Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-187
District Docket No. VIII-2018-0004E

In the Matter of	:
Julie Anna LaVan	:
An Attorney at Law	:

Decision

Argued: November 19, 2020

Decided: April 27, 2021

Patricia M. Love appeared on behalf of the District VIII Ethics Committee.

Julie Anna LaVan appeared pro se.

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 reprimand filed by the District VIII Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.7(a) (conflict of interest) and RPC 1.8(a) (improper business transaction with a client).

For the reasons set forth below, we determine to impose a censure, with a condition.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2006, and to the District of Columbia bar in 2011. At the relevant time, she practiced law in Moorestown, New Jersey.

In 2019, respondent received a reprimand for violating RPC 8.4(a) (knowingly assisting or inducing another to violate the Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In that matter, she made a misrepresentation to the United States District Court for the District of New Jersey and to her adversary that the fee agreement between her and her client, which she produced in response to her adversary's motion to compel production of the agreement, was the original; instead, the document had been re-created, backdated, and re-executed by the client, after the motion was filed, because respondent could not locate the original following her agreement to produce it. In re LaVan, 238 N.J. 474 (2019).

We now turn to the facts of this matter.

The parents of the grievant, Cheryl Pellegrino, owned a commercial property (the Property) in Evesham Township, New Jersey, which they leased to a tenant, Quality Oil Repair (Quality). Quality, which performed

automotive work, contracted with Mid States Oil Refining Co., LLC (Mid States) for oil reclamation services.

On February 17, 2014, Mid States negligently caused an oil spill on the Property that precipitated the instant matter. Pellegrino testified that Mid States' insurance company, XL Insurance Group (XL), agreed to pay for the remediation, because the Mid States employee who had caused the spill immediately admitted his guilt. He acknowledged that he did not follow established procedures, did not have a spill kit on his truck, and was not qualified to remediate the spill. Moreover, the lease between Pellegrino's parents and Quality expressly provided that Quality was responsible for all costs, including attorneys' fees, relating to such a spill.

On February 24, 2014, Pellegrino, acting as her parents' authorized agent, met with respondent and another attorney from respondent's office to discuss the spill and the need to hire a remediation contractor and a Licensed State Remediation Professional (LSRP). An LSRP is an environmental engineer who oversees the remediation in behalf of the New Jersey Department of Environmental Protection (NJDEP), to ensure compliance with NJDEP regulations. Pellegrino testified that respondent's husband, William La Van, also was present at the February 24, 2014 meeting, but respondent denied this assertion.

At all relevant times, respondent was a principal of, had an ownership interest in, and was vice president and general counsel to Impact Environmental Closures, Inc. (IEC), an environmental remediation contractor. The complaint alleged that respondent's husband, William, was also a principal of IEC, but respondent claimed that he was merely a consultant.

Pellegrino testified that, during their initial meeting, respondent suggested that Pellegrino hire an employee of IEC, David Pry, who was an LSRP, but William suggested that they engage a different company that was closer to the Property. Pellegrino ultimately agreed to hire IEC as the remediation contractor.

Respondent failed to comply with the requirements of RPC 1.7(b) prior to proceeding with the concurrent representation. Specifically, she admittedly failed to seek Pellegrino's informed consent, in writing, following full disclosure and consultation regarding the conflict of interest caused by her concurrent representation of both Pellegrino and IEC, as RPC 1.7(b) requires; yet, she asserted she had fulfilled the mandate of RPC 1.7(b) through her verbal disclosure of her interest in IEC. The complaint further alleged that respondent violated RPC 1.8(a) by engaging in an improper

business transaction with Pellegrino; respondent disputed that charge, asserting that Pellegrino never entered into a business transaction with IEC.

In February 2014, Pellegrino executed respondent's fee agreement and paid a $3,000 retainer. Specifically, Pellegrino retained respondent to represent her in connection with the spill; to ensure that the remediation was performed properly and in accordance with the NJDEP regulations; and to protect her parents by ensuring that the parties responsible for the spill paid all costs associated with the remediation. In her discussions with Pellegrino, respondent clarified that she could not force a responsible party to remit payment but would attempt to obtain such payment.

In a February 25, 2014 e-mail, respondent informed Pellegrino that a February 27, 2014 meeting had been scheduled with Pry, and that Quality would be notified. That same date, respondent sent letters notifying Mid States and Quality of the spill and requesting information regarding the spill. On February 26, 2014, Pellegrino sent an e-mail to respondent expressing concerns about the remediation, inquiring about Pry's rates, and asking whether he was the LSRP that William previously had recommended. Respondent replied, in an e-mail that same day, that all relevant parties had been notified, and that Mid States and Quality were on notice that Pellegrino

intended to retain an LSRP, Pry, who worked for IEC, and that respondent would call Pellegrino to provide further explanation.

A few days after the initial meeting and after Pellegrino had paid the retainer, respondent called Pellegrino and revealed that respondent had an ownership interest in, and was counsel for, IEC. Respondent told Pellegrino that respondent's connection with IEC was "good," because she could keep a closer eye on the matter and, initially, Pellegrino agreed.

On February 27, 2014, respondent, Pellegrino, Pry, and adjusters from XL met at the Property, and Pellegrino informed them that the oil spill had migrated to an adjacent property. A few weeks later, on March 20, 2014, Pellegrino received a contract (the first contract) from IEC, sent via e-mail from respondent's law office, with an estimate of approximately $22,000 for the remediation, and a requirement for a $5,000 retainer. Pellegrino promptly replied that she did not understand why respondent had sent her the contract, because she had not retained IEC to remediate the spill, but, rather, had retained respondent's legal services to ensure that the responsible parties paid for the remediation of the Property. Pellegrino attached information from Quality, requested an itemized bill from respondent, and asked respondent what actions she had taken to ensure that

the responsible parties remediated the spill. Pellegrino did not sign the first contract with IEC, because it obligated her to pay all the remediation costs.

On April 3, 2014, Pellegrino met with Pry and a representative of XL at the Property, notified them that the spill had migrated to the adjacent property, and asserted that the adjacent property owner must be notified.

Pellegrino testified that she was becoming frustrated with the delay in remediation, because the weather conditions were causing the oil to further migrate to the adjacent property, and because the first contract failed to mention either XL or Quality. On April 8, 2014, respondent copied Pellegrino on an e-mail to Mid States, which contained a signed contract (the second contract), similar to the first contract, that substituted Mid States for Pellegrino as the party contracting with IEC.

Pellegrino then sent an April 11, 2014 e-mail to all the parties, including XL, in which she stated that the second contract only substituted her name for Mid States. Pellegrino further stated that Mid States had no authority to enter into a contract regarding her property, and that the contract had to be rewritten to include her authority, her protection, and her recourse from XL, such that XL would be responsible for all payments to IEC. She also informed the parties in the e-mail that the oil had migrated onto the adjacent property; that she had notified the Burlington County

health department inspector; and that she already had met with XL and Pry. She further stated that Pry claimed he could take samples from the adjacent property, but contended that, because he had not obtained the owner's permission to do so, "the exposure of my liability one day down the line is obvious." Despite Pellegrino's April 11, 2014 e-mail, no changes were made to the second contract.

Pellegrino became concerned that the second contract did not protect her, because, in her opinion, there is "quite a bit of corruption" in New Jersey, and "all of a sudden people that spilled this are now in contract with the people that are cleaning it up and is it really going to get cleaned up?" She was worried that, when she attempted to sell the Property in the future, the ground would be sampled, would remain contaminated, and she would be held liable. Pellegrino also was concerned that, despite the passage of time, respondent had taken no action in respect of the adjacent property, including failing to notify the adjacent property owners of the spill.

In a May 27, 2014 e-mail to Pellegrino, respondent stated that Mid States and XL should notify the adjacent property owners, but that, if they did not, respondent would do so, "if you [Pellegrino] are still adamant about placing them on notice." Respondent cautioned that, if she sent the

notification letter, it would appear that Pellegrino was taking responsibility for the remediation.

On June 4, 2014, a representative of XL sent an e-mail to Pellegrino confirming that respondent previously had agreed to send a notification letter to the adjacent property owner and that, if the owner had not yet replied to respondent's letter, XL strongly suggested that IEC begin the work on the Property as soon as possible. On June 4, 2014, respondent sent an e-mail to XL's representative, copying all parties, contending that "[i]n my opinion it's best to continue remediation on the Pellegrino property while waiting [sic] a response from the adjacent party." In Pellegrino's June 4, 2014 e-mail to all parties, she maintained that she would not proceed with the remediation until she was assured that the adjacent property owner had been notified of the spill, and that the adjacent property owner must grant permission for IEC to evaluate it for contamination. Pellegrino believed that this action was necessary to conduct the remediation completely, so that she would not be exposed to future liability. She inquired, "[w]hy is everyone is [sic] such a hurry all of a sudden?"

Pellegrino testified that she became concerned about respondent's divided loyalties to Pellegrino and IEC, because Pellegrino believed that respondent wanted her to complete the remediation process without

notifying the adjacent property owner; yet, Pellegrino knew that, as the Property owner, she had the ultimate responsibility for the remediation. She believed that respondent was trying to push the project forward, and that her loyalty was to IEC.

On June 11, 2014, IEC formally notified the adjacent property owner of the spill. In a June 30, 2014 invoice, IEC billed Mid States $500 for preparing the notification letter. Respondent billed Pellegrino $1,436.50 (4.42 hours at $325/ hour) for drafting the same notification letter, claiming that she had reviewed input from all the parties regarding the content of the letter. Pellegrino was concerned by respondent's billing practices, especially because respondent was a principal of IEC. Pellegrino questioned whether respondent was IEC's attorney or her attorney, and whose interest was paramount.[1]

IEC never notified Pellegrino that it had commenced work on the Property and purportedly completed the remediation. Pellegrino learned of this development when Quality informed her that it was surprised that she

[1] Pellegrino testified that she filed a fee arbitration request in connection with this matter, after respondent had sought $19,911.12 in legal fees. We choose to take judicial notice that, according to the Office of Attorney Ethics (OAE) database, the fee arbitration committee (FAC) found that the total reasonable fee was $0 and ordered respondent to reimburse the $3,000 retainer to Pellegrino, unless XL had paid it, which it had. The FAC further determined that respondent's request for payment of fees should be denied, because she might have violated RPC 1.7(a) and RPC 1.8(a), and referred the matter for an ethics investigation.

had not been present when IEC arrived at the Property and took soil samples. Pellegrino testified that respondent previously had notified all parties that either Pellegrino or her representative were to be present at the Property during the remediation. When Pellegrino asked respondent for an update, respondent replied that IEC had communicated with respondent at her IEC e-mail address, which she claimed she did not check often, to inform her that it began work at the Property. She found the e-mail and forwarded it to Pellegrino. At that point, Pellegrino directed the parties to cease work on the Property, she "cut ties" with respondent, and she attempted to proceed on her own.

About ten days later, Pellegrino arranged for IEC to return to the Property and excavate soil to show her where it had performed the remediation work. During the ethics hearing, Pellegrino expressed concern regarding what remediation work actually had been completed.

The spill was remediated in July 2014, and the responsible parties paid the bills. Pellegrino was required to sign a document from the State which confirmed that the remediation was complete. Because there were multiple subcontractors who worked on the remediation, Pellegrino requested all invoices and canceled checks concerning payment through IEC, in order to confirm that all parties were paid. Because she had not

received all the information and could not confirm that all parties had been paid, she refused to sign the State's document. An annual fee of approximately $1,800 was required to be paid to the State while the case remained open, which XL had paid up to the point when the remediation was completed. Pellegrino repeatedly called IEC to obtain the requested information, but IEC would not return her calls. Pellegrino had to pay the $1,800 fee for one year, because the case remained open while she was attempting to obtain the payment information. Pellegrino then hired a new attorney and claimed that she incurred about $10,000 in additional attorneys' fees, which she paid, in addition to the $1,800 fee to the State.

Based on the foregoing facts, the complaint alleged that respondent violated RPC 1.7(a) by engaging in a concurrent conflict of interest. Respondent denied having violated RPC 1.7(a), claiming that she had disclosed to Pellegrino that she was a partner of IEC, and that she had no intention of misleading Pellegrino. Respondent maintained that she had obtained Pellegrino's informed consent to the concurrent representation, and had provided full disclosure to her, although respondent conceded that the disclosure was not in the retainer agreement. She stipulated that the retainer agreement further failed to memorialize her ownership interest in IEC.

The complaint further charged that, although Pellegrino had not signed the remediation contract with IEC, respondent engaged in an improper business transaction with Pellegrino, in violation of RPC 1.8(a) by selecting IEC as the remediation contractor; by failing to memorialize and disclose to Pellegrino respondent's involvement with IEC; and by failing to give Pellegrino a reasonable opportunity to seek the advice of independent legal counsel of her choice.

Respondent denied that Pellegrino entered into a business transaction or an agreement with IEC; that IEC's involvement caused a conflict; that she misled Pellegrino; that Pellegrino did not have an opportunity to seek the advice of independent counsel; and that respondent had not obtained Pellegrino's informed consent to the transaction. Respondent conceded, however, that she had not obtained informed consent in writing, and that Pellegrino had agreed to use IEC as the contractor.

In her answer to the complaint, respondent asserted the following affirmative defenses: the complaint failed to state a claim for which relief can be granted; it did not establish an RPC 1.8(a) violation; respondent fully complied with the applicable standard of care due to her clients; she did not knowingly violate any of the RPCs; she did not have the requisite mens rea; her actions were not intentional or malicious; the client incurred no harm;

the Property was fully remediated pursuant to NJDEP regulations; and Pellegrino did not complain about the representation until she was expected to make payments. During the hearing, respondent declined both an opening and a closing statement, did not testify, and did not call any witnesses, participating exclusively through cross-examination of Pellegrino.

The DEC determined that the clear and convincing evidence established that respondent violated both RPC 1.7(a) and RPC 1.8(a).

Specifically, the panel found that respondent violated RPC 1.7(a) by failing to notify Pellegrino that she was a principal of IEC and by failing to obtain her informed, written consent in respect of the concurrent conflict. Respondent recommended IEC to Pellegrino but did not provide full disclosure of her pecuniary and legal interest in IEC until after Pellegrino signed the retainer agreement. Respondent did not provide Pellegrino with any consultation regarding the risks or advantages of contracting IEC to perform the work, except to say that retaining IEC was beneficial so respondent could "keep a closer eye on things," nor was there a writing memorializing consent. In addition, the panel found that respondent was more concerned with IEC's performance of the remediation work than her duties to Pellegrino, such as notifying the adjacent property owner. Pellegrino quickly became uncomfortable with respondent's representation of her interests.

Further, the panel determined that respondent violated RPC 1.8(a) by failing to fully disclose, in writing, her association with IEC at the time she recommended IEC, and by failing to provide Pellegrino with the opportunity to seek independent counsel before she signed the retainer agreement.[2] Respondent also promoted IEC, even though William had suggesting using an LSRP who was closer to the Property. Moreover, Pellegrino retained respondent to pursue XL to pay for the remediation cost, but the first IEC contract listed Pellegrino as the responsible party.

In mitigation, the panel found that there was no harm to the client. Although Pellegrino claimed that she expended about $10,000 in additional legal fees to her subsequent attorney, the DEC observed that she did not document that claim through an invoice. Questioning the justification for a $10,000 fee, when the new attorney only confirmed the performance of and payment for remediation work, the panel concluded that Pellegrino had not proven serious economic injury by clear and convincing evidence.

The panel recognized that, in aggravation, respondent had a prior reprimand; failed to accept responsibility for her actions; and did not express contrition or remorse or offer an apology or any explanation for her misconduct.

[2] The complaint did not allege that the RPC 1.8(a) violation had any connection to the signing of the retainer agreement.

Therefore, a majority of the panel recommended a reprimand, with the condition that respondent complete twelve continuing legal education credits (CLE) in ethics within one year. The public panel member recommended a censure, with the same condition.

Notwithstanding respondent's scant participation below, she appeared for oral argument before us in this matter. She twice admitted that her representation of Pellegrino constituted a conflict of interest for which she had not obtained a waiver; claimed that she never intended to harm Pellegrino; informed us that she is no longer general counsel or a principal of IEC; and described positive professional and person changes she has made in her life in the intervening period.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent violated RPC 1.7(a) is fully supported by clear and convincing evidence. For the reasons set forth below, however, we determine to dismiss the RPC 1.8(a) charge.

Respondent violated RPC 1.7(a) by concurrently representing IEC and Pellegrino and failing to seek or obtain a written conflict waiver from Pellegrino, as RPC 1.7(b) requires. Respondent appeared more concerned with swiftly commencing and completing IEC's remediation work, which was in her best interest, instead of informing the adjacent property owner, which was in

Pellegrino's best interest. In addition, the first IEC contract respondent prepared listed Pellegrino as responsible for the remediation costs, although Pellegrino specifically had instructed respondent to ensure that Pellegrino was financially protected, and that Mid States and XL were to be responsible for the costs. As a result, Pellegrino quickly became uncomfortable with respondent's dual representation and her clearly divided loyalties between IEC and Pellegrino.

We determine to dismiss the allegation that respondent violated RPC 1.8(a), which prohibits an attorney from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless certain conditions are met. Here, Pellegrino did not sign the remediation contract with IEC. Therefore, respondent did not engage in a business transaction with Pellegrino. At most, by sending the remediation contract to Pellegrino, respondent attempted to violate this RPC – a potential violation of RPC 8.4(a) (attempt to violate the Rules of Professional Conduct) for which she was not charged. Moreover, although the hearing panel considered the retainer agreement in finding that respondent entered into a business transaction with Pellegrino, the complaint did not charge a violation of RPC 1.8(a) based on the execution of the retainer agreement. In any event, the execution of the retainer agreement did not constitute a business transaction between respondent and Pellegrino.

In sum, we find that respondent violated RPC 1.7(a). We determine to dismiss the RPC 1.8(a) charge. The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See also In re Rajan, 237 N.J. 434 (2019) (the attorney engaged in a conflict of interest and an improper business transaction with a client by investing in a hotel development project spearheaded by an existing client; no prior discipline); In re Drachman, 239 N.J. 3 (2019) (the attorney engaged in a conflict of interest by recommending that his clients use a title insurance company in eight, distinct real estate transactions, without disclosing that he was a salaried employee of that company; there was no evidence of serious economic injury to the clients; the attorney also violated RPC 5.5(a)(1) by practicing law while ineligible to do so; no prior discipline); and In re Allegra, 229 N.J. 227 (2017) (the attorney engaged in a conflict of interest by engaging in a sexual relationship with an emotionally vulnerable client; the attorney also engaged in an improper business transaction with the same client by borrowing money from her; the attorney promptly repaid all the funds and had no prior discipline).

In addition, we consider the aggravating and mitigating factors. Although respondent has a 2019 reprimand, that misconduct occurred prior to the conduct in the instant case and was dissimilar. Thus, respondent's prior reprimand does not serve to enhance the discipline.

We note, however, that respondent expressed no contrition or remorse, failed to accept responsibility, offered no explanation for her misconduct, and did not apologize until her appearance before us. Despite the DEC's finding to the contrary, Pellegrino clearly was harmed by respondent's misconduct in that she had to retain new counsel and expend unnecessary funds to ensure that the Property was fully remediated. Pellegrino's testimony on this issue was not disputed. These aggravating factors, thus, warrant the enhancement of the discipline to a censure.

There is no mitigation to consider.

On balance, we determine that a censure is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. Moreover, we determine to impose the condition that, within ninety days of the date of the Court's Order in this matter, respondent is to complete two ethics courses approved by the OAE, and submit proof of completion to the OAE. Respondent shall not obtain credit for her attendance at either course in calculating the continuing legal education credits required by R. 1:42-1.

Member Boyer voted to impose a reprimand, with the same condition.

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

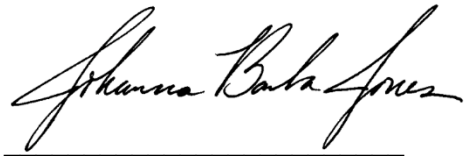
In the Matter of Julie Anna LaVan
Docket No. DRB 20-187

Argued: November 19, 2020

Decided: April 27, 2021

Disposition: Censure

Members	Censure	Reprimand	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



Johanna Barba Jones
Chief Counsel