

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted having committed multiple violations of RPC 1.8(a) (improper business transaction with a client).

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

Respondent earned admission to the New Jersey bar in 1972. He maintains an office for the practice of law in Vernon, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated November 28, 2019, which sets forth the following facts in support of respondent's admitted ethics violations.

Gordon Hampton, the grievant, and his wife, Mary Hampton, made multiple loans to respondent while respondent served as their attorney.² Respondent failed to fully repay those loans. Over a forty-year period, until 2014, respondent had represented Gordon in ten to twelve matters and, during that time, the Hamptons and respondent became friends.

² The stipulation acknowledges an attorney-client relationship only between Gordon Hampton and respondent. The underlying grievance, however, indicates that respondent had represented both Gordon and Mary Hampton.

In July 2006, respondent was experiencing difficulty meeting his law firm expenses, and Gordon offered him a short-term, \$10,000 loan. In mid-July 11, 2006, respondent prepared a promissory note, requiring repayment of the loan by September 1, 2006, and accepted the money. He failed to advise the Hamptons, in writing, to consult an independent attorney of their choosing, and failed to obtain their signed, informed consent to the terms of the transaction and to his role in the transaction, as RPC 1.8(a) requires. On September 22, 2006, respondent repaid the Hamptons, and the promissory note for the first loan was voided.

In February 2008, respondent again was experiencing financial difficulties, this time arising from a divorce. He sought a second loan from the Hamptons, in the amount of \$50,000, with a repayment date of August 1, 2008, and an interest rate of six percent per annum. As security for the loan, respondent prepared both a promissory note and a mortgage on his personal residence. The Hamptons proceeded with the second loan to respondent, who again failed to advise them, in writing, to consult an independent attorney of their choosing, and failed to obtain their signed, informed consent to the terms of the transaction and respondent's role in the transaction. Respondent failed to repay the loan by the August 1, 2008 due date.

Nevertheless, in October 2008, the Hamptons loaned respondent an additional \$15,000. By letter dated October 10, 2008, respondent acknowledged the loan and provided another promissory note to the Hamptons, with a due date of October 10, 2009, an interest rate of six percent per annum, and a thirty-day repayment grace period. For a third time, respondent failed to advise the Hamptons, in writing, to consult an independent attorney of their choosing, and failed to obtain their signed, informed consent to the terms of the transaction and to his role in the transaction. Respondent failed to repay the loan by the due date.

By letter dated September 18, 2012, the Hamptons asked respondent to provide a status update, within seven days, regarding the outstanding loan amounts. On September 21, 2012, Pamela Lutz, respondent's employee, informed the Hamptons that respondent would call them in the next few days to discuss his debt. On September 28, 2012, respondent called the Hamptons, informing them that he would call again, in a few days, to discuss the debt. On October 2, 2012, respondent told the Hamptons that Lutz would deliver a first installment payment of \$10,000 toward the debt. Thereafter, the Hamptons received \$10,000 in cash from Lutz, in respondent's law office parking lot.

In October 2012, a party not identified in the record promised the Hamptons that respondent would begin to make monthly payments on the loans; however, respondent failed to do so. He had intended to draw from his Social Security benefits to fund the installment payments, but was unable to do so, because of his overwhelming debt. On December 10, 2013, however, respondent made a second, and last, \$10,000 payment to the Hamptons. Despite continuing to perform legal work for Gordon in 2014, respondent failed to make additional payments toward the remaining \$45,000 debt.

By letter dated September 22, 2016, R. Alan Karch, Esq., in behalf of the Hamptons, requested respondent to provide a repayment plan for the outstanding debt. Respondent failed to reply to Karch's letter. Almost two years later, by letter dated June 11, 2018, Gordon complained to respondent that he had tried multiple times to speak with respondent, who refused to answer. Gordon wrote "I thought you were my friend and lawyer, you of all people know how hard I worked to get that money, that I loaned you. I do not know why you have turned your back on me . . . I now ask you to pay back the loan." Gordon added that he did not want to create legal problems for respondent, but, cautioned that, unless respondent answered the letter within ten days, Gordon would be forced to "do

something I don't want to do." On July 2, 2018, Gordon filed the ethics grievance underlying this matter.

Based on the above facts, the OAE recommended that respondent receive a reprimand, citing respondent's failure to comply with RPC 1.8(a) in the three loan transactions, and emphasizing the financial harm caused to the Hamptons by respondent's failure to repay \$45,000 of the debt.

In a March 23, 2020 brief, respondent's counsel stated that respondent agreed with the OAE's recommendation and requested that we impose discipline no greater than a reprimand. In support of mitigation, respondent asserted that he had requested the loans from the Hamptons while he was experiencing both professional and personal difficulties. In 2006, respondent requested the initial \$10,000, because he had financial difficulties with his solo law practice. Respondent claimed that, during this time, his wife was suffering from serious personal issues, leading to a divorce, which was both costly and lengthy. Respondent was forced to expend a significant portion of his savings and to sell his car. Due to these pressures, he considered closing his law practice. Instead, he requested the \$50,000 loan from the Hamptons. To ensure repayment, respondent prepared the mortgage on his residence, which he claimed remains as a lien on the property. Although he admitted that the Hamptons have not been

repaid, he asserted that his residence has sufficient equity to satisfy the loans. Respondent did not provide any further context for his solicitation of the third loan, for \$15,000, from the Hamptons.

Respondent also emphasized that he accepted responsibility for his misconduct; was remorseful for the harm he caused his client; had no prior discipline in his nearly forty-eight years as a member of the New Jersey bar; cooperated with the OAE; had served the nation as an honorably discharged United States Marine; and had served his community and his church, resulting in multiple honors. Respondent also offered that he served, for twelve years, as a municipal court judge; had spent more than twenty years as a chief legal officer in the Episcopal Church for the Diocese of Newark; had held multiple other positions in his church; and had represented bishops and priests in high profile matters.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed multiple violations of RPC 1.8(a). Specifically, in all three loan transactions with the Hamptons, he failed to advise them, in writing, to consult an independent attorney of their choosing, and failed to obtain their signed,

informed consent to the terms of the transaction and to his role in the transaction, as that Rule requires.

The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

When an attorney borrows money from a client without observing the safeguards of RPC 1.8(a), the discipline has ranged from an admonition to a term of suspension, depending on the existence of other factors, such as additional ethics violations; demonstrable harm to the client; the vulnerability of the client; or the attorney's prior discipline. See, e.g., In the Matter of April Katz, DRB 06-190 (October 5, 2006) (admonition for attorney who solicited and received a \$1,500 loan from a matrimonial client without observing the requirements of RPC 1.8(a); in mitigation, the attorney repaid the loan and had no prior discipline in thirteen years at the bar); In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (admonition for attorney who borrowed \$30,000 from a client to satisfy a gambling debt without observing the requirements of RPC 1.8(a); in mitigation, the attorney had no prior discipline in thirty-five years at the bar); In re Allegra, 229 N.J. 227 (2017) (reprimand for attorney who borrowed \$17,500 from a client without observing the requirements of RPC 1.8(a); the attorney also engaged in an inappropriate sexual relationship with the

client, in violation of RPC 1.7(a); in mitigation, the attorney consented to discipline and had an otherwise unblemished attorney disciplinary record of more than thirty-seven years); In re Cipriano, 195 N.J. 188 (2008) (reprimand for attorney who borrowed \$735,000 from a client who was a friend for more than forty years, without regard to the requirements of RPC 1.8(a); he also negligently invaded \$49,000 of client funds as a result of poor recordkeeping practices; ethics history included two prior reprimands); 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), failed to memorialize the basis or rate of his fee, and failed to adequately communicate with the client; 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 (a one-year suspension and a reprimand)); In re Schultz, 241 N.J. 492 (2020) (six-month suspension for attorney who borrowed \$32,000 from a client, purportedly to be “worked off” through the provision of future legal services, without observing the requirements of RPC 1.8(a); the attorney additionally violated RPC 1.7(a) and, via his deceitful conduct during the disciplinary investigation and his filing of a dishonest claim for fees against the client’s estate, also violated RPC 8.1(a) and RPC 8.4(c); in mitigation, the attorney had one prior

admonition in more than forty years at the bar); In re Torre, 223 N.J. 538 (2015) (one-year suspension for attorney who borrowed \$89,259 from an elderly client he had known for many years, without complying with the strictures of RPC 1.8(a); in aggravation, the loan represented seventy percent of the client's life savings, the attorney repaid only a fraction of the loan during the client's lifetime, and he barely reimbursed her estate; in mitigation, the attorney had an otherwise unblemished disciplinary record at over thirty years at the bar).

Reprimands have been imposed when the loan involves a significant amount of money, when the attorney engages in multiple business transactions without the client's informed written consent, 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) (attorney, while representing his client in the purchase of a property that the client intended to develop into a hotel, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty-percent share, a holding company formed by the attorney and his brother and 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 and became potentially adverse to the other clients;

the attorney did not advise his clients to consult independent counsel, and he did not obtain their informed, written consent to 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, because he exercised such poor judgment; the attorney's prior service as a member of a district ethics committee was considered both in aggravation and in mitigation); In re Amato, 231 N.J. 167 (2017) (attorney 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); and In re Futterweit, 217 N.J. 362 (2014) (attorney, in lieu of legal fees, agreed to share in the profits of his client's business, 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, a violation of RPC 1.8(a); the attorney also violated RPC 1.5(b), by failing to provide the client with a writing setting forth the basis

or rate of his fee; in aggravation, we 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).

Here, because respondent engaged in multiple improper transactions with the Hamptons, for a significant amount of money, the baseline level of discipline for his violations is a reprimand. However, to craft the appropriate discipline in this case, we considered both mitigating and aggravating factors.

In respect of mitigation, this is respondent's first disciplinary matter in nearly forty-eight years as a member of the bar; he admitted his wrongdoing and accepted responsibility for his misconduct; he was remorseful for the harm he caused; and he has served his community and has a good reputation, as evidenced by his multiple honors. In aggravation, respondent's failure to repay \$45,000 caused significant financial harm to the Hamptons, his longtime clients and friends. Although an unblemished forty-eight-year legal career is compelling mitigation, in our view, it does not outweigh the harm to the clients.

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

Member Singer voted to impose an admonition, finding the mitigation discussed above to be substantial; finding this conduct to be aberrant behavior in a forty-eight-year unblemished legal career, occurring when respondent was going through a lengthy, costly divorce from a wife who was experiencing serious personal issues; and considering that he prepared an existing mortgage on his personal residence to provide security for repayment to his client.

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 Michael F. Rehill
Docket No. DRB 19-451

Decided: November 23, 2020

Disposition: Reprimand

<i>Members</i>	Reprimand	Admonition	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer		X		
Zmirich	X			
Total:	8	1	0	0

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel