SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-143
District Docket No. XIV-2015-0424E

In The Matter Of	:
Ernest G. Ianetti	:
An Attorney At Law	:

Decision

Argued: June 21, 2018

Decided: October 26, 2018

Al Garcia appeared on behalf of the Office of Attorney Ethics.

Robert J. DeGroot appeared on behalf of respondent.

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

This matter was first before us in September 2013 on a recommendation for disbarment filed by Special Ethics Master Kenneth R. Meyer, Esq., based on respondent's knowing misappropriation of $27,500 in trust funds, a violation of the principles set forth in In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985). We agreed with the special master's

determination and, thus, recommended to the Court that respondent be disbarred. In the Matter of Ernest G. Ianetti, DRB 12-379 (November 21, 2013) (slip op. at 52-53) (Ianetti I).

In addition to knowing misappropriation of client escrow funds, we concluded that respondent had engaged in a concurrent conflict of interest, without obtaining written informed consent after full disclosure and consultation; entered into a prohibited business transaction with a client, also without obtaining written informed consent; knowingly made a false statement of material fact in connection with a disciplinary investigation; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Id. at 52. Given our disbarment recommendation, we did not consider the appropriate quantum of discipline for these additional RPC violations. Id. at 53.

On November 26, 2014, the Court rejected the knowing misappropriation determination, finding that the matter involved "a business dispute between business associates." In re Ianetti, D-28 September Term 2013 No. 073588 (November 26, 2014) (slip op. at 5). The Court remanded the matter to us and, further, authorized us to refer the matter to the special ethics master, to "render findings of fact and conclusions of law" as to whether respondent had (1) "negligently appropriated" the funds or acted "under the mistaken belief that the withdrawal was authorized by his business associate,"

and (2) "recommend the appropriate discipline to be imposed, including discipline for the RPC violations that respondent does not contest." Id. at 5-6.

At our February 19, 2015 session, we determined to remand the matter to the special master for the purpose of conducting a new hearing, in light of insufficient evidence in the record to resolve the issues that the Court raised, as well as the special master's familiarity with the parties and the case. We limited the issues on remand to (1) the parties' practices in respect of the reimbursement of expenses incurred by each of them in carrying out their business venture and whether respondent's withdrawal of the $27,500 was consistent with that practice, or (2) "the possibility that, for any other reason, respondent's use of the monies was proper, due to a reasonable belief on his part that he could use the funds."

Rather than proceed by way of hearing, the Office of Attorney Ethics (OAE) and respondent entered into a disciplinary stipulation, dated April 25, 2018 (S). In the stipulation, respondent admitted that

- by representing both the buyer and the seller in a real estate transaction, he engaged in a conflict of interest, a violation of RPC 1.7(b)(1);[1]

[1] RPC 1.7(a)(1) prohibits the dual representation of clients with adverse interests. RPC 1.7(b) permits such dual representation when certain safeguards are met. Therefore, RPC 1.7(a) is the applicable Rule.

- he engaged in prohibited business transactions with a client, a violation of RPC 1.8(a)(1);

- he failed to safeguard funds and negligently misappropriated client funds, a violation of RPC 1.15(a); and

- he provided false information to the OAE, a violation of RPC 8.1(a) and RPC 8.4(c).

[S§B¶1.]

For the above infractions, the OAE seeks the imposition of a censure. Respondent seeks a reprimand. We determine that respondent violated RPC 1.7(a), RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c), and censure him for the totality of his misconduct.

Respondent was admitted to the New Jersey bar in 1986 and to the Virgin Islands bar in 1992. At the relevant times, he maintained an office for the practice of law in Denville. Respondent has no disciplinary history.

The facts are taken from the disciplinary stipulation and, when necessary for clarification, completeness, or correction, our decision in Ianetti I.

This matter arises from respondent's business dealings with Eric Wynn, whom he met in the 1980s at the law firm of Brown & Brown, where respondent first worked as a summer associate and, later, as an attorney. Ianetti I (slip op. at 3-4). Respondent described Wynn as a "promoter" in the securities industry, who sought start-up companies interested in raising capital

by public or private offerings. Id. at 3. By mid-1986, respondent and Wynn had become "pretty close friends." Ibid.

Wynn was a twice-convicted felon, who served multi-year prison sentences in the 1990s for criminal tax evasion and conspiracy to commit securities fraud. Ibid. By the time he was released from the second imprisonment, on November 29, 2000, respondent and his spouse, Patrice Renner Ianetti, had formed their own law firm. Id. at 3, 5. Respondent hired Wynn, whose employment continued through 2004. Ibid.

Over the years, respondent occasionally represented Wynn. Id. at 4. During the same time, according to the stipulation, respondent and Wynn became involved in "various business entities." Consequently, with Wynn's knowledge, respondent limited his legal practice in order to pursue their joint business ventures.

In the spring of 2004, respondent began traveling to California and Florida to work with Wynn on their various business entities. In August 2004, respondent and Patrice closed their law office and stopped accepting new clients.

Meanwhile, in 2000, respondent and Patrice had invested more than $100,000 in OptionsXpress, an online options and futures brokerage. Ianetti I (slip op. at 16). The account name was "Renner Ianetti LLC" (Renner Ianetti

account). Ibid. At some point, respondent and Wynn agreed that, upon the development of a favorable track record, the Renner Ianetti account would become The Vertical Fund. Ibid. In our prior decision, the Renner Ianetti account was referred to as the OptionsXpress account.

In January 2004, Wynn invested $50,000 in the OptionsXpress account. Ianetti I (slip op. at 17). According to the stipulation, between 2004 and 2006, respondent and Wynn worked together on at least fifteen different business projects, which included The Vertical Fund. The entities were funded by respondent and Wynn, each of whom deposited money in a joint account. During the course of respondent's and Wynn's business relationship, Wynn had requested that respondent "not create a writing or any memorialization of their various communications," which was consistent with Wynn's practice of avoiding a financial paper trail. Ianetti I (slip op. at 8-9).

In 2005, respondent's and Wynn's "business plans and philosophies . . . began to diverge." Wynn attempted to assert more control over the ventures and alter strategies by including short sale stock options. Between mid-2005 and September 2006, Wynn's strategies caused the OptionsXpress account to lose $167,000.

At issue in this matter is respondent's participation in a real estate transaction and his use of $27,500 of the net proceeds. In 1999, just before

Wynn's first imprisonment, he funded his then girlfriend's purchase of a residential property in Westfield, New Jersey for $200,000. Ianetti I (slip op. at 4). Respondent represented Wynn's girlfriend in the 2003 transaction, which is not at issue in this matter.

In 2003, Wynn and his girlfriend ended their relationship and agreed to sell the Westfield property to Wynn's son Brandon, who would then serve as Wynn's "straw man" and sell the property to a third party, on Wynn's terms. Id. at 6. No money changed hands in the transaction. Ibid.

In April 2004, respondent represented Brandon in the sale of the Westfield property. Ibid. The $393,507.55 in net closing proceeds were retained in respondent's trust account. Ibid. Wynn and Brandon agreed that Wynn would maintain "decisional control" over the disbursement of these monies. Id. at 6-8. Wynn communicated this decision to respondent orally because, as stated above, he did not want his communications and conduct memorialized in writing.

Between June 1 and 29, 2004, respondent disbursed $27,500 of the net closing proceeds in the form of three trust account checks payable to his law firm. He did not inform Wynn of the disbursements. Further, although respondent had deposited all three checks into the firm's business account and used the monies to pay firm operating expenses and personal bills, the parties

stipulated that he "misrepresented" to the OAE that he had paid $10,000 to Wynn, $7,500 to Brandon, and $10,000 to Wynn's other son, Jason. The details of the misrepresentation were omitted from the stipulation. Because they are important, we provide the details, based on our decision in Ianetti I.

Respondent did not simply tell the OAE that he had paid the monies to the Wynns, as the stipulation suggests. Rather, in December 2007, in connection with the OAE's investigation, respondent provided a client ledger for the real estate transaction, which he claimed to have reconstructed in November 2004 after the data were lost in a computer crash. Ianetti I (slip op. at 10). The reconstructed ledger represented that the trust account disbursements to respondent's firm had been made to the Wynns. Id. at 24. Specifically, according to the reconstructed ledger, on June 1, 2004, respondent disbursed $10,000 to Jason; on June 14, $7,500 to Brandon; and, on June 29, $10,000 to Wynn. Ibid.

The OAE subpoenaed and examined the trust account banking records, which contradicted respondent's claim. Ibid. The three trust account checks had not been issued to the Wynns but, rather, to the Ianetti firm's business

account. Ibid.[2] When asked to explain this discrepancy, respondent changed the story and stated that Wynn had authorized him to use the funds to cover overdrafts in the business account, which were caused by Patrice's neglect of her bookkeeping duties. Id. at 24-25.

Upon examination of the business account banking records, the OAE learned that no shortage existed in that account during June 2004. Id. at 25. At this point, March 2009, respondent changed his story again and claimed that, after he had taken the $27,500, he applied a $27,500 credit to Wynn's share of The Vertical Fund account. Id. at 25-26. By the time of the February 28, 2011 disciplinary hearing, respondent offered yet another explanation for the disbursements, claiming that the $27,500 "represented 'advances against [his] capital account in the companies that [they] were building,'" which respondent "'absolutely intended'" to repay. Id. at 31.

Wynn emphatically denied that he had authorized respondent to use the $27,500 for his own purpose. Id. at 34. According to the stipulation, "[i]n retrospect," respondent disbursed the $27,500 to himself on the "subjective belief" (which, although "objectively unreasonable," was "honestly held") that

[2] The parties stipulated that respondent "did not keep appropriate records of the payees of these checks." We do not know the intended meaning of this sentence, as the payees were respondent's law firm, and respondent had "reconstructed" the ledger.

he was entitled to the funds based on "his verbal communications with Wynn" and their "prior practice of drawing out money from their businesses to pay expenses."

The stipulation neither describes the "verbal communications" nor provides any details regarding respondent's and Wynn's "prior practice." Instead, the stipulation provides the following examples of communications that took place years after the checks were written, which, purportedly, proved the prior practice:

> a) In an email exchange between Respondent and Wynn in September 2006, when their relationship continued to deteriorate, Wynn indicates to Respondent that, "... I put up funds as soon as I said I swould [sic] so you would be able to have a chance to have a chance to earn.";
>
> b) Later, in an email to Respondent in February 2007, Wynn indicates to Respondent that, "I am willing to escrow with counsel or an independent escrow agent, other than you or Patrice, a fair amount of money for any verifiable expenditures incurred to date, for a specified period of time."; and,
>
> c) Wynn continues in the same February 2007 email, "As you may remember I initially had no problem covering your potential liabilities which has been my position all along and remains so, Jason (Wynn) continuously has communicate [sic] this to you as well...".
>
> [S§B¶29.]

These e-mails were a part of the record in Ianetti I. Our decision mentioned only the September 2006 e-mail, which respondent offered for the purpose of establishing that he was entitled to take the $27,500. Ianetti I (slip op. at 32-34). We did not analyze the merits of the proposition because the special master had found respondent (and Wynn) entirely lacking in credibility, a determination that we accepted. Id. at 51.[3]

In aggravation, the parties stipulated that respondent had failed to make restitution to Wynn. In mitigation, the stipulation cited respondent's unblemished disciplinary history and the passage of time between the start of the OAE's investigation and the date of the stipulation.

In addition, respondent has submitted seven character letters from eight individuals. Three of the individuals are lawyers, three are former employees, and two are the owners of businesses to whom respondent provided legal representation. All of the authors praise respondent's honesty and integrity. Many of the letters are undated, but those that are bore dates in early 2014. Many of the opinions expressed in the letters were not based on contemporary knowledge. Indeed, it is not clear whether the individuals who offered the

[3] The special master's credibility determination was based on respondent's multiple misrepresentations regarding the $27,500 in disbursements.

character letters in behalf of respondent knew about the circumstances underlying this proceeding.

Following a review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical and in violation of RPC 1.7(a)(1), RPC 1.8(a)(1), RPC 8.1(a), and RPC 8.4(c). Although respondent would not concede those violations in Ianetti I, he has now stipulated to all of them.

Pursuant to RPC 1.7(a)(2), a conflict of interest exists when

> 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, a former client, or a third person or by a personal interest of the lawyer.

As we concluded in Ianetti I, respondent became involved in such a conflict when he simultaneously represented Brandon, as the straw seller of the Westfield property, and Wynn, who had decisional control over the disbursement of the proceeds. Ianetti I (slip op. at 49). Furthermore, respondent had maintained a longstanding friendship with Wynn, and had represented him in at least one legal matter and some business ventures, which were ongoing. Ibid. Thus, under RPC 1.7(a)(2), a significant risk existed that respondent's representation of Brandon would be materially limited by his

responsibilities to Wynn, as well as respondent's personal interest in maintaining his relationship with Wynn.[4] Ibid. Consequently, respondent was obliged to comply with paragraph (b) of RPC 1.7, which requires an attorney to obtain written informed consent from each client affected by the conflict, after full disclosure and consultation. Ibid. As respondent stipulated, he failed to do so and, thus, violated RPC 1.7(a).

RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client unless:

> (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 concerning the transaction; and
>
> (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.

As we found in Ianetti I, although respondent and Wynn were involved in multiple business transactions, respondent admittedly failed to comply with the Rule's requirements for advising Wynn to seek independent legal counsel and obtaining Wynn's written consent to the business relationship. Ianetti I

[4] Brandon suffered capital gains tax liability, as the result of the sale, while Wynn benefitted financially. Ianetti I (slip op. at 42).

(slip op. at 49-50). As respondent stipulated, he failed to do so and, thus, violated RPC 1.8(a)(2) and (3).

RPC 8.1(a) prohibits an attorney from knowingly making a false statement of material fact in connection with a disciplinary matter. RPC 8.4(c) proscribes conduct involving dishonesty, fraud, deceit or misrepresentation. In Ianetti I, we determined that respondent violated these RPCs in two respects, one of which is omitted from the stipulation.

The stipulation refers only to respondent's claim to the OAE that he had disbursed the $27,500 to Wynn and his sons. As discussed above, we found, in Ianetti I, that respondent violated RPC 8.1(a) and RPC 8.4(c) when he presented the OAE with the 2004 reconstructed ledger. Ianetti I (slip op. at 50). Upon further review of the record, however, we also find that respondent violated the Rules when, after the OAE confronted him with proof that the funds had been paid to him, he then claimed that the funds were used to cover overdrafts in the business account, which also was not true.

Respondent offered the OAE yet another explanation for his use of the $27,500 – that the disbursements represented advances against the capital account. However, in the absence of a finding of knowing misappropriation, we decline to characterize that particular statement as a lie.

The other misrepresentation finding in Ianetti I involved a May 2005 and September 2006 accounting created by respondent and submitted to Wynn for the purpose of showing the disbursement of the funds and how the investments were doing. Ianetti I (slip op. at 9, 50). The accountings did not reflect all transactions that had taken place within the trust account[5] and did not reflect accurate OptionsXpress account balances. Ibid.

We now turn to the misappropriation issue. As stated previously, the Court remanded this matter for findings of fact and conclusions of law as to whether respondent had "negligently appropriated" the $27,500 or acted "under the mistaken belief" that Wynn had authorized the disbursements. According to the stipulation, respondent believed that he was authorized to disburse the $27,500 to himself. Therefore, based on the stipulation, no misappropriation – negligent or knowing – took place at all. Instead, the parties agreed that respondent had an honest, subjective belief that he was entitled to use the funds, notwithstanding the "objectively unreasonable" nature of his belief. We, thus, dismiss the stipulated violation of RPC 1.15(a).

To conclude, we accept, as clearly and convincingly established, the stipulated violations of RPC 1.7(a), RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c).

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[5] The final disbursement of the proceeds took place on November 19, 2004. Ianetti I (slip op. at 9).

We now address the appropriate quantum of discipline to impose for respondent's ethics infractions.

The minimum measure of discipline for a misrepresentation to a client or a disciplinary authority is a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989) (client) and In re DeSeno, 205 N.J. 91 (2011) (disciplinary authority). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (respondent exhibited gross neglect and a lack of diligence by ceasing all work on his client's case after filing the initial claim, causing its dismissal, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, and that he should expect a monetary award in the near future were false, in violation of RPC 8.4(c)), and In re DeSeno, 205 N.J. 91 (attorney reprimanded for misrepresenting to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand).

Censures have been imposed on attorneys who, like respondent, make misrepresentations to more than one party. In In re Otlowski, 220 N.J. 217 (2015), for example, a censure was imposed on an attorney who made misrepresentations in violation of RPC 8.1(a) and RPC 8.4(c). Specifically, the attorney had misrepresented to both an individual lender of his client and the OAE that funds belonging to the lender and his client's co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties. In the Matter of George J. Otlowski, Jr., DRB 14-067 (September 17, 2014) (slip op. at 3-4, 9-10). He also made misrepresentations on an application for professional liability insurance. Id. at 4, 11-12.

In In re Schroll, 213 N.J. 391 (2013), a censure was imposed on an attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, even though he knew that the complaint had been dismissed more than a year earlier. In the Matter of Bryan C. Schroll, DRB 12-204 (December 4, 2012) (slip op. at 4-5, 19). Further, for the next three years, the attorney continued to mislead the secretary that the case was still active. Id. at 8. The attorney also misrepresented to his client's former lawyer that he had obtained a default judgment against the defendants. Id. at 9. Schroll also was guilty of gross

neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case. Id. at 12-13.

In our decision, we noted that, at a minimum, a reprimand was warranted for Schroll's "most serious transgression," which was his misrepresentations to the district ethics committee secretary and the client's former attorney. Id. at 19. In aggravation, however, we pointed out that, during the three-year period in which the attorney continued to withhold the truth from the secretary, he had "squandered several opportunities to 'come clean' and admit that the complaint had been dismissed, choosing instead to 'double[] down' on his lies." Ibid. This aggravating factor outweighed the attorney's unblemished disciplinary history during the ten-year period between his admission to the bar and his unethical conduct, thereby resulting in the censure. Id. at 19-20.

Here, respondent's conduct is similar to that of Schroll. Like Schroll, when the OAE determined that respondent had disbursed the $27,500 to himself instead of to the Wynns, as he had represented, respondent chose to double down and to change his story, as the OAE uncovered more inconsistencies in his explanations.

The mitigation advanced in the above cases is vastly different, however. The mitigating evidence in Schroll and in this case is limited to an unblemished disciplinary history – ten years for Schroll, about eighteen years

for respondent. Otlowski had enjoyed an unblemished disciplinary history of almost forty years. Moreover, Otlowski benefitted from additional mitigating factors. He had served on a community college's board of trustees, and had represented a local board of education for twenty years. Otlowski, slip op. at 12. In addition, he had served as a municipal prosecutor for four years and as a municipal public defender for two or three years. Id. at 12-13. Finally, Otlowski had represented "'a lot of churches of all different denominations,'" on a pro bono basis, for many years. Id. at 13.

The additional mitigation in respondent's favor is far less compelling. The character letters are of little worth, given that many of the opinions are not based on contemporary knowledge or on the circumstances of this ethics proceeding.

However, we give the passage of time some consideration. Respondent committed his misconduct between 2004 and 2009. The disciplinary hearing took place in early 2011. Since then, the wheels of justice have turned slowly.

The special master's report was issued on July 3, 2012, a year-and-a-half after the hearing. The record was not filed for our consideration until another year later, on September 19, 2013. Our decision was filed with the Court in November 2013. Thereafter, the Court entered its remand Order a year later, on November 26, 2014.

We remanded the matter to the special master for a hearing on February 27, 2015. Thereafter, more than three years later, the parties entered into the stipulation. By that point, fourteen years had passed since respondent's first act of misconduct.

Given the passage of time, a reprimand might suffice for respondent's multiple misrepresentations. However, he also engaged in multiple conflicts of interest.

Ordinarily, a reprimand is the measure of discipline imposed on an attorney who engages in a conflict of interest. In re Berkowitz, 136 N.J. 134 (1994). If the conflict involves "egregious circumstances" or results in "serious economic injury to the clients involved," discipline greater than a reprimand is warranted. Berkowitz, 136 N.J. 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).

Here, respondent engaged in two conflicts of interest. The RPC 1.8(a) conflict resulted from Wynn's and respondent's business relationship. Given Wynn's status as an experienced investor and respondent's status as a novice, in addition to the lack of credibility afforded to both, and the unreliable accounting records, we find no basis for determining that this conflict involved

egregious circumstances or serious economic injury to Wynn. Thus, in our view, a reprimand would be warranted for this infraction.

The RPC 1.7(a) conflict of interest, on the other hand, did involve egregious circumstances. Respondent represented Brandon in the sale of the Westfield property, knowing that he was a straw man for his father, who controlled the disposition of the proceeds. Respondent did not explain any liabilities that would befall Brandon, such as capital gains tax. Indeed, Brandon did suffer tax consequences, while his father, respondent's other client, was financially enriched. When considered together, we determine the appropriate measure of discipline for the two conflicts to be a censure.

In our view, a censure is appropriate for the totality of respondent's misconduct. This is particularly so given the mitigation, including the passage of time weighing in respondent's favor.

Chair Frost and Members Gallipoli and Joseph were recused. Member Hoberman 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
Bruce W. Clark, Vice-Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Earnest G. Ianetti
Docket No. DRB 18-143

Argued: June 21, 2018

Decided: October 26, 2018

Disposition: Censure

Members	Censure	Recused	Did Not Participate
Frost		X	
Clark	X		
Boyer	X		
Gallipoli		X	
Hoberman			X
Joseph		X	
Rivera	X		
Singer	X		
Zmirich	X		
Total:	5	3	1

Ellen A. Brodsky
Chief Counsel