SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-329
District Docket No. XIV-2013-0554E

IN THE MATTER OF	:
DAVID E. TIDER	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: May 26, 2017

Christina Blunda Kennedy 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 originally was before us at our September 15, 2016 hearing on a recommendation for an admonition filed by the District IIB Ethics Committee (DEC). We determined to treat the matter as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4). We further determine that a censure is the appropriate quantum of discipline.

The formal ethics complaint charged respondent with violating RPC 1.6(a) (revealing information relating to the representation without the client's consent), RPC 1.7(a)(1) (conflict of interest), RPC 1.8(a) (prohibited business transaction with a client), RPC 1.8(b) (using information relating to the representation to the disadvantage of the client), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1990. He has no history of discipline.

On October 5, 2015, the DEC held a hearing at which respondent stipulated to the following facts.

Arie Chostaka owned and operated a commercial lighting business under the name Starlight Supplies Corp., d/b/a General Lite Co. From 2010 to Chostaka's death, in February 2013, respondent represented Chostaka in both estate planning matters and personal collection matters. Respondent also represented Starlight in lease negotiations.

On July 23, 2012, respondent issued to Chostaka a $25,000 check from his attorney business account. On the same day, Chostaka executed a loan note identifying himself as the borrower and respondent as the lender. Under the terms of the note, the

principal amount of the loan was $25,000, with an interest rate of 10%. The loan had a repayment schedule of one year, commencing August 23, 2012, with any outstanding balance due on or before July 22, 2013. In the event of a default, unless the borrower cured it within thirty days, the interest rate would increase to 15%, until the loan was repaid in full. The note did not state whether the interest was compound or simple. On July 24, 2012, Chostaka endorsed and negotiated the check. Respondent failed to advise Chostaka to seek independent counsel with regard to the loan.

On August 15, 2012, respondent issued a $10,000 check from his personal checking account, payable to Arie Chostaka/General Lite Co. Although respondent admitted writing the check, he disputed the identity of the payee. Respondent claimed that he issued the check to Chostaka alone, that he did not write "General Light Co." on the check, and that he does not know who did.

A loan note was not prepared for the $10,000 transaction. Respondent, again, failed to advise Chostaka to seek independent counsel with regard to this transaction. Chostaka did not endorse respondent's personal check; rather, it was endorsed with a rubber stamp for Starlight, and was deposited into Starlight's bank account. According to both TD Bank and the New Jersey

Department of Revenue, Chostaka was not a signatory on the accounts for General Light or Starlight. Respondent denied any knowledge of which individuals had signing authority on either of those accounts.

Several months later, on January 10, 2013, respondent recorded a Uniform Commerical Code (UCC) lien against Chostaka's cooperative apartment as security for the loan(s) to Chostaka. Although Chostaka signed the UCC lien, it did not indicate the amount of the lien. Respondent explained that, because he had not seen a place on the UCC financing statement to enter the loan amount, he did not include that information. He contended that the financial statement and the original loan agreement always were intended to cover both the $25,000 loan and the $10,000 loan, pointing out that the UCC statement had been recorded after the second loan was issued.

In February 2013, Chostaka passed away, without having made any loan payments. Craig Gilgallon, Esq., represented Chostaka's estate in the sale of his cooperative apartment, on which respondent held the UCC lien. On June 17, 2013, respondent provided a loan payoff statement to Gilgallon in the amount of $47,157.29, representing total loans of $35,000, plus two years' compound interest, to be paid in exchange for removal of the UCC lien against the apartment. In response to an e-mail from

Gilgallon, respondent prepared and signed a second letter, also dated June 17, 2013, showing a total loan of $35,000, with an interest rate of 15%, and a balance due of $40,626.41, based on one year's interest. Respondent applied a 15% interest rate to both loan amounts, despite the absence of a note evidencing an agreement to repay the $10,000.

Respondent denied the allegations in the complaint that he charged compound interest; that he charged compound interest on an undocumented "loan" given to a commercial entity; that he asserted a statutory lien against the estate of an individual with no evidence of a "loan" to, or funds received by, the individual; and that he filed a "UCC-1"[1] to assert a statutory lien in a false amount.

Beginning in May 2013, and before communications with Gilgallon, respondent represented Eldad Reechulsky, the plaintiff in a civil matter against Chostaka's estate. On May 9, 2013, respondent sent a letter informing Vik Pawar, Esq., attorney for the estate, he represented Reechulsky, that he had previously represented Chostaka for several years before his demise, that he

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[1] A UCC-1 financing statement is a legal form that a creditor files to give notice that it has, or may have, an interest in the personal property of a debtor.

had loaned Chostaka money, that he had recorded a UCC lien, that at no time did he represent the estate and, that, therefore, he perceived no conflict of interest. Interestingly, respondent also noted in the letter that, if Pawar took the position that Chostaka was not competent to handle his affairs, respondent would provide witnesses who would testify otherwise. He then stated, "FYI, Arie did have a number of medical issues but he ran his business and dealt with innumerable issues that came up on a daily basis. Should you wish to discuss the matter please feel free to give me a call."

While representing Reechulsky, respondent served discovery demands on Pawar, leveraging information to which he was privy based solely on his prior representation of Chostaka and Starlight, including requests for:

a. bank account statements for Starlight;

b. details of Chostaka's lease for property located in Hackensack, New Jersey; and

c. details regarding Chostaka's cooperative apartment

Respondent admitted making these demands. He denied, however, that his prior representation of Chostaka and Starlight had provided him with the information necessary to serve those discovery demands. In turn, OAE disciplinary auditor Joseph Streiffler testified that, during the investigation, respondent had admitted in an interview that, if he had not had prior

knowledge through his representation of Chostaka, he would not have made these document demands.

On July 10, 2013, Pawar moved for respondent to be removed as counsel for plaintiffs. On August 9, 2013, the Honorable Joseph Rosa, J.S.C., granted the motion and adjourned the case until September 10, 2013. Respondent explained that, when he agreed to represent Reechulsky, he had reached out to Deborah Agulnick, Chostaka's daughter and executrix, who had yet to retain counsel, and asked whether she had any objection to his representing plaintiffs against the estate. Because she did not respond, he filed the papers. On cross-examination, respondent conceded that Agulnick's silence did not equate to permission.

The DEC determined that respondent entered into a business transaction with a client - specifically, that he provided a loan to a client - without advising the client to seek independent counsel, a violation of RPC 1.8(a). The DEC also found that respondent violated RPC 1.8(b) because he "may" have had confidential information that could have been used in the lawsuit, brought by Reechulsky, to the detriment of his former client, Chostaka. Specifically, respondent knew that Chostaka was in financial distress, and that his estate was responsible for the disbursement of any funds. The knowledge regarding the estate

and the decision to file a lawsuit were based on respondent's former representation.

The DEC found, however, that respondent had not acted in a dishonest, fraudulent, or deceitful manner, as it related to the business transaction. Chostaka was a business owner, and, according to the testimony, repeatedly requested a loan from respondent. Based on the record, respondent attempted to help Chostaka, but failed to advise him to obtain separate counsel. Hence, the hearing panel dismissed the RPC 8.4(c) charge. The DEC also determined that respondent's conduct was not prejudicial to the administration of justice, noting that he was compliant with all requests and responsive throughout the entire process (presumably, the disciplinary process). The RPC 8.4(d) charge, however, related to the filing of a UCC lien with no stated amount and respondent's efforts to enforce the lien against the estate. Nevertheless, the DEC dismissed that charge.

Further, the DEC determined that the discovery demands that respondent propounded on behalf of Reechulsky were not a product of his prior representation, as they were general in nature and might have been made, regardless of the prior representation. Accordingly, the hearing panel dismissed the charged violation of RPC 1.6(a). Similarly, the DEC found that respondent's representation of Reechulsky did not adversely affect Chostaka's

estate, as the discovery demands were general in nature and respondent's representation did not provide any distinct advantage. Therefore, the DEC also dismissed the RPC 1.7(a)(1) charge.

In sum, the DEC determined that respondent violated only RPC 1.8(a) and (b). In mitigation, the panel considered respondent's unblemished career and his cooperation throughout the pre-hearing process and during the proceedings. Further, the DEC noted respondent's attendance, candor, and general demeanor, including, but not limited to, his remorse and regret for the actions that led to the complaint. Therefore, the DEC unanimously recommended an admonition.

The Office of Attorney Ethics (OAE) submitted a letter-brief urging us to reject the DEC's conclusions and to find that the OAE sustained its burden of proving each of the charges against respondent.

Specifically, the OAE argued that respondent violated RPC 1.6(a), based on the discovery demands he propounded on behalf of Reechulsky. The OAE cited the portion of the transcript in which respondent admitted that he requested certain items only due to his prior representation of Chostaka and Starlight. Hence, the OAE maintained, respondent revealed information relating to the client without informed consent. Correspondingly, as a result of

the unauthorized release of this information, respondent represented Reechulsky to the detriment of his former client, Chostaka's estate, a violation of RPC 1.7(a)(1). The OAE also contended that the DEC's determination that respondent had not violated RPC 1.6(a) or RPC 1.7(a)(1) was inconsistent with its finding that respondent violated RPC 1.8(b).

Further, the OAE argued that the DEC incorrectly concluded that respondent had not violated RPC 8.4(c) or (d) with regard to the UCC lien he filed in the amount of $40,626.41. It is undisputed that Chostaka signed a note for $25,000, which did not indicate the type of interest charged, and that he signed the UCC-1, acknowledging the lien on his cooperative apartment. Because no writing memorialized the second $10,000 loan, and because Starlight, not Chostaka, endorsed that check, the OAE claimed that there is no evidence of a personal obligation on the part of Chostaka for the $10,000. The OAE, therefore, contended that respondent's assertion of a UCC lien against the estate for more than the original $25,000 loan constitutes both dishonesty and conduct prejudicial to the administration of justice.

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

The record supports the DEC's findings that respondent violated the Rules of Professional Conduct, specifically, RPC 1.8(a) and (b). The record, however, also supports a finding that respondent violated other RPCs that the DEC determined to dismiss.

Specifically, the record makes clear that respondent violated RPC 1.6(a), by propounding precise discovery demands on the estate. First, the OAE auditor testified that respondent admitted having made discovery demands, based solely on information that he possessed through his prior representation of Chostaka. In addition, our review of the discovery demands alone, attached as Exhibit 10 to the amended complaint, makes clear that respondent leveraged this information. For example, respondent specifically requested an admission regarding the $10,000 personal loan he had made to Chostaka. He also leveraged his loans and other personal knowledge in his May 9, 2013 letter to Pawar on behalf of Reechulsky.

As previously mentioned, the DEC did not find a violation of RPC 1.7(a)(1), explaining that respondent's representation of Reechulsky was not adverse to his former client, Chostaka, and that the discovery demands were general in nature and did not provide any distinct advantage. Although this explanation is inconsistent with the DEC's finding that respondent violated RPC

1.8(b) (using information relating to the representation to the disadvantage of the client), the allegation that respondent violated RPC 1.7(a)(1) requires a closer review.

RPC 1.7(a)(1) provides that an attorney shall not represent a client, if that representation involves a concurrent conflict of interest, which exists if the representation of one client will be directly adverse to another client's interests. The representation of Chostaka terminated upon his death. Therefore, Chostaka was no longer a client, but a former client, and to the extent that respondent's representation of Chostaka renders his estate as a former client, as his successor in interest, RPC 1.7(a)(1) is inapplicable. RPC 1.9(a) prohibits the representation of a client in the "same or substantially related matter" against a former client. Respondent's representation of Reechulsky against Chostaka's estate, however, did not stem from the same or substantially related matter as his representation of Chostaka. In any event, because the complaint did not allege a violation of RPC 1.9(a), we may not find a violation of that rule.

Without question, however, respondent's representation of Reechulsky against Chostaka's estate constituted a conflict of interest. Respondent represented one client against the estate of a former client. Moreover, he represented a client against an

estate in which he, too, had an interest. RPC 1.7(a)(2) provides that a concurrent conflict of interest exists if the representation of one or more clients will be materially limited by, among other things, the lawyer's own personal interests. As a secured creditor, respondent's interests were in conflict with Reechulsky's in that they both had competing claims against the same estate, which might not have had sufficient resources to compensate both parties. However, respondent was not charged with a violation of RPC 1.7(a)(2). Thus, we may make no finding in that regard. See R. 1:20-4(b).

Additionally, respondent violated RPC 1.8(a) by providing a loan to a client without advising that client to seek independent counsel. Further, he violated RPC 1.8(b), because he used confidential information in the lawsuit brought by Reechulsky to the detriment of his former client, Chostaka. Specifically, respondent knew that Chostaka was in financial distress, and that his estate was responsible for the disbursement of any funds. The decision to file a lawsuit and the knowledge regarding the estate were based on respondent's former representation. Respondent, therefore, used information relating to a client's representation to the disadvantage of that client.

Finally, the DEC dismissed both the RPC 8.4(c) and RPC 8.4(d) charges, explaining that respondent had not acted in a

dishonest manner in connection with the business transaction because Chostaka repeatedly asked for, and respondent merely provided to him, financial assistance. The DEC, however, overlooked the complaint, which alleged that the UCC lien failed to identify the amount owed. The OAE contends that, because the second $10,000 loan was not a personal obligation of Chostaka, respondent's attempt to enforce it against the estate may have been dishonest, as well as prejudicial to the administration of justice. Respondent denied that his omission of the loan amount on the UCC lien was an attempt to deceive anyone. He further claimed that he wrote the check payable only to Chostaka, and the business name was added by someone else after the fact.

In respondent's first letter to the estate, he attempted to collect the principal, plus compound interest calculated on both loans for two years. He asked for $47,157.29 to satisfy both loans. This letter was deceitful in two respects. First, respondent was entitled to less than one year of interest on the $25,000 loan, not two years. The loan was issued on July 23, 2012; respondent sent his first letter to Gilgallon on June 17, 2013, less than one year later. Although respondent reduced his calculation of interest to one year in a second letter to Gilgallon, he also applied a compound interest calculation, at

fifteen percent, to reach that amount, despite the absence of any term in the note allowing for compound interest.

Second, respondent applied the fifteen percent calculation to the $10,000 personal loan, knowing that a note was never prepared or executed setting forth the terms of that loan, including the rate of interest owed. Nothing in the record supports respondent's contention that the original note was meant to encompass both loans.

Respondent's attempt to collect inappropriate amounts of money from the estate, including inflated interest, was a violation of RPC 8.4(c). He also violated RPC 8.4(d) by filing an inaccurate UCC lien and possibly making misrepresentations thereon. Further, respondent was aware that his representation of plaintiffs against the estate was suspect, as evidenced by his request for approval from the executrix of the estate. Although he did not receive a response, he nevertheless proceeded with the suit. This conduct forced the estate to move for his removal, further delaying the matter, which also constitutes conduct prejudicial to the administration of justice.

In sum, respondent violated RPC 1.6(a), RPC 1.8(a), RPC 1.8(b), RPC 8.4(c), and RPC 8.4(d).

Respondent revealed confidential information about his former client to use on behalf of his current client and himself.

Attorneys who have done so or threatened to do so have received reprimands. See, e.g., In re Chatarpaul, 175 N.J. 102 (2003) (attorney threatened to divulge privileged information about the client, in order to collect outstanding legal fees); In re Hopkins, 170 N.J. 251 (2001) (the attorney represented two couples, the Oliveris and the Fords, in their apparently uncontested divorces; respondent was aware that, after the couples' divorces were finalized, Ms. Oliveri sought to marry Mr. Ford; however, while the matters were pending, the attorney discussed Mr. Ford's confidential financial information with Ms. Oliveri, in violation of RPC 1.6(a); the attorney was also found guilty of a conflict of interest, in violation of RPC 1.7(a)); and In re Lord, 220 N.J. 339 (2015) (attorney forwarded to her adversary a copy of a letter to her clients that contained confidential attorney-client information, a violation of RPC 1.6(a); in addition, the attorney violated RPC 1.7(a)(2) when she sent to the clients a "pre-action letter," pursuant to R. 1:20A-6, which renders such a letter "a necessary prerequisite" to the filing of a lawsuit for unpaid fees, while she still represented them; finally, the attorney violated RPC 1.16(d) by summarily ending the representation of her clients, without notice, prior to her completion of legal work on their behalf; in mitigation,

the attorney had no history of discipline in more than thirty years at the bar).

But, see, In the Matter of Richard L. Seltzer, DRB 13-315 (January 28, 2014) (admonition imposed on attorney who, after having served as assistant and, later, acting Montclair Township Attorney, assisted a former co-worker's attorney in the co-worker's wrongful discharge action against Montclair Township, by sharing information that he had acquired while acting as the township attorney and that, although not confidential, was not generally known to the public, a violation of RPC 1.9(c)(1) and (2); in mitigation, we considered the attorney's more than thirty-year career, without prior incident, his desire to assist a long-time co-worker with the procedural hurdles and legal steps necessary to effectively press her claim, apparently believing that he was on the side of the truth, and the passage of time - almost ten years since the conduct had taken place).

Further, 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 David M. Beckerman, DRB 14-118 (July 22, 2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he loaned the client $16,000, in monthly increments of $1,000, to enable

him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained a note and mortgage from the client on his share of the marital home, which mortgage turned out to be invalid; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)).

The existence of aggravating factors, or additional ethics infractions, however, often results in the imposition of greater discipline. See, e.g., In re Futterweit, 217 N.J. 362 (2014) (reprimand imposed on attorney who agreed to share in the profits of his client's business in lieu of legal fees, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction, a violation of RPC 1.8(a); the attorney also violated RPC 1.5(b) by failing to provide the client with a writing setting forth the basis or rate of his fee; in aggravation, we noted that the attorney had given inconsistent

statements to the district ethics committee, that he had received an admonition for failure to communicate with a client, and that he had never acknowledged any wrongdoing or showed remorse for his conduct); and In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed $3,000 from a client without observing the safeguards of RPC 1.8(a), did not memorialize the basis or rate of his fee, and did not adequately communicate with the client; aggravating factors were the attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record, consisting of a one-year suspension and a reprimand).

Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation ordinarily results in at least a reprimand. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violation of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation); In re Liptak, 217 N.J. 18 (2014)

(attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation); and In re Frey, 192 N.J. 444 (2007) (attorney, while representing a purchaser, made a knowing misrepresentation to a real estate agent that he had received an additional down payment deposit of $31,900 when he had not; when the attorney received from his client an $11,000 installment toward the deposit, he later released those funds back to his client, despite his fiduciary obligation to hold them and to remit them to the realtor).

Finally, conduct prejudicial to the administration of justice comes in a variety of forms, with the discipline ranging between a reprimand and a term of suspension, depending on such factors as the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure

to communicate with clients; mitigating factors were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, the attorney's conduct occurred in the course of his own child custody case); and In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who, although required to hold in trust a fee in which she and another attorney had an interest, took the fee in violation of a court order).

Censures were imposed in In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to

show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, his failure to provide the court with advance notice of the conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); and In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order, failure to produce information, and other ethics violations; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities).

Suspensions were imposed where attorneys either had significant ethics histories or were guilty of violating a number of ethics rules, or both. See, e.g., In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the

judge or failed to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20; failed to cooperate with disciplinary authorities; failed to provide clients with writings setting forth the basis or rate of the fees; lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2004) (motion for reciprocal discipline; two-year suspension for attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, and violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct

prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

In DeClemente, supra, the attorney received a three-month suspension for misrepresentations to clients, a conflict of interest, and conduct prejudicial to the administration of justice. While these violations also exist here, the facts are not exactly analogous in that DeClemente's behavior was more serious. DeClemente represented the buyers and the sellers, and acted as the lender for the buyers in a commercial real estate deal, a transaction in which the attorney also acquired a twenty-five percent interest, a violation of RPC 1.7(a). In the Matter of Thomas A. DeClemente, DRB 08-413 (August 25, 2009) (slip op. at 45-46). Because DeClemente had entered into a prohibited business transaction with a client, we also found that he violated RPC 1.8(a). Id. at 46.

DeClemente, however, made egregious misrepresentations to his clients in order to conceal from them the fact that he was the lender, a violation of RPC 8.4(c). Id. at 48-49. In further violation of that rule, he had arranged three loans to a sitting judge in connection with his business, First England Funding. In

violation of RPC 8.4(d), DeClemente failed to disclose to his adversary his financial relationship with the judge, after an order to show cause on behalf of First England was assigned to that very judge. Id. 53-54.

We determined that a six-month suspension was the appropriate quantum of discipline for the totality of DeClemente's conduct. We lowered our recommendation to a three-month suspension in light of his unblemished thirty-eight-year career. Id. 61-62.

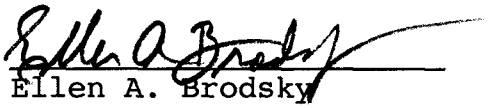
In our view, based on DeClemente and the other cases cited above, respondent's conduct does not rise to the level of a suspension. Based on the totality of his conduct, we determine that a censure is the appropriate quantum of discipline.

We considered the mitigation cited by the DEC – an unblemished twenty-six-year career, respondent's full cooperation, his candor at the hearing, and his expression of remorse. However, respondent's attempt to extort money from the estate by inflating the terms of the loans to two years with 15% compound interest was significantly egregious. Thus, we do not view the mitigation to justify a downward departure. Hence, we determine to impose a censure.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David E. Tider
Docket No. DRB 16-329

Argued: January 19, 2017

Decided: May 26, 2017

Disposition: Censure

Members	Censure	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel