Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-352
District Docket No. XIV-2018-0177E

In the Matter of Benjamin G. Schneider An Attorney at Law	:

Decision

Argued: February 20, 2020

Decided: June 4, 2020

Ryan J. Moriarty appeared on behalf of the Office of Attorney Ethics.

Lee A. Gronikowski 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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having

violated RPC 1.8(a) (improper business transaction with a client), RPC 1.15(a) (commingling), and RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6).

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

Respondent was admitted to the New Jersey bar in 1984, and has no prior discipline. At the relevant times, he maintained an office for the practice of law in Washington Township, Warren County, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated September 4, 2019, which sets forth the following facts in support of respondent's admitted ethics violations.

On November 13, 2017, the OAE conducted a random audit of respondent's financial records and discovered improper business transactions with a client, as well as numerous recordkeeping deficiencies. All the improper business transactions involved respondent's client Michael Danza.

Specifically, respondent represented Danza in a real estate purchase in Phillipsburg, New Jersey. Danza provided respondent with a $1,000 deposit for the transaction, which respondent deposited in his attorney trust account (ATA). On June 11, 2012, respondent sent a letter to Danza and his wife, Linda Danza, via e-mail, confirming an agreement whereby they consented to loan respondent

the $1,000, due to his "strained circumstances." The agreement further provided that respondent would transfer the $1,000 to his attorney business account (ABA), and that the Danzas would sign respondent's letter, evidencing their agreement to the loan, and return it to respondent, which they did. The purpose of the loan was for "general carrying costs of the practice and personal costs; rent, utilities, groceries and the like." Respondent, however, failed to inform Danza, in writing, of the material terms of the business transaction, or to advise Danza to consult independent counsel concerning the transaction, in violation of RPC 1.8(a). On January 9, 2013, respondent fully repaid the loan.

Next, on December 12, 2014, respondent, acting as the lender, executed a mortgage and note for Danza, as the borrower, for property located in Hackettstown, New Jersey. The principal balance of the loan was $9,916, at a 10% interest rate, with a monthly payment of $106.56. Again, respondent failed to inform Danza, in writing, to consult independent counsel concerning the transaction, in violation of RPC 1.8(a).

Then, on October 2, 2017, respondent sent a letter to Danza, confirming that Danza had agreed to lend respondent $3,000. The letter further provided that respondent could repay this $3,000 loan through a $3,000 reduction of the principal on the 2014 mortgage loan that respondent had provided to Danza.

Respondent failed to notify Danza, in writing, of the material terms of the business transaction, or to advise Danza to consult independent counsel concerning the transaction, in violation of RPC 1.8(a).

Moreover, during the October 24, 2018 demand audit and interview that arose from the November 13, 2017 random audit, respondent disclosed to the OAE that, in 1999, he had formed PALS, LLC, (PALS) with Danza and two other individuals, whereby each member had a 25% interest. Respondent served as the managing member and registered agent of PALS, the purpose of which was to purchase and sell real estate. On November 18, 1999, PALS purchased a property in Phillipsburg, New Jersey. The property was sold on May 12, 2003, and PALS was dissolved the same year. The Phillipsburg property was the only property PALS ever purchased. Respondent told the OAE that he believed that the members of PALS had reviewed the operating agreement and by-laws for the company, but he admitted that he had failed to advise Danza to consult independent counsel concerning the transaction, in violation of RPC 1.8(a).

Further, respondent stipulated to having committed the following recordkeeping violations:

> a. No monthly three-way ATA reconciliations, in violation of R. 1:21-6(c)(1)(H);

b. No ATA receipts and disbursement[s] journals, in violation of R. 1:21-6(c)(1)(A);

c. Personal funds of $616.96 were maintained in Respondent's ATA, in excess of the amount authorized to cover bank charges, in violation of RPC 1.15(a);

d. Inactive balances maintained in Respondent's ATA as follows, in violation of R. 1:21-6(d):

Client Matter	Last Activity	Amount
Moore/Ferdinand	October 28, 2016	$60.00
Lockard/Greenwald	October 28, 2016	$100.10
Pennisi/KAJA	May 14, 2016	$35.00
Ramesh Damodarant	December 23, 2015	$8.20

e. Unidentified funds of $64,341.36 remained in Respondent's ATA, in violation of R. 1:21-6(d);

f. An old, outstanding check remained in Respondent's ATA, in violation of R. 1:21-6(d):

Check #	Date Issued	Payee	Amount
3798	May 14, 2016	John Pennisi	$100.00

g. Respondent failed to timely remove the following earned legal fees from his ATA, therefore, commingling $2,034.95 of personal funds in his ATA, in violation of RPC 1.15(a);

Client Matter	Last Activity	Amount
Ramesh Damodarant	December 7, 2015	$725.00
Dave & Pandya	December 22, 2015	$709.95
Hess/Gill	February 17, 2016	$600.00

h. The designation on Respondent's ABA was improper, in violation of R. 1:21-6(a)(2);

i. The designation on Respondent's ATA was improper, in violation of R. 1:21-6(a)(2); and

j. Cancelled ABA checks were improperly imaged, in violation of R. 1:21-6(b).

The OAE and respondent stipulated that, in aggravation, his misconduct involved multiple transactions. The parties further stipulated that, in mitigation, respondent has no prior discipline in thirty-five years at the bar; he admitted his misconduct; he revealed a "remote in time" additional business transaction of which the OAE had been unaware (PALS, LLC); he corrected the recordkeeping deficiencies and is currently in compliance with the relevant Rules; and Danza suffered no injury as a result of respondent's conduct.

The OAE asserted that, although an admonition is appropriate where there is only one improper business transaction between an attorney and client, a reprimand is warranted in this matter, due to the number and varying types of

business transactions between respondent and Danza, plus respondent's commingling and violation of the recordkeeping rules.

On January 13, 2020, respondent submitted a letter brief to us, through counsel, in which he asserted that the $1,000 loan was "a friend helping out a friend," and that respondent would have received a "mystified look" if he had suggested that Danza consult separate counsel to review the transaction. Respondent also maintained that the mortgage loan transaction also was between friends, initiated by Danza, and respondent's motive was not financial, but to help his friend. Respondent further contended that none of the members of PALS had questions or concerns about the operating agreement. Respondent noted that he is now in compliance with the recordkeeping rules. Respondent disputed the use of the word "multiple" to characterize the number of transactions, despite having stipulated to that fact, and maintained that an admonition, not a reprimand, is the appropriate level of discipline for his misconduct.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.8(a), RPC 1.15(a), and RPC 1.15(d).

Specifically, respondent violated RPC 1.8(a) in all four business transactions with Danza by failing to advise his client to consult independent

counsel concerning the transactions. Consequently, we need not address whether the transaction terms were fair and reasonable (RPC 1.8(a)(1)) or whether Danza gave respondent his informed consent (RPC 1.8(a)(3)). Next, respondent violated RPC 1.15(a) by commingling $616.96 in personal funds in his ATA, an amount in excess of authorized bank fees, and by failing to withdraw from his ATA $2,034.95 in earned legal fees. Finally, respondent stipulated to having committed numerous recordkeeping infractions, as detailed above, in violation of RPC 1.15(d).

In sum, we find that respondent committed multiple violations of RPC 1.8(a), RPC 1.15(a), and RPC 1.15(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

When an attorney enters into a loan transaction with a client without observing the safeguards of RPC 1.8(a), the ordinary measure of discipline is an admonition. See, e.g., In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (during the course of the attorney's representation of a financially-strapped client in a matrimonial matter, he lent the client $16,000, in monthly increments of $1,000, to enable him to comply with the terms of a pendente lite order for spousal support; further, to secure repayment for the loan, the attorney obtained an impermissible mortgage from the client on his share of the marital

home; the attorney also paid for the replacement of a broken furnace in the client's marital home; by failing to advise the client to consult with independent counsel, failing to provide the client with written disclosure of the terms of the transactions, and failing to obtain his informed written consent to the transactions and to the attorney's role in them, the attorney violated RPC 1.8(a); by providing financial assistance to the client, he violated RPC 1.8(e)) and In the Matter of John W. Hargrave, DRB 12-227 (October 25, 2012) (attorney obtained from his clients a promissory note in his favor, in the amount of $137,000, representing the amount of legal fees owed to him, and secured the payment by a mortgage on the clients' house; the attorney did not advise his clients to consult independent counsel before they signed the promissory note and mortgage in his favor).

Discipline greater than an admonition has been imposed when a loan (or loans) involves a significant amount of money, when the attorney engages in multiple improper transactions with the client, when the attorney is guilty of additional ethics infractions, or when aggravating factors are present. See, e.g., In re Rajan, 237 N.J. 434 (2019) (reprimand imposed on attorney who, while representing his client in a hotel development project, introduced the client to two other clients who agreed to fund fifty percent of the project; when the client

could not fund his fifty-percent share, a holding company formed by the attorney, his brother, and his brother-in-law lent $450,000 ($350,000 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client's interest, and became potentially adverse to the interest of his other clients; the attorney neither advised his clients to consult independent counsel, nor obtained their informed, written consent in respect of the loan transaction; the attorney also represented the client in the real estate transaction and received $32,500 in legal fees; violations of RPC 1.7(a) and RPC 1.8(a); despite the attorney's unblemished disciplinary record, the absence of harm to the client, his acceptance of responsibility, and his expression of remorse, we imposed a reprimand; the attorney's prior service as a member of a district ethics committee was considered in both aggravation and in mitigation); and In re Amato, 231 N.J. 167 (2017) (reprimand imposed on attorney who made three loans, totaling more than $528,000, to his client, and entered into a business transaction involving a currency transaction, all in violation of RPC 1.8(a); despite the attorney's lack of a disciplinary record, his admission of wrongdoing, and the lack of harm to the client, he received a reprimand, given the large amount of money involved).

Here, respondent also is guilty of commingling and recordkeeping violations. Generally, admonitions have been imposed on attorneys who engage in commingling and fail to comply with recordkeeping requirements. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011).

Respondent's misconduct involved four business transactions with the same client: two loans, one mortgage, and one business venture. In light of the presence of numerous improper business transactions with a client, plus respondent's additional commingling and recordkeeping infractions, we find that a reprimand is the baseline discipline warranted.

Finally, we consider the aggravating and mitigating factors set forth in the stipulation. This case presents no aggravating factors. In mitigation, respondent has no ethics history in thirty-five years at the bar; he admitted his misconduct and revealed an additional unknown business transaction to the OAE; he rectified the recordkeeping deficiencies and is now in compliance with the Rules; and Danza suffered no injury.

On balance, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph and Petrou 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, Chair

By: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Benjamin G. Schneider
Docket No. DRB 19-352

Argued: February 20, 2020

Decided: June 4, 2020

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli			X
Boyer	X		
Hoberman	X		
Joseph			X
Petrou			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	0	3

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel