Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-078
District Docket No. XIV-2018-0051E

In the Matter of	:
Jeannette A. Hoffman	:
An Attorney at Law	:

Decision

Argued: September 17, 2020

Decided: February 19, 2021

Christina Blunda appeared on behalf of the Office of Attorney Ethics.

Joseph R. Lang appeared on behalf of respondent.

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

This matter originally was before us on a recommendation for an admonition filed by the District IX Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4).

The formal ethics complaint charged respondent with having violated RPC 1.2(d) (counseling or assisting a client in illegal, criminal or fraudulent conduct); RPC 1.7(b) (now RPC 1.7(a)) (conflict of interest);[1] RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.3(a)(2) (failure to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act); RPC 3.3(a)(4) (offer of evidence that the lawyer knows to be false); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1977 and to the New York bar in 1972. During the relevant time frame, she maintained an office for the practice of law in Keyport, New Jersey. She has no prior discipline.

Respondent and the grievant, Kalliopi G. Makris, had an attorney-client relationship prior to November 2003, for which outstanding legal fees of $8,000 had accrued. On November 5, 2003, because Makris had been unable to pay

[1] Respondent's misconduct, which pre-dated the 2004 revisions to the New Jersey Rules of Professional Conduct, would constitute a violation of RPC 1.7(a) under the current Rules.

those fees, respondent prepared a residential mortgage (the Mortgage), in the principal amount of $8,000 and bearing an annual interest rate of five percent, secured by real estate (the Baron property) that Makris owned. The Mortgage, which named respondent lender and Makris borrower, became due and payable upon the sale of the Baron property. Respondent ultimately waived all accrued interest on her $8,000 fee.

Respondent admitted that she recorded the Mortgage as an $8,000 lien against the Baron property and, subsequently, recorded it as a junior lien against a second property where Makris lived (the Wedgewood property).[2] The Wedgewood property was encumbered by a first mortgage with GMAC. According to respondent, in November 2003, Makris was $18,513 in arrears on a mortgage held by Amboy National Bank (Amboy) on the Baron property, plus $3,006 in arrears for homeowner's association dues. Makris's son and his wife lived in that house.

Respondent then counseled Makris to consider filing a Chapter 13 bankruptcy, and Makris then retained respondent to proceed with the petition. On November 7, 2003, respondent prepared and electronically filed Makris's

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[2] In June 2017, Makris discovered that the lien remained of record for the Wedgewood property. In December 2017, she filed the grievance underlying this matter.

Chapter 13 petition and proposed repayment plan. Respondent charged Makris $1,000 for the filing, but testified that her customary fee for such a filing was $2,000 to $3,000.

Respondent failed to list the Mortgage in Schedule D of the petition, titled Creditors Holding Secured Claims, and failed to include the $8,000 principal sum owed in the calculation of Makris's total secured debt. Respondent's status as a secured creditor appeared neither in Makris's petition nor her reorganization plan, despite a category designated for a "Secured Creditor Unaffected by the Plan." Likewise, respondent did not list herself as an unsecured creditor in respect of any other unpaid legal fees. Makris's bankruptcy petition listed total assets of $508,650 and total liabilities of $219,906.

On November 7, 2003, Makris signed the Chapter 13 petition, under penalty of perjury, certifying that the bankruptcy summary and schedules were "true and correct to the best of [her] knowledge, information, and belief." There is no indication in the record that Makris was aware of, or understood the importance of, respondent's omissions. Makris passed away on an undisclosed date, prior to the ethics hearing.

Respondent testified that her failure to include the Mortgage in Makris's bankruptcy matter had not been to defraud the bankruptcy court:

> [n]o, I just -- it was an inadvertent omission. I didn't even think of it, because it was to squeeze out this little bit of money to pay back the mortgage arrears and they only give you five years, and if your budget is very, very tight – that was -- the only intention was not to lose the Baron Lane property. So I never even thought about my mortgage, 'cause if they stayed in the house for another 20 years, it would have just sat there, so I never intended to defraud anybody. I didn't even think about it as being a payment to me.
>
> [T33-T34.][3]

However, respondent also testified:

> [i]f I put my payments on my mortgage into that plan, they -- they wouldn't have been able to afford it; it was a stretch just paying the arrears. It was very tight. When I say 'they,' I mean Miss Makris and her son and daughter-in-law, because the son and daughter-in-law lived in [the Baron property] and she lived in [the Wedgewood property].
>
> [T33.]

On cross-examination, respondent acknowledged that, at the time of the representation, she was a seasoned attorney whose "forte" was bankruptcy law. She further testified that she knew she was a secured creditor when she filed the bankruptcy petition, a scant two days after obtaining a mortgage from her client, but claimed that she did not think of herself that day, because she "didn't have to get paid" in the Chapter 13 plan.

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[3] "T" refers to the transcript of the August 14, 2019 ethics hearing.

Seven months into Makris's repayment plan, by order effective June 16, 2004, the bankruptcy court granted Makris's motion to conduct a private sale of the Wedgewood property. On March 4, 2005, the sale was consummated, and respondent received $8,000 from the sale proceeds. That disbursement appeared on line 505 of the HUD-1 as "Payoff 2nd mtg. loan J. HOFFMAN."

At the closing, respondent received a second check, for $10,963.50, which represented legal fees earned in state court litigation to remove other, unrelated liens that had encumbered the Wedgewood property. According to respondent, that successful result also formed the basis for the bankruptcy court's approval of the sale. Respondent added that, by the terms of the Amboy mortgage, Makris was liable for more than $71,000 in legal fees and costs incurred in Amboy's defense of the state court litigation.

Inexplicably, the settlement agent for the Wedgewood sale, Robert A. Blanda, Esq., listed the $10,963.50 disbursement on line 514 of the HUD-1 as "PERSONAL LOAN TO J. HOFFMAN." The record, including the transcript of the ethics hearing, contains no explanation for this erroneous listing on the HUD-1 for respondent's additional legal fees.

Respondent testified that her omission of the Mortgage was not material to the bankruptcy matter, did not prejudice the debtor, and had no effect on the

administration of justice by the bankruptcy court. In support of that position, respondent represented that Makris's creditors were fully repaid under the Chapter 13 plan.

Respondent also presented a bankruptcy expert, Carol Knowlton, Esq., who testified that the mortgage "should have been listed on the petition, but – but it didn't change what the plan had to be." Moreover, Knowlton opined that respondent's omission had no negative impact on the bankruptcy, because the Wedgewood property had sufficient equity to pay all creditors in full.

Although the hearing panel report did not mention it, respondent presented a character witness, Sheila Bender, who testified about a fifty-year friendship with respondent which began when respondent was working her way through law school. Bender, a psychologist, described respondent as "intelligent, compassionate, [and of] the highest integrity." Respondent raised two sons, one of whom was present at the hearing, and, according to Bender, "they're a close family, five grandsons, all of whom are wonderful young people. And she and I, we just talk for hours about cases, I'm a psychologist and I'm always interested in ethical considerations. I've been on two panels."

The DEC found clear and convincing evidence that respondent violated RPC 1.7(b) and RPC 8.4(c). However, the panel determined to dismiss the

remaining allegations that respondent violated RPC 1.2(d) and RPC 3.3(a)(1), (2), (4), and (5), finding a lack of clear and convincing evidence to support those charges.

Specifically, the panel found that, by simultaneously acting as a creditor of and counsel for Makris, a bankruptcy debtor, respondent's own interests in the matter posed an inherent conflict vis-à-vis Makris's interests. The conflict should have been disclosed and perhaps waived by the client. However, respondent neither disclosed the conflict to Makris nor attempted to obtain her waiver of it. The panel found that respondent's actions violated RPC 1.7(a), as charged in the complaint.

The panel report further stated as follows:

> [w]e find Respondent's assertion that the omission of this mortgage, prepared a scant two days before the preparation and filing of the Chapter 13 Bankruptcy petition, was due to inadvertence or oversight not to be credible. That said, we do not conclude that the omission was intentionally fraudulent nor a 'material' fact which prejudiced [Makris's] interests or interfered with the administration of justice or misled the 'tribunal.' As such, we find no violation of RPC 1.2(d) nor RPCs 3.3(a)(1); (a)(2); (a)(4) and (a)(5).
>
> [HPR¶3.][4]

[4] "HPR" refers to the August 19, 2019 hearing panel report.

The DEC found that respondent's omission of the mortgage constituted a misrepresentation, and, thus, a violation of RPC 8.4(c).

The panel considered, in mitigation, the lack of injury to the client or prejudice to the administration of justice; the absence of personal gain as respondent's motive for her misconduct; the passage of sixteen years since the violation occurred; respondent's lack of prior discipline; and the isolated nature of the incident.

Based on the mitigation presented, the panel recommended an admonition for respondent's misconduct.

Following a de novo review of the record, we find that respondent is guilty of having violated RPC 1.7(a), RPC 3.3(a)(1), and RPC 8.4(c). We determine to dismiss the remaining charged RPC violations.

In November 2003, respondent prepared the Mortgage to secure $8,000 in legal fees that Makris owed her. Because Makris lacked the means to pay those fees, respondent recorded the Mortgage as a lien against Makris's two properties. Based on the significant equity in Makris's properties, respondent counseled Makris to consider filing a Chapter 13 bankruptcy. A mere two days after recording the Mortgage, respondent filed a Chapter 13 bankruptcy petition for Makris, but failed to include any reference to the Mortgage or respondent's

status as a secured creditor. Although the bankruptcy listed just two secured creditors, Amboy and GMAC, both of which held mortgages senior to respondent's own mortgage, respondent claimed that her omission had been inadvertent – a claim that the hearing panel found not credible.

On the bankruptcy filing date, Makris had almost $300,000 in equity in the Baron and Wedgewood properties. In June 2004, seven months after implementation of the repayment plan, respondent obtained bankruptcy court approval for Makris to sell the Wedgewood property. According to respondent and her expert, Knowlton, that sale, which took place in March 2005, made enough cash available for Makris to pay her creditors in full. Respondent's mortgage, a junior lien against the Wedgewood property, was among those liens paid in full from the proceeds of that sale.

The DEC correctly found that respondent engaged in a conflict of interest by preparing and recording the Mortgage, and by subsequently representing Makris as debtor's counsel, without Makris's written, informed consent. Pursuant to RPC 1.7(a), a lawyer shall not represent a client if the representation may be materially limited by the lawyer's own interests. Clearly, because respondent was both Makris's creditor and her bankruptcy counsel, the client's interests were materially limited by respondent's own interest in protecting her

security interest in the Baron and Wedgewood properties. Moreover, respondent made no efforts to seek Makris's informed, written consent to waive the conflict. Thus, respondent's actions violated RPC 1.7(a).

Respondent admitted in her answer that she failed to disclose to the Chapter 13 trustee, the bankruptcy court, and the other creditors her secured creditor status, the existence of the Mortgage, and the liens on the Baron and Wedgewood properties. Based on the circumstantial evidence and the timing of events, the panel rejected respondent's assertion that she had inadvertently omitted the Mortgage and her status as a creditor from Makris's bankruptcy filing and, thus, correctly concluded that her omission constituted a misrepresentation, in violation of RPC 8.4(c).

Contrary to respondent's assertion that her omission was not material, for the purposes of this disciplinary proceeding, the existence of the Mortgage, secured against Makris's two real estate parcels, and respondent's status as an unsecured creditor for unpaid legal fees, were material facts. Without them, the bankruptcy court and all others concerned lacked a complete picture of Makris's bankruptcy estate's assets and liabilities on the date of the bankruptcy filing. Respondent's failure to disclose her own financial interests in the debtor's properties was essential to that understanding. Moreover, respondent's omission

was not an oversight, but an intentional act. Respondent's intentional omission of that information constituted a false statement of material fact to a tribunal, in violation of RPC 3.3(a)(1). We dismiss the remaining RPC 3.3(a)(2), (4), and (5) charges, cited for the same misconduct, as duplicative.

With respect to the RPC 1.2(d) charge dismissed below, no evidence was adduced that respondent counseled or assisted Makris in respondent's improper acts. The only evidence in the record involving Makris's knowledge is respondent's testimony that she counseled Makris to consider filing a Chapter 13 petition. Without more, that was a proper act. For lack of clear and convincing evidence, we dismiss the RPC 1.2(d) charge.

When we first considered this matter, there was some question about respondent's mens rea when she omitted the Mortgage from the bankruptcy filings. Now, with the benefit of the transcript of the ethics hearing, it is clear: respondent's explanation for her actions, the rejected inadvertence claim, is meritless. Notably, when respondent was asked about her purpose in filing the bankruptcy, she explained that she needed "to squeeze out this little bit of money to pay back the mortgage arrears" because money was "very, very tight." Her purpose was to save the Baron property from foreclosure. However, respondent added that, if she had included payment for the Mortgage in Makris's Chapter

13 plan, "they wouldn't have been able to afford it; it was a stretch just paying the arrears. It was very tight." Thus, respondent, a seasoned bankruptcy practitioner, had determined not to include her own mortgage in the mix when she prepared the bankruptcy petition, just two days after securing that mortgage. Any doubt about respondent's mens rea has been settled.

When we first considered this matter, a separate question arose about the HUD-1 listing for a $10,963.50 disbursement to respondent for legal fees in the Benjamin Levine litigation. That disbursement appeared on the HUD-1 as "PERSONAL LOAN TO J. HOFFMAN." Unfortunately, the transcript of the ethics hearing sheds no new light on the reason for that odd terminology; it appears that the payment was for respondent's outstanding legal fees in the state court litigation. Because the OAE was fully aware of that disbursement and did not charge respondent with an ethics infraction for it, we make no finding with respect to this issue.

In sum, we find that respondent violated RPC 1.7(a), RPC 3.3(a)(1), and RPC 8.4(c). We determine to dismiss the additional charged violations of RPC 1.2(d), and RPC 3.3(a)(2), (4) and (5). There remains for determination the appropriate quantum of discipline to be imposed for her misconduct.

It is well settled that, absent egregious circumstances or serious economic injury, a reprimand is appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). However, in the case of an attorney who, like respondent, enters into a loan transaction with a client, without observing the safeguards of RPC 1.8(a)(1)-(3), 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; the payment by a mortgage on the clients' house; the attorney did not advise his clients to consult with independent counsel, before they signed the promissory note and mortgage in his favor).

Generally, lack of candor to a tribunal or a misrepresentation to a court, violations of RPC 3.3(a)(1) or RPC 8.4(c), results in the imposition of an admonition or a reprimand, so long as no other, egregious factors are present. See, e.g., In the Matter of George P. Helfrich Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; consequently, they were unavailable for trial, a violation of RPC 3.3(b) and RPC 3.4(c); at the next trial date, the attorney finally informed the court and his adversary that his client, the witnesses, and his own law firm were unaware that a trial had commenced, resulting in a mistrial; on the same day, the attorney informed his law firm of the offense; in aggravation, we found that, prior to the attorney's admission of wrongdoing, judicial resources had been wasted when the court impaneled a jury and commenced trial; in mitigation, we noted that

this was the attorney's first ethics infraction in his thirty-eight year legal career; he suffered from anxiety and high blood pressure at the time of his actions; the client suffered no pecuniary loss because the firm had reimbursed fees and costs; his law firm had demoted him from shareholder to hourly employee, resulting in significantly lower earnings; and he was remorseful and working hard to regain the trust of the court, his adversaries, and the members of his firm); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints she had filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); and In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, about the date the attorney learned of the dismissal of the complaint, a violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also lacked diligence, failed to properly communicate with the client, and failed to expedite litigation,; prior reprimand; in mitigation, we considered that the conduct in both matters had occurred

during the same time frame and that the misconduct in the second matter may have resulted from the attorney's poor office procedures).

Standing alone, either act of misconduct by respondent – the conflict of interest or the misrepresentation/lack of candor to a court – would warrant the imposition of an admonition. Together, a reprimand is implicated.

In crafting the appropriate discipline in this matter, however, we also must consider aggravating and mitigating factors. Although there is no aggravation to consider, there are substantial mitigating factors. First, there is the passage of time – sixteen years since the misconduct occurred. As stated above, Makris learned of the lien on her property in June 2017, and, therefore, did not file the grievance until December 2017, about fourteen years after respondent's misconduct had taken place. Such a passage of time is considered a significant mitigating factor. See, e.g., In re Verdiramo, 96 N.J. 183 (1984) (finding mitigation where events occurred more than eight years earlier, holding that "the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time") and In re Davis, 230 N.J. 385 (2017) (imposing significantly lesser discipline than otherwise warranted because, as stated in the Order, there was "extraordinary delay in initiating disciplinary proceedings").

Another significant factor is respondent's forty-three-year career at the New Jersey bar without prior incident. Moreover, there was no harm to the client as a result of respondent's actions; the misconduct was an isolated incident in her otherwise unblemished legal career; and a close friend of fifty years gave respondent high marks for her honesty and integrity.

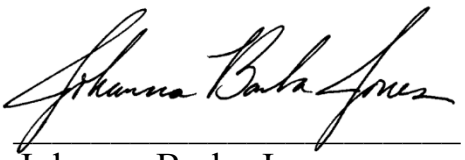
On balance, we determine that a reprimand is the quantum of discipline required to adequately protect the public and preserve confidence in the bar.

Member Singer voted to impose an admonition (in agreement with the District IX Ethics Committee) in light of the unusually strong mitigation, including the lengthy 17-year passage of time between respondent's isolated misconduct and imposition of a sanction, her 43-year otherwise unblemished legal career, and lack of harm to any client -- all of which is noted above by the majority as mitigation but not credited by it.

Members Joseph and Rivera 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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeannette A. Hoffman
Docket No. DRB 20-078

Argued: September 17, 2020

Decided: February 19, 2021

Disposition: Reprimand

Members	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:	6	1	0	2

Johanna Barba Jones
Chief Counsel