Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-210
District Docket No. VIII-2019-0037E

In the Matter of	:
Barbara K. Lewinson	:
An Attorney at Law	:

Decision

Argued: February 17, 2022

Decided: March 16, 2022

Angela F. Pastor appeared on behalf of the District VIII Ethics Committee.

Teri S. Lodge appeared on behalf of respondent.

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 (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.7(a)(2) (engaging in a concurrent conflict of interest).

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

Respondent earned admission to the New Jersey and Pennsylvania bars in 1981. At all relevant times, she maintained a practice of law in East Brunswick, New Jersey.

On January 31, 1992, respondent received a public reprimand for her negligent misappropriation of client trust funds. In re Lewinson, 126 N.J. 515 (1992).

Next, on March 24, 1999, in connection with a motion for reciprocal discipline, the Court suspended respondent for six months, following her consent to disbarment in Pennsylvania for practicing law while ineligible and for misrepresenting her eligibility to a Pennsylvania judge. In re Lewinson, 157 N.J. 627 (1999). According to the website for the Disciplinary Board of the Supreme Court of Pennsylvania, respondent remains disbarred in that jurisdiction.

Finally, on October 7, 1999, the Court suspended respondent for three months for her gross neglect in two client matters. The Court also required that she practice with a proctor for a period of two years upon her reinstatement to the practice of law. In re Lewinson, 162 N.J. 4 (1999). Effective February 8, 2000, respondent was reinstated to the practice of law. In re Lewinson, 162 N.J. 359 (2000).

We now turn to the facts of this matter.

Respondent admitted the misconduct set forth in the formal ethics complaint both in her verified answer and again at the disciplinary hearing. Thus, the facts of this case are undisputed.

Almost two decades ago, respondent represented the grievant, Belinda Wallace, in a divorce proceeding against her then husband, Leonard Wallace.[1] The final judgment of divorce was entered on June 5, 2003 and included a provision for the equitable distribution of the marital home, decreeing that the "parties are to split the proceeds of the home" equally.

In 2019, nearly sixteen years later, respondent undertook the representation of Belinda's former spouse, Leonard, who sought to enforce the terms of the 2003 final judgment of divorce and to split the proceeds from the sale of the marital home. Specifically, respondent and Leonard signed a fee agreement. Thereafter, on August 29, 2019, respondent filed a motion to enforce the terms of the final judgment of divorce on behalf of Leonard, in Superior Court of New Jersey, Middlesex County, Law Division, against her former client, Belinda. Respondent attached to that motion a copy of the operative 2003 final judgment of divorce.

[1] To avoid confusion, going forward, the Belinda and Leonard are referred to by their first names.

In connection with these disciplinary proceedings, respondent admitted having violated RPC 1.7(a)(2) but wished to be heard regarding mitigation. At the disciplinary hearing, she testified that she was eighty-three years old. She further testified that although she sought to "wind down" her general, solo law practice, she still actively practiced, focusing on personal injury and uncontested divorce matters. Additionally, for the past thirty years, respondent has shared office space with another attorney, and they "look at each other's stuff" and "help each other out." A third attorney writes briefs for respondent, and she also has an assistant.

Although she admitted her misconduct, respondent testified that she had not heard from either Belinda or Leonard from 2003 through 2018. Respondent admitted that, in 2019, she agreed to represent Leonard in the action to recover his share of the proceeds from the sale of the marital home, pursuant to the terms of the final judgment of divorce, and that they signed a fee agreement.

As to whether she knowingly agreed to take on Leonard's matter, respondent testified:

> Q. Okay. Prior to filing that complaint, did you realize – consciously realize that you were filing the complaint against someone you had represented 15 years prior?
>
> A. No. I really didn't think about it.
>
> Q. Okay. How did you come to realize that there was a conflict of interest?

> A. After I filed the complaint, Belinda Wallace filed a grievance, and she didn't answer the complaint and she filed a grievance.
>
> [HPR¶35;T25-T26.][2]

Respondent further testified:

> Q. Okay, and what did you do in response to receiving the grievance?
>
> A. I immediately realized – thought, boy, I made a mistake. I called [DEC presenter] Angela Pastor and discussed the – discussed what was going on with her, and we both agreed that I should get out of the case. I also asked her very specifically, I said, do you think that I should be – because the case had just started – I said do you think that I should also dismiss the case. Her comment to me was that, no, I shouldn't dismiss the case because that would be hurting my client.
>
> Q. Okay.
>
> A. So I contacted Leonard, told him I can't represent you and he then, I understand, went forward pro se.
>
> [HPR¶36;T26.]

Respondent next testified that she also advised the court that she had a conflict of interest and withdrew as Leonard's counsel, and that she never collected a fee from Leonard. She described herself as having become "more careful" when checking new clients for any conflict. Respondent further testified

[2] "HPR" refers to the DEC's July 30, 2021 hearing panel report, which contains exhibits J-1 through J-5, and "T" refers to the June 14, 2021 disciplinary hearing transcript.

that she was agreeable to running her initial pleadings by the other two attorneys with whom she shares an office space to check for possible conflicts.

Regarding her ethics history, respondent testified that (1) the 1992 reprimand resulted from a random audit and no clients were harmed; (2) the 1999 suspension occurred because she was practicing law in Pennsylvania while her license was inactive due to her confusion regarding Pennsylvania's license reactivation statute, she paid for her former client's new lawyer and assisted that new lawyer through trial, and, again, no clients were harmed; and (3) besides the three-month suspension imposed in 1999, she has had no further discipline in the past twenty-two years.

The DEC found respondent's testimony cooperative and sincere, but "relatively cursory in all respects." The DEC noted respondent's cooperation and admission of wrongdoing but commented that neither party elicited testimony or evidence of contrition and remorse. As to respondent's testimony regarding the remedial measures she has implemented, the DEC concluded that her measures were "largely superficial and non-specific."

The DEC found, by clear and convincing evidence, that respondent's violation of RPC 1.7(a)(2) was knowingly committed, since she attached the 2003 final judgment of divorce to the 2019 enforcement application and referenced the equitable distribution provision. The DEC further determined that

there was a significant risk that respondent's representation of Leonard in 2019 would have been materially limited by respondent's responsibilities to Belinda, her former client.

Although the DEC failed to specify aggravating and mitigating factors, it recommended the imposition of a reprimand, based on respondent's disciplinary history, and "the fact that this was clearly a knowing violation."

At oral argument before us, respondent, through counsel, again admitted her misconduct. She also accepted the DEC's disciplinary recommendation of a reprimand. Respondent further represented that she had only four client matters to conclude prior to her retirement from the practice of law.[3]

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

As the Court observed in In re Berkowitz, 136 N.J. 134, 145 (1994), "[o]ne of the most basic responsibilities incumbent on a lawyer is the duty of loyalty to his or her clients. From that duty issues the prohibition against representing clients with conflicting interests." (Citations omitted).

[3] As of the date of this decision, respondent's New Jersey law license remains active.

In that vein, RPC 1.7(a)(2) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under that Rule, 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.
>
> [Emphasis added].

Under RPC 1.7(b), however,

> Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client, if:
>
> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation;
>
> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (3) the representation is not prohibited by law; and
>
> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, respondent engaged in a conflict of interest, in violation of RPC 1.7(a)(2), because there was a significant risk that her representation of Leonard, in the enforcement of the final judgment of divorce, would be materially limited

by her prior representation of Belinda in the 2003 divorce proceedings. Indeed, respondent's representation of Belinda in the underlying divorce proceedings included the drafting, negotiation, and acceptance of the final judgment of divorce, which decreed that the proceeds from the marital home be equally split between Belinda and Leonard. As such, respondent represented Belinda in dividing the marital home, the very substance of her representation of Leonard against Belinda, albeit sixteen years later.

Notably, the more appropriate charge in this case would have been RPC 1.9. That Rule, entitled "Duties to Former Clients," states, in relevant part, that:

> (a) A lawyer who has represented a client in a matter **shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client** unless the former client gives informed consent confirmed in writing. (emphasis added).

Despite the manner in which respondent's misconduct was charged, her conduct clearly constituted engaging in a prohibited conflict of interest. Passage of time is not a defense to either RPC 1.7(a) or RPC 1.9(a), and the record clearly establishes that respondent knew or should have known that she had previously represented Belinda.[4] First, respondent attached a copy of the 2003 final

[4] A fact-specific analysis of RPC 1.9 is set forth in Advisory Comm. on Professional Ethics

(footnote cont'd on next page)

judgment of divorce to the enforcement application that she filed on behalf of Leonard. Second, she referenced, in the enforcement application that she filed on behalf of Leonard, the portion of the final judgment of divorce requiring the proceeds from the sale of the marital home to be equally split. Thus, we determine, as the hearing panel found, that "on these facts there was a significant risk that the representation of [Leonard] would have been materially limited by Respondent's responsibility to [Belinda, her former client]."

As RPC 1.7(b) and RPC 1.9(b)(2) provide, despite the existence of a conflict of interest, an attorney may represent a client, under certain conditions, which include obtaining informed, written consent. The absence of such informed consent cements a finding of a conflict of interest. We consistently have emphasized that RPC 1.7(b) operates as a saving provision and, thus, a

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Op. 579, which provides that, in the context of the representation of a party in the partition of property, despite an attorney's assertion that:

> in her prior representation of A and B [, in connection with the purchase of the property,] she obtained no information concerning the finances of either individual or the partnership, she did represent both parties at the closing on the purchase of the property and, therefore, would have reviewed all of the relevant financial documents and, most likely, have retained copies in her file on those clients. The [attorney's] representation of former client A in a partition action, with respect to the property, would be a matter substantially related to the earlier acquisition in which she represented both A and B and, therefore, under the requirements of RPC 1.9(a)(1) the [attorney] would, at a minimum, be required to fully disclose to former client B the request that the [attorney] represent former client A and obtain former client B's consent.

violation of that subpart does not constitute unethical conduct. See In the Matter of Gary L. Mason, DRB 19-448 (October 20, 2020) (slip op. at 6 n.4); In re Mason, 244 N.J. 506 (2021) (finding a violation of RPC 1.7(a)(2) only, despite inclusion of an RPC 1.7(b)(1) charge in the formal ethics complaint). Here, respondent did not attempt to comply with the saving provision of RPC 1.7(b).

In sum, we find that respondent violated RPC 1.7(a)(2). The sole issue left for us to determine is the appropriate quantum of discipline 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. Berkowitz, 136 N.J. at 148. 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; respondent promptly repaid all the funds; no prior discipline).

A reprimand, thus, is the baseline quantum of discipline for respondent's prohibited conflict of interest. In crafting the appropriate discipline, however, we also must consider aggravating and mitigating factors.

In aggravation, respondent has a disciplinary history, including a 1992 public reprimand, a 1999 six-month suspension, and a 1999 three-month suspension. However, respondent has been without formal discipline for more than twenty years. Accordingly, respondent's disciplinary history should be given minimal or no weight. See In re Keeley-Cain, 247 N.J. 196 (2021); In the Matter of Thomas Martin Keeley-Cain, DRB 20-034 (February 5, 2021) (slip op. at 19) (prior discipline was not an aggravating factor, because "[a]lthough respondent received an admonition, in 2005, for similar misconduct, given the passage of time, that prior misconduct does not serve to enhance the discipline"), and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (in imposing only an admonition, we considered the significant passage of time since the attorney's prior disciplinary matters for unrelated misconduct (1990, private reprimand (now an admonition), and 1995, admonition)).

In mitigation, respondent withdrew from the representation of Leonard immediately upon the filing of the ethics grievance, readily admitted her wrongdoing in connection with these proceedings, and appears to have implemented additional steps for conducting a conflict check of potential, new clients.

On balance, we determine that the mitigation is insufficient to warrant a reduction in the baseline quantum of discipline and that a reprimand is required to protect the public and preserve confidence in the bar.

Member Hoberman was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Barbara K. Lewinson
Docket No. DRB 21-210

Argued: February 17, 2022

Decided: March 16, 2022

Disposition: Reprimand

Members	Reprimand	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel