SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-404
District Docket No. XIV-2013-0330E

IN THE MATTER OF

CHONG S. KIM

AN ATTORNEY AT LAW

Decision

Argued: February 18, 2016

Decided: August 25, 2016

Andrea Fonseca-Romen appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us pursuant to R. 1:20-6(c)(1). That rule allows the pleadings and a statement of the procedural history of the matter to be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to

present aggravating circumstances. The pleadings submitted in this matter, indeed, raise substantial disputes of material fact. Moreover, in his verified answer, respondent offers affirmative defenses and mitigating circumstances and requests a hearing on the charges. However, in addition to the pleadings, respondent and the Office of Attorney Ethics (OAE) submitted a stipulation of facts and a stipulation of documents for our review and consideration, in which respondent stipulated to the facts and charges set forth in the complaint. Thus, we consider the stipulations to supersede the pleadings and determine to treat the matter as a stipulation of facts.

The three-count complaint charged respondent with violations of RPC 1.8(a) (conflict of interest - business transaction with a client), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 7.1(a) (false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement), RPC 7.5(a) (using a firm name, letterhead or other professional designation that violates RPC 7.1), and RPC 7.5(b) (failing to indicate the jurisdictional limitations on lawyers not licensed to practice in the jurisdiction where the office is located).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1997. At the relevant times, he maintained a law office in Clifton.

In 2007, respondent received an admonition for failure to hold property of clients separate from his own property, failure to maintain an attorney business account, and recordkeeping violations. In the Matter of Chong Kim, DRB 06-341 (March 27, 2007).

The following facts are taken from the December 8, 2015 stipulation of the parties.

In 2004, respondent represented Il-Sun Griffith in her divorce from her husband. Respondent continued to represent Griffith, in various matters, until March 15, 2006, when Griffith terminated the representation, in writing, citing respondent's failure to communicate with her between December 2005 and March 2006.

While representing Griffith in 2004 and 2005, respondent was a partner in the law firm of Kim & Timban, LLC. Accordingly, when respondent issued letters to Griffith and to third parties in connection with her legal matters, he used Kim & Timban's letterhead. Although Timban had not been admitted to practice law in New Jersey, the firm's letterhead did not specify Timban's jurisdictional limitations, as required by RPC 7.5(b).

Moreover, Kim and Timban's letterhead listed offices in New York, New York and Philadelphia, Pennsylvania, jurisdictions where respondent was not admitted to practice law. The letterhead did not reflect respondent's jurisdictional limitations, as required by RPC 7.5(b). Respondent told the OAE that he was unaware of which jurisdictions Timban was admitted to practice law, despite having sponsored Timban, during or before 2005, to the Michigan bar.[1] Respondent made no effort to determine whether Timban was admitted to practice law in New Jersey or whether he was eligible for admission. Additionally, respondent was aware that, after Griffith fired him, Timban assumed representation of her in connection with an ongoing New Jersey legal matter.[2]

During his representation of Griffith, respondent borrowed a total of $9,000 from her, through two loans, which he memorialized in very basic handwritten promissory notes – the first, dated June 4, 2005, for $2,000, and the second, dated March 21, 2006, for $7,000.[3] Although Griffith willingly loaned these funds to

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[1] The complaint did not charge respondent with having violated RPC 8.1(a) (false statement of material fact to disciplinary authorities).

[2] At the time Timban assumed the representation of Griffith, he and respondent were no longer in partnership. Thus, a violation of RPC 5.5(a)(2) (assisting in the unauthorized practice of law) was neither charged nor admitted.

[3] The promissory notes simply acknowledged the loans and the obligation to repay them. It contained no repayment terms or other information required by RPC 1.8(a).

respondent, he never advised her, in writing or otherwise, that she should seek the advice of independent counsel concerning these business transactions, and never obtained her informed consent regarding these business transactions, as required by RPC 1.8(a).

The second promissory note referenced two checks from respondent, drawn on Citizens Bank, made to repay the $7,000 loan from Griffith. Griffith, however, provided the OAE with three checks that respondent had issued to her, dated between September 14, 2005 and September 24, 2006. The first check was issued from respondent's attorney trust account at Commerce Bank, and the second and third checks were issued from his business account at Citizens Bank. After Griffith deposited the checks into her bank accounts, all three were rejected for insufficient funds. When respondent issued these checks, he was aware of his duties to oversee his trust and business accounts in accordance with R. 1:21-6 and RPC 1.15(d). Respondent also admitted that, when he issued these checks to Griffith, he "post-dated" them and knew that the accounts contained insufficient funds to cover the checks. He claimed that the checks were "given to Ms. Griffith to further evidence my intent to repay her." He believed, however, that his attorney trust account at Commerce Bank had already been closed when Griffith attempted to negotiate the first check in the amount of $2,000.

Respondent conceded that he had no records showing that he ever repaid Griffith the $9,000 that he borrowed from her, that he never replaced the checks that Griffith's bank had rejected for lack of funds, and that he had previously considered the loans to be a "private matter," but now acknowledged the ethics implications of his business transactions with Griffith. Respondent conceded that he violated multiple subsections of R. 1:21-6 by failing to preserve (1) pertinent portions of Griffith's case files relating to their financial transactions; (2) originals of the checkbooks from which he issued the three checks detailed above; (3) financial records relating to Griffith's client matters; and (4) financial records relating to the loans from Griffith, including the checks he had issued to her.

In 2013 and 2014, in response to the investigation of this matter, respondent corresponded with the OAE on the letterhead of his then firm, Kim & Boyer. That letterhead designated respondent as admitted to practice law in Michigan and New Jersey. At the time he corresponded with the OAE on that letterhead, respondent was aware that, although he had been admitted to the Michigan bar in 1997, he had been suspended from the practice of law in that jurisdiction in 2005, for nonpayment of required fees. Respondent admitted that he also had routinely used this misleading letterhead for correspondence with clients, courts, and other attorneys.

The facts set forth in the stipulation clearly and convincingly establish that respondent is guilty of unethical conduct.

In 2005, respondent borrowed a total of $9,000 from his client, Griffith. Although Griffith willingly loaned these funds to respondent, he never advised her that she should seek the advice of independent counsel, and never obtained her written informed consent regarding these business transactions, in violation of RPC 1.8(a).

In addition, respondent failed to maintain his attorney trust and business accounts, in accordance with the mandates of R. 1:21-6. He also failed to preserve Griffith's case files relating to their business transactions, including with respect to the loan transactions between them. Respondent's conduct in this respect violated RPC 1.15(d) and multiple subsections of R. 1:21-6.

Moreover, while a partner at Kim & Timban, LLC, respondent issued letters to Griffith, courts, and third parties using that firm's letterhead, which failed to specify that Timban was not admitted to practice law in New Jersey, and which listed firm offices in New York City and Philadelphia, without specifying that respondent was not admitted to practice law in those jurisdictions. Respondent's use of the Kim & Timban, LLC letterhead violated RPC 7.1(a), RPC 7.5(a), and RPC 7.5(b).

Finally, in 2013 and 2014, respondent corresponded with the OAE on the letterhead of his then firm, Kim & Boyer. That letterhead designated respondent as a member of the Michigan bar, despite his knowledge that he had been suspended in that jurisdiction for failure to pay required fees. Respondent's use of this letterhead for correspondence with clients, courts, other attorneys, and the OAE constituted an additional violation of RPC 7.1(a) and RPC 7.5(a).

There remains for determination the appropriate quantum of discipline for respondent's unethical conduct. When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g., In the Matter of George W. Johnson, DRB 12-012 (March 22, 2012) (as trustee of a testamentary trust, attorney made a loan from the trust to himself without seeking court approval, as required by Clark v. Judge, 84 N.J. Super. 35, 59 (App. Div. 1964), aff'd 44 N.J. 550 (1965); extensive mitigation considered, including the attorney's forty-four year untarnished record); In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small, interest-free loans to three clients, without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered); In the Matter OF April Katz, DRB 96-190 (October 5,

2006) (attorney solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC 1.8(a)); and In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (attorney borrowed $30,000 from client to satisfy a gambling debt; the attorney did not observe the requirements of RPC 1.8(a)). But see, In re Futterweit, 217 N.J. 362 (2014) (reprimand for failure to memorialize the basis or rate of the fee and improper business transaction with a client; prior admonition).

An admonition is also the usual form of discipline for recordkeeping violations. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances, failed to promptly remove earned fees from the trust account, and failed to perform monthly three-way reconciliations, in violation of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline); In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified; no prior discipline); and In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the

OAE revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct).

The use of a misleading letterhead ordinarily results in an admonition, as well. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (admonition imposed on attorney who used letterhead that identified three attorneys as "of counsel," despite his having had no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) since two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; we noted other improprieties); In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (admonition for attorney who continued to use firm letterhead that contained the name of an attorney no longer associated with the firm, violations of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971); no prior discipline); and In the Matter of Carlos A. Rendo, DRB 08-040 (May 16, 2008) (admonition for using letterhead that identified a lawyer as admitted to practice law in New York, rather than as admitted to practice law only in New York; violation of RPC 7.1(a) and RPC 7.5(a); no prior discipline).

Here, the stipulation contains additional evidence of misconduct by respondent, including his improper use of his trust account in connection with the loans from Griffith and his issuance of checks, including a trust account check, from accounts that he knew contained insufficient funds. Although this unethical conduct was not charged as part of the formal ethics complaint and was not the subject of the stipulation, we find it to constitute aggravating factors. See, e.g., In re Pena, In re Rocca, In re Ahl, 164 N.J. 222 (2000) and In re Steiert, 201 N.J. 119 (2014) (holding that evidence of unethical conduct contained in the record can be considered in aggravation, despite the fact that such unethical conduct was not charged in the formal ethics complaint).

In addition, and in further aggravation, we note that, in the eleven years since Griffith made the loans, respondent has not repaid any portion of them.

Given the totality of respondent's misconduct and the presence of these aggravating factors, a censure would arguably be adequate discipline for respondent's ethics transgressions. The concept of progressive discipline, however, must also be addressed in this case. In 2007, respondent received an admonition for numerous recordkeeping violations. Although some of the recordkeeping misconduct under scrutiny in this case began before imposition of that sanction, additional recordkeeping deficiencies

continued well after respondent was admonished and, thus, he should have had heightened awareness of his obligations under R. 1:21-6 and RPC 1.15(d). In 2013, when the OAE began requesting Griffith's client files and financial documents relating to respondent's business transactions with her, he knew that he was required to have maintained such files and documents, but had not done so. It is clear to us, therefore, that respondent has not learned from his prior mistakes and has chosen to ignore his recordkeeping obligations. The Supreme Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See, e.g., In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). Therefore, we determine that a three-month suspension is warranted in this case.

In addition, in light of respondent's apparent ongoing failure to comply with his recordkeeping obligations, we require respondent to provide the OAE with monthly reconciliations of his trust account, on a quarterly basis, for a period of two years.

Members Boyer, Clark, and Singer voted for a censure, with the same reporting and reconciliation requirements.

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: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Chong S. Kim
Docket No. DRB 15-404

Argued: February 18, 2016

Decided: August 25, 2016

Disposition: Three-Month Suspension

Members	Censure	Three-Month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Boyer	X					
Clark	X					
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer	X					
Zmirich		X				
Total:	3	6				

Ellen A. Brodsky
Chief Counsel