Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-163
District Docket Nos. XIV-2020-0196E
and XI-2021-0901E

In the Matter of	:
Steven H. Schefers	:
An Attorney at Law	:

Decision

Argued: November 17, 2022

Decided: February 15, 2023

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.8(a) (engaging in an improper business transaction with a client).

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1988 and has no prior discipline. During the relevant timeframe, he maintained a practice of law in Hawthorne, New Jersey.

The disciplinary stipulation, dated September 22, 2022, sets forth the following facts in support of respondent's admitted ethics violation.

Between 2006 and 2018, respondent and Patrick Colgan had an ongoing attorney-client relationship. Specifically, between 2006 and October 2018, respondent represented Colgan in connection with a matrimonial matter. Following the conclusion of the matrimonial matter, respondent prepared a last will and testament for Colgan.[1]

In 2015, respondent purchased a vacant lot in Florida and, in 2016, he hired a construction company to build his personal residence on the lot. Thereafter, respondent sent "various payments" to the construction company, until June 2017, when the company went "out of business." By June 2017, however, respondent had sent the construction company $120,000 more than the value of the work it had completed on the property. Following the construction

[1] The timeframe underlying respondent's preparation of Colgan's will is unclear from this record.

company's failure to return respondent's money, he did not have the funds available to complete the project.

On July 5, 2017, during the pendency of the matrimonial matter, Colgan agreed to provide respondent a $50,000 loan toward the completion of the construction of his personal residence. Between July 5 and 6, 2017, Colgan issued three checks to respondent, in amounts ranging from $10,000 to $30,000, and totaling $50,000. Following respondent's receipt of the funds, he completed the construction of his personal residence and began residing at the property.

On April 7, 2018, more than nine months after respondent's receipt of the loaned funds, at Colgan's request, he executed a $50,000 promissory note in favor of Colgan. The note provided that respondent would repay Colgan "the sum of $50,000, together with any interest, fees[,] or costs requested by [Colgan], which is understood and agreed to as a condition of this loan." The note also stated that respondent had a pending claim with the "Florida Homeowners[']Construction Recovery Fund" (the FHCRF) [2] and that any funds received in connection with that claim "may be used to repay [Colgan]." The note, however, failed to specify the timeframe within which respondent was

[2] The FHCRF provides payments to individuals who "lose money" on a residential construction project, "where the loss results from specified violations of Florida law by a licensed contractor." See Fla. Stat. § 489.1425.

required to repay Colgan. In Colgan's ethics grievance, he alleged that respondent was required to repay the $50,000 loan, at a five-percent annual interest rate, within six months of July 6, 2017.

Between June and December 2019, Colgan sent respondent numerous text messages, attempting to secure the repayment of the loan. Specifically, in June 2019, Colgan sent respondent a series of text messages claiming that he needed full loan repayment by September 2019 because of his "changing financial status." Colgan also requested that respondent update him regarding the status of the claim before the FHCRF. Respondent replied that he was "crazy busy" and that he would "be in touch soon."

Between August 7 and 13, 2019, Colgan sent respondent a text message and an e-mail requesting that respondent repay the full loan amount by September 6, 2019, the date Colgan alleged that his "new financial issues [would] commence." Respondent, however, failed to reply.

In September 2019, Colgan sent respondent additional text messages requesting an update on the loan repayment. Respondent replied that he would "have a firm date very soon."

On October 18, 2019, Colgan sent respondent two text messages stating that it had "been a month since our last contact [. . .] and no reimbursement to date [. . . .] It's been almost 2 ½ years." In reply, respondent told Colgan to "hold

on a little longer. I [am] working on this every day and I believe I'm getting closer to being able to pay you in full."

On November 4, 2019, Colgan sent respondent two more text messages requesting an update regarding the repayment of his loan. Respondent again told Colgan to "hang in a little longer," claiming that he was "doing everything I can."

On December 1, 2019, Colgan sent respondent a text message stating that it had "been another month and nothing from [you]. This situation will end up costing [you] more than just the $50,000 loan[,] including explaining this situation to the NJ bar." In reply, respondent told Colgan "that's not gonna help the situation. The truth is I am working on this every day. Too long delays, I know. I've applied for conventional financing and [am] awaiting for commitment/approval." Respondent also told Colgan that he would "advise immediately when I get an approval."

On December 13, 2019, following Colgan's repeated inquiries regarding the details of respondent's new purported loan, respondent sent Colgan a text message maintaining that he did "not know when commitment will be received. It is in the works."

Colgan claimed that, on December 17, 2019, he "waved to" respondent and his wife while they were sitting in their car in front of their Florida

residence.[3] Colgan alleged that respondent did not acknowledge his gesture, after which Colgan sent respondent the following text message: "Guess [you] were on [your] way to work on repaying [your] debt to me. No problem. We will talk later . . . in court [and] at the bar hearing. Enjoy life in [Florida.]" In reply, respondent sent Colgan the following text message:

> As I have repeatedly said, a loan to repay you is in the works. There were numerous issues that caused this delay and no one feels worse about it than I do. I feel beyond awful about the delay in paying you. I hope to hear soon on the loan, as I was told I would as of yesterday. Nevertheless, I truly believe that filing a case in court or a grievance (bar) will not help the situation whatsoever or expedite you getting paid, and could or may cause further delay. I don't want further delay, not to mention having to defend a grievance. I've asked that you refrain from doing so, and you have been very gracious. I hope that you will continue to refrain. It just won't help.
>
> [(Ex.1p.21).][4]

Despite respondent's instructions to Colgan that he "refrain" from filing an ethics grievance, on March 2, 2020, Colgan filed an ethics grievance against respondent based on his failure to repay the $50,000 loan.

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[3] Colgan resides in the same Florida city as respondent.

[4] "Ex.1" refers to exhibit 1 of the stipulation.

Meanwhile, on March 17, 2020, following his retention of Florida counsel, Colgan filed a lawsuit against respondent and his wife, in the Circuit Court of Lee County, Florida, seeking to recoup his loan.

On March 18, 2021, the Circuit Court issued a judgment in favor of Colgan for $50,000, in addition to (1) $3,512.08 in pre-judgment interest, (2) $505 in court costs, and (3) a "reasonable attorney's fee to be determined at a later date." Additionally, the Circuit Court stated that it had "entered" a judgment "on behalf of [Colgan]" and "against" respondent and his wife "for a fraudulent transfer of" their Florida residence, "which took place on February 10, 2020."[5] The Circuit Court required respondent's wife to "transfer her interest" in their Florida home "back to [respondent] within seven days" of the execution of the judgment. Additionally, if respondent's wife failed to transfer her ownership, the Circuit Court noted that its final judgment would "operate to act as the deed of conveyance transferring ownership to [respondent]."

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[5] Although the details underlying this fraudulent transfer are unclear from this record, Colgan claimed, in his grievance, that respondent had executed a "quit claim[]" deed of his Florida residence to his wife, in an apparent attempt to "shelter" their home "from a judgment."

Generally, in Florida, "[a] transfer made [. . .] by a debtor is fraudulent as to a creditor [. . .] if the debtor made the transfer [. . .] [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." To determine intent, Florida courts may consider, among other factors, whether "[t]he transfer of obligation was to an insider;" "the debtor retained possession or control of the property [. . .] after the transfer;" "the transfer or obligation was disclosed or concealed;" or "[b]efore the transfer was made [. . .], the debtor had been sued or threatened with suit." See Fla. Stat. § 726.105.

On May 10, 2022, almost fourteen months after the issuance of the Circuit Court's judgment, and almost five years after Colgan's provision of the $50,000 loan, respondent satisfied the Circuit Court's judgment.

Based on the foregoing facts, respondent stipulated that he violated RPC 1.8(a) by accepting a $50,000 loan from Colgan without complying with the safeguards of RPC 1.8(a). Specifically, respondent failed to advise Colgan, in writing, of the precise terms of the loan transaction, including when respondent would be required to repay the loan. Additionally, respondent failed to advise Colgan of respondent's conflict of interest, given that respondent accepted the loan from Colgan while still representing him in a matrimonial matter. Finally, respondent not only failed to advise Colgan, in writing, of the desirability of consulting with independent counsel to review the loan transaction, but he also failed to obtain from Colgan a written waiver.

Based on respondent's stipulated violation of RPC 1.8(a), the OAE urged the imposition of a reprimand or a censure and analogized respondent's misconduct to the reprimanded attorneys in In re Rehill, __ N.J. __ (2021), and In re Fell, 211 N.J. 2 (2012), and to the censured attorney in In re Stanziola, 233 N.J. 401 (2018).

As detailed below, the reprimanded attorney in Rehill received three loans, totaling $75,000, from two longtime friends and clients. In the Matter of

Michael F. Rehill, DRB 19-451 (November 23, 2020) at 2-4. Although the attorney repaid a portion of the loans, he altogether failed to repay $45,000 of his debt, resulting in significant financial harm to his clients. Id. at 12.

Additionally, the reprimanded attorney in Fell received a $30,000 loan from two clients and agreed to repay that amount, plus $10,000 in interest, within one year. In the Matter of Joseph Jerome Fell, DRB 12-005 (June 1, 2012) at 2. When the attorney failed to repay the loan, the clients filed a lawsuit and obtained a $45,710.95 consent judgment against the attorney, who continued to make $500 monthly payments to the clients in satisfaction of the judgment. Id. at 3.

Finally, the censured attorney in Stanziola agreed to provide legal services to a client in exchange for the rent-free lease of office space in the client's commercial building. In the Matter of Claudio Marcelo Stanziola, DRB 17-217 (December 14, 2017) at 2-4. Following the attorney's failure to provide any legal services to the client, the client was forced to institute legal proceedings against the attorney to remove him from the premises. Id. at 4-5. In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, the significant economic injury to the client in the form of lost rental income and additional legal expenses. Id. at 14. We also emphasized that the attorney

was less than forthright during the ethics hearing and had instituted criminal proceedings against his client. Ibid.

The OAE argued that, like the attorneys in Fell and Rehill, respondent took a substantial loan from Colgan without observing the safeguards of RPC 1.8(a). Although the OAE cited, as mitigation, respondent's otherwise unblemished thirty-four-year legal career, the OAE emphasized that, like the attorney in Stanziola, respondent had caused significant financial harm to Colgan by failing to repay the $50,000 loan for almost five years. In that vein, the OAE stressed that respondent repaid his debt only after Colgan had instituted legal proceedings in Florida and filed an ethics grievance with the OAE.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent committed the charged unethical conduct.

RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

> (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 transaction; and
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> (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.

Respondent violated RPC 1.8(a) by procuring a $50,000 loan from Colgan, with whom he had an ongoing attorney-client relationship, without complying with the required safeguards enumerated in RPC 1.8(a).

Respondent's failure to adhere to the RPC 1.8(a) safeguards forced Colgan to expend significant time and effort to recover his money. Specifically, more than nine months after Colgan had provided respondent with the loan proceeds, Colgan requested that respondent memorialize the terms of their transaction in a written promissory note. The terms of that note, however, failed to specify when respondent would be required to repay the loan. Between June and December 2019, more than two years after the loan transaction, Colgan was forced to repeatedly contact respondent to inquire when he intended to repay his debt. Respondent, however, merely provided Colgan with vague promises that his repayment was "in the works" and that Colgan should "hold on a little longer." By December 2019, when Colgan signaled his intent to file an ethics grievance, respondent improperly attempted to dissuade Colgan from doing so,

claiming that he did not "want" "to defend a grievance[,]" which, he claimed, would "not help the situation whatsoever and could or may cause further delay."

Although not charged in the formal ethics complaint, respondent's attempts to prevent Colgan from filing a grievance would have constituted a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice). See In the Matter of Alan E. Welch, DRB 11-117 (October 6, 2011) (noting that an attorney's improper efforts to restrict his adversary's client from filing a grievance constituted a violation of RPC 8.4(d)), so ordered, 208 N.J. 377 (2011). However, because the stipulation did not charge respondent with having violated RPC 8.4(d), we cannot independently sustain that charge. Nevertheless, we considered that uncharged conduct in aggravation. See In re Steiert, 220 N.J. 103 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

Despite respondent's efforts to dissuade Colgan from seeking recourse through the attorney disciplinary system, in March 2020, Colgan filed a grievance with the OAE and a lawsuit in Lee County, Florida, seeking to recover his debt. In March 2021, more than thirteen months after respondent had fraudulently transferred his interest in his Florida property to his wife, Colgan secured a $54,017.08 judgment, which required respondent's wife to return her

interest in the property back to respondent. In May 2022, more than fourteen months after the issuance of the judgment, and almost five years after the loan transaction, respondent finally satisfied his obligations to Colgan.

In sum, we find that respondent violated RPC 1.8(a). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Attorneys who engage in improper business or loan transactions with a client have received discipline ranging from an admonition to a term of suspension, depending on the existence of other factors, such as additional ethics violations; demonstrable harm to the client; the vulnerability of the client; or the attorney's prior discipline. See, e.g., In the Matter of John F. O'Donnell, DRB 21-081 (September 28, 2021) (admonition for an attorney who provided his client 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;" in mitigation, we 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 prior to our review); In re Rehill, __ N.J. __ (2021) (reprimand for an

attorney who received three loans, totaling $75,000, from two longtime clients, in violation of RPC 1.8(a); fours year after the second and third loan transactions, the attorney had repaid only $30,000 of his $75,000 debt; the attorney failed to make any additional payments toward the remaining $45,000 debt; thereafter, the clients hired new counsel, who requested that the attorney provide a repayment plan for his outstanding debt; however, the attorney failed to reply; in mitigation, the attorney had no prior discipline in his forty-eight-year legal career, admitted to his misconduct, and had an otherwise outstanding reputation in the community); In re Fell, 211 N.J. 2 (2012) (reprimand for an attorney who received a $30,000 loan from two clients, in violation of RPC 1.8(a); the attorney agreed to repay that amount, plus $10,000 in interest, within one year; four years after the repayment deadline, the attorney had paid only $16,000 of his $30,000 debt; thereafter, the clients filed a lawsuit and obtained a $45,710.95 consent judgment against the attorney, who continued to make $500 monthly payments to the clients in satisfaction of the judgment; in imposing a reprimand, we noted that, despite the harm suffered by the clients, the attorney was attempting to make amends; the attorney had a prior admonition for unrelated conduct); In re Stanziola, 233 N.J. 401 (2018) (censure for an attorney who agreed to provide legal services to a client, via an improper barter agreement, in return for the rent-free lease of office space in the client's

commercial building, in violation of RPC 1.8(a); the client never received legal services from the attorney and, when the client became dissatisfied with the attorney's inaction, he was unable to remove the attorney from the premises without instituting legal proceedings; in aggravation, the client believed that the attorney represented him in connection with the lease and suffered demonstrable economic injury in the form of lost rental income and additional legal expenses; we also considered that the attorney was less than forthright at the ethics hearing and had instituted criminal proceedings against his client; in mitigation, however, we highlighted the attorney's lack of prior discipline in his almost twenty-year career at the bar); In re Kim, 227 N.J. 455 (2017) (three-month suspension for an attorney who borrowed $9,000, through two loans, from a client, in violation of RPC 1.8(a); the attorney issued a trust account check and two business account checks to his client in a purported effort to repay the loan; however, all the checks were returned for insufficient funds; the attorney also failed to preserve the client's case files, among other recordkeeping infractions; in aggravation, we weighed the attorney's failure to repay any portion of the client loans, despite the passage of eleven years, his improper issuances of checks from accounts he knew contained insufficient funds, and his disciplinary record, consisting of a prior admonition for recordkeeping violations, which demonstrated his failure to learn from past mistakes and justified the

enhancement of the sanction); In re Schultz, 241 N.J. 492 (2020) (six-month suspension for an attorney who borrowed $32,000 from a client, purportedly to be "worked off" through the provision of future legal services, without observing the requirements of RPC 1.8(a); the attorney additionally violated RPC 1.7(a) and, via his deceitful conduct during the disciplinary investigation and his filing of a dishonest claim for fees against the client's estate, also violated RPC 8.1(a) and RPC 8.4(c); the attorney had a prior admonition in more than forty years at the bar); In re Torre, 223 N.J. 538 (2015) (one-year suspension for an attorney who borrowed $89,259 from an elderly client he had known for many years, without complying with the strictures of RPC 1.8(a); in aggravation, the loan represented seventy percent of the client's life savings, the attorney repaid only a fraction of the loan during the client's lifetime, and he barely reimbursed her estate; the attorney had no prior discipline in more than thirty years at the bar).

In our view, respondent's improper client loan transaction was more egregious than that of the reprimanded attorneys in Rehill and Fell. In those matters, the attorneys had paid only a portion of their client loan debt, despite the passage of several years since the underlying loan transactions. However, Rehill and Fell took no overt efforts to hinder their clients' respective efforts to recoup their financial losses.

By contrast, although respondent repaid his entire loan debt to Colgan almost five years after the underlying loan transaction, he did so only after his repeated attempts to thwart Colgan's efforts to recover his money.

Specifically, in December 2019, respondent sent Colgan at least two text messages in which he requested that Colgan decline to exercise his right to file an ethics grievance for his misconduct. In respondent's December 17, 2019 text message to Colgan, he even claimed that an ethics grievance could "delay" his repayment. Thereafter, in February 2020, just two months after Colgan had expressed his willingness to file a court action to recover his debt, respondent fraudulently transferred his interest in his Florida home to his wife, as determined by the Lee County Circuit Court, in an apparent attempt to shield that asset from an unfavorable judgment. One month later, in March 2020, Colgan retained Florida counsel and filed a lawsuit against respondent in the Lee County Circuit Court. Respondent, however, failed, for more than fourteen months, to satisfy the Circuit Court's March 2021 $54,017.08 judgment.

Nevertheless, in our view, respondent's misconduct is not as severe as the attorney in Kim, who received a three-month suspension. Unlike Kim, who issued three bad checks, from either his attorney trust or business accounts, in a purported effort to repay his client loans, respondent did not issue any bad checks or engage in any improper use of his attorney accounts in connection

with his client loan. Also, unlike Kim, who altogether failed, for eleven years, to repay any portion of the $9,000 client loan, respondent, eventually, satisfied his entire financial obligation to Colgan. Finally, unlike Kim, who had a prior admonition, this matter represents respondent's first brush with the disciplinary system in his thirty-five-year career at the bar.

On balance, weighing respondent's improper efforts to avoid repaying his debt to Colgan against his otherwise unblemished thirty-five-year legal career, we determine that a censure is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli and Member Petrou voted for a three-month suspension, according significant aggravating weight to respondent's fraudulent transfer of his Florida residence one month prior to Colgan's filing of his Florida lawsuit.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven H. Schefers
Docket No. DRB 22-163

Argued: November 17, 2022

Decided: February 15, 2023

Disposition: Censure

Members	Censure	Three-Month Suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman			X
Joseph	X		
Menaker	X		
Petrou		X	
Rivera	X		
Total:	5	2	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel