Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-269
District Docket No. XIV-2017-0243E

In The Matter Of	:
Keirsten Klatch	:
An Attorney At Law	:

Decision

Argued: October 18, 2018

Decided: January 15, 2019

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel 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 on a motion for reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following the Supreme Court of Florida's March 9, 2017 imposition of a three-year suspension, retroactive to June 16, 2016, the effective date of respondent's suspension for contempt of court, by failing to comply with a subpoena issued

by The Florida Bar. The three-year suspension was based on respondent's conditional guilty plea for consent judgment in which she admitted having violated the following Rules Regulating the Florida Bar: 4-1.2(a) (requiring a lawyer to abide by a client's decisions); 4-1.4(a) (informing a client of the status of the representation); 4-8.4(a) (violating or attempting to violate the Rules of Professional Conduct), 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 4-8.4(g) (failing to respond to a disciplinary agency), 5-1.1(a) (failure to hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in the lawyer's possession in connection with a representation), 5-1.1(b) (application of trust funds or property to specific purpose), and 5-1.2(b) (minimum trust accounting records).

The above Florida Rules correspond to the following New Jersey RPCs: 1.2(a) (abiding by a client's decisions concerning the scope and objectives of the representation); 1.4(b) (keeping the client reasonably informed about the status of a matter); 8.4(a) (violating, or attempting to violate, the RPCs); 8.1(b) (failure to cooperate with disciplinary authorities); 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); 1.15(a) (failure to safeguard funds and commingling); and 1.15(d) (recordkeeping violations). No New Jersey RPC corresponds to Florida Rule 5-1.1(b). In addition, although

Florida did not charge a violation of RPC 1.8(a) (business transaction with client), the OAE found the facts to fall within that Rule and, therefore, included it as a charged violation.

Counsel for respondent has filed a motion to supplement the record with documents that were not part of the Florida record, discussed in more detail below. The OAE does not object to the motion. We determined to grant the motion.

The OAE urges the imposition of a reprimand or censure for respondent's violation of all New Jersey RPCs, except RPC 8.4(a). Respondent seeks a reprimand.

For the reasons set forth below, we determined to grant the motion for reciprocal discipline and impose a reprimand on respondent for her violation of the New Jersey RPCs identified above, except RPC 1.2(a) and RPC 8.4(a) and (c).

Respondent was admitted to the New Jersey bar in 2004, the New York bar in 2008, and the Florida bar in 2011. She has not maintained an office in this state.

Respondent has no disciplinary history in New Jersey. However, her license to practice law was revoked, on June 4, 2018, for her failure to pay the

annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection for seven consecutive years.[1]

On November 1, 2017, following respondent's Florida suspension, the Supreme Court of New York, Appellate Division, Second Judicial Department, imposed reciprocal discipline of a three-year suspension, retroactive to June 16, 2016. In re Klatch, 62 N.Y.S.3d 536 (N.Y. App. Div. 2017).

On October 1, 2018, Office of Board Counsel received respondent's motion to supplement the record. On October 3, 2018, the OAE informed Office of Board Counsel that it had no objection to the motion.

The documents subject to the motion are (1) respondent's September 7, 2018 affidavit, which explains her version of the facts underlying the ethics charges, offers facts in mitigation of her conduct, and updates her compliance with the Supreme Court of Florida's suspension order; (2) a transcript of grievant José Carrasquillo's December 19, 2016 deposition in the Florida disciplinary proceeding; (3) a June 8, 2017 letter from respondent's treating psychologist, Robert Karpas, Psy.D.; and (4) a June 26, 2017 letter from Carol Mooshian, attesting to respondent's character. Because the additional

[1] Pursuant to R. 1:28-3, an Order of revocation does not preclude our exercise of jurisdiction over misconduct that occurred prior to the Order's effective date.

information is illuminating in some respects, benign in others, and will not prejudice the OAE or this proceeding, we determine to grant the motion.

The facts are as follows. During an unidentified period between 2010 and 2011, respondent was a paralegal with The Littlefield Law Group, a Florida law firm. Also, during the unidentified period, she became acquainted with José Carrasquillo, whom the firm represented in a wrongful death case, arising from his wife's August 2007 death during childbirth.

In 2010, Carrasquillo asked respondent to assume his representation because, according to the Florida ethics complaint, his prior attorney, Linda Littlefield, had been disbarred. At the time, he was incarcerated in Florida, after having served time in New York for another offense. Carrasquillo wanted respondent to represent him because she had met with him "regularly" in both prisons and, thus, was familiar with the matter. At the time of Carrasquillo's request, respondent was a member of the New York bar. Although she had taken and passed the Florida bar examination, she had not yet been admitted to practice law in that state.

On an unidentified date, respondent filed an appearance in the wrongful death action as Carrasquillo's attorney, pro hac vice. Thereafter, the case was settled for an amount not identified in the record.

According to Carrasquillo, his net recovery was $100,000. Because the Florida Department of Corrections did not permit inmates to keep or receive more than $5,000 at any given time, respondent agreed to hold Carrasquillo's funds in trust.

Over the years, on Carrasquillo's instruction, respondent made the following disbursements: $25,000 to Carrasquillo's prison account; $30,000 to cover respondent's legal fees in the contested guardianship proceeding, as well as legal fees owed to the attorney who represented Carrasquillo in his criminal matters; and an unspecified amount to cover certain expenses of his children.[2]

In approximately 2013, Carrasquillo, who knew that respondent was "struggling outside," told her that, if she ever needed to borrow money, he would let her use his trust funds, but that she would have to let him know so that he would be aware of how much money was available to him. Carrasquillo also told respondent that she would have to repay him upon his release from prison. According to Carrasquillo, respondent declined the offer, stating that she was "good" and that she "cannot do that," and that she,

[2] According to respondent, she represented Carrasquillo in the guardianship proceeding between 2011 and 2013, when the matter was settled.

nevertheless, would need his specific authorization before borrowing any of his funds.

Carrasquillo testified that, after their discussion about the loan, respondent "disconnected," leaving him unable to communicate with her. Thus, in 2013, he filed a grievance with The Florida Bar. Once Carrasquillo learned that respondent was still holding his funds, he apologized for the "misunderstanding," they agreed that she would continue to hold the monies in trust until he was released from prison, and he withdrew the grievance.

Sometime in October 2014, Carrasquillo asked respondent to e-mail some money to his prison account, as he needed the funds for his daughter. Respondent replied that she was out of town but that she would do so when she returned home. Carrasquillo heard nothing more from respondent and could not contact her. He, thus, filed another grievance with The Florida Bar.

After Carrasquillo filed the second grievance, he and respondent agreed that she would disburse the trust funds to him in $5,000 increments, as permitted by the Florida Department of Corrections. Thus, "the file was closed."

In late 2015, Carrasquillo again complained that he had lost contact with respondent and that he "had no idea about his money." When The Florida Bar asked respondent to reply to Carrasquillo's allegations, she first stated that his

funds were in her New York trust account, but that she would be transferring the monies to the Florida trust account. She then stated that the funds would remain in the New York trust account.

On January 6, 2016, The Florida Bar asked respondent to provide both trust account numbers. Although she provided information pertaining to the Florida trust account, she failed to provide any information regarding the New York trust account. Further, respondent did not provide "any New York trust account records."

Due to respondent's non-compliance with the Bar's request for the above information, on May 17, 2016, the Supreme Court of Florida (the Florida Court) held respondent in contempt of court and temporarily suspended her, effective June 16, 2016. Two days later, The Florida Bar filed an ethics complaint against respondent. She defaulted.

Nearly six months later, on January 4, 2017, respondent entered a conditional guilty plea for consent judgment. Two days later, she testified at a final sanction hearing.

At the hearing, respondent acknowledged that she had failed to provide The Florida Bar with the New York trust account information. According to respondent, she was uncertain whether she could disclose information pertaining to her New York clients.

Respondent did provide The Florida Bar with a hand-written ledger for Carrasquillo, which, purportedly, recorded activity from 2011 until August 2014. The last notation, dated August 2014, reads: "total funds left: $21,540.85." Despite the August 2014 notation, in 2012 and 2013, respondent had borrowed the full amount. According to respondent, when she borrowed the funds, she "misunderstood" that she first needed to ask Carrasquillo and/or inform him. Thus, she did neither.

Carrasquillo admitted that there may have been a "misunderstanding" on respondent's part, that he bore her "no ill will," and that he did not want her to be disbarred. Loyal and devoted to respondent, Carrasquillo testified that, on many occasions, he told her that, if she "need[ed] anything," she should just tell him, and he would be "more than glad to help" her.

Respondent stated that, between 2013 and 2015, her communications with Carrasquillo "broke down" for several reasons, including his various prison transfers and her failure to remain in contact with him. Ultimately, she replenished and returned Carrasquillo's funds when he was released from prison in 2016.

The referee recommended that respondent be found guilty of the violations charged in the complaint. In mitigation, the referee cited respondent's unblemished disciplinary history, the lack of venality in her

actions, her "personal or emotional problems," and her inexperience in the practice of law.

Based on the mitigation and disciplinary precedent, the special referee recommended that respondent be suspended for three years, retroactive to June 16, 2016, the date of her suspension in the contempt matter. He also recommended that she be evaluated by Florida Lawyers Assistance, Inc. (FLA), and abide by all of its recommendations, including admission to a rehabilitation program.

As a condition of reinstatement, the referee recommended that respondent be required to provide a statement from FLA attesting to her fitness to practice law; prove that she had taken and passed the Multistate Professional Responsibility Examination (MPRE); and pay The Florida Bar's costs in her disciplinary matter. Upon reinstatement, respondent would serve a three-year probationary period.

On March 9, 2017, the Florida Court approved the referee's report and suspended respondent for three years, retroactive to June 16, 2016, followed by three years' probation. The Florida Court also adopted the recommended terms and conditions. Ronald C. Minkoff, Esq., who is admitted pro hac vice in this matter, reported respondent's Florida suspension to the OAE.

In this proceeding, respondent's affidavit provides additional facts about her background, her conduct vis-à-vis Carrasquillo and The Florida Bar, and in mitigation.

Respondent was a New York resident when she attended law school in Florida, but settled in Florida after graduation. By that time, respondent had established a real estate investment business.

Between 2006 and 2008, respondent was a Qualified Representative, representing individuals in Florida administrative hearings to determine whether they were entitled to Medicaid benefits for home and community-based services. In 2008, she apparently was hired as a paralegal by the Littlefield firm.

In 2010, while respondent was still employed by the Littlefield firm, she opened a property and casualty insurance company. She also was an adjunct professor at a state university and raised funds for an endowment that promoted music therapy in pediatric cancer treatment rooms at a children's hospital.

Upon respondent's admission to the Florida bar, in 2011, she left the Littlefield firm and established a solo practice.

According to respondent's affidavit, her "struggles" with depression and anxiety began in 2012 and reached "an all-time high" in 2015, when The

Florida Bar began investigating Carrasquillo's grievance. Due to her mental state, respondent "could not bring [her]self to respond to the Bar's inquiries," and she, thus, defaulted.

In respondent's affidavit, she wrote:

> It was never my intention to mislead or otherwise harm Mr. Carrasquillo and, as demonstrated in Mr. Carrasquillo's testimony as well as the Referee's Report, which is part of the Florida Order, the misconduct stemmed from a misunderstanding. That being said, I accept full responsibility and acknowledge that I did not properly maintain the Settlement Funds nor did I properly document the transaction with Mr. Carrasquillo.
>
> [RA¶18.[3]]

In short, respondent asserts that her misconduct "was the result of mental health issues" for which she is now seeking treatment. Thus, the communication breakdown, on her part, was due to "worsening depression and anxiety."

The details underlying respondent's mental health issues are scant, but serious. Specifically, in 2012, she had a falling out with a business partner, who "cut off [her] ability to earn a living." At about the same time, respondent ended her relationship with her fiancé. Both events resulted in two protracted lawsuits, one involving the home that she owned and in which she lived.

[3] "RA" refers to respondent's affidavit, dated September 7, 2018.

According to respondent, "the above-described incidents" caused her depression and anxiety.

In 2013, respondent relocated to Jacksonville, where she intended to re-start her career and begin teaching. Her anxiety became worse, due to "an ongoing series of stressful events that led to an unstable living situation and required [her] to repeatedly move." Her day-to-day activities became "almost unbearable," and she avoided people.

Respondent sought treatment from her primary care physician, who prescribed medication. She did not undergo psychotherapy, and the medication proved ineffective. Eventually, respondent unsuccessfully attempted to re-engage with other people.

As noted, in 2015, respondent's anxiety reached an all-time high, after the final Carrasquillo grievance had been filed. In December 2016, respondent returned to New York because the medication prescribed by her primary care physician was not helping her, and she wanted to "seek appropriate treatment" and live in "a supportive environment amongst friends and family." Thereafter, respondent entered into the conditional guilty plea in the Florida disciplinary proceeding.

When respondent moved to New York, in December 2016, she became employed as the director of marketing for a software and marketing company.

She left that position and started a floral design company. She also cares for her sickly elderly father.

Upon her relocation to New York, respondent began psychotherapy sessions with Dr. Karpas, which she attended twice a week. According to Dr. Karpas, respondent is "receiving appropriate medication," although neither respondent's affidavit nor Karpas's report identifies the medication or its purpose. Karpas states that respondent's prognosis for a full recovery is "excellent."

In April 2017, pursuant to the terms of respondent's suspension, the FLA evaluated respondent. The FLA concluded that she "did not require therapeutic intervention."

According to respondent, she has no intention of returning to Florida. She has paid The Florida Bar's costs and fees in the disciplinary proceeding and submitted to the FLA's evaluation. She intends to take the MPRE prior to seeking reinstatement to the Florida bar.

Carol Mooshian, a longtime Klatch family friend, had watched respondent grow up and provided a summary of her achievements throughout her life. These achievements included respondent's receipt of a highly-coveted leadership award in high school, her formation of The Italian American Lawyers Association in law school, her advocacy for special needs students,

and the fact that she passed both the New York and Florida bar examinations the first time.

According to Mooshian, respondent's misconduct was a mistake in judgment, an aberration, and uncharacteristic of her. She concluded:

> Keirsten is an honest young woman having integrity. I have seen her suffer anxiety and depression. Over the last year I have noticed a marked improvement in her demeanor. She is also a caring person. On many occasions, before she moved back she had flown home to New York to help her mother take care of an ill father. That is a selfless act.
>
> [ML3.][4]

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

[4] "ML" refers to Mooshian's letter, dated June 26, 2017.

> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies to the facts of this case because respondent's conduct in Florida does not warrant a three-year suspension. Instead, a reprimand is the appropriate measure of discipline for her ethics infractions.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Florida, the imposition of discipline requires "a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Rules Regulating The Florida Bar." Section 1.3 of Florida's Standards for Imposing Lawyer Sanctions.

The crux of Florida's case against respondent was that, notwithstanding Carrasquillo's agreement that she could borrow the funds that she was holding

in trust for him, and irrespective of her understanding that she did not have to seek his permission prior to doing so, respondent lost touch with Carrasquillo and failed to inform him, prior to, contemporaneously with, or even within a reasonable time thereafter, that she wanted to borrow, or had borrowed, the monies. These facts clearly and convincingly support the conclusion that respondent violated RPC 1.4(b) and RPC 1.8(a) (improper business transaction with a client).[5]

RPC 1.4(b) requires an attorney to keep the client reasonably informed about "the status of a matter" and to promptly comply with reasonable requests for information. Here, the "matter" was respondent's maintenance of Carrasquillo's settlement monies in her trust account, and their agreement that she could borrow the funds, under certain conditions. Respondent violated RPC 1.4(b) when she lost touch with Carrasquillo and failed to inform him, prior to, contemporaneously with, or even within a reasonable time thereafter, that she wanted to borrow, or that she had borrowed, monies that she was holding in trust for him, even if, as she says, she understood that Carrasquillo did not impose those conditions.

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[5] The Florida Bar did not charge respondent with having violated RPC 1.8(a). Nevertheless, the OAE charged a violation of that RPC in the motion for reciprocal discipline. Thus, respondent was on notice of that charge and, therefore, the alleged violation of that RPC properly is before us.

Respondent also violated RPC 1.8(a), which provides:

> (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to 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 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.

A loan between client and attorney qualifies as a business transaction within the meaning of RPC 1.8(a), and an attorney who obtains such a loan violates the Rule when he or she fails to comply with its requirements. See, e.g., In re Allegra, 229 N.J. 227 (2017) (during the course of the attorney's representation of a client, he received several loans, totaling $17,500); In re (Robert) Franco, 212 N.J. 470 (2012) (after the attorney's representation of his client had concluded, they subsequently formed a familial relationship; during an eight-year period, the client lent the attorney and his spouse $160,000); 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)); In the Matter of April Leslie Katz, DRB 06-190 (October 5, 2006) (attorney received a $1,500 loan from a client while she represented him in a matrimonial matter); In re Glynn, 180 N.J. 169 (2004) (attorney received separate loans from two clients); In re Hilberth, 149 N.J. 87 (1997) (attorney received a $20,000 loan from his Hungarian-speaking client, which he did not repay until five years after it was due; he also arranged loans from the same client to other clients); and In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (attorney who represented his fiancée's parents in mortgage refinancing borrowed $30,000 of the refinance proceeds from his clients).

Here, respondent violated RPC 1.8(a) when she accepted Carrasquillo's offer to permit her to borrow funds that she held in trust for him, but made no effort to ensure that the transaction and terms were "fair and reasonable" to Carrasquillo, by fully disclosing the terms to him, in writing, in a manner that he could understand; and advising him to seek counsel, providing him with a reasonable opportunity to do so, and, ultimately, obtaining his consent to the loan in writing.

In respect of the other ethics infractions, the record clearly and convincingly supports the determination that respondent violated RPC 1.15(a) and (d), and RPC 8.1(b).

We begin with respondent's recordkeeping violations. Respondent failed to maintain an accurate client ledger regarding Carrasquillo's settlement monies. Although the ledger is not a part of the record, the referee's findings make it clear that respondent produced the document, which was inaccurate, at best. For example, the ledger reflected that, as of August 2014, $21,540.85 of Carrasquillo's funds remained in the trust account. Yet, respondent stated that, by 2013, she had borrowed all of those monies.

R. 1:21-6(c)(1)(B) requires an attorney to maintain "an appropriate ledger book, having at least one single page for each separate trust client," showing, among other things, the "the descriptions and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed." Although respondent had dissipated Carrasquillo's funds by 2013, the ledger showed a balance of $21,540.85 in August 2014. Thus, respondent clearly was not meeting her recordkeeping obligations, a violation of RPC 1.15(d).

Respondent's failure to comply with RPC 1.15(d), as described above, left Carrasquillo's or other client or trust account funds unprotected and placed

them at risk of being "borrowed" but never repaid. Respondent's conduct constituted a clear failure to safeguard her client's funds, a violation of RPC 1.15(a).

Respondent's resistance to The Florida Bar's requests for information pertaining to her trust accounts clearly and convincingly demonstrated a violation of RPC 8.1(b). That Rule prohibits an attorney from knowingly failing to reply to a lawful demand for information from a disciplinary authority. Here, respondent first told The Florida Bar that Carrasquillo's funds were in her New York trust account, but that she would be transferring the monies to the Florida trust account. She then stated that the funds would remain in the New York trust account. Yet, she failed to provide The Florida Bar with any information regarding the New York trust account, including the account number and trust account records.

The record, however, does not contain clear and convincing evidence that respondent violated RPC 1.2(a) or RPC 8.4(c). RPC 1.2(a) pertains to a client's decisions concerning the scope and objectives of the representation. Respondent may not have complied with Carrasquillo's instruction that she obtain his authorization prior to borrowing the settlement monies, but that failure has no relevance to the scope or objectives of her representation of him in the wrongful death or guardianship actions.

Although respondent admitted and was found guilty of violating RPC 8.4(c), we cannot ascertain the facts on which the violation was based. In our view, the record does not clearly and convincingly establish that she acted dishonestly, fraudulently, deceptively, or that she made a misrepresentation.

To be sure, respondent represented Carrasquillo in a Florida matter before she had been formally admitted to the bar. Yet, at the time, she was a member of the New York bar, and her appearance in the Florida matter was pro hac vice. She did not hold herself out as an attorney licensed to practice law in that state.

Although respondent "misunderstood" that she did not have to ask Carrasquillo's permission when she borrowed his monies, a misunderstanding does not violate RPC 8.4(c). See, e.g., In re Uffelman, 200 N.J. 260 (2009) (an attorney who makes a statement believing it to be true has not made a misrepresentation; a misrepresentation is always intentional and, therefore, does not occur simply because an attorney is mistaken or his statement is later proved false, due to changed circumstances).

Admittedly, respondent failed to follow through on her statement to The Florida Bar that she would be transferring Carrasquillo's funds from her New York trust account to her Florida trust account, but that is not clear and convincing evidence of a misrepresentation or act of dishonesty. It is possible

that, at the time of the representation, respondent fully intended to follow through, but, for whatever reason, did not.

To conclude, the record contains clear and convincing evidence that respondent violated New Jersey RPC 1.4(b), RPC 1.8(a), RPC 1.15(a) and (d), and RPC 8.1(b). The record lacks clear and convincing evidence of respondent's violation of RPC 1.2(a) and RPC 8.4(a) and (c).[6]

There remains for determination the appropriate quantum of discipline to impose for respondent's ethics infractions.

When an attorney borrows money from 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 (extensive mitigation considered, including the attorney's forty-four-year untarnished record); In the Matter of April Leslie Katz, DRB 06-190 (in mitigation, we observed that, at the time of the loan, the representation "had been largely fulfilled," although a "miniscule amount of work" had since been performed; that months had passed without any time having been billed and that the small amount of time that was billed was part and parcel of the original representation; that no new representation had commenced; that the loan

[6] We do not find that respondent violated RPC 8.4(a) because, in this context, the Rule is redundant to the other RPC violations.

amount was small; and that the attorney had repaid the borrowed funds); and In the Matter of Frank J. Jess, DRB 96-068 (unblemished disciplinary history).

Discipline greater than an admonition has turned on the existence and nature of additional misconduct or aggravating factors. See, e.g., In re Allegra, 229 N.J. 227 (reprimand; attorney also violated RPC 1.7(a)(2), by engaging in a sexual relationship with an emotionally vulnerable client); In re (Robert) Franco, 212 N.J. 470 (three-month suspension; after the attorney's representation of his client had concluded, they subsequently formed a familial relationship; during an eight-year period, the client loaned the attorney and his spouse $160,000; the attorney committed additional RPC violations in additional client matters, including a conflict of interest under RPC 1.7(a) and negligent misappropriation of client funds); and In re Glynn, 180 N.J. 169 (six-month suspension; attorney also committed recordkeeping violations and negligently misappropriated trust account funds; we found that he was reckless and completely irresponsible in the handling of his trust account, which he used as an overdraft protection device for his business account, thereby causing "chronic trust account shortages").

In this case, standing alone, an admonition could be appropriate for respondent's violation of RPC 1.8(a). Respondent's violation of the Rule was

not due to venality, she did not cause financial harm to Carrasquillo, and her actions in borrowing the funds were based on a misunderstanding.

Respondent's other infractions, individually, and sometimes combined, typically warrant an admonition. See, e.g., In re Matheke, ___ N.J. ___ (2014) (RPC 1.4(b) and (c); attorney failed to advise her client about "virtually every important event" in the client's malpractice case between 2006 and 2010, including the dismissal of her complaint); In the Matter of Michael P. Otto, DRB 08-294 (February 26, 2009) (RPC 1.15(a); attorney's failure to oversee law firm trust account enabled law partner to repeatedly misappropriate trust account funds; attorney also violated RPC 1.15(d)); In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (RPC 1.15(d)); and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (RPC 8.1(b); attorney failed to reply to repeated requests for information from the District Ethics Committee investigator regarding his representation of a client in three criminal defense matters). Respondent's ethics infractions do not stand alone, however, and, in combination, they require the imposition of a reprimand.

Respondent's failure to comply with RPC 1.8(a) denied Carrasquillo the opportunity to structure any loan in such a way that he would know the status of his funds, that his monies would be protected from unilateral loans taken by respondent, and that he would receive a return on respondent's use of his

funds. Respondent's failure to communicate with Carrasquillo, both by "disappearing" and not informing him that she was borrowing, or had borrowed, his monies, together with her failure to keep an accurate ledger, placed Carrasquillo's or other client funds at great risk. Though not necessarily reckless, respondent's conduct warrants more than an admonition. Thus, for the totality of her misconduct, we determine to impose a reprimand on respondent.

Although respondent may have suffered from depression and anxiety at the time of her misconduct, no evidence links her mental health issues to her misconduct vis-à-vis her use of Carrasquillo's funds. Her affidavit is not clear in respect of when she sought treatment from her primary care physician in Florida, although it would appear to have been sometime in 2013. Moreover, Dr. Karpas did not know respondent at the time of her misconduct, and his letter does not link that misconduct to her mental anxiety and depression. Although respondent's remorse and her efforts to rehabilitate herself are admirable, in our view, the mitigation is insufficient to reduce the reprimand to an admonition.

To conclude, we determine to impose a reprimand on respondent for her misconduct.

Member Joseph 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
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 Keirsten Klatch
Docket No. DRB 18-269

Argued: October 18, 2018

Decided: January 15, 2019

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1

Ellen A. Brodsky
Chief Counsel