DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 292-1011

REDACTED - August 22, 2019
April 25, 2017

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Peter A. Allegra
Docket No. DRB 17-053
District Docket No. XIV-2014-0097E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.7(a)(2) (engaging in a conflict of interest) and RPC 1.8(a) (entering into a prohibited business transaction with a client).

Specifically, on June 20, 2002, grievant, T.P., retained respondent's firm to represent her in a divorce action in Monmouth County. Both T.P. and respondent signed a fee agreement for that retention. At their initial meeting, T.P. indicated that she also wanted to apply for citizenship for the United States. T.P., a lawful permanent resident for the prior three years, married to a

United States citizen, was under the impression that she was immediately eligible to apply for citizenship.[1]

On June 28, 2002, respondent filed a Freedom of Information Act (FOIA) request with the Immigration and Naturalization Service (INS) on behalf of T.P., on firm letterhead, seeking a copy of her immigration file, which contained information necessary for T.P. to apply for citizenship. Soon thereafter, respondent assigned his associate, Elizabeth Loud-Hayward, Esq., to handle T.P.'s divorce action. Respondent, however, continued to assist T.P. with her citizenship matter.

Respondent continued to communicate with INS through September 1, 2002, when he finally received copies of T.P.'s immigration file. He provided those documents to T.P., who then filed an application for citizenship pro se.

On January 17, 2003, Loud-Hayward filed a complaint for divorce on behalf of T.P., which indicated that the parties were living in separate households. On September 25, 2003, while T.P.'s application for citizenship was pending, Loud-Hayward negotiated a Property Settlement Agreement on behalf of T.P. At the time of the settlement, T.P. had been a lawful permanent resident for four years, and still believed she was eligible for citizenship. Once T.P. became divorced, however, she was no longer eligible for citizenship, because she had not been a lawful permanent resident for at least five years.

Indeed, T.P. had earlier expressed her concern to respondent that, if a Final Judgment of Divorce were entered prior to her citizenship hearing, her application would be denied. Respondent, however, led T.P. to believe that her citizenship application could still be granted. Neither respondent nor Loud-Hayward advised T.P. that, because she and her husband were living in separate households, she was no longer eligible for citizenship based on her marriage. Further, respondent did not instruct Loud-Hayward to postpone the entry of the Final Judgment of Divorce until after T.P.'s citizenship hearing.

On October 23, 2003, T.P.'s Final Judgment of Divorce was entered. Soon thereafter, respondent appeared with T.P. at her citizenship hearing. Her application was denied, however, because she was no longer married to a United States citizen and had not

[1] While not mentioned in the stipulated facts, the OAE notes in its analysis that respondent later waived payments for his legal services, which "functionally created a pro bono representation."

been a lawful permanent resident for at least five years. As a result, T.P. would be required to wait additional time before reapplying for citizenship.

On the day of the hearing, T.P. and respondent met at his office and drove together to the hearing in Newark, New Jersey. Because of the denial of her citizenship application, T.P. was emotionally distraught. After the hearing, T.P. and respondent went to a restaurant in New York. Afterward, they returned to respondent's office after normal business hours. While they were alone in the office, respondent and T.P. engaged in sexual relations. Although respondent and T.P. disagree on the circumstances under which the initial sexual contact was made, both agree that they had sexual relations on the evening of the hearing.

Respondent admitted that, at a time of emotional turmoil for her, he began a sexual relationship with his client, T.P. By all accounts, this relationship was consensual. Nonetheless, this conduct violated RPC 1.7(a)(2) because T.P. was emotionally vulnerable at the time. As her counsel, respondent should have exercised better judgment.

More than one year later, in February 2005, T.P. applied for a Small Business Loan (SBL) from Commerce Bank. Respondent represented T.P. in connection with that application. In addition, beginning in March and continuing through June 2005, respondent represented T.P. in the negotiation of a commercial lease. During the course of that representation, between April 30 and July 18, 2005, respondent borrowed a total of $17,500 from her.

Specifically, between April 26, 2005 and July 18, 2005, T.P. authorized four wire transfers in varying amounts, from her corporate business account, into respondent's Buffalo Creek Ranch, Inc., checking account. In each instance, within a few days, and, on one occasion, on the same day, respondent repaid the loans by issuing a check either from his Buffalo Creek account or from a personal checking account he held jointly with his wife, and then signed T.P.'s name to the checks and deposited them into her corporate business account.

Respondent failed to provide T.P. with a writing fully disclosing the terms of the loans; failed to advise T.P., in writing, of the desirability of seeking independent advice regarding the loans and their terms; and failed to obtain T.P.'s written, signed consent for the loans. Hence, he entered into a

prohibited business transaction with his client by taking several small loans from her totaling $17,500; a violation of RPC 1.8(a).

Although it is not per se unethical for an attorney to enter into a sexual relationship with a client, the relative positions of the parties must be scrutinized to determine whether the relationship was prohibited. Violations based on such conduct generally have been found in cases where the attorney was appointed to represent an indigent client and/or a client who was emotionally distraught, or who suffered from mental health issues. See In re Liebowitz, 104 N.J. 175 (1985) (attorney reprimanded for his attempt to have a sexual relationship with an assigned client; the Court concluded that the client could reasonably infer that a failure to accede to the attorney's desires would adversely impact on her legal representation, thereby creating an "inherent element of coercion" and, further, that the attorney had engaged in "opportunistic misconduct" toward his pro bono client); In re Rea, 128 N.J. 544 (1992) (attorney reprimanded for having or attempting to have a sexual relationship with an assigned client, who also struggled with psychological problems; the attorney and the client offered different versions of the encounter, the client maintaining that she had refused the attorney's sexual advances even in the face of the attorney's threat to "frustrate" her case and the attorney maintaining that the client willingly entered into sexual relations with him; the Board determined that, under either version, the attorney "should have exercised more sound judgment, knowing that he was in a relationship with an assigned client who had a history of mental health problems, and who may well have felt that a failure to accede to his sexual advances would have an adverse effect on her legal matters"); In re Warren, 214 N.J. 1 (2013) (attorney reprimanded for having sexual relations with an assigned client, whom he knew was involved in a custody dispute with her former husband, was undergoing methadone withdrawal, and had attempted suicide a year earlier); and In re Resnick, 219 N.J. 620 (2013) (attorney reprimanded for an improper sexual relationship with a client he had initially represented, pro bono, after referral from the Jersey Battered Women's Shelter; later, he represented her, for a fee, in connection with her divorce from her alleged abuser; during the pendency of her divorce proceedings, the attorney informed the client that he desired a personal relationship with her; days earlier, the attorney had told the client that she "couldn't afford her divorce" and, in conjunction with his romantic overtures, offered to refund his $5,500 retainer; they subsequently engaged in a consensual sexual relationship, which ended acrimoniously; the attorney later

withdrew from the representation, via an ex parte proceeding; the Board found that the attorney had become sexually involved with his client knowing, due to the prior pro bono representation, that she had fled an abusive relationship and that he, therefore, knew that she was emotionally vulnerable to his advances; under the circumstances, the Board determined that the client "felt pressure to yield to [the attorney's] romantic advances," and that, thus, the attorney had engaged in an impermissible conflict of interest, among other ethics infractions, including the improper ex parte termination of representation). But see In the Matter of Peter Ouda, (DRB 13-124) (October 25, 2013) (admonition for attorney who engaged in a brief sexual relationship with his client six months after the representation began; there was no clear and convincing evidence that the client had not consented to the relationship or was so emotionally vulnerable that she was unable to freely consent to it; the attorney, however, should have terminated the representation after the sexual relationship ended because of the significant risk that the attorney's representation might have been materially limited by his personal interest, in violation of RPC 1.7(a)(2); the imposition of only an admonition, instead of stronger discipline, was based on the attorney's lack of prior discipline in twenty-three years at the bar and the absence of adverse effects on the client's case).

Here, respondent did not engage in a sexual relationship with an appointed client; hence, unlike the attorneys in the above cases, he was not in a superior role vis-à-vis his client. T.P., however, was in an emotionally vulnerable state in that her citizenship application had been denied, in part, because respondent's firm made certain mistakes in handling the application in conjunction with her divorce. Thus, his conduct clearly violated RPC 1.7(a)(2).[2]

Respondent also admitted that he received several loans, totaling $17,500, from T.P. When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g.; In the Matter of David M. Beckerman, DRB 14-118 (July 22,

[2] The Board rejected the OAE's assertion that, because respondent waived his fee, he represented T.P. on a pro bono basis, and, therefore, his client was akin to those clients who are represented by assigned counsel. Those cases are distinguishable because the clients could reasonably believe that their failure to yield to the attorneys' advances could affect their representation. Here, there was no such risk.

2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he loaned the client $16,000, in monthly increments of $1,000, to enable him to comply with the terms of a pendente lite order for spousal support; to secure repayment for the loan, the attorney obtained a note and mortgage from the client on his share of the marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney violated RPC 1.8(a)); and In the Matter of April Leslie Katz, DRB 06-190 (admonition for attorney who solicited and received a $1,500 loan from a client while representing him in a matrimonial matter without first advising the client of the desirability of seeking counsel, giving him a reasonable opportunity to seek the advice of counsel, and obtaining his consent in writing; a violation of 1.8(a); in mitigation, the Board considered that, at the time of the loan, the purpose of the representation had been largely fulfilled, no new representation was undertaken and the loan, which was repaid, was small).

The existence of aggravating factors, or additional ethics infractions, however, often results in the imposition of greater discipline. See, e.g., In re Futterweit, 217 N.J. 362 (2014) (reprimand imposed on attorney who agreed to share in the profits of his client's business, in lieu of legal fees, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction; violation of RPC 1.8(a); in aggravation, the Board noted that the attorney had given inconsistent statements to the district ethics committee, that he had received an admonition for failure to communicate with a client, and that he had never acknowledged any wrongdoing or showed remorse for his conduct); and In re Moeller, 201 N.J. 11 (2009) (three-month suspension for attorney who borrowed $3,000 from a client without observing the safeguards of RPC 1.8(a); aggravating factors were the attorney's failure to take reasonable steps to protect his client when he withdrew from the matter and his disciplinary record, consisting of a one-year suspension and a reprimand).

In mitigation, respondent has expressed remorse for his conduct, which was aberrational. He readily admitted wrongdoing, stipulated to the facts, and consented to discipline. He also promptly repaid all loans he received from T.P.; thus, she incurred

no economic injury. Finally, respondent has no history of discipline in thirty-seven years at the bar.

On its own, in light of the mitigating factors, the discipline for respondent's relationship with his client would likely be on the cusp between an admonition and a reprimand. Respondent, however, also entered into an improper business transaction with his client. Therefore, the Board determined that a reprimand was warranted.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 31, 2017.
2. Stipulation of discipline by consent, dated January 25, 2017.
3. Affidavit of consent, dated January 10, 2017.
4. Ethics history, dated April 25, 2017.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

EAB/alc
c: Bonnie C. Frost, Chair
Disciplinary Review Board (via e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (via e-mail)
Christina Blunda Kennedy, Assistant Ethics Counsel
Office of Attorney Ethics (via e-mail)
Adam J. Adrignolo, Esq., Counsel for Respondent (via e-mail)
T.P., Grievant