), RPC 1.8(c) (conflict of interest – solicitation of a substantial gift from a client), RPC 1.15(a) (negligent misappropriation of trust funds), and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations). Respondent waived his right to a mitigation hearing before the District IV Ethics Committee and, instead, elected to present his mitigation evidence directly to us. We determine that a reprimand properly addresses respondent's ethics transgressions.

Respondent was admitted to the New Jersey bar in 1978. He maintains a law practice in Woodbury, New Jersey. He has no history of discipline.

Count One

In July 2006, the OAE conducted a random audit of respondent's books and records. The audit revealed that, during the course of respondent's representation of six estate matters (Estate of Raikes, Estate of Nichols, Estate of Williams, Estate of Robins, Estate of Davis, and Estate of Nelson), he asked the estate representatives if he could use, "for the operation of his legal practice," funds that he was holding in trust for the estates. In connection with each request, he prepared a form to borrow the funds, titled "Trust Funds Authorization." The forms

were dated from May 6, 2003 to June 14, 2004 and, with the exception of the Davis matter, were somewhat contemporaneous with the loans. The forms stated, in relevant part, variations of the following:

> I am the [Administratrix/Executor of the estate/ and/or have authority over the funds held in trust]. The funds may be used for business purposes up until the time of final distribution. [We/I] understand that final distribution will occur within [6 or 12 to 12 or 24 months]. Roland has explained that his office engages in major cases and that the funds will be used to assist in cashflow and expenses. I grant this use because he is [our nephew/ or I am a close friend of Roland and his family/or we have lived in the same neighborhood and I am close friends with Roland and his family/ or Roland is a close friend and cousin.] I am interested in him being successful in his law practice.
>
> I, Roland G. Hardy, Jr., grant [ ] and the Estate of [ ] an interest in the receivables of the law office of Roland G. Hardy, Jr. & Associates, P.C. equal to amount of funds used. The receivables are associated with the cases listed in the attached Schedule and any future cases. This claim to receivables may be exercised upon default of this agreement.
>
> [Ex.1-6.]

The forms show that respondent obtained the loans from either close friends or family members. Exhibit 7 shows the origination date of the loans; Exhibits 1-6 show the date that

the "lenders" executed the form giving respondent permission to borrow the estates' funds.

ESTATE NAME	DATE OF LOAN ORIGINATION	DATE FORM SIGNED
Raikes	May 2003	May 16, 2003
Nichols	August 2004	August 1, 2004
Williams	September 2004	May 9, 2004
Robins	March 2004	March 26, 2004
Davis	March 2004	May 14, 2005
Nelson	June 2004	June 14, 2004

The complaint charged that the transactions were not fair and reasonable to the clients because, prior to the OAE audit, respondent had not paid interest to any of the estates for his use of their funds. In addition, respondent did not advise any of the clients, in writing (or even orally), of the desirability of seeking advice from independent legal counsel. As a result of the OAE audit, respondent issued new promissory notes in the Davis and Nelson matters that provided for the payment of ten percent interest on the loans.

Respondent's schedule of the loans and interest ultimately paid to the estates shows that, from May 2003 through June 2004, he borrowed a total of $402,680.32. As of October 2005, he had repaid

all but the Davis and Nelson loans (remaining balances of $12,710.41 and $93,367.47, respectively).

Count Two

The OAE's random compliance audit disclosed that respondent was not properly reconciling his attorney trust account on a monthly basis. His failure to do so resulted in the negligent misappropriation of trust funds in February and April 2005.

As of February 28, 2005, respondent should have been holding a total of $9,732.64 for four clients: Abdul-Hamid - $1,189.72; Watkins - $7,010; Worlds - $1,042.38; and Hare -$490.54. Instead, his trust account bank balance was $176.08, creating a $9,556.56 shortage. The shortage remained until April 11, 2005, when respondent deposited into his trust account a $75,000 settlement, of which approximately $25,000 represented attorney's fees.

On April 29, 2005, respondent should still have been holding a total of $2,023.46 for three clients: Abdul-Hamid - $1,189.72 Worlds - $1,042.72; and Hare - $490.54. However, his trust account balance was only $471.88, creating a shortage of $1,551.58. The shortage continued until June 5, 2005, when respondent received a $10,000 settlement, of which $3,333.33 comprised attorney's fees.

Count Three

The OAE's random compliance audit revealed the following recordkeeping deficiencies:

a. Trust account and business accounting records must be maintained contemporaneously according to GAAP.

b. A schedule of clients' ledger accounts is not prepared and reconciled monthly to the trust account bank statement.

c. The trust receipts journal was not fully descriptive.

d. The trust disbursements journal was not fully descriptive.

e. A business receipts journal was not being maintained.

f. The business disbursements journal was not fully descriptive.

g. Clients' ledger sheets were not fully descriptive.

h. Special fiduciary funds were being improperly maintained in the attorney trust account.

i. Trust account deposit slips must be maintained with the accounting records for a period of seven years.

j. Business account deposit slips must be maintained with the accounting records for a period of seven years.

> k. All earned legal fees must be deposited to the attorney business account.
>
> [C4¶2-C5.][1]

In his answer, respondent admitted the allegations of the complaint and provided a "statement of mitigation." He claimed that, in each of the estate matters, he maintained either a "close personal and/or familial relationship" with the client. According to respondent:

> In the estate of Gertrude Raikes, the executors were William Raikes and Joseph Raikes. William Raikes was my uncle and all of the heirs knew me from birth. In the Nichols and Williams estates, Thomas and Betty Woodford, and Glenda Williams and her family are close family friends. In the Robins estate, I am a close friend and cousin of the heirs. All of the heirs knew me at the time of my birth. I grew up with the daughters of James A. Washington, executor. Gladys Davis, administrator and heir of the estate, has known me since birth. I grew up with her daughters in the same neighborhood. In the estate of Nelson, Lakisha is a close friend of the family. My brother is the godfather of her daughter.
>
> [A2.][2]

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[1] C refers to the ethics complaint, dated August 31, 2007.
[2] A refers to respondent's answer, dated September 19, 2007.

Respondent stated that he has been a sole practitioner "or partner" for twenty-nine years and has never before been "cited" for ethics violations.

Respondent added that since 1981, his practice has had an "emphasis" on personal injury matters. In 2002, he had been contacted by a former employee of the Kimble-Owens Illinois Glass Co. (Kimble), in Vineland, New Jersey, who had been diagnosed with colon cancer. While working in the glass factory for a number of years, the employee had been exposed to various chemicals. She informed respondent that a number of her co-workers had also been diagnosed with various forms of cancer. Respondent then began a preliminary investigation into the matter. By 2003, he had been contacted by fifteen former employees or their heirs, on behalf of employees who had either been diagnosed with or had died from cancer.

According to respondent, he began a "laborious investigative search through medical records, local and state health records, hazardous materials reports and volumes of interviews on behalf of the Kimble clients, to learn of TCE contamination in the water supply at the plant." Based on his investigation, respondent believed that, because of the relatively large number of cancer victims in a relatively small employee-population, the cancers may have been connected to the

exposure to chemicals at the plant. However, two and one-half years later, "at the end of the trail we were unable to substantiate the causation through expert toxicologists." Respondent did, however, pursue two medical malpractice negligence claims on behalf of Kimble employees.

Respondent explained that, over the two and one-half year period, he had spent countless hours on the matter and, in the process, had neglected business management and bookkeeping requirements. Respondent admitted that there had been times when he had not reconciled his attorney trust account for up to six or seven months. He claimed that, since that time, he has followed the standard of monthly trust account reconciliations, and is presently maintaining his attorney trust and business account records consistent with the requirements of R. 1:21-6.

By letter dated February 18, 2008, respondent submitted to the Office of Board Counsel six character letters from members of the New Jersey bar. Those letters consistently portrayed respondent as "a man of high integrity," excellent character, and good standing in the legal community. One attorney praised respondent's positive leadership trait and the excellent legal services he provides, stating that he goes above and beyond what is expected. Another attorney who served with respondent on the Supreme Court Committee on Character mentioned that he performed

his functions diligently, thoroughly and fairly. The attorney added that he could unequivocally attest to respondent's good character. Another letter described respondent as being honest, trustworthy, ethical and caring, always open and candid in his dealings, and truthful in all of his representations. Respondent served with another attorney on the New Jersey State Bar Association's Judicial and Prosecutorial Appointments Committee for four and one-half years. Based on that attorney's observations, she found respondent to be attentive, involved, prepared, hardworking, responsible, trustworthy and honest. Another attorney stated that respondent's primary interest is that the "populace be served with excellence," and that to respondent monetary remuneration was secondary to satisfying his clientele. The attorney praised respondent's honesty, integrity, candor and truthfulness.

Following a full review of the record, we are satisfied that respondent's unethical conduct is supported by clear and convincing evidence.

Respondent admitted the allegations of the complaint. He admitted that he had negligently misappropriated funds and engaged in recordkeeping violations, thereby violating RPC 1.15(a), and RPC 1.15(d) and R. 1:20-6, respectively. He also admitted having

violated RPC 1.8(a) and RPC 1.8(c). RPC 1.8(a) provides, in relevant part:

> A lawyer shall not enter into a business transaction with a client . . . unless:
>
> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
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> (2) 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
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> (3) the client gives informed consent, in a writing signed by the client, 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.

Clearly, respondent failed to comply with the requirements of this rule. He did not pay interest to the clients, thereby making the terms of the transaction unfair; the documents signed by the clients did not set forth the terms of the loan; there is no evidence that respondent advised his clients, in writing, of the desirability of seeking independent legal counsel; and the clients did not provide written, informed consent to the transaction. He, therefore, violated RPC 1.8(a).

The complaint also charged respondent with having violated RPC 1.8(c), which states:

> A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client.

Notwithstanding that respondent admitted having violated this rule, it is not applicable to the facts of this matter. The documents that respondent's clients signed clearly indicate that the funds were a loan to respondent, not a gift. We, therefore, dismiss this charge.

We now turn to the quantum of discipline. Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated $103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of other clients' funds; the attorney also failed to promptly disburse funds to which both

clients were entitled); In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account $4,100 in legal fees before depositing corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); In re Rosenberg, 170 N.J. 402 (2002) (attorney negligently misappropriated client trust funds in amounts ranging from $400 to $12,000 during an eighteen-month period; the misappropriations occurred because the attorney routinely deposited large retainers in his trust account, and then withdrew his fees from the account as needed, without determining whether he had sufficient fees from a particular client to cover the withdrawals; attorney had a prior private reprimand for unrelated violations); In re Silber, 167 N.J. 3 (2001) (attorney negligently invaded client's funds in four instances and failed to maintain proper trust and business accounting records); In re Blazsek, 154 N.J. 137 (1998) (negligent misappropriation of $31,000 in client funds and failure to comply with recordkeeping requirements); and In re Goldstein, 147 N.J. 286 (1997) (negligent misappropriation of clients' funds and failure to maintain proper trust and business account records).

With regard to respondent's conflict of interest, since 1994, it has been well-settled that a reprimand is the measure of discipline imposed on an attorney who engages in a conflict of interest, absent egregious circumstances or serious injury to clients. In re Berkowitz, 136 N.J. 148 (1994). Accord In re Mott, 186 N.J. 367 (2006) (conflict of interest imposed on attorney who 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 them 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; the Court found the attorney guilty of violating RPC 1.7(b) and 1.8(a)); In re Poling, 184 N.J. 297 (2005) (attorney engaged in a conflict of interest when, on behalf of buyers, he prepared 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, the attorney did not disclose that title insurance could be purchased elsewhere; the attorney violated RPC 1.4(b), RPC 1.7(b) and RPC 1.8(a)); In re LeVine, 167 N.J. 608 (2001) (attorney borrowed client funds without making the required disclosures or obtaining the necessary consents, commingled

personal and trust funds, failed to comply with recordkeeping requirements, and failed to safeguard client funds, thereby violating RPC 1.15(a), RPC 1.15(d), R. 1:20-6, and RPC 1.8(a)); and In re Chazkel, 170 N.J. 69 (2001) (attorney engaged in a conflict of interest, knowingly acquired a pecuniary interest adverse to the client, charged an unreasonable fee in a collection matter, failed to withdraw from representation upon discovery of the conflict, failed to safeguard property or to keep property separate, and failed to provide client with an explanation of the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," discipline greater than a reprimand is warranted. In re Berkowitz, supra, 136 N.J. at 148. See also In re Guidone, 139 N.J. 272, 277 (1994) (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 (1) fully explain to the Club the various risks involved with the representation and (2) 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"). See also In re Boyer, 194 N.J. 3 (2008) (three-month suspension for attorney who acquired a pecuniary interest adverse to the client without obtaining informed consent (RPC 1.8(a)) and engaged in a conflict of interest (RPC 1.7(a)(2)), lack of diligence, failure to explain a matter to the extent necessary to permit the client to make informed decisions about the representation, and misrepresentation; attorney had a prior admonition); In re Hilbreth, 149 N.J. 87 (1997) (three-month suspension for attorney who secured loans from a client to himself and brokered loans from the client to other clients without making the disclosures required by RPC 1.8(a); the attorney also engaged in gross neglect); In re Shelly, 140 N.J. 501 (1995) (six-month suspension for attorney who borrowed funds from a client without the proper documentation and without advising her to seek independent legal counsel; the attorney then failed to timely repay it, prompting the filing of a grievance; the Court did not find clear and convincing evidence of misappropriation; the attorney also failed to comply with the recordkeeping rules); In re Dato, 130 N.J. 400 (1992) (one-year suspension for attorney who represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a considerable profit); and In re Griffin,

121 N.J. 245 (1990) (one-year suspension for attorney who entered into a business transaction with a client who was unable to manage her affairs properly; the client pledged her home as collateral for a $20,000 loan, three-quarters of which she paid to the attorney; the attorney did not fully disclose to the client the consequences of the transactions or advise her to seek independent counsel).

In mitigation, we have considered that glowing character letters have been presented on respondent's behalf; that, in his twenty-nine years of practice, this is his first brush with ethics authorities; that his problems came to light as a result of an OAE random audit, not a client complaint; that he neglected his "business management" and bookkeeping requirements because of the countless hours he spent over a two and one-half year period working on the Kimble matter; and that his failure to perform monthly reconciliations of his trust account was likely the result of the considerable time spent on the Kimble matter, which presumably caused his negligent misappropriation of client funds.

As to respondent's loans from his clients, he clearly did not comply with the requirements of RPC 1.8(a). However, we find that this conflict is somewhat mitigated by the fact that his clients were aware of the loans, consented to the loans, and did not, on their own, request interest upon repayment of the loans. The

individuals who authorized the loans to respondent did so because they were "interested in him being successful in his law practice," because of their longstanding relationship. Nevertheless, although the loans were given to respondent by friends or family, those individuals were the estates' executors and were, therefore, lending the estates' funds, not their own personal funds. Thus, except for the two estates that received interest on the loans, the other estates suffered some pecuniary loss. The extent of the losses or harm to the estates is not known.

One more point deserves mention. Over a one and one-half year period, respondent received loans from the estates, totaling $402,680.32, to assist him with his "cashflow and expenses." The record before us does not explain why he needed such a significant amount of money.

In any event, although respondent borrowed a large sum of money, the borrowing does not equate to the "egregious circumstances" that are present in suspension cases (Guidone (three months) failed to disclose his interest in an entity that purchased land from his client; Shelly (six months) borrowed funds from a client without proper documentation and failed to repay the loan; and Dato (one year) purchased property from a client for substantially less than its actual value and resold it within ten days at a substantial profit). Respondent's violations are more in

line with the reprimand cases cited above (LeVine, for instance, borrowed funds without making the required disclosures, failed to safeguard client funds, and engaged in recordkeeping violations).

Based on precedent and the substantial mitigating circumstances mentioned above, including respondent's cooperation with the OAE and his claim to have reformed his bookkeeping practices, we find that a reprimand adequately addresses respondent's misconduct.

Member Baugh voted for an admonition. Member Neuwirth 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
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Roland G. Hardy, Jr.
Docket No. DRB 07-414

Argued: March 20, 2008

Decided: May 7, 2008

Disposition: Reprimand

Members	Disbar	Suspension	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy				X		
Pashman				X		
Baugh					X	
Boylan				X		
Frost				X		
Lolla				X		
Neuwirth						X
Stanton				X		
Wissinger				X		
Total:				7	1	1

Julianne K. DeCore
Chief Counsel