Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-411
District Docket No. I-2016-0012E

In the Matter of

Seymour Wasserstrum

An Attorney at Law

Decision

Argued: February 21, 2019

Decided: July 29, 2019

Christopher C. Fallon, III appeared on behalf of the District I Ethics Committee.

Vincent J. Pancari appeared on behalf of respondent.

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

This matter was before us on a recommendation for a three-month suspension filed by the District I Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.1(a) (gross neglect); RPC

1.3 (lack of diligence); RPC 1.5(e) (improper division of fees between lawyers who are not in the same law firm); RPC 5.1(a) (every law firm or organization authorized to practice law shall make reasonable efforts to ensure that member lawyers conform to the RPCs), RPC 5.1(b) (a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the RPCs), RPC 5.1(c) (a lawyer shall be responsible for another lawyer's violation of the RPCs if (1) the lawyer orders or ratifies the conduct involved or (2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action); RPC 5.3(a) and (b) (failure to make reasonable efforts to ensure that the conduct of nonlawyers is compatible with the lawyer's professional obligations); RPC 5.5 (presumably, subsection (a)(2), a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law); RPC 7.1(a) (false or misleading communication about the lawyer, the lawyer's services, or any matter in which the lawyer seeks a professional involvement); and RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another).

For the reasons detailed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey bar in 1973 and to the Pennsylvania bar in 1974. In February 1998, he received an admonition for failing to prepare a retainer agreement in a personal injury case and for violating R. 1:21-7(g) by turning the file over to the client without retaining copies of the settlement disbursement sheets and other required records. In the Matter of Seymour Wasserstrum, DRB 97-046 (February 23, 1998). In July 1998, respondent was again admonished for failing to execute retainer agreements in two personal injury matters involving the same client. In the Matter of Seymour Wasserstrum, DRB 98-173 (August 5, 1998). In September 2007, respondent received a reprimand for failing to prepare retainer agreements in three client matters, and failing to obtain his clients' informed consent to limiting the scope of the representation. In re Wasserstrum, 192 N.J. 397 (2007).

During the relevant time frame, respondent maintained an office for the practice of law in Vineland, New Jersey.

In August 2012, the grievant, George Robert Dawson, met with Andrew Archer, then an associate at respondent's law firm, seeking representation to pursue civil claims and potential defenses against Wells Fargo, his mortgage lender, which was threatening foreclosure action because he was in arrears. Dawson provided the firm with a detailed written summary of his case against

Wells Fargo, comprising hundreds of pages of notes and exhibits, which Archer initially reviewed. Specifically, Dawson alleged that Wells Fargo had acquired his mortgage during its acquisition of Wachovia Bank, and proceeded to make a "slew of errors, miscalculations, and oversights" in connection with his mortgage and a loan modification, resulting in more than $32,000 in improper charges. Dawson alleged that the bulk of the $32,000 was due to "double-billing" of property taxes, exacerbated by the bank's failure to credit payments that Dawson and his wife had made.

Dawson was subsequently informed that, if he retained respondent's firm, an Illinois attorney named Theresa V. Johnson, purported to have expertise in foreclosure and consumer fraud actions, would assist respondent's law firm in the representation. Although not admitted in New Jersey, Johnson is licensed to practice in Illinois, having earned admission to that bar in 1996, and maintained her own firm in Westmont, Illinois.

In January 2013, Dawson met with respondent and Johnson, who jointly agreed to represent him and presented a plan for such representation. According to Dawson, Johnson led the discussion regarding the representation, advising him that he had a "strong case" against Wells Fargo, and that she believed that the bank would settle without litigation. During his testimony, respondent echoed that belief, maintaining that it was his firm's strategy to

aggressively settle Dawson's matter, rather than engaging in litigation with a bank. Respondent and Johnson informed Dawson that Johnson was an Illinois attorney who would be required to seek pro hac vice admission in the unlikely event that Dawson's matter required litigation. Respondent admitted at the ethics hearing that no one from his firm had ever been involved in the pro hac vice process, and that he was not familiar with the relevant Court Rule or standards for such admission.

During the ethics hearing, Johnson admitted that she had provided legal assistance to New Jersey clients, including Dawson, whom she met with approximately five times, but denied that she had provided him with legal advice. Under cross-examination, Johnson insisted that, during respondent's firm's representation of Dawson, from December 2012 through November 2014, she never provided him with legal advice, and he was never her client.

Johnson and respondent both testified, however, that on or about February 6, 2013, they had reached a formal agreement for the provision of Johnson's services to respondent's law firm, whereby Johnson would "do most or all of the work [in Dawson's matter] except for court appearances." During his testimony, respondent conceded that Johnson was the principal attorney for Dawson's matter, through the arrangement she had with his law firm; that she

provided legal services to Dawson; and that she was engaged in the practice of law in New Jersey.

Dawson made clear that his goal in the representation was to stay in his home and to obtain monetary damages against Wells Fargo, given its conduct in respect of the foreclosure action. Johnson testified that her role in the matter was to draft a complaint "related to bank-related foreclosure issues for the review of [respondent] . . . since [she] was not licensed in New Jersey." She conceded that she was "acting as an attorney" in respect of her role in Dawson's representation, and had even published a YouTube legal advertisement with respondent, in April 2014, during the representation of Dawson, regarding residential loan modifications that respondent's firm could obtain.

Dawson testified that "[n]othing happened" with his case for the first thirty days of the representation, despite his repeated calls to Johnson and her promise that she would send Wells Fargo a draft complaint and demand letter within that time frame. Specifically, according to Dawson, he expected the demand letter and draft complaint to be served on Wells Fargo by the end of January 2013, based on Johnson's representations. During their testimony, both Johnson and respondent steadfastly denied having promised to take any such action in the time frame Dawson claimed.

Further, Dawson testified that, prior to the formal retention of respondent's law firm, Johnson had been so difficult to reach that he began exploring the retention of two other law firms. Ultimately, however, Dawson retained respondent's law firm, by fee agreement dated April 15, 2013, for services including defending the Wells Fargo's foreclosure action and a potential lawsuit or counterclaims against the bank. Respondent signed the fee agreement on behalf of his firm. Although Johnson was not a signatory to the document, respondent admitted that she discussed the terms of the fee agreement with Dawson.

Dawson claimed that Johnson exclusively negotiated the terms of the fee agreement and e-mailed it to him on respondent's letterhead. He cited, in support, (1) Johnson's April 11, 2013 e-mails to him, wherein she stated "[p]lease e-mail me with any changes, questions and comments," and "I'm done and ready to get your case going;" and (2) his direct negotiation of all revisions to the fee agreement with her. Johnson admitted that she was the scrivener of the fee agreement but denied that she had independent authority to negotiate the agreement without respondent's final approval. In her April 11, 2013 e-mail to Dawson, however, she asked him to return the fee agreement as soon as possible, stating "[if respondent] is not at the office when you arrive, he said I could sign for him." Respondent testified that he and Johnson had

discussed the terms of the fee agreement, and that he then allowed her to draft it.

Pursuant to the terms of the fee agreement, Dawson paid $10,000 toward the representation. The fee agreement stated that the law firm would pursue defenses against any foreclosure action and affirmative claims against Wells Fargo on Dawson's behalf.

Respondent and Johnson divided the fees received from Dawson, despite the fact that Johnson's Illinois law firm was not a party to Dawson's fee agreement. Dawson believed that Johnson had received the entire fee, because she had requested, on multiple occasions, that he bring cash to the Vineland office so that the office manager could deposit the funds and she could access them from her Chicago office. Dawson testified that, to his knowledge, respondent provided no substantive legal services in respect of the representation, but, rather, would often tell him to "take that up with [Johnson]."

Dawson further testified that the only substantive work ever completed on his case was by Queping Chen, a law student and employee of respondent's law firm, who "cut and pasted" portions of Dawson's summary of his case into a draft complaint, which was placed on Johnson's letterhead. Dawson testified that, in July 2013, he had assisted Chen in drafting the complaint. The initial

draft complaint referenced the "Circuit Court of Cook County, New Jersey," although Cook County is in Illinois, and erroneously captioned Dawson and his wife as defendants, rather than plaintiffs. Dawson also testified that, in August 2013, he met with Johnson, who informed him that the draft complaint was basically worthless, and that she would have to wholly rewrite it. According to Dawson, "since I had basically written that complaint, it didn't surprise me that it was inadequate . . . I know I'm inadequate as an attorney, that's why I retained [respondent's law firm]."

Johnson admitted that she neither completed nor filed a complaint in behalf of Dawson. Although she initially denied having been supervised in that representation, she later testified that respondent and other attorneys in his firm had supervised her. Respondent acknowledged that he had a duty to supervise Johnson and claimed that he, along with multiple, successive associates in his law firm, had done so. Respondent also admitted that neither a complaint nor a demand letter ever was completed, but asserted that multiple drafts were created.

Neither respondent nor Johnson ever sent a demand letter to Wells Fargo. Johnson admitted that, notwithstanding twenty-three months of representation, she did not fully understand the facts and legal issues in Dawson's case. Both respondent and Johnson blamed Dawson, claiming that

he had failed to provide them with necessary documents, and that their focus and strategy in the representation had shifted once they learned that Wells Fargo had obtained a default judgment, as detailed below. Respondent admitted that, at that point, the draft complaint and demand letter went on the "back burner," but insisted that Dawson owed them additional information, and that respondent did not want to proceed against the bank "haphazardly and half-baked."

In December 2013, Dawson learned that, on September 26, 2012, Wells Fargo had secured a default judgment against him and his wife, in connection with a foreclosure complaint involving their mortgage. According to Dawson, he met with respondent, who agreed that his firm would seek to vacate the judgment for no fee, since the firm had not completed the legal services contemplated under the fee agreement. Respondent denied such a concession, but noted that his firm successfully vacated the default judgment.

Subsequently, Wells Fargo improperly obtained a second default judgment against Dawson and his wife. At the time of the ethics hearing, Dawson's dispute with Wells Fargo was ongoing. Thereafter, on November 10, 2014, Dawson e-mailed Johnson and respondent, terminating the representation, and expressing his dissatisfaction with the law firm's performance in the almost two years of representation. Specifically, he cited

his displeasure that neither a draft complaint nor a demand letter had been produced, despite his payment of legal fees and production of hundreds of pages of documents and summaries of facts to the firm.

Dawson claimed that the legal fee that he paid respondent's firm was not reasonable, and that respondent had admitted as much in connection with fee arbitration, agreeing, on the eve of the fee arbitration, not only to refund Dawson's entire fee, but to pay $500 toward Dawson's costs to hire new counsel. Johnson defended the $10,000 in legal fees that Dawson had paid, maintaining that approximately fifty-four hours had been spent "sorting through [Dawson's material] and [creating drafts] of his facts." Respondent claimed that he disgorged the legal fee purely as a "business decision," as he did not want to spend "days and days" in a fee arbitration after his attempts to justify the fee to Dawson had failed. Respondent pointed out that he was never ordered to disgorge the fee, but, rather, did so voluntarily.

Respondent and Johnson have been friends since 1987, became engaged during their representation of Dawson, and were married in 2015. Since their marriage, Johnson has worked full-time at respondent's law firm, as both the "office manager" and as an attorney in immigration cases.

In connection with this matter, numerous character witnesses opined that respondent has a reputation as a well-respected attorney and member of the community.

The DEC found clear and convincing evidence that respondent violated RPC 1.5(e). Specifically, the DEC found that the fee agreement between respondent's law firm and Dawson was "fatally flawed," because it did not set forth the division of attorney's fees between respondent and Johnson, and because Dawson was not provided with any prior notice that his legal fees would be split.

Next, the DEC found that respondent violated RPC 5.1, concluding that he made no effort to supervise Johnson's work in respect of Dawson's matter. The DEC emphasized that, during the ethics hearing, respondent expressed "bemusement at the concept that he would be required to look over the work of another attorney."

The DEC also concluded that respondent violated RPC 5.3, reasoning that he failed to supervise Chen, Johnson's intern, to whom Johnson delegated the first draft of Dawson's complaint against Wells Fargo. Given respondent's law firm's retention of Johnson, the DEC found that respondent was responsible for supervising Chen's work.

The DEC further determined that respondent violated RPC 5.5, concluding that he "could not have reasonably believed that Ms. Johnson could have been admitted pro hac vice" in New Jersey. In support of that conclusion, the panel emphasized that neither respondent nor Johnson had experience regarding pro hac vice admission; neither respondent nor Johnson had reviewed the applicable Court Rule; and Johnson was relatively inexperienced in respect of litigating foreclosure matters.

In addition, the DEC determined that respondent violated RPC 7.1, but its finding was not based on the presenter's theory of the case set forth in the formal ethics complaint and during the ethics hearing, but, rather, was based on a YouTube advertisement that respondent and Johnson had created and published in 2014. The presenter had admitted that evidence solely in support of the RPC 5.5 allegations.

Finally, the DEC determined that respondent violated RPC 8.4(a). Given the panel's findings regarding other RPC violations, the panel concluded that respondent assisted Johnson in violating the RPCs, including in respect of (1) failing to supervise Chen; and (2) Johnson's unauthorized practice of law in New Jersey.

The DEC found no clear and convincing evidence that respondent had violated RPC 1.1(a) (gross neglect) or RPC 1.3 (lack of diligence). As to the

RPC 1.1(a) charge, the DEC determined that the work performed by respondent's firm, including the successful vacation of the default judgment against Dawson, countered the ethics allegation. The panel noted, however, that Johnson may not have had the required expertise or ability required to "meaningfully advance" Dawson's position in respect of Wells Fargo.

In respect of the RPC 1.3 charge, the DEC found that respondent's firm had not promised to prepare a complaint or issue a demand letter to Wells Fargo by a date certain and had performed significant legal services in behalf of Dawson, including reviewing his records, drafting a complaint, and successfully vacating the default judgment.

In aggravation, the DEC considered respondent's prior discipline. In mitigation, the DEC cited his respected reputation within his community, his documented diligence as a lawyer who produces positive results for his clients, and his willingness to take Dawson's case at a reduced rate, when other attorneys would not.

The DEC determined to recommend a three-month term of suspension.

The presenter relies on the decision of the DEC hearing panel. In turn, respondent denies that he committed misconduct in this case. Specifically, in respect of the RPC 1.5(e) allegation, respondent argues that, although the division of fees between himself and Johnson was not explicitly set forth in the

fee agreement, Dawson "was aware of and consented to the division of fees," and, thus, had received the required notice. In support of his position, respondent emphasizes that Dawson testified that "he knew the attorneys were not working for free."

As to the RPC 5.1 allegation, respondent asserts that he had no duty to supervise Johnson on a "day-by-day" or "step-by-step" manner, but "was fully abreast" of Johnson's work on the grievant's matter, was "actively involved," and was in constant contact with both Johnson and Dawson. Moreover, respondent points out that, other than the allegation that Johnson was engaged in the unauthorized practice of law, the complaint did not allege that she had violated the RPCs in respect of the substance of Dawson's matter, such as by engaging in gross neglect or lack of diligence, and, therefore, the presenter offered no proof that he had failed to adequately supervise Johnson.

In respect of the RPC 5.3 allegation, respondent maintains that the RPC "does not require a lawyer to supervise a nonlawyer working with a different law firm," and, thus, he had no duty to supervise Chen, who was employed exclusively by Johnson.

Respondent argues, as to the RPC 5.5 allegation, that Johnson's representation of Dawson fell squarely within the "safe harbor" provision of RPC 5.5(b), because pursuant to the express language of that subsection,

Johnson was "preparing for a proceeding in which [she] reasonably expect[ed] to be" admitted pro hac vice "and [was] associated in that preparation with a lawyer admitted to practice" in New Jersey. Further, he disputes the DEC's determination that Johnson lacked expertise in the subject matter of Dawson's case, emphasizing her twenty years of practice as an attorney, completion of relevant continuing legal education courses (CLEs), over one hundred hours of research, litigation experience, and familiarity with the facts of Dawson's case.

In respect of the RPC 7.1 allegation, respondent asserts that the DEC's finding was improper, as it was not based on misconduct charged in the complaint, but, rather, on a YouTube advertisement presented in support of the unauthorized practice of law issue, and, thus, violated his due process rights.

As to the RPC 8.4(a) allegation, respondent maintains that, since he did not violate any other RPCs, he cannot be found to have violated this particular RPC.

Finally, respondent argues that, if we impose discipline, we should not consider his prior discipline as an aggravating factor, given the remoteness and dissimilarity of those matters (1998 and 2007). In support of mitigation, respondent cites the DEC findings mentioned above, provides numerous additional character letters, and emphasizes that he disgorged the entire fee, plus additional funds, to Dawson.

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent violated RPC 1.5(e) and RPC 5.3(b). The DEC correctly determined that there was insufficient evidence to sustain the allegations that respondent violated RPC 1.1(a) and RPC 1.3, given the significant legal services provided in behalf of Dawson. For the reasons set forth below, we determine also to dismiss the RPC 5.1(a)-(c), RPC 5.5(a)(2), RPC 7.1(a), and RPC 8.4(a) allegations.

RPC 1.5(e) states that:

> [e]xcept as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:
>
> (1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and
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> (2) the client is notified of the fee division; and
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> (3) the client consents to the participation of all the lawyers involved; and
>
> (4) the total fee is reasonable.

Based on the record, including respondent's own testimony, he clearly failed to comply with subparts (1) and (2) of the conjunctive requirements set forth in this RPC. Although Dawson agreed to the representation by both respondent and Johnson (subpart (3)), the fee agreement that respondent and

Dawson executed failed, on its face, to satisfy the requirement of joint responsibility and notice of the fee division to Dawson. Johnson repeatedly denied that she was engaged in the joint representation of Dawson. Moreover, Dawson testified that he was not notified of the fee division, and assumed that Johnson was receiving the entire fee. Respondent's argument that Dawson was aware that respondent's firm was not working "for free" does not constitute the notice required under the RPC. There is, thus, no evidence that Dawson approved the fee division contemporaneous with, or subsequent to, the execution of the fee agreement. Respondent, thus, violated RPC 1.5(e).

Next, RPC 5.1 states that:

> (a) Every law firm . . . authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.
>
> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
>
> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
>
> (1) the lawyer orders or ratifies the conduct involved; or
>
> (2) the lawyer having direct supervisory authority over the other lawyer knows of the

> conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Respondent concedes that he ratified his law firm's arrangement with Johnson to serve as the primary attorney in Dawson's matter. Moreover, during the ethics hearing, he acknowledged that he had a duty to supervise Johnson. The crux of the analysis, however, is whether the presenter proved, by clear and convincing evidence, that Johnson's representation of Dawson constituted the unauthorized practice of law in New Jersey. Respondent argues that the presenter did not meet that burden, since Johnson's representation of Dawson was shielded by the pro hac vice "safe harbor" provision, set forth under RPC 5.5(b)(1).

On the one hand, certain facts cut against respondent's position regarding that "safe harbor." Specifically, respondent and Johnson testified that their strategy for Dawson's matter, from the outset of the representation, was to seek to settle, rather than litigate, with Wells Fargo. Moreover, during his testimony, respondent conceded that he was wholly unfamiliar with the Court Rule and procedures for pro hac vice admission, had never been involved in a pro hac vice admission, and had made no effort to research the process.

On the other hand, other facts in the record support a finding that Johnson's representation of Dawson fell squarely within that "safe harbor" protection. It is undisputed that, at the beginning of the representation, both respondent and Johnson informed Dawson that, if the matter proceeded to litigation, Johnson would be required to seek pro hac vice admission. During her testimony, Johnson emphasized her twenty years of practice as an attorney, her completion of CLE courses relevant to loan modifications and foreclosures, her research of the underlying issues, and her litigation experience in behalf of clients and in her own foreclosure matters. Moreover, there is no evidence, despite the DEC hearing panel's speculative conclusion, that Johnson would have been denied pro hac vice admission, under the Court Rule, due to a lack of expertise, especially if Dawson had still desired her representation and she was associated with a qualified New Jersey attorney.

For these reasons, we conclude that there is insufficient evidence to determine that Johnson was engaged in the unauthorized practice of law. We, thus, dismiss the allegations that respondent violated RPC 5.1(a)-(c) and RPC 5.5(a)(2), as the presenter's theory of the case requires, as an element, that Johnson was engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1).

We find, however, clear and convincing evidence that respondent violated RPC 5.3(a) and (b) in respect of Chen's work, while she was in the employ of Johnson, in connection with Dawson's matter. Respondent had a duty to supervise Johnson. By direct extension of his responsibility to supervise Johnson, he was duty-bound to supervise Chen. He failed to do so, resulting in Chen's production of a draft complaint that, by Johnson's admission, contained blatant errors and needed substantial revision. Dawson testified that Johnson went so far as to call Chen's work product "worthless." Respondent, thus, violated RPC 5.3(a) and (b).

Given the above analysis, we dismiss the allegation that respondent violated RPC 8.4(a). It has been our practice to not sustain violations of RPC 8.4(a) unless it is proven that a respondent either attempted to violate the RPCs, or knowingly assisted another in doing so. The facts in this case support neither theory.

In sum, we find that, in one client matter, respondent violated RPC 1.5(e) and RPC 5.3(a) and (b). We dismiss the charges that respondent violated RPC 1.1(a), RPC 1.3, RPC 5.1(a)-(c), RPC 5.5(a)(2), RPC 7.1(a), and RPC 8.4(a).

In improper division of legal fees cases, admonitions have been imposed where one instance of improper fee-splitting occurred. See, e.g., In the Matter

of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney entered into a disproportionate fee-sharing arrangement with another attorney and failed to obtain the client's consent to the representation; the attorney also was guilty of gross neglect) and In the Matter of Ellan A. Heit, DRB 04-138 (May 24, 2004) (the attorney shared a fee with the referring lawyer, who had performed no services; the attorney was also guilty of violating RPC 7.1(a) and RPC 7.5(a) by not listing her full name and address at the top of her retainer agreement).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a censure, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and

stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds via thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies); and In re Key, 220 N.J. 31 (2014) (censure for attorney who failed to ensure that his nonlawyer employees recorded the attorney's time spent on client matters, a violation of RPC 5.3; the attorney also violated RPC 3.1 when, while his appeal from an adverse fee arbitration award was pending, he filed an answer to his clients' civil complaint seeking to enforce the award and asserted a counterclaim for the purpose of relitigating the reasonableness of his fee; the attorney knew that the court was without jurisdiction while the fee appeal was pending and, further, that he was barred from relitigating the fee arbitration panel's determination; in addition, after we dismissed his appeal from the fee award, he did not withdraw his counterclaim; the attorney also

failed to record expenses and costs incurred on behalf of his clients, a violation of RPC 1.15(d); two prior admonitions and a reprimand for recordkeeping violations).

Here, respondent improperly divided fees with Johnson. When respondent's failure to adequately supervise Chen is added to the calculus, a reprimand becomes the adequate sanction for respondent's misconduct.

In respect of aggravation, this matter constitutes respondent's fourth occurrence of discipline for ethics violations. However, the prior three instances of discipline are remote, dating back to 1998 (two admonitions) and 2007 (a reprimand), and resulted from misconduct dissimilar from the RPCs in this case. It cannot, thus, be said that respondent has failed to learn from his past mistakes, and that progressive, enhanced discipline is warranted. Moreover, in mitigation, respondent voluntarily disgorged the entire fee to Dawson, and has engaged in the practice of law for approximately forty-five years. According to his numerous character witnesses, that practice has been meaningful and centered on affordable and effective service to his clients. Finally, respondent enjoys a positive reputation as both an attorney and member of his community. Therefore, we determine to impose a reprimand for respondent's misconduct.

Members Gallipoli and 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 Seymour M. Wasserstrum
Docket No. DRB 18-411

Argued: February 21, 2019

Decided: July 29, 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:	7	0	2

Ellen A. Brodsky
Chief Counsel