DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
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September 27, 2021

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of David L. Johnson**
Docket No. DRB 21-025
District Docket No. XIV-2018-0130E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.8(a) (eight instances).

This disciplinary case arises as a result of several business transactions between respondent and Paul Wiebel, a long-time client of respondent and respondent's law firm. Those transactions took place between 2002 and 2009.

Specifically, in 2003, Wiebel purchased a one-third stock interest in Destiny Plastics, Inc. (Destiny Plastics), for $1.2 million. Wiebel also extended a loan to Destiny Plastics in the amount of $2.5 million. On March 24, 2003, Wiebel executed a personal guaranty to Premium Financial Services in connection with financing for Destiny Plastics. Billing records from respondent's law firm showed that it had charged Wiebel for a legal review of this guaranty, but respondent could not recall if he was the attorney that reviewed the agreement. Respondent recalled, however, advising Wiebel not to sign the guaranty.

Respondent later became involved with Destiny Plastics when he agreed to loan money to the company to purchase molds for the manufacture of plastic cutlery. On April 15, 2003, to

effectuate this transaction, respondent incorporated Jawbone, LLC (Jawbone). Pursuant to a July 2, 2003 Sale, Lease and Repurchase Agreement, Jawbone loaned Destiny Plastics $430,000 to purchase the molds (the Jawbone Agreement). Pursuant to the Jawbone Agreement, Jawbone took title to the new cutlery molds and leased the molds back to Destiny Plastics. Respondent and Destiny Plastic's Chief Executive Officer signed the Jawbone Agreement, with Wiebel signing the agreement as a personal guarantor for the payment and leasing obligations due to Jawbone. Destiny Plastics ultimately defaulted on the loan, filed for bankruptcy protection, and litigation ensued, in which Wiebel indemnified respondent and Jawbone.

Respondent stipulated that he entered the Jawbone Agreement without complying with the written disclosures and informed consents required by RPC 1.8(a). Further, neither the stipulation nor accompanying exhibits include a signed, written consent from Wiebel. Although the Jawbone Agreement stated that "[t]he parties acknowledge that each has had the opportunity to consult with independent counsel of their own choosing in connection with the review and execution of this agreement," that provision did not apply to Wiebel, who was not a party to the agreement but, rather, was a guarantor.

Further, from February 2002 through April 2005, respondent provided seven loans to Wiebel, totaling $950,160. Respondent admitted that, with the exception of the $430,000 obligation to Destiny Plastics (discussed above), all loans made by respondent to Wiebel were not memorialized in promissory notes or other written documentation. Thus, respondent further admitted, the loans were provided without the written disclosures and signed, informed consents that RPC 1.8(a) requires.

In order to pay off the outstanding debt to respondent, on December 1, 2009, Wiebel assigned his 46.25 percent ownership interest in Silver Ridge Rocky Mountain, LLC to respondent.[1] Respondent accepted this assignment as the full repayment of all outstanding sums owed to him. In total, respondent released Wiebel from $950,160 of debt. On January 14, 2010, the Silver Ridge operating agreement was amended to reflect that Wiebel was no longer a member and that respondent held a 92.5 percent interest in the company.

RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client unless:

> (1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
>
> (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the

[1] On December 1, 1999, respondent and Wiebel executed an operating agreement and created Silver Ridge, a limited liability company established to purchase and sell property in Colorado and consisting of four members, with respondent and Wiebel each holding a 46.25 percent financial interest and two other members each holding a 2.5 percent interest. Respondent did not admit to committing unethical conduct by entering into the Silver Ridge agreement with Wiebel and, since the record does not otherwise enable a determination of whether the requisite disclosures and informed consents were executed, it is not included as one of the instances of misconduct.

> transaction; and
>
> > (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Thus, in order to protect the interests of a client who engages in business transactions with their lawyers, RPC 1.8(a) mandates extensive disclosures and writings that are designed to ensure the business transactions between a lawyer and client are knowing, informed, and consensual.

Here, respondent acknowledged that he entered into the Jawbone Agreement with Weibel and provided him with seven loans totaling over $950,000. The record further demonstrates that respondent entered into these business transactions without any of the disclosures or writings required by RPC 1.8(a)(2) or (3). More specifically, respondent admitted that he failed to advise Wiebel, in writing, of the desirability of seeking independent legal advice, as RPC 1.8(a)(2) requires. Respondent also admitted that he failed to obtain the client's written, informed consent, as RPC 1.8(a)(3) requires.

Based on the above facts, the Board determined that respondent's misconduct violated RPC 1.8(a) (eight instances).

Reprimands have been imposed when the attorney engages in multiple business transactions without the client's informed written consent, the loan involves a significant amount of money, when the attorney is guilty of additional ethics infractions, or when aggravating factors are present. See, e.g., In re Rajan, 237 N.J. 434 (2019) (reprimand for attorney, while representing his client in the purchase of a property that the client intended to develop into a hotel, introduced the client to two other clients who agreed to fund fifty percent of the hotel project; when the client could not fund his fifty percent share, a holding company formed by the attorney and his brother and brother-in-law lent $450,000 ($350,00 of which was the attorney's) to the client so that he could close the transaction; the attorney, thus, acquired a security and pecuniary interest adverse to his client and became potentially adverse to the other clients; the attorney did not advise his clients to seek the advice of independent counsel, and he did not obtain their informed, written consent to the loan transaction; the attorney also represented the client in the real estate transaction and received $32,500 in legal fees; violations of RPC 1.7(a) and RPC 1.8(a); despite the attorney's unblemished disciplinary record, the absence of harm to the client, his acceptance of responsibility, and his expression of remorse, the Board imposed a reprimand because he exercised such poor judgment; the attorney's prior service as a member of a district ethics committee was considered in aggravation and in mitigation); In re Amato, 231 N.J. 167 (2017) (reprimand for attorney who made three loans, totaling more than $528,000, to his client, and entered into a business transaction involving a currency transaction, all in violation of RPC 1.8(a); despite the attorney's lack of a disciplinary record, his admission of wrongdoing, and the lack of harm to the client, he received a reprimand, given the large amount of money involved); and In re Futterweit, 217 N.J. 362 (2014) (reprimand for attorney who, in lieu of legal fees, agreed to share in the profits of his client's business, without first advising the client, in writing, of the desirability of seeking the advice of independent counsel and obtaining the client's written consent to the transaction, a violation of RPC 1.8(a); in aggravation, the Board noted that the attorney had given inconsistent statements to

the district ethics committee, that he had received an admonition for failure to communicate with a client, and that he had never acknowledged any wrongdoing or showed remorse for his conduct); In re Gertner, 205 N.J. 468 (2011) (reprimand for attorney who provided legal representation at the closings on houses that he and his business partner purchased and flipped, without complying with the requirements of RPC 1.8(a); he also negligently misappropriated client funds on four occasions); In re Kazer, 189 N.J. 299 (2007) (reprimand for attorney who made nineteen loans to eleven clients, altruistic motivations considered in mitigation).

Based on the above precedent, the Board determined that respondent's misconduct warrants a reprimand. Although the significant total amount of the loans issued by respondent (exceeding $950,000) could serve to enhance the discipline to a censure, see e.g., In the Matter of Lawrence S. Berger, DRB 20-225 (June 8, 2021), the Board concluded that the presence of compelling mitigating factors, including respondent's forty-year unblemished legal career, his acknowledgment of wrongdoing, and the lack of any other RPC violations supports imposition of a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated February 8, 2021.

2. Stipulation of discipline by consent, dated February 4, 2021.

3. Affidavit of consent, dated January 28, 2021.

4. Ethics history, dated September 27, 2021.

Very truly yours,

Johanna Barba Jones
Chief Counsel

JBJ/jm
Enclosures
c: See attached
(w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (e-mail and interoffice mail)
HoeChin Kim, Presenter
Office of Attorney Ethics (e-mail)
Marshall D. Bilder, Respondent's Counsel (e-mail and regular mail)
Paul Wiebel, Grievant (regular mail)