Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-244
District Docket No. XIV-2017-0583E

In the Matter of

James F. Paguiligan

An Attorney at Law

Decision

Argued: February 18, 2021

Decided: June 14, 2021

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Robert B. Hille appeared on behalf of respondent.

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

In October 2017, this matter was before us on a motion for discipline by consent (censure or such lesser discipline as we deemed appropriate) filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-10(b)(1). On October 24, 2017, we denied the motion and remanded the matter to the OAE because, in our view, the stipulated facts potentially warranted

discipline greater than a censure. Further, we commented on the absence of key information from the motion, the treatment of which is described in detail below.

The remand letter provided that, if the parties filed another motion for discipline by consent, included a more factually explicit stipulation and expanded the range of discipline to include a six-month suspension, we would be inclined to consider the motion. Otherwise, we suggested that the matter proceed by way of a disciplinary stipulation, leaving the quantum of discipline to our discretion, or a formal ethics complaint.

This matter is now before us on a recommendation for a reprimand filed by the District IX Ethics Committee (DEC) following a one-day hearing on December 13, 2019. The parties proceeded by way of a formal ethics complaint and entered into a factual stipulation wherein respondent stipulated to violating the same RPCs as in the prior motion for discipline by consent: RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter); RPC 1.5(b) (failure to communicate in writing the basis or rate of the fee); RPC 1.7(a)(2) and 1.7(b)(1) (concurrent conflict of interest – representing a client where there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client without

obtaining the informed, written consent of the clients, after full disclosure and consultation); RPC 1.13(d) (in dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part); RPC 1.13(e) (failure to secure consent to dual representation of both an organization and the directors, officers, employees, members, shareholders or other constituents thereof); RPC 1.15(a) (failure to properly safeguard the property of a client or third person); and RPC 1.15(b) (failure to promptly notify a client or third party upon receipt of funds in which they have an interest). Respondent further stipulated to having violated RPC 1.15(c) (failure to segregate property in which both the attorney and another party have an interest).

Respondent denied, however, having violated RPC 3.4(g) (presenting, participating in presenting, or threatening to present criminal charges to obtain an improper advantage in a civil matter), as charged by the complaint. The DEC held a hearing at which respondent's alleged violation of RPC 3.4(g) was the only contested issue.

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

Respondent earned admission to the New Jersey bar in 2003 and has no prior discipline. At the relevant time, he practiced law in Toms River, New

Jersey.

This matter stems from a dispute between two business partners – the grievant, Hiroki Takahashi, and Renato R. Cuyco, Jr. Cuyco is the stepson of respondent's uncle and introduced respondent to Takahashi. Prior to the dispute between the parties, respondent had represented Takahashi in connection with a traffic ticket.

In March 2013, Takahashi and Cuyco formed Champion Autosports, LLC (Champion), a car dealership business involved in the sale, leasing, and servicing of luxury automobiles. Champion's March 11, 2013 operating agreement provided that Takahashi owned 70% of the company and Cuyco owned 30% of the company, but it did not set forth the capital contributions of either party.

Respondent maintained that he had not participated in the formation of Champion, and that he first saw the certificate of formation and operating agreement after Takahashi filed the grievance underlying this matter. Respondent contended that Cuyco informed him that Cuyco and Takahashi were partners in Champion, as set forth in the operating agreement; that Takahashi was not a United States citizen; that Takahashi attended college courses; and that Takahashi sought an "E-2" investor visa. Respondent claimed that he had no firsthand knowledge of the investment arrangement

between Takahashi and Cuyco.

In 2013, Cuyco requested that respondent review a proposed lease agreement between Rex 3, LLC (Rex 3), the landlord, and Champion, the tenant, for a property located in South Amboy (the Property). Respondent believed that Champion already conducted its business from the Property and claimed that Cuyco informed him that Rex 3 required Takahashi's name on the lease, because it believed he was the more solvent and responsible of the two principals.

In respondent's view, when he reviewed the lease, he was not representing Takahashi personally but, rather, was representing Champion and Cuyco. Respondent, however, failed to communicate that perception to Takahashi or to prepare a written fee agreement.

On November 1, 2013, Takahashi personally signed the lease agreement, for Champion's benefit, to lease the Property for $2,920 per month for a term of one year, ending on October 31, 2014. The lease included an option to purchase the Property, for $360,000, on or prior to the expiration of the lease. On November 13, 2013, Cuyco issued a $5,000 personal check to Rex 3, representing Champion's security deposit, which Rex 3 endorsed and negotiated.

About one month before the lease expired, Jeffrey R. Chang, Esq., counsel for Rex 3, sent a letter dated October 2, 2014 to both respondent and Takahashi, which confirmed Chang's conversation with respondent:

> Please be advised that our office continues to represent the interests of REX3, LLC with regard to the above captioned property. This letter serves to confirm our telephone conversation of September 23, 2014 in which you advised that Hiroki Takahashi has declined to exercise his option to purchase the property. Specifically, Hiroki Takahashi has elected not to exercise Section 18.1 of the Lease entered between the above parties. Please confirm that this understanding is accurate. Please also be advised that the within Lease shall expire on October 31, 2014. There are currently no provisions to extend the Lease.
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> [S¶13.][1]

Pursuant to the letter, respondent had notified Rex 3 that Takahashi declined to purchase the property, and Chang verified that there were no arrangements to extend the lease. Takahashi, however, claimed that he had orally instructed respondent to negotiate the extension of the lease, on a month-to-month basis. Respondent indicated that he had never asked for nor received such an instruction from Takahashi. Respondent asserted that, instead, he solely relied on Cuyco for such instructions. Respondent stated that Cuyco directed him to negotiate a new lease between the parties, which

[1] "S" refers to the December 11, 2019 stipulation of facts.

Cuyco signed on behalf of Champion.

On October 9, 2014, respondent sent a letter to Chang, in which he directed him to prepare a new lease; replace Takahashi's name with the corporate entity Champion; and apply the existing $5,000 deposit to owed rent, with the balance returned to Cuyco. Respondent also notified Chang that Takahashi would sign a release to effectuate those modifications to the lease. Respondent did not copy Takahashi on the letter to Chang and relied solely on Cuyco's representations in connection with the letter.

That same day, Chang replied to respondent by letter:

> Thank you for your letter dated October 9, 2014 and telephone call confirming that Hiroki Takahashi has elected not to exercise Section 18.1 of the Lease entered between the above parties.
>
> Also, this letter confirms that you have agreed to secure a release from Mr. Takahashi, specifically authorizing the Landlord, REX 3, LLC to credit $2,920.00 from the security deposit as payment for the October 2014's outstanding rent due by Champion Autosports. The remaining security deposit minus any damages and incidentals will be returned to Hiroki Takahashi when the lease expires per the lease terms and statutory regulations.
>
> . . .
>
> Please note, the Landlord will not offer an option to purchase in the new lease. The only option will be a right of first refusal. The Landlord will gladly entertain offers to purchase by the proposed new Tenant, Jay Cuyco a/k/a JR Cuyco a/k/a R Renato,

> but same will not be provided for in the contract.
>
> Our office requires the aforementioned written release **prior** to execution of the new lease between Rex 3, LLC and Jay Cuyco a/k/a JR Cuyco.
>
> [S¶15 (emphasis in original).]

Chang did not copy Takahashi on that responding letter, and respondent neither shared nor discussed the letter with Takahashi. Respondent prepared a release that authorized Rex 3 to apply $2,910 of the $5,000 security deposit toward owed rent, and to return the balance to Cuyco. Respondent never contacted Takahashi regarding the release; relied on Cuyco to secure Takahashi's signature; and Cuyco returned the release to respondent with what appeared to be Takahashi's notarized signature, dated October 10, 2014. Respondent claimed that he trusted the veracity of Takahashi's signature on the release because an attorney, Lincoln Tan, Esq., had notarized it.

On October 31, 2014, Cuyco executed a five-year lease agreement with Rex 3, on behalf of Champion, to lease the Property for $4,000 per month from November 1, 2014 through October 1, 2019. Rex 3 drafted the lease and copied respondent, who reviewed the lease on behalf of Cuyco, Respondent neither notified Takahashi of these developments nor consulted him regarding the lease.

On February 10, 2015, Cuyco executed a "First Addendum to Lease" and an "Assignment of Lease," whereby Rex 3 consented to the assignment of the lease to two new entities in which Takahashi claimed he held no interest: Champion Autosports Performance & Custom Creations, LLC (Champion Performance) and Champion Auto Leasing & Finance, LLC (Champion Leasing). Respondent represented to the OAE that he did not recall whether he had reviewed these lease documents. Moreover, he claimed that he was unaware of the execution of the two documents.

During a November 22, 2016 OAE interview, Tan admitted that, on October 10, 2014, he notarized Takahashi's signature on the release, despite not having witnessed Takahashi's execution of the document. Rather, Cuyco had provided him the document, already signed. Tan asserted that he trusted Cuyco, because Tan had been preparing tax documents for the parties and Cuyco had given him all the information, and Takahashi seldom came to Tan's Jersey City office. Cuyco told Tan that Champion's lease was expiring, that Cuyco had to procure a new lease, and that Cuyco needed the release of the balance of the deposit.

Tan relied on Cuyco's representation that Cuyco was speaking for both himself and Takahashi. Tan believed that Cuyco brought the signed release to Tan's Jersey City office because, at that time, Takahashi was

preparing to leave for Japan. Cuyco did not mention respondent in connection with the release, and Tan was not aware of respondent's involvement at the time that he notarized the release. Tan testified that he understood that, even though Takahashi was leaving for Japan, he would still be involved in the business, and that the business was never transferred to any other person or company.

Tan further admitted that he had notarized Takahashi's signature on Champion's March 11, 2013 operating agreement, on three pages, despite having not actually witnessed Takahashi's execution of the document; again, the document already was signed when he received it. Tan acknowledged that he should have required Takahashi to appear before him. Tan had properly witnessed Cuyco's signatures when he notarized them.

Tan testified that he is admitted only to the New York bar, but is licensed in New Jersey as a notary public, and noted that his law firm is located in Jersey City.[2] He is a tax and immigration attorney who represents clients in New Jersey federal courts. Cuyco retained Tan and introduced him to Takahashi. Tan notarized documents concerning their businesses, and prepared tax documents, but provided no legal or tax advice regarding

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[2] A search of the applicable databases confirmed that Tan is admitted in New York, not New Jersey, but maintains an office in Jersey City.

the creation of their business entities. Tan represented Takahashi in tax matters; he analyzed the 2013 tax return of the company; and prepared the 2013, 2014, and 2015 tax returns for Champion, in addition to the personal tax returns for Cuyco and Takahashi. When Tan prepared the parties' 2013 schedule K-1, and state and federal tax returns, he was acting more as their accountant than their attorney. Tan never met or directly communicated with Takahashi regarding the tax documents. Rather, Cuyco provided Tan with all the necessary documents.

According to the stipulation, Takahashi was required to spend a certain period in Japan to qualify for the "E-2" investor visa he desired. Accordingly, he resided in Japan from November 2014 through February 2015 and claimed that, upon his return to the United States, he was "locked out" of the car dealership. Respondent maintained that he had no knowledge of the requirements of an "E-2" investor visa or the veracity of Takahashi's claims.

Takahashi denied signing the release notarized by Tan, but admitted having signed the other pertinent documents. Tan testified that he never had discussions with respondent or Cuyco regarding the release. Tan also never spoke to Takahashi about the release, because Takahashi already was in Japan at that time, and was more concerned with his "E-2" investor visa

application.

At Cuyco's request, Tan prepared Takahashi's "E-2" investor visa application with supporting documents, including Champion's original operating agreement. The operating agreement, which detailed Takahashi's 70% ownership of Champion, was necessary for Takahashi to acquire an "E-2" investor visa, as he was required to "have some substantial investment in the company." Another attorney handled Takahashi's first "E-2" investor visa, but, after he went to Japan, he had to re-apply for the visa.

Tan met respondent on two occasions. The first such meeting was in May 2015, to discuss the possibility of settlement between Takahashi and Cuyco. Tan understood that respondent represented Cuyco in the meeting and did not have direct knowledge as to whether respondent also acted as Takahashi's attorney. Takahashi and Cuyco sought Tan's opinion regarding Takahashi's demand for $200,000 to settle the matter. Tan advised that it would be wise to settle rather than going to court, due to the added expense. Tan testified that Cuyco and Takahashi told him, in connection with his preparation of Takahashi's "E-2" investor visa application, that they both capitalized Champion with $500,000. Tan never communicated directly with respondent via e-mail, letters, or telephone calls.

In the first quarter of 2015, Cuyco informed Tan that Cuyco and

Takahashi had agreed to close Champion and would probably sell the rights to the South Amboy office. Tan was never involved in any discussions between respondent and Cuyco to remove control of the company from Takahashi or to transfer it to Cuyco.

Respondent was not aware of the conversation between Tan and the OAE. Takahashi claimed he never signed the release, and that Cuyco forged his signature to obtain control over the car dealership. Respondent denied any knowledge that Takahashi's signature was allegedly forged, or that Tan notarized the release without personally witnessing the signature. On October 13, 2014, respondent mailed the release to Chang, represented that Takahashi had executed it, and indicated that it referenced a lease between "[his] client," Cuyco, and Chang's client, Rex 3.

Takahashi alleged that respondent's submission of the bogus release initiated a series of events which culminated in Cuyco and another employee ousting him from Champion and causing the conversion of his investment.

On April 1, 2015, Jerome Noll, Esq., of Wu & Kao, P.C., sent a letter to Cuyco notifying him that Takahashi had retained Noll to represent Takahashi in his dispute against Cuyco, and warning that Cuyco may have breached his fiduciary and corporate duties to Takahashi, Champion, and

related companies by:

> engaging in self-dealing, deceptive business practices and other improper activities aimed at defrauding [Takahashi] and the Companies, including wasting corporate assets, converting funds belonging to the Companies for your own personal use and benefit and creating phony payrolls through which the Companies' funds were distributed to individuals who did no real work or were not legitimate employees.
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> [S¶26.]

That same day, Cuyco forwarded the letter to respondent, as well as three other letters Cuyco had received from Noll, which Noll had sent to three banks directing them to deny Cuyco access to various accounts allegedly containing funds belonging to Champion.

On April 2, 2015, Rex 3 issued a $2,320 check to respondent's attorney trust account (ATA), representing the refund of Champion's security deposit after a deduction of $2,910 for the October 2014 rent, plus additional adjustments. Respondent did not deposit the check into his ATA but, instead, brought it to the auto dealership, endorsed the check, and gave it to Cuyco, who negotiated it on April 21, 2015. Takahashi did not receive any portion of the deposit refund.

On April 7, 2015, Allen Wu, Esq., also of Wu & Kao, P.C., sent an e-mail directly to Cuyco, and stated:

As of today, you have failed to response [sic] to our friendly warning against you to cease and desist all unlawful activities but you chose to continue your breach and unlawful activities.

Among other things, we have duly demanded upon you to release and “unblock” the Champion’s corporate and financial records, to disclose and provide all banking accounts and cooperate with our client in winding up all Champion business and operations. As a result of your breach and ignorance, our client will be forced to take all necessary legal actions to protect his and Champion [sic] best interests.

For your information and from our investigation, we have found the following unlawful or irregular activities which **we will report to the proper authorities or parties, and file immediate claims or actions accordingly**:

1. One customer contacted us regarding her Maserati Cambiocorsa incident which our client denied any liabilities and would hold you liable foray [sic] and all liabilities due to **your illegal or wrongful conducts** [sic].

2. We have found many irregular, fraudulent and deceptive auto leasing and financing activities wherein you used Champion employee (your cousin) Juan C Abuan a/k/a Jeffrey Abuan and others to defraud BMW Financial Services, Mercedes-Benz Financial Services, etc. and the customers for illegal and secret profits while Mr. Abuan monthly pay is only approximately $3,000. **For this illegal operation, we will report and work with those lenders (e.g. BMW and MB) for further investigation and possible prosecution** to protect Champion [sic] best interests.

3. **From banks' records, we have already found many "stealing" or "illegal wiring"** including, but not limited to Kim Vu, Lincoln Tan, Gerard Franco, **of which we shall report same to the Police Department and start turn-over actions against them**.

4. You have materially breached your fiduciary duties including, but not limited to, **forming illegal joint ventures** with Dido Kim, Juan Abuan and Lincoln Tan in competition or conflicting with Champion Autosports business and, worse of all, illegally and unlawfully use our client purchased assets, such as auto repair equipments [sic] of Champion Autosports for **illegal scheme and gains**.

We have more evidences [sic] to show your wrongful and unlawful activities which we will duly organize them and **report to the proper authorities or parties for further investigations and possibly prosecution.**

In the interim, we urge you again to stop all such activities and cooperate with our client to quickly winding [sic] up the business and account for the return of all your unlawful gains and profits from self-dealing, secret profits and unlawful operations.

You or your attorney may contact our Litigation Department attorney, Jerome Noll, Esq. **if you decide to cooperate with our client to close the business and personally account for all unlawful profits.**

[S¶26 (emphasis added).]

By letters dated April 8, 15, and 17, 2015, respondent notified Noll,

Wu, and Alice Chao, Esq., of Wu and Kao, P.C., that he represented Cuyco and JC Abuan, an employee of Champion, and requested that all future communications be directed to him; that Takahashi and his parents cease and desist from contacting respondent's clients; and that Noll instruct Takahashi to cease trespassing on the Property, noting that the prior lease had expired and Cuyco had solely executed the new lease. Respondent further notified Noll that Cuyco was amenable to a reasonable offer if Takahashi wanted to negotiate, and Cuyco had authorized respondent to counteroffer Takahashi's buyout offer of $417,224.90 with the sum of $131,000. Finally, respondent requested that the recipients of the letter forward the letter to a licensed New Jersey attorney to handle the matter because Noll, Wu, and Chao were not licensed in New Jersey. Notably, in respondent's April 17, 2015 letter to Wu, he stated: "[w]ith respect to Mr. Takahashi's continuing allegations, **my client is not afraid of any investigation by law enforcement**, as there was no wrongdoing and as he would be exonerated from your allegations."

At least as of the time of respondent's receipt of the April 1, 2015 e-mail from Cuyco regarding Noll's letter, respondent should have known that the relationship between Cuyco and Takahashi was irreparable, yet respondent continued to represent Cuyco in negotiations with Takahashi's

counsel to attempt to resolve the parties' dispute without requesting or obtaining written informed consent from Cuyco, Takahashi, or Champion. Specifically, respondent admitted that he knew, on or about April 1, 2015, that a business dispute existed between Cuyco and Takahashi. There was no evidence that Takahashi, Cuyco, or an official of Champion, other than Cuyco, submitted written informed consent, after full disclosure and consultation, to respondent's representation of Cuyco, despite the risk that respondent's representation of Cuyco would be materially compromised by his responsibilities to Takahashi or Champion.

When the lease expired on October 31, 2014, the rent deposit was issued to Rex 3 in accordance with the lease. In a May 5, 2015 letter to Chang, Noll requested that Rex 3 forward that deposit to Takahashi. In the same letter, Noll warned that Takahashi was considering initiating legal action against Cuyco and other parties. On May 11, 2015, Chang sent a letter to Noll, copied respondent, and confirmed that the February 10, 2015 lease was between Rex 3 and Champion Leasing and Champion Performance; that the security deposit had been refunded to respondent pursuant to his request; and that Takahashi had authorized the refund via the executed release that respondent had submitted to Chang. By letter dated May 12, 2015, Noll informed respondent that Takahashi retained a majority

interest in Champion pursuant to the operating agreement; Noll had learned that Rex 3 issued Champion's $2,320 rent deposit to respondent; Takahashi did not authorize respondent or anyone else to accept or disburse the rent deposit to anyone other than Champion or Takahashi; and Takahashi did not receive any part of the rent deposit.

On May 14, 2015, respondent sent Noll a letter notifying him that Cuyco originally had paid the rent deposit and, upon renewal of the lease, the deposit, less the rent amount, rightfully had been returned to Cuyco. Respondent indicated that the $131,000 demand reflected a portion of his claimed investment in Champion but did not consider that the business was not making a profit "at the outset;" Cuyco's $114,000 subsequent investment "to keep the business operating;" or Takahashi's improper use of business funds for personal expenses which he never replaced. This letter formed the basis for the RPC 3.4(g) allegation, specifically the following paragraph:

> Finally, Mr. Takahashi is in possession of property of Mr. Cuyco, namely dealer plates registered by the New Jersey Motor Vehicle Commission to Mr. Cuyco and a 2014 BMW X5 XDrive35d which is leased from BMW Financial Services in the name of Mr. Cuyco as the guarantor, for which Mr. Takahashi is no longer making payments. **As such, we are demanding that Mr. Takahashi return both the plates and the vehicle immediately or else be reported to the authorities for theft.**

[S¶35.]

During his testimony at the ethics hearing, respondent conceded that the statement was "problematic" under RPC 3.4(g). He did not recall writing the sentence, or why he wrote it; he was shocked that it was in the letter; and stated that he never included a sentence in a communication like that before, nor has he done it since. He did recall previously telling the OAE that Wu "had made several threats like that to me." Respondent acknowledged that just because Wu had threatened respondent did not mean that he could similarly threaten Wu.

Respondent further testified that Cuyco notified respondent that Takahashi had taken the plates and vehicle. To respondent's knowledge, Cuyco owned the plates and vehicle at that time, and no criminal charges were ever filed against Takahashi. There was no pending civil litigation at the time the letter was written, and respondent never spoke to Takahashi directly regarding any threat of criminal prosecution.

On June 28, 2015, Takahashi filed a federal lawsuit against Cuyco and several business entities, seeking monetary damages; on July 16, 2015, he amended the complaint to add claims against respondent and Tan. Respondent ceased representing Cuyco after respondent was served with the federal complaint, obtained his own counsel through his malpractice

carrier, and, on February 2, 2018, respondent's carrier settled with Takahashi, prior to discovery, for $62,500, without any admission of wrongdoing.

On September 21, 2015, Takahashi filed a grievance against respondent, alleging that he had breached his ethical obligations and unlawfully converted Takahashi's funds without his knowledge or consent.[3]

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[3] In our October 24, 2017 letter denying the motion for discipline by consent, we remanded the matter, in part, to acquire more information, such as the financial arrangement between Takahashi and Cuyco; whether the arrangement was memorialized in writing, and if so, by whom; an explanation of the New York attorney's involvement in the matter (Tan); and the extent of economic harm that Takahashi and Cuyco suffered.

Although we requested information about the extent of economic harm, Takahashi and Cuyco would not further cooperate with the OAE. On November 14, 2017, the OAE sent Cuyco's counsel a letter notifying him that we had denied the motion for discipline by consent because of, in part, the lack of evidence of economic harm suffered by Cuyco and requesting that Cuyco provide the evidence by November 22, 2017. Cuyco never replied to the OAE.

The OAE investigator testified that he was in communication with Takahashi's counsel, and later Takahashi himself, multiple times after his law firm notified the OAE that it no longer represented him, regarding the hearing and his need to testify. By letter dated November 3, 2017 to the OAE, Takahashi's counsel claimed that Takahashi had suffered over $900,000 in damages directly or indirectly due to respondent; he had communicated previously a buy-out offer of $417,224.90 and a $131,000 demand. Takahashi's counsel contended that the $900,000 was comprised of $500,000 in damages from Cuyco's conversion of Takahashi's initial investment in Champion; over $200,000 in damages from Takahashi's loss of leasehold interest in the South Amboy property, including $83,000 in improvements; $100,000 in attorneys' fees; and $2,910 from respondent's conversion of the security deposit.

On October 20, 2019, Takahashi replied to the OAE via e-mail: "Regarding the matter of OAE v. James F. Paguiligan, Esq., since me and Mr. Paguiligan Esq. have been settled outside of the court, I have no intention to continuously testify in this matter." On October 22, 2019, the OAE sent Takahashi an e-mail and notified him that his testimony was critical to determine his economic harm, if any, as a result of respondent's misconduct, and that if

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.1(a); RPC 1.3; and RPC 1.4(b) by failing to consult with Takahashi regarding whether he wanted to extend the lease in his own name; failing to consult with Takahashi prior to informing Rex 3 that Takahashi had agreed to allow the lease to expire in his name, and authorizing a credit of $2,910 from the security deposit as payment for outstanding rent; failing to inform Takahashi that he drafted a release authorizing the issuance of the security deposit to Cuyco; failing to communicate with Takahashi to confirm that he agreed to sign the release and actually had signed it, prior to remitting it to Rex 3; failing to consult with Takahashi regarding entering into the new lease agreement between Cuyco and Rex 3, and its assignment to Champion Leasing or Champion Performance; failing to notify and obtain permission from Takahashi when respondent received the April 2015 check representing the refund of the security deposit, endorsed the check, and submitted it to Cuyco; and failing to otherwise protect Takahashi's interest in Champion, to the extent it was compatible with his duty of loyalty to Cuyco and Champion.

Further, the parties stipulated that respondent violated RPC 1.5(b) by

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he did not reply by the end of the week, the OAE would assume he was no longer interested in cooperating in the matter. Takahashi never replied.

failing to enter into a fee agreement with Champion at the beginning of the representation, because he had not represented Champion regularly in the past.

Moreover, the parties stipulated that respondent violated RPC 1.7(a)(2); RPC 1.7(b)(1); and RPC 1.13(e) by continuing to represent Cuyco in negotiations with Takahashi's counsel to attempt to resolve the parties' dispute, at which time he knew that the relationship between Cuyco and Takahashi was irreparable, before obtaining written informed consent from an official of Champion other than Cuyco, after full disclosure and consultation, from Takahashi, or Champion, despite the risk that respondent's representation of Cuyco would be materially compromised by his responsibilities to Takahashi or Champion.

Next, the parties stipulated that respondent violated RPC 1.13(d) by failing to notify Takahashi that respondent did not represent Takahashi personally, which was required to avoid any misunderstanding by Takahashi when respondent was negotiating the lease in which Takahashi had an interest and would have been foreseeable and reasonable considering respondent's prior representation of Takahashi. Respondent admitted that he failed to explain to Takahashi that he did not represent him in respect of any of the limited and separate services Cuyco requested. Further, due to

respondent's failure to correct Takahashi's foreseeable and reasonable misapprehension regarding respondent's role, the parties stipulated that respondent was considered to have represented Takahashi as well as Champion.

Finally, the parties stipulated that respondent violated RPC 1.15(a) and RPC 1.15(c) by endorsing the $2,320 security deposit check from Rex 3 and providing it to Cuyco on April 9, at which time he was aware that Takahashi had retained another attorney and was threatening litigation against Cuyco, when he should have deposited the check into his ATA and safeguarded the funds until the dispute had concluded. The parties stipulated that respondent also violated RPC 1.15(b) by failing to inform Takahashi when respondent received the check.

As stated previously, the RPC 3.4(g) charge was the sole subject of the disciplinary hearing. Based on the foregoing facts, the complaint alleged that respondent violated RPC 3.4(g) by threatening to report Takahashi "to the authorities for theft" in his May 14, 2015 letter to Noll, if Takahashi did not return both the vehicle and corresponding dealer plates immediately.

Respondent denied having violated RPC 3.4(g), claiming that Cuyco alleged that Takahashi had stolen the license plates from him, and that respondent accurately represented to Takahashi's counsel what Cuyco had

authorized him to communicate – Cuyco wanted the items returned or he would report Takahashi to the proper authorities. Respondent maintained that the specific statement at issue is "separate and apart from the paragraphs referencing the parties' negotiations and it is not stated as a condition of agreeing to anything or a settlement." Further, respondent noted that there was a similar exchange in a July 15, 2015 e-mail from Cuyco's counsel in the federal litigation to Takahashi's counsel regarding the litigation, in which Cuyco's counsel stated, "As you are aware, your firm has made numerous threats of criminal prosecution and administrative penalties in this matter and we have advised our client regarding this issue." Thus, respondent urged a reprimand or less as the appropriate quantum of discipline for his misconduct.

In both its written summation to the panel and its brief to us, the OAE relied on the stipulation and the facts elicited at the DEC hearing in support of its contention that respondent violated all the charged RPCs, including RPC 3.4(g).

The OAE asserted that respondent's combined misconduct placed Takahashi in a vulnerable position in which Cuyco could victimize him; allowed his familial relationship with Cuyco to overcome his duty of loyalty to Takahashi; and potentially permitted great economic harm to Takahashi.

Although the OAE conceded that, standing alone, the sanction for an RPC 3.4(g) would be an admonition, it noted that the DEC's dismissal of the charge would not affect its recommendation for discipline, and urged that the combination of respondent's misconduct warrants a censure.

In respect of the RPC 3.4(g) charge, the OAE relied on In the Matter of Christopher M. Howard, DRB 95-214 (August 1, 1995) (discussed below), arguing that respondent's admissions that he knew the language at issue was "problematic;" he was shocked to see the language; he never before or since used such language; and his acknowledgment that just because his adversary threatened criminal charges does not mean he could likewise threaten such charges, are evidence of a "consciousness of guilt that supports a finding of intent." The OAE distinguished respondent's conduct from that of the attorney in In re Helmer, 237 N.J. 70 (2019), a case upon which respondent relied (discussed below).

The OAE further relied on In re Levow, 176 N.J. 505 (2003) (admonition imposed on attorney who violated RPC 3.4(g), in connection with a medical malpractice lawsuit, by writing a letter to his unrepresented adversary setting forth his client's personal injury claim; mentioning "criminal assault;" warning of a pending civil lawsuit; and including a demand of $3,500,000 to settle the claim; then, unbeknownst to the

attorney, the client filed a criminal complaint against the adversary; the criminal charges were dismissed and the client never pursued a civil suit). The OAE emphasized that the holding in Levow supported its contention that actual ongoing civil litigation is not required to trigger an RPC 3.4(g) violation, contrary to the DEC panel's determination and respondent's argument that the Rule requires that the parties be involved in civil litigation.

The OAE noted no aggravating factors and, in mitigation, recognized that respondent has no disciplinary history; employed subsequent remedial measures when he deposited the remaining security deposit in his ATA; readily admitted his wrongdoing; and exhibited both contrition and remorse.

In respondent's mitigation statement, supplemental submission to the DEC, and brief to us, he argued that he did not violate RPC 3.4(g) and that the totality of his mitigating factors warranted discipline of, at most, a reprimand. He urged us to adopt the DEC panel's determinations and to dismiss the RPC 3.4(g) charge.

Respondent asserted that he was not involved in the parties' finances or business operations, transferred the partial lease deposit to Cuyco because he believed it belonged to Cuyco, and then obtained the return of the disputed amount which he is currently holding in his ATA, at the OAE's

direction. He contended, despite his carrier's settlement with Takahashi, and Takahashi's representations to the contrary, that Takahashi had incurred no other financial loss. Further, Tan stated that he had provided legal services for Cuyco, Takahashi, and Champion after the execution of the October 21, 2014 lease.

With respect to the RPC 3.4(g) charge, respondent maintained that he penned the statement at issue during negotiations regarding the parties' dispute, which were conducted solely through Takahashi's counsel; the statement was in response to Takahashi's threats, through counsel, of criminal action against Cuyco; and there was no improper advantage gained because settlement was not conditioned on Takahashi's compliance with respondent's demand of the return of the vehicle and dealer plates. Further, the statement was not made to invite a quid pro quo. Respondent contended that there was no determination that Cuyco's claim of Takahashi's wrongful possession was untruthful, and that respondent ceased all negotiations after Takahashi initiated the federal complaint.

Respondent argued that RPC 3.4(g) does not provide that "it is a violation to convey truthful and accurate information regarding the parties' conduct and respective rights arising therefrom." RPC 3.4(g) does not define "civil matter," or expand the term beyond a formal civil lawsuit, and

at the time of respondent's statement no civil matter was pending. In addition, respondent relied on the decision in Helmer to support his argument that he did not violate RPC 3.4(g), because in Helmer, the RPC 3.4(g) charge was dismissed where the circumstances were much more egregious than the instant facts.

Respondent further argued that the stipulated violations stemmed from a single business relationship; his improper, but understandable, over-reliance on the veracity of Cuyco's representations due to their familial relationship; and his failure to confirm the accuracy of the representations with Takahashi. Respondent contended that Takahashi's only monetary loss was the partial lease deposit refund, which had been remedied. In addition, respondent asserted that the OAE's interpretation of RPC 3.4(g) ignored victims' rights and the obligations of law enforcement; would result in a prohibition on all crime victims' communications when there is factually related civil litigation; and failed to recognize that the RPC prohibits an "improper" advantage as opposed to any advantage.

Respondent urged us to adopt the DEC panel's dismissal of the RPC 3.4(g) charge because the intent of the statement at issue was not to gain an improper advantage in a civil matter; there was no pending civil matter in the courts; respondent sent the letter because a criminal act may have

occurred; and the exchange was designed to achieve the return of the vehicle that the client considered to be stolen. He also noted that Takahashi refused to appear at the hearing and, thus, respondent's testimony was uncontested and supported the panel's findings.

Moreover, respondent submitted three character letters from New Jersey attorneys who were his former employees, attesting to his high legal, moral, professional, and ethical standards, to demonstrate that his misconduct was an aberration. Those letters stated that respondent is well respected in the legal community; is dedicated to his clients and his family; provides pro bono services to clients and assistance to other attorneys; and is deeply embarrassed, regretful, and remorseful about the instant disciplinary matter.

Respondent stated that there are no aggravating factors and, in mitigation, he had cooperated with the investigation; he has no ethics history in seventeen years at the bar; he successfully employed remedial measures when he obtained the return of the disputed deposit balance; he readily admitted wrongdoing; he demonstrated contrition and remorse; and there is little likelihood that the misconduct will be repeated. Accordingly, respondent maintained that a reprimand or less is the appropriate quantum of discipline, indicating that an admonition would be most appropriate.

The DEC did not conduct an independent examination of the facts and RPC violations, except in respect of RPC 3.4(g), but rather accepted the facts and violations as stipulated, declaring them to be based on clear and convincing evidence. The panel determined that the clear and convincing evidence did not establish that respondent violated RPC 3.4(g).

Specifically, the DEC recognized that the instant dispute was based on whether the statement at issue was sufficient to establish an RPC 3.4(g) violation. The panel relied on Helmer in dismissing the RPC 3.4(g) charge, viewing it with "heightened care" and acknowledging that "the core issue is not whether private counsel could pursue restitution through the criminal process but rather the manner in which he sought to do so." In re Helmer, 237 N.J. at 83-84. The statement was sent to opposing counsel as part of an exchange that involved strong language on both sides; a scenario which the panel determined was not contemplated by RPC 3.4(g). The panel noted that it was unclear whether the facts contained in the paragraph were untrue, and that there was no precedent for the position that counsel cannot espouse a fact regarding a potential criminal act.

Further, the panel recognized the plain language of the Rule – that an attorney shall not "present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter," and

concluded that, although respondent did threaten criminal charges, the intent of the statement was not "to obtain an improper advantage in a civil matter." No civil matter was pending at the time the letter was written, although a civil dispute was anticipated. The panel determined RPC 3.4(g) permitted a threat to present criminal charges as long as it was not made to obtain an improper advantage. It concluded that respondent composed the statement because a criminal act may have occurred; the exchange between counsel involved the stolen vehicle and other matters; and the purpose of the paragraph was to have the stolen vehicle returned. The DEC noted that the facts did not establish respondent's dishonesty, venality, and immorality. Therefore, the panel found that the statement did not establish an RPC 3.4(g) violation.

The panel found that there were no aggravating factors. In mitigation, the panel considered respondent's mitigation statement persuasive; that he has demonstrated contrition; and that it is unlikely that he will repeat the misconduct. The DEC acknowledged the OAE's position that an RPC 3.4(g) violation would not change its recommended discipline of censure. In conclusion, the panel recommended a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the clear and convincing evidence supports the DEC's determination that respondent

violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.5(b); RPC 1.7(a)(2); RPC 1.7(b)(1); RPC 1.13(d); RPC 1.13(e); RPC 1.15(a); and RPC 1.15(b). For the reasons set forth below, however, we determine to dismiss the RPC 1.15(c) and RPC 3.4(g) charges.

Respondent's most egregious misconduct involved the prolonged conflict of interest. Respondent represented both Takahashi and Champion and failed to correct Takahashi's reasonable and foreseeable misapprehension concerning such a role. Then, respondent assisted Takahashi in negotiating the initial lease with Rex 3, which established an attorney-client relationship.

It is well-settled that an attorney must act with high standards in business transactions and that his professional obligations extend to all persons who have reason to rely on him, even if they are not strictly clients. In re Katz, 90 N.J. 272, 284 (1982) (citing In re Lambert, 79 N.J. 74, 77 (1979)); In re Genser, 15 N.J. 600, 606 (1954). Even if Takahashi had not been respondent's client, which respondent tacitly admitted was the case, Takahashi had every reason to rely on respondent to protect his interests. In re Chester, 127 N.J. 318 (1992) (attorney reprimanded for failing to protect the interests of a third party in a business transaction and drawing a trust account check against uncollected funds).

RPC 1.7(a)(2) provides:

> a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent

> conflict of interest exists if:
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

RPC 1.7(b)(1) provides that an attorney may, nevertheless, represent a client when there is a concurrent conflict of interest if:

> each affected client gives informed consent, confirmed in writing, after full disclosure and consultation . . . [w]hen the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved.

Here, respondent violated RPC 1.7(a)(2) by continuing to represent Cuyco in connection with the dispute between Cuyco and Takahashi when he knew, at least as early as his receipt of the April 1, 2015 e-mail from Cuyco, that the relationship between Cuyco and Takahashi irreparably had broken down. Respondent continued his representation of Cuyco, however, in ongoing negotiations with Takahashi's counsel regarding their dispute, notwithstanding the significant risk that his representation of Cuyco would be materially limited by his obligations to Takahashi and Champion. Also, respondent violated RPC 1.7(b)(1) by failing to obtain the required informed, written consent from Takahashi, Cuyco, or Champion, after full disclosure and consultation; nor did he explain the advantages and risks of a common representation to any of the

parties.

Respondent further violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). He failed to consult with Takahashi regarding whether Takahashi wanted to extend the lease in his own name. He did not consult with Takahashi prior to notifying Rex 3 that Takahashi agreed to allow the first lease to expire, nor about signing the release authorizing a credit of $2,910 from the security deposit as payment for outstanding rent. Respondent failed to inform Takahashi that he drafted a release authorizing the issuance of the security deposit to Cuyco; to confirm with Takahashi that he agreed to sign the release and actually had signed it, prior to submitting it to Rex 3; to confer with Takahashi regarding entering into the new five-year lease agreement between Cuyco and Rex 3, and its assignment to Champion Leasing or Champion Performance; and to notify or obtain permission from Takahashi upon receipt of the April 2015 check representing the remainder of the security deposit, after which respondent endorsed the check and provided it to Cuyco. Overall, respondent failed to protect Takahashi's interest in Champion, to the extent that it was compatible with his duty of loyalty to Cuyco and Champion.

Further, respondent violated RPC 1.5(b) by failing to provide Champion with a writing communicating the basis or rate of his fee, despite the fact that

he had not previously represented Champion.

Respondent also was charged with a violation of RPC 1.13(d) which requires an attorney, when dealing with an organization's directors, officers, employees, members, shareholders or other constituents, to explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part. Respondent violated this Rule by failing to explain to Takahashi that respondent did not represent Takahashi personally, but only Champion and Cuyco. This explanation was necessary to avoid any misunderstanding during respondent's negotiation of the second lease. In the absence of such an explanation, Takahashi justifiably and foreseeably relied upon respondent's undivided loyalty, considering respondent's prior representation of Takahashi, in both negotiating the initial lease between Champion and Rex 3 and Takahashi's motor vehicle matter. If respondent complied with R. 1.13(d), he may have avoided not only the instant ethics charges, but also the federal lawsuit between himself and Takahashi.

Respondent also violated RPC 1.13(e), which states:

> A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of RPC 1.7. If the organization's consent to the dual representation is required by RPC 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented or by the shareholders.

Respondent admittedly failed to obtain Takahashi's consent to the dual representation. The discipline for respondent's violation of RPC 1.13 would, nevertheless, be subsumed into the discipline imposed for his violation of RPC 1.7.

Next, respondent violated RPC 1.15(a) by endorsing the $2,320 security deposit check from Rex 3 and submitting it to Cuyco, despite his awareness that Takahashi had retained counsel and was threatening litigation. Given the circumstances, respondent was duty-bound to deposit those disputed funds in his ATA and to safeguard them until the dispute was resolved. Respondent also violated RPC 1.15(b) by failing to notify Takahashi when respondent received the check.

The language in respondent's May 14, 2015 letter to Noll comprises the basis for the RPC 3.4(g) charge: "As such, we are demanding that Mr. Takahashi return both the plates and the vehicle immediately or else be reported to the authorities for theft." The precursor to RPC 3.4(g) was DR 7-105(A), which stated that, "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges in a civil matter." By comparison, RPC 3.4(g) states that, "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges **to obtain an improper advantage** in a civil matter." (Emphasis added).

Cases applying both DR 7-105(A) and RPC 3.4(g) consistently have examined whether the attorney had the intent or purpose to obtain an improper advantage in a civil matter. The revision essentially codified the element of intent always required to find a violation of the Rule.

For example, in In the Matter of Michael K. Chong, DRB 19-027 (March 27, 2019), the attorney repeatedly threated criminal prosecution and incarceration toward a third-party paralegal with whom he was engaged in a $725 contract dispute. We found that, in an attempt to prevail in a civil matter, the attorney used the threats to improperly leverage potential criminal consequences for his advantage. We characterized the attorney's actions as the very conduct that RPC 3.4(g) is intended to deter.

In In re Beckerman, 223 N.J. 286 (2015), the attorney threatened to pursue the federal prosecution of his pro se adversary, his client's former husband, during post-divorce civil proceedings. In the Matter of David M. Beckerman, DRB 14-176 (December 10, 2014) (slip op. at 7). We concluded that the purpose of the attorney's threats of criminal prosecution "was to gain an advantage in the post-divorce litigation," a violation of RPC 3.4(g). Id. at 23. For his violation of RPC 3.4(g), accounting for the "prolonged" nature of his misconduct, which spanned five years, the attorney received a censure.

In In re McDermott, 142 N.J. 634 (1995), the attorney filed criminal

charges against a client and her parents, alleging theft of services, after the client stopped payment on a check for legal fees. In the Matter of John V. McDermott, DRB 94-385 (May 23, 1995) (slip op. at 7-9). Those criminal charges were dismissed, on motion of the prosecutor, who concluded that the attorney's claim against his client was civil, not criminal. Id. at 10. We found that "[a] fair reading of the record leaves no doubt that respondent's sole design was to frighten [his client] and her parents into paying him his fee, not later, but immediately." Id. at 13. We characterized the attorney's threat of criminal prosecution as "calculating," since he was "not merely interested in recovering his fees. He also wanted to avoid a lawsuit [alleging malpractice]" by leveraging a dismissal of the criminal charges in return for a full release from his client. Ibid. For his violation of RPC 3.4(g), the attorney received a public reprimand.

In In re Neff, 185 N.J. 241 (2005), when a dispute arose at a real estate closing over the payment of the attorney's $750 legal fee, the attorney seized his adversary's file, took documents from it, and refused to identify the items taken or to return them to the adversary. In the Matter of H. Alton Neff, DRB 05-124 (August 31, 2005) (slip op. at 5-7). Moreover, he unilaterally terminated the closing, called the police, and directed them to either remove the adversary from his building or to arrest him for trespass. Id. at 6-7. In addition to the attorney's threat to charge his adversary with trespassing, he considered theft

charges. Ibid. We characterized the attorney's threats of criminal prosecution of his adversary as "abominable," determining that "[a]n inference may be raised that respondent's purpose in threatening criminal prosecution was to coerce [his adversary] into agreeing" with his position that the transaction was nullified due to the failure to pay his fee, and "to obtain an improper advantage in the transaction." Id. at 22. For his violation of RPC 3.4(g), the attorney received a censure, after we weighed aggravating circumstances, including a prior reprimand.

In support of its argument that respondent had violated RPC 3.4(g), the OAE likened the present facts to those of In the Matter of Christopher M. Howard, DRB 95-214 (August 1, 1995). In Howard, we found a violation of RPC 3.4(g) and imposed an admonition on an attorney who, during an ongoing dispute between his client and another shareholder of a corporation, sent a letter to the other shareholder on behalf of the client, informing him that, if he did not return certain personal property to the attorney's client within five days, pursuant to his instructions, the client would file a complaint in municipal court for unlawful conversion. Howard, DRB 95-214 at 1.

To determine whether an attorney's advocacy crossed the line contemplated by RPC 3.4(g), we examine both the context of the conduct and the attorney's intent. In that light, Cuyco, as the operating principal of

Champion, was still responsible for the vehicle and the dealer plates possessed by Takahashi. Regardless of whether the ongoing business dispute was headed toward civil litigation, Cuyco had the right to pursue parallel, criminal charges against Takahashi, within the bounds of the RPCs, and to obtain legal representation toward that purpose.

The question before us is whether respondent's statements in his letter were intended to gain an improper advantage in a civil matter. Based on this record, we concluded that the OAE failed to sustain its burden of proof that the advantage was improper. Indeed, if Takahashi failed to return Champion's property, Cuyco was entitled to pursue other remedies available to him, including reaching out to criminal authorities to report Takahashi's perceived theft. Although, as respondent recognized, his statement was potentially "problematic," we find both respondent's intent and the context of the statement to be factually distinguishable from the precedent discussed above. Thus, we are unable to conclude by clear and convincing evidence that the statement violated RPC 3.4(g), and determine to dismiss that charge.

As a side note, respondent's argument that the holding in Helmer absolves his conduct underpinning the RPC 3.4(g) violation is without merit. In Helmer, the attorney, a former prosecutor with the Cumberland County Prosecutor's Office (CCPO), was retained to represent National Freight, Inc. (NFI), to

persuade the prosecutor's office to prosecute the principals of Trident for bad checks, because Trident owed NFI funds for services rendered. In the Matter of Yaron Helmer, DRB 17-070 (September 26, 2017) (slip op. at 2,4-5,10).

Prior to respondent's retention and Trident's involuntary bankruptcy declaration, but after NFI had filed a civil lawsuit against Trident alleging breach of contract, unjust enrichment, fraud and conspiracy to commit fraud, NFI's Vice President of Security, Willard Graham, warned the owners of Trident, in writing, that NFI would pursue criminal prosecution if Trident did not make NFI whole within twenty days. Id. at 4-8. We noted that, if Graham had been NFI's attorney, his threat would have constituted a textbook RPC 3.4(g) violation. Id. at 52.

We identified multiple ethical "red lights" that Helmer "ran" during his representation of NFI, including "pursuit of a criminal prosecution based on the same alleged misconduct in the civil and bankruptcy proceedings, which should have prompted ethics concerns; use of special access to the CCPO; manipulation of an inexperienced assistant prosecutor; design of a plan to charge and arrest individuals in order to convert a high bail into restitution" and very irregular and irresponsible grand jury testimony. In re Helmer, 237 N.J. 70, 80 (2019). A majority of members agreed with the Special Master's dismissal of the RPC 3.4(g) charge, but did not adopt his legal conclusions, and explained that the

Rule required proof of intent to gain an improper advantage in a civil matter, which did not occur in Helmer. Id. at 80. We found, however, that Helmer violated RPC 8.4(a) and RPC 8.4(c), and imposed a censure. Id. at 80-81.

The Court declined to consider the RPC 3.4(g) charge separate from the RPC 8.4(d) charge; determined that the prosecutors made the ultimate decisions; and that Helmer had not improperly induced the prosecutors and the court to act: "[a]lthough he actively encouraged a criminal prosecution and advocated for restitution for his client, to place primary responsibility on Helmer for what occurred overlooks the role and decision-making authority of the prosecution team." Id. at 82, 84. The Court did not find clear and convincing evidence that Helmer violated RPC 8.4(d), and dismissed the disciplinary charges. Id. at 89.

Here, unlike Helmer, respondent directly warned Takahashi, through his counsel, that respondent would report Takahashi to the authorities for theft if he did not immediately return the license plates and vehicle at the time when the parties were involved in negotiating a civil dispute regarding the winding up of Champion. The attorney in Helmer was specifically retained to pursue criminal prosecution of Trident. The Court evaluated Helmer's conduct in the setting of RPC 8.4(d) rather than RPC 3.4(g), determined that the prosecutor and the court bore ultimate responsibility for Helmer's conduct, and dismissed the ethics charges against him. Id. at 80-81. Helmer, therefore, is inapplicable to the facts

of this case.

Finally, we determined to dismiss the charge that respondent's conduct violated RPC 1.15(c). That Rule requires an attorney to keep property in which both the attorney and another person claim interest separate until there is an accounting and a severance of their interests. If a dispute arises, the part of the property in contention should be kept separate until it is resolved. Here, the parties stipulated, and the panel found, that respondent violated RPC 1.15(c) by failing to deposit the security deposit check in his ATA until the dispute was resolved. However, RPC 1.15(c) applies only where there is an asserted dispute concerning a lawyer's and another party's respective claims of interests in funds. Respondent did not have an interest in the security deposit check – the dispute over those funds was between Takahashi and Cuyco. Accordingly, RPC 1.15(c) does not apply. Moreover, respondent's failure to safeguard funds is adequately addressed by the RPC 1.15(a) and RPC 1.15(b) findings.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.5(b); RPC 1.7(a)(2); RPC 1.7(b)(1); RPC 1.13(d); RPC 1.13(e); RPC 1.15(a); and RPC 1.15(b). We determined to dismiss the charges that he violated RPC 1.15(c) and RPC 3.4(g). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct involved his concurrent

representation of Cuyco, Takahashi, and Champion which caused him to engage in a prolonged conflict of interest. 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).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of

the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client, but for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits, violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in $40,000 in accrued interest and a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client

reasonably informed about events in the case (RPC 1.4(b)); return the client file upon termination of the representation (RPC 1.16(d)); and cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney suffered a stroke that forced him to cease practicing law and expressed his remorse); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of

interest; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

Cases involving an attorney's failure to safeguard funds, in violation of RPC 1.15(a), and to promptly notify and deliver funds to clients or third persons, in violation of RPC 1.15(b), usually result in the imposition of an admonition, even if accompanied by other infractions. See, e.g., In re Sternstein, 223 N.J. 536 (2015) (after the attorney had received five checks from a bankruptcy court, representing payment of his clients' claim against the bankrupt defendant, he failed to deposit the checks in his attorney trust account, choosing instead to place the checks in his desk, a violation of RPC 1.15(a); the attorney also failed to inform his clients of his receipt of the funds, and, only after numerous inquiries, first from the clients and then from an attorney retained by them to pursue their interests, did he finally take the steps necessary to receive the funds from the bankruptcy court, which he then turned over to the clients, a violation of RPC 1.15(b); despite two prior suspensions, we did not enhance the discipline because those matters were remote in time and involved unrelated conduct); and In the Matters of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-

453 (March 19, 2012) (in three personal injury matters, attorney neither promptly notified his clients of his receipt of settlement funds nor promptly disbursed their share of the funds; the attorney also failed to properly communicate with the clients; we considered the attorney's lack of prior discipline).

In addition, we requested information regarding the financial arrangement between Takahashi and Cuyco; whether the arrangement was memorialized in writing, and if so, by whom; and the extent of economic harm that Takahashi and Cuyco suffered. Except for the facts set forth in this memorandum, this information remains unknown due to Takahashi's and Cuyco's refusal to further cooperate with the OAE.

As set forth in the facts, during the negotiations of Takahashi and Cuyco's dissolution of Champion, Takahashi communicated a buy-out offer of $417,224.90 and a previous demand of $131,000; Cuyco's counteroffer was $131,000; and respondent's carrier settled with Takahashi for $62,500 in the federal lawsuit. Takahashi represented to the OAE that he suffered over $900,000 in damages, and Tan testified that the parties both initially contributed $500,000 to Champion. As of the filing of this matter, respondent held the $2,320 in his ATA, representing the remainder of the security deposit. Without Cuyco and Takahashi's testimony, and further

documentation, including information regarding resolution of the entire federal lawsuit and documents indicating the parties' total respective investment in Champion, however, it is difficult to quantify the economic harm to the parties.

A reprimand might have been the appropriate sanction for respondent's conflict of interest if he had not committed additional violations. Generally, each additional violation would singularly warrant an admonition. To craft the appropriate discipline, however, we also must consider the aggravating and mitigating factors. In aggravation, there was financial harm to the parties, although it could not be precisely quantified. Further, respondent's mistakes stemmed from his unwise decision to represent and rely on his family relationship with Cuyco, at the expense of Takahashi and Champion, ultimately resulting in the violation of eleven RPCs. Considering those additional aggravating factors, we conclude that the totality of respondent's misconduct warrants a censure.

In mitigation, respondent has no ethics history in seventeen years at the bar; cooperated with the investigation; acknowledged his misconduct; expressed remorse and contrition; employed remedial measures; submitted persuasive letters attesting to his good character; and it is unlikely that the misconduct will be repeated. In addition, he entered into the stipulation admitting all of the RPC

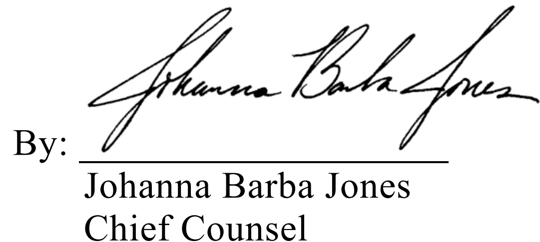
charges, except the RPC 3.4(g) charge.

On balance, given the totality of the circumstances and respondent's myriad RPC violations, the mitigation is insufficient to reduce the discipline. A censure, thus, is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Members Boyer, Joseph, Petrou, and Singer voted to impose a reprimand.

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 James F. Paguiligan
Docket No. DRB 20-244

Argued: February 18, 2021

Decided: June 14, 2021

Disposition: Censure

Members	Censure	Reprimand
Clark	X	
Gallipoli	X	
Boyer		X
Hoberman	X	
Joseph		X
Petrou		X
Rivera	X	
Singer		X
Zmirich	X	
Total:	5	4

Johanna Barba Jones
Chief Counsel