DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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July 25, 2022

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

RE: In the Matters of Christopher M. Walrath and Michael Howard Gluck
Docket Nos. DRB 22-076 and DRB 22-077
District Docket Nos XIV-2019-0122E and XIV-2019-0123E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motions for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the OAE in the above matters, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motions and determined to impose a reprimand for Walrath's violation of RPC 1.7(a)(2) (conflict of interest); RPC 1.8(a) (prohibited business transaction with a client); RPC 4.1(a)(1) (making a false statement of material fact to a third person); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and an admonition for Gluck's violation of RPC 1.7(a)(2) and RPC 1.8(a)

Specifically, on April 25, 2014, Porta at Asbury, LLC (Porta), a restaurant, retained GluckWalrath LLP (the Firm) to represent it in a dispute with Asbury Park, New Jersey regarding its liquor license. Porta was operated by James Watt; Jason Watt; Margaret Brunette; Kyle Lepree; and Michael Alfieri. Collectively, Porta's

operating group was entitled the "Watt Group." However, Porta also fell under the control of the Smith Group, which consisted of the same members, minus Alfieri. Walrath and Gluck believed that the Watt Group and the Smith Group were essentially the same unincorporated entity. Respondents provided legal services to many of the corporate entities owned by the Watt Group and the Smith Group.

Through varied business relations, Walrath and Gluck were acquaintances with Thomas Arnone, who was the Vice President of property management for the PRC Group (PRC). At some point, Arnone spoke with Walrath and Gluck about PRC's ongoing business venture at The College of New Jersey (TCNJ), including the creation of Campus Town on the TCNJ campus. Gluck told Arnone that, if PRC was looking to add a restaurant or bar to Campus Town, the Firm may have a client that would be interested. A few days later, Walrath followed up with Arnone and arranged a meeting to introduce the Smith Group to Arnone to discuss a possible business venture.

On May 5, 2015, a second, more formal meeting occurred at the TCNJ Campus Town. In attendance were respondents; a principal of PRC; and all four owners of the Smith Group. Initially, Gluck did not believe that he and Walrath were present at the meeting to act as attorneys for the Smith Group. However, during the meeting, Brunette approached Gluck and requested representation from the Firm. Gluck viewed the verbal conversation as an extension of the April 2014 retainer agreement signed for the representation of Porta. Thereafter, the Firm acted as counsel on behalf of the Smith Group for the duration of the Smith Group's investment on the TCNJ campus.

The Smith Group ultimately determined to form a new restaurant on the TCNJ campus – Brickwall at Campus Town. Thus, in late May 2015, Walrath and Gluck participated in the negotiation of a letter of intent between the Smith Group and PRC for developing the Brickwall restaurant at TCNJ's Campus Town. Later, in June 2015, Walrath and Gluck participated in the lease negotiation between Brickwall at Campus Town and PRC.

On June 26, 2015, Brickwall at Campus Town and PRC executed a lease. The same date, James Watt sent an e-mail to Walrath and Gluck to thank them for their work on the lease. In that same e-mail, Watt also indicated that he would "reach out to [respondents] early next week regarding [their] potential ownership interest in the project."

Subsequently, Walrath and Gluck decided to invest in Brickwall at Campus Town and, on September 30, 2015, formed Union Street Investments Ewing, LLC (Union Street Ewing) to facilitate the investment. Walrath and Gluck shared equal responsibility and ownership in the entity.

Walrath drafted a letter of investment pertaining to Union Street Ewing's investment in Brickwall at Campus Town, which both respondents signed on October 1, 2015. On October 6, 2015, James Watt signed the letter of investment on behalf of the Smith Group. The letter of investment detailed the financial contributions and legal services that Union Street Ewing and its principals (Walrath and Gluck) would be obligated to invest.

Although Walrath and Gluck invested in Brickwall at Campus Town, the Smith Group operated as the majority owner of the project, with sole authority to make decisions.

Neither Brickwall at Campus Town, nor its four Smith Group investors, gave informed consent, confirmed in writing, after full disclosure and consultation with respondents, regarding the advantages and risks involved in a concurrent conflict of interest. Moreover, the respondents did not advise the Smith Group, in writing, of the desirability of seeking independent legal counsel concerning Walrath and Gluck's investment in the Brickwall at Campus Town project. Consequently, the Smith Group was not given a reasonable opportunity, after receipt of a written advisory, to seek such counsel. However, Walrath and Gluck represented to the OAE that they verbally discussed with James Watt the desirability of having the Smith Group consult with independent counsel prior to the execution of the letter of investment for the Brickwall at Campus Town project. Finally, the members of the Smith Group did not provide informed consent, in writing, signed by each member, regarding the essential terms of the business transaction and the role of Walrath and Gluck in the transaction, including whether respondents were representing the Smith Group in its investment in Brickwall at Campus Town.

On or about April 25, 2017, the Smith Group verbally informed Walrath and Gluck that it was terminating the lease for the Brickwall at Campus Town project. Exercising its sole decision-making authority, the Smith Group made the decision to terminate the lease without consulting Walrath, Gluck, or Union Street Ewing.

Approximately two days later, new counsel assumed the representation of Brickwall at Campus Town and respondents' representation was terminated.

Ultimately, on July 12, 2017, respondents dissolved Union Street Ewing.

In addition to the foregoing, Walrath individually admitted that, on June 25, 2015, he was advised that the Smith Group had approved of the terms of the lease between PRC and Brickwall at Campus Town. Walrath believed that James Watt intended to hand-deliver the required one-month security deposit, the Guarantee to the lease agreement (the Guarantee), and the lease agreement itself to the Firm's Red Bank office, for notarization. Instead, the same date, James Watt sent an e-mail to Walrath informing him that "[w]e are ok with you notarizing." Thus, on June 25, 2015, Walrath improperly notarized the signatures of each of the four Smith Group members upon the Guarantee. Specifically, at the time Walrath notarized the signatures of the Smith Group members on the Guarantee, he was not in the presence of any of the signatories.

After improperly notarizing the Guarantee, Walrath transmitted the document to Peter S. Wersinger, III, Esq., Vice President and Corporate Counsel to PRC. The validity of the Smith Group's personal Guarantee was a material term for whether PRC would grant Brickwall at Campus Town the lease for space on the TCNJ campus. At the time Walrath transmitted the Guarantee to Wersinger, Walrath knew that the jurat appended to the Guarantee was false.

Based on the foregoing facts, Walrath and Gluck admitted that they violated RPC 1.7(a)(2) by simultaneously serving as counsel for the Smith Group while investing in its Brickwall at Campus Town project, which created a concurrent conflict of interest constituting a significant risk that their representation of the Smith Group could be materially limited. Walrath and Gluck both asserted their belief that the conflict was waivable, pursuant to RPC 1.7(b) because, notwithstanding their investment, they could, and did, provide competent and diligent representation and were not materially limited. However, respondents admitted that they failed to obtain the waiver required under RPC 1.7(b) to ensure that "each affected client [gave] informed consent, confirmed in writing, after full disclosure and consultation." Walrath and Gluck also admitted that they violated RPC 1.8(a) by failing to comply with the written and informed consent requirements of that Rule, which are necessary to address an attorney's decision to enter a business transaction with a client. Thus, Walrath and Gluck admitted that they had failed to adequately address the conflicts of interests between their own interests, and that of Union Street Ewing, the Smith Group, and Brickwall at Campus Town, as the RPCs require.

Separately, for his misrepresentation to a third party, Walrath additionally admitted that he violated (1) RPC 4.1(a)(1) when, during his representation of Brickwall at Campus Town, he presented a Guarantee to PRC's corporate counsel, knowing that it contained false jurats, and (2) RPC 8.4(c) when he notarized the Guarantee when none of the four signatories personally appeared before him, and three of the signatories had not even acknowledged to him that the personal Guarantee had been executed and delivered as their voluntary act and deed.

Neither motion cited aggravating factors. In mitigation, the OAE noted that neither Walrath nor Gluck has a disciplinary history in more than thirty years at the bar and that each entered into the disciplinary stipulation with the OAE, thus, saving "valuable resources." See In the Matter of John E. Maziarz, DRB 18-251 (January 9, 2019) (slip op. at 12).

The Board found that the facts, as stipulated to by Walrath and Gluck, clearly and convincingly support the admitted violations of the Rules of Professional Conduct.

Both Walrath and Gluck admitted they engaged in a conflict of interest with their client by simultaneously serving as counsel for the Smith Group, while also investing in the Brickwall at Campus Town project, a violation of RPC 1.7(a)(2). Despite their conflicts of interest, neither Walrath nor Gluck, during their attorney-client and business relationships with the Smith Group, properly disclosed to their clients the conflicts or obtained the Smith Group's written, informed consent waiving such conflicts, in violation of RPC 1.7(a)(2). Indeed, neither Walrath nor Gluck obtained an appropriate waiver of the conflict, in writing, as RPC 1.7(b) requires. Additionally, both Walrath and Gluck violated RPC 1.8(a) by entering into a business transaction with the Smith Group, without complying the Rule's written and informed consent requirements. The record supports these admissions.

Finally, in addition to the above RPC violations, Walrath violated RPC 4.1(a)(1) by providing a Guarantee to a third party knowing that it contained a false jurat; in fact, Walrath's notarization of the Guarantee, when none of the four signatories had personally appeared before him, was itself a violation of RPC 8.4(c). The record supports these admissions.

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). However, if the conflict of interest arises from

a business transaction between a lawyer and client, the minimum measure of discipline is usually an admonition. See, e.g., In the Matter of John F. O'Donnell, DRB 21-081 (September 28, 2021) (admonition for attorney who provided his client with a $180,000 loan, at a six-percent interest rate, in violation of RPC 1.8(a); the attorney also engaged in a concurrent conflict of interest, in violation of RPC 1.7(a), by representing the client in connection with "multiple promissory notes" at the same time the attorney represented a property management company in connection with a real estate transaction in which the client acted as a "broker;" the concurrent representation required the attorney to disburse to his client fees from his trust account, on behalf of the property management company; in imposing an admonition, the Board weighed the attorney's otherwise unblemished legal career of more than forty years and the fact that the misconduct had occurred more than ten years earlier).

Reprimands have been imposed when the attorney engages in multiple business transactions without the client's informed written consent, 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) (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 ($350,000 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 consult 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 both in aggravation and in mitigation).

Thus, based on the applicable case law, the baseline discipline for Walrath and Gluck's violations of RPC 1.7(a)(2) and RPC 1.8(a), standing alone, is a reprimand.

However, Walrath additionally violated RPC 4.1(a)(1) and RPC 8.4(c) when he notarized the Guarantee even though none of the signatories personally appeared before him, and then submitted it to PRC.

Furthermore, the Court has long held that the requirements for the execution of jurats and the taking of acknowledgements must be met in all respects.[1] See In re Surgent, 79 N.J. 529, 532 (1979); In re Coughlin, 91 N.J. 374 (1982) (reprimand imposed on attorney who executed a jurat and completed an acknowledgment on a deed without the presence of the grantor; violations of DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 7-102(A)(5) (false statement of material fact or law to a tribunal); In re Rinaldo, 86 N.J. 640 (1981) (reprimand imposed on attorney who permitted his secretaries to sign two affidavits and a certification in lieu of oath); In re Conti, 75 N.J. 114 (1977) ("severe public reprimand" imposed on attorney who directed his secretary to sign the grantors' names; the attorney then signed his name as a witness and completed the acknowledgment).

Attorneys who have taken improper jurats, or signed the names of others, even with authorization, are guilty of misrepresentation, in violation of RPC 8.4(c). See In re Hock, 172 N.J. 349 (2002). Ordinarily, the sanction for the improper execution of jurats is either an admonition or a reprimand. However, when the attorney witnesses and notarizes a document that has not been signed in the attorney's presence, but the document is signed by the proper party or the attorney reasonably believes it has been signed by the proper party, the discipline is usually an admonition. See, e.g., In the Matter of Nicholas V. DePalma, DRB 12-004 (February 17, 2012) (as a favor to another lawyer, the attorney signed a deed as the preparer, although the other lawyer had prepared it; he also affixed his jurat to the deed and affidavit of title outside the presence of the sellers and in the absence of their signatures; the sellers later signed the affidavit of title; violation of RPC 8.4(c); the Board took into consideration that the attorney had expressed remorse for his misconduct; that his actions were not born of venality but were, rather, a favor for a friend; that he had neither obtained personal gain nor received a fee; that no harm resulted to the sellers; that, at the time of the misconduct, he had been practicing law

[1] Five steps are involved in notarizing documents: (1) the personal appearance by the party before the attorney; (2) the identification of the party; (3) the assurance by the party signing that he is aware of the contents of the documents; (4) the administration of the oath or acknowledgment by the attorney; and (5) execution of the jurat or certificate of acknowledgment by the attorney in presence of the party. In re Friedman, 106 N.J. 1, 7-8 (1987).

for twenty-four years, without incident; and that, since his misconduct, another thirteen years had passed before his retirement for medical reasons).

Knowingly making a false statement of material fact to a third person ordinarily requires a reprimand. See, e.g., In re Lundy, 249 N.J. 101 (2021) (reprimand for an attorney who backdated power of attorney documents and presented them to a third party, violations of RPC 4.1(a)(1) and RPC 8.4(c); the Board found that the attorney did not backdate the documents to cover up a mistake or gain an improper advantage for himself or his client, rather, he drafted and presented the documents to comply with a demand for proof that his client had been authorized to execute an agreement of sale for a property; in mitigation, the Board found that the attorney had an otherwise unblemished record in forty-five years at the bar and had promptly admitted his wrongdoing).

Considering Walrath's additional misconduct, the Board viewed a censure as the baseline discipline for the totality of his violations. However, the Board also weighed the impact of aggravating and mitigating factors as to both respondents.

With respect to aggravation, Walrath notarized the Guarantee to further the project. However, he did so following an e-mail from James Watt informing him that he was "okay" with Walrath notarizing the document. To be sure, it was unethical for Walrath to execute the jurats. However, he did not do so without his client's knowledge or to advance his own interests. Thus, the Board did not give great weight to this aggravating factor.

In mitigation, Walrath and Gluck's misconduct occurred seven years ago. In additional mitigation, both Walrath and Gluck have been practicing law for more than thirty years with no prior ethics infractions – a factor to which the Board assigned significant weight.

Overall, considering the compelling mitigation present in this case, the Board determined that heightened discipline for these two attorneys is not necessary to advance the protective or reputational purposes of the disciplinary system. See In re Principato, 139 N.J. 456, 460 (1995) (citations omitted) ("The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar.") Thus, the Board determined that, despite the serious nature of the respondents' misconduct, the strong mitigating factors justify the imposition of a reprimand on Walrath and an admonition upon Gluck.

Enclosed are the following documents regarding both respondents:

1. Notice of motion for discipline by consent, dated May 11, 2022.

2. Stipulation of discipline by consent, dated May 10, 2022.

3. Affidavit of consent, May 2, 2022.

4. Ethics history, dated July 25, 2022.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel

TME/
Enclosures

c: (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)
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