

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-168
District Docket No. IV-2018-0046E

In the Matter of
I. M. Heine
An Attorney at Law

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Decision

Argued: November 17, 2022

Decided: March 22, 2023

Ann Madden Tufano appeared on behalf of District IV Ethics Committee.

I. M. Heine appeared pro se.

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 IV Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC

1.8(a) (improper business transaction with a client), and RPC 1.15(b) (failure to promptly deliver funds to a client).

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

Respondent earned admission to the New Jersey bar in 1968 and has no disciplinary history.

We now turn to the facts of this matter.

The grievant, Linda Spiegleman, first met respondent in 1967, when the parties worked in the same office building in Camden, New Jersey. In 1978, Spiegleman began to work for respondent as a legal secretary. She then became his bookkeeper and remained in that position for "at least ten years."

After Spiegleman left respondent's employ, she remained on friendly terms with him; in fact, they shared a sibling-like relationship. Spiegleman would type documents for respondent when his practice was under time pressure, and he would undertake minor legal work for her and her family, free of charge. For instance, he wrote a demand letter to her tenant who was engaging in "illegitimate activity," drafted a purchase and sale agreement when she purchased a laundromat, and "straightened it out" when her daughter was "threatened with permanent loss of [her] driver's license" after falling asleep at

the wheel. The parties did not enter into written fee agreements with respect to these legal tasks.

Spiegleman is the owner of Spiegleman Property Management I, LLC (SPI) and Spiegleman Property Management II, LLC (SPII), entities she formed to hold her investment properties. In 2013, Spiegleman placed a house SPI owned on the market for sale. She succeeded in finding a buyer; however, the buyer discovered numerous defects in the house and demanded that they be fixed. To address the defects, Spiegleman engaged the services of Donald Weiner and Joseph Eibell, two individuals associated with TBS Basement Waterproofing (TBS). As Weiner and Eibell worked on the house, they discovered additional defects that required remediation. Their discovery prompted Spiegleman to consult with respondent, who referred her to James Whitaker, an engineer with construction expertise. Upon examining the house, Whitaker informed Spiegleman that TBS was “doing a fine job.” He also assured her that he lived in the neighborhood and would stop by, from time to time, to monitor TBS’s progress. It is unclear whether Whitaker kept his promise, but TBS never finished the project. In fact, TBS ceased working despite Spiegleman having paid them \$80,000.

On November 25, 2014, respondent sent a letter to TBS on behalf of “clients” Spiegleman, SPI, and SPII. In the letter, respondent stated that he was

preparing to file a complaint against TBS; Weiner; Eibell; and Eibell's father.¹ Respondent further directed TBS and its agents to refrain from "all communications with Linda Speigleman [sic]" and to "terminate immediately all work and entry on the property."

On January 12, 2015, respondent filed on behalf of SPI a civil complaint against TBS, Weiner, and Eibell, in the Superior Court, Law Division, Camden County. The complaint asserted several claims based on breach of contract and the Consumer Fraud Act, pursuant to N.J.S.A. 56:8-1 to -20.

On February 16, 2015, respondent provided Speigleman with a letter of engagement. The letter contained the following passage, which the parties quoted during the ethics proceeding:

With your executed Acceptance below (returned by scan/email, fax, etc.) this will confirm your engagement of this Firm for the prosecution of all claims and actions against responsible parties identified in the action above, and other individuals where appropriate, for, without limitation, breach of contract and violations of the Consumer Fraud[] Act. We have personally discussed the distinctions between an action for breach of contract and violation of the Consumer Fraud Act. Ultimately, taking your factual representations to me at face value, I am convinced that the Consumer Fraud Act has been violated. Where that road ultimately goes, as a practical matter, turns on the identification, financial capability and collectability of the defendants.

¹ The record does not reveal the basis for the claim against the father.

With every personal consideration extended, our compensation in this matter will be in the following blended fee:

1. All attorney work will be performed at a minimum attorney hourly charge to cover overheads at the rate of \$150.00 per hour. The Firm's monthly invoices identify services in tenths of an hour, which for clarity, are payable upon presentment.
2. In addition to the hourly rate, we will be compensated, contingent on your actual collection, in an amount equal to the greater of (a) 25% of all sums recovered by settlement prior to Trial Notice and preparation, (b) 30% of all sums recovered by settlement subsequent to Trial Notice and preparation, or (c) fees allowed by the Superior Court Law Division in the Consumer Fraud Act Litigation. Parenthetically, in the event your matter is tried to verdict successfully, you may reasonable[y] expect to have attorney's fees assessed against the defendants in the amount of the actual time spent by Heine Law Firm attorneys multiplied by regular hourly rates

[R4.]²

The letter also set forth the hourly rate for the three attorneys at respondent's firm and further noted that Spiegleman had "been informed that suit was filed" and that service had been accepted on behalf of TBS and Weiner by an attorney licensed in both Pennsylvania and New Jersey. On February 17, 2015,

² "R" refers to respondent's exhibits admitted during the ethics proceeding.
"P" refers to the presenter's exhibits admitted during the ethics proceeding.
"HP" refers to the exhibits attached to the July 28, 2022 hearing panel report.
"Rb" refers to respondent's brief to the Board, dated October 27, 2022.

Spiegleman executed the engagement letter. Ibid.

Thereafter, Eibell settled the matter for \$5,000, presumably as to his individual liability, to be paid in monthly installments. TBS and Weiner defaulted. Following a May 8, 2017 proof hearing, judgment was entered in SPI's favor against TBS and Weiner, in the amount of \$192,472.50 for damages and \$27,425.97 for attorneys' fees.

According to Spiegleman, she and respondent had a heated discussion following the proof hearing. During the ethics hearing underlying this matter, Spiegleman testified that, as they were discussing collecting on the judgment they had won, an argument broke out when Spiegleman reminded respondent of an agreement they had made, during a telephone call, in March 2017. The terms of the agreement, Spiegleman maintained, were that (1) respondent would complete all remaining work in the case, including collection, for \$2,500 (which sum Spiegleman had paid on March 31, 2015), and (2) because all legal work was to be covered by the \$2,500 fee, respondent would remit Eibell's last settlement payment, in the amount of \$700, to Spiegleman in full, as opposed to keeping \$400 of the \$700 to satisfy legal fees, as the parties previously had agreed. Spiegleman testified that respondent initially denied ever accepting these terms but, ultimately, conceded that he had agreed to them.

According to Spiegleman, on or about June 15, 2017, respondent called her and asked her to loan him \$4,500 “for a couple of days.” Spiegleman agreed and deposited the money in respondent’s account. On the same day, she sent respondent an e-mail stating: “It’s been almost six weeks since the proof hearing, and I’m wondering if you know what our next step will be Please advise.”

On August 11, 2017, respondent sent Spiegleman an e-mail informing her that he had sent a “final order” to the judge for execution. On August 17, 2017, Spiegleman responded to the e-mail, asking “[w]hat’s the status of the Order?” Spiegleman also stated the following in a separate e-mail on the same date:

Michael, what makes you think it’s ok for you to not talk to me or respond to me? If this situation was reversed, I know you would not be quiet with me, as you want me to be with you. I can’t believe you are doing this to me. Especially you, my lawyer and friend??

Get the money. Get it from a family member or a friend or wherever you have to go to get it. I need it now.

[P5.]

On August 22, 2017, an “EXEMP COPY JUDG” was filed on eCourts by SPI. Although SPI was noted as the filing party, the name of the filing attorney was not noted.

On August 24, 2017, Spiegleman sent respondent yet another e-mail, this time stating “[a]nd yet another week has gone by and no word from you. What am I supposed to do? You are my lawyer.” Respondent replied the same date and stated, “[a]nd your friend. The same week has gone by for me with no word from the parties who owe me money. When I can I will.....[sic] Now that we have the Final Order, it is time to chase Weiner.....[sic] serious money!!” On August 25, 2017, Spiegleman replied: “So, what’s next?” and respondent answered “Get me as much personal info [as] you can on Weiner: Work, living, property ownership, activity in NJ (names, addresses, etc.) You might be able to get some of this online.”

On September 14, 2017, Spiegleman sent respondent an e-mail demanding that he repay the loan. She also asserted an entitlement to the last settlement payment sent by Eibell, explaining that respondent had paid her \$400 out of the \$700 but still owed her \$300. She concluded: “I am done. I want my money.”

On September 18, 2017, Spiegleman sent an e-mail to respondent to inform him “I don’t have much on Donald Weiner. What I do have is on the attached sheet.” The referenced sheet contained basic information about Weiner, including his address; the fact that his previous residence was in his wife’s name; his date of birth; the color and make of his car; and his license plate number. Approximately twenty minutes later, Spiegleman sent another e-mail stating:

In my last email, I made reference to Donald Weiner being an engineer.³ I don't believe that's the same Donald Weiner.

I have so little information. That investigator I had gave me hardly anything except the tag on his vehicle.

The realtor, Stephen Clyde, gave me the information on the sale of his house in his wife's name.

Can you guide me on how to find out stuff about him?

[P7.]

On September 15, 2017, Spiegleman asked respondent, via text message, to provide her with a promissory note for the loan she had given him, stating that she had lost the text in which he acknowledged the debt. Respondent replied on the same day promising to provide the note.

On September 20, 2017, Spiegleman sent two more e-mails to respondent. Collectively, the e-mails questioned why respondent was ignoring Spiegleman and included two attachments about Weiner.⁴ In the second e-mail, Spiegleman asked respondent to "unblock" her.

On September 22, 2017, Spiegleman sent respondent an e-mail stating that he had claimed to send her the promissory note, but that she had not received it. The e-mail also detailed Spiegleman's failed attempts to reach respondent by

³ This reference is not reflected in the first e-mail and raises the possibility that another e-mail interceded the two e-mails included in the record.

⁴ The attachments are not included in the record.

telephone. Spiegleman concluded that “this whole situation” was “making [her] very nervous” and warned that, if respondent did not get back to her, she would “do something [she] d[idn’t] want to do.”

Respondent eventually provided a promissory note to Spiegleman.⁵ It bears respondent’s signature and acknowledges that respondent borrowed \$4,500 from Spiegleman at the interest rate of five percent per year “from June 15, 2017.”

On October 4, 2017, Spiegleman sent respondent a lengthy e-mail stating, among other things, that: (1) Spiegleman needed the money she had loaned to respondent; (2) when she asked for the money, respondent had attacked her for being a “nudge” and brought up the fact that she had allowed herself to lose \$80,000 to Weiner, whereas respondent had borrowed only \$4,500; (3) Spiegleman had paid respondent \$10,000 in fees but was wondering if she needed to retain an attorney to represent her against respondent; (4) respondent had reminded Spiegleman “of all [he had] done for [her] over the years” even though “[she had] come to [his] rescue too many times to mention, and [she had] never thrown that back in [his] face;” and (5) the parties’ sibling-like relationship was over. In closing, Spiegleman demanded that respondent repay the loan by October 15, 2017.

⁵ The exact date of respondent’s delivery of the note to Spiegleman is unknown.

On October 16, 2017, Spiegleman sent respondent a demand letter, via e-mail, stating as follows:

On October 4th, I emailed you the enclosed Demand for Payment by October 15, 2017, of the \$4,500 plus interest that you borrowed from me on June 15. You have not responded to me, and you have made no effort to repay the loan.

Secondly, you have neglected working on the collection of my Judgment against Donald Weiner, which you promised to do. It has been over five months since the final Judgment was entered by the Court. I can only assume from your inaction and unresponsiveness that you do not intend to follow through on your promises. Thirdly, the last \$300 payment by Joseph Eibell was supposed to be turned over to me. That has not been done.

If you continue to ignore my demands for payment, I will be forced to seek action against you.

[P11.]

Respondent replied by e-mail on the same day, stating:

Received. Who wrote it? Smells like a lawyer!

I'm mindful of the debt, and will pay it as soon as possible.

When we discussed the collection of the Weiner judgment, of necessity, as you understood and agreed, you were going to investigate him. I am not in that business. You said your son in law had an investigator.

Ruth, as I recall, told me the \$300 was paid over to you. When she is in Thurs I'll straighten that out!!

Your patience is appreciated. I do get a sense that you are sublimating in this small matter the self-anger for your bad management of the Weiner theft...[sic] burning up, as I recall, Art's⁶ money. I'm not your enemy [. . . .]

[P12.]

The record contains Spiegleman's reply to the above, but it is not clear if the reply was a draft or an actual e-mail, as it does not bear a time stamp. In that reply, Spiegleman stated that she had already provided respondent with all the information she had about Weiner and reiterated her demands that he repay the loan.

On October 1, 2017, Spiegleman notified respondent, via e-mail, that she still had not received the \$300 from Eibell's settlement. She also asked when respondent would begin paying her back.

On December 1, 2017, Spiegleman sent respondent an e-mail asking "[w]hy is it so hard to get an appointment with you?" She asserted that she had called "a couple times over the last two weeks" and reached respondent's secretary, but respondent had not called her back. Respondent replied the same day, claiming that he had not been informed of Spiegleman's call.

On December 4, 2017, Spiegleman sent respondent an e-mail asking:

So, when can you see me? My judgment (obtained in May) against Weiner means nothing. You said you'd do

⁶ The record does not shed light on Art's identity or connection to this case.

the collection. Reminds me of Humpty Dumpty
“words.” What do YOUR words mean?

[P20.]

On December 8, 2017, Spiegleman sent respondent a text message warning that she would contact ethics authorities regarding respondent’s treatment of her. On December 10, 2017, Spiegleman sent respondent the following text messages:

Michael I don’t want to talk to you. I want my money
and I want my file if necessary for my new attorney.

What the hell are you talking about? My son-in-law did
a job. That has nothing to do with me. I don’t want to
talk to you. I want my money and my file.

[P13.]

Respondent replied that he wanted to talk to Spiegleman and once again mentioned that she had allowed Weiner to steal money from her.

On December 19, 2017, Spiegleman sent respondent an e-mail with the subject line “My final contact with you.” In the e-mail, Spiegleman stated that respondent had called her a “brat” and still had not granted her an appointment to talk about the collection of the judgment “obtained 7 MONTHS AGO and paid for!” Because respondent had “done nothing regarding the collection,” (emphasis in original) Spiegleman dismissed him as her attorney and demanded that he refund the \$2,500 that she had “paid without question” so that she could pay another attorney she had found in Pennsylvania. Spiegleman also threatened

to contact ethics authorities regarding respondent's conduct.

On December 20, 2017, respondent sent Spiegleman an e-mail with the subject line "Brat City" in which he denied calling Spiegleman a "brat," but acknowledged that he had said she was "acting like one in a single situation." He further claimed that Spiegleman had displayed "frustration and anger . . . far beyond anything that ha[d] to do with [him]" and accused her of having shown "exaggerated reaction." He also stated "I would like to meet with you on the Collection matter. When is a good time?"

In January 2018, Spiegleman asked Alvin Gross, Esq., another friend of hers, to help her collect on the loan she had advanced to respondent. In a February 13, 2018 text message to respondent, Spiegleman complained that respondent was ignoring communications by Gross and threatened to "consult with another attorney or file a pro se complaint."

On February 14, 2018, respondent sent Spiegleman a reply text message stating: "I am keenly aware of the debt If you make it a personal obsession it will not help matters. Constructively, use your time to tail Weiner. He stole \$80,000 from you. I hope you didn't have an affair with him 30 days is a hopeful target for me." Spiegleman replied that she did not have an affair with Weiner and asked: "Do you intend to work on the collection?" To that, respondent stated: "Of course I will work on the collection. I'll talk to you about

that next week.” Spiegleman stated that the judgment had to be domesticated in Weiner’s county.

On February 22, 2018, Spiegleman asked respondent in a text message: “When do you want to meet with me?” The next day, Spiegleman sent another text message stating: “You said you would call me this week. You didn’t call.” Respondent replied the “[w]eek is not over. I was in a hearing all morning, and now eating lunch. Later....[sic]”

On February 28, 2018, Spiegleman followed up with the following text message: “You said you’d call me back last Friday. Haven’t heard from you. Did you discuss the case with your associate?? I want to start the collection process. It’s already a year.” On March 1, 2018, Spiegleman sent respondent a text message asking if respondent had seen her previous communication. He replied that he was in a meeting and would call her the next day.

On March 21, 2018, Spiegleman sent respondent a text message stating that thirty days had gone by and suggesting a payment plan. On March 22, 2018, Spiegleman implored respondent to “[p]lease respond.” Respondent then replied: “Regrettably, nothing has changed. It is in my mind. I’ve been honest with you. The associate I hired with P.A. credential became ill and terminated after a week.” To that, Spiegleman replied: “Forget the collection. I have a PA attorney working on it. I just need you to pay me back.” Respondent then stated:

“I have a contingency fee in that collection.”

On May 30, 2018, Spiegleman filed the ethics grievance underlying this matter. She alleged that respondent (1) failed to disburse to her the \$300 in settlement proceeds; (2) failed to repay the personal loan she advanced to him; and (3) neglected the collection in her litigation against TBS, even though she paid respondent \$10,500 in legal fees at the beginning of the lawsuit.

On October 18, 2018, the DEC forwarded a copy of the grievance to respondent, requesting his reply. On October 29, 2018, respondent’s secretary sent Spiegleman a \$300 check, dated October 20, 2017, with a cover letter in which the secretary claimed that the check had been forgotten under some papers. The forgotten check also was accompanied by an undated note stating: “Taking your recollection of our agreement at face value, enclosed is our check for \$300 – representing the final payment to you on the disposition of the Eibell settlement payments.” The letter enclosed a new check as well as the purportedly forgotten check.

Based on the foregoing facts, the DEC alleged that respondent improperly sought and received a loan from Spiegleman, in violation of RPC 1.8(a); failed to promptly provide her with \$300 in settlement proceeds, in violation of RPC 1.15(b); and made no effort to collect on the judgment entered in SPI’s favor, in violation of RPC 1.3.

Respondent filed a verified answer claiming that (1) by the time of the loan, he no longer was representing Spiegleman because the representation concluded when judgment was entered in favor of SPI; (2) the parties never agreed that Spiegleman was entitled to the \$300 in settlement proceeds; and (3) collection was not within the scope of representation. Respondent also asserted: “[f]rom the outset of [g]rievant’s engaging [r]espondent . . . [g]rievant informed [r]espondent that Weiner was a PA resident without any known assets. Grievant and [r]espondent repeatedly acknowledged . . . that [g]rievant would have to personally hire a PA attorney for collection litigation” Ibid.

During the ethics hearing, Spiegleman testified that, at the beginning of the case, she had no knowledge “as to the financial wherewithal of any of the defendants.” She had expected respondent to pursue collection, and when she executed the engagement letter, she understood the term “all claims and actions” to encompass collection, as well as all other aspects of the case. Apart from her own understanding of the original agreement, Spiegleman pointed out that respondent promised her over the telephone, in March 2017, that he would “take care of everything” for \$2,500, including collection. She added that his subsequent refusal to help her collect on the judgment made her “feel that [she] went through the whole case for nothing. That [she] paid him \$10,000 for nothing.”

Spiegleman conceded that she did not “remember” discussing with respondent whether the defendants were insured. She also stated that she was aware respondent was not licensed to practice law in Pennsylvania, and that she knew he had never undertaken any “collection matters” in Pennsylvania. However, she pointed out that the letterhead on which his engagement letter was printed listed the names of two attorneys licensed to practice law in Pennsylvania.

Spiegleman acknowledged that she previously had handled business transactions without counsel, and that she was not aware that she could not collect on the loan by filing a grievance. When respondent’s counsel asked Spiegleman why she considered respondent her attorney at the time of the loan, she stated that it was because she “always considered him [her] lawyer.” Nevertheless, she testified that “[w]hen we did our original engagement letter . . . his job was not to collect on the judgment, it was in a later conversation that we had in March of ’17 where he told me that if I paid him an additional \$2,500 . . . that he would continue on this case . . . through the collection of the judgment.”

In turn, respondent testified that he did not engage in collection work, which he defined as representation of “creditors for whom there’s no question of entitlement for payment.” However, he acknowledged that he did collect on

judgments he won for his clients “if there was an expectation of available assets.” He elaborated that, in a typical matter, he only accepted blended fees if he believed collection was possible. In Spiegleman’s matter, he claimed that he knew from the beginning that collection was impossible because Spiegleman “told [him] she had looked into it thoroughly and couldn’t find any assets.” Nonetheless, respondent claimed that, when Spiegleman decided to pursue judgment, out of affection for her, he agreed to take the case, accepted blended fees, and spent two years litigating on her behalf in exchange for nothing but overhead expenses.

Respondent contended that he advised Spiegleman “long before [they] started suit” to “go hire a Pennsylvania lawyer and go after Weiner.” He also advised her that he was not in the collection business and would not be involved with collection. Although the engagement letter mentioned “all claims and actions,” respondent asserted that, when the letter was read in context, particularly with its reference to “fees allowed by the Superior Court Law Division,” he was not responsible for post-judgment practice in Pennsylvania. He also asserted that the letter was a “routine form” he used for other clients and was not “prepared in contemplation of . . . an examination five years later.”

Respondent further testified that he never charged Spiegleman for any post-judgment services. He denied ever agreeing to finish the case for \$2,500.

In fact, he claimed that the fee provisions in the engagement letter remained in full force and effect, and that Spiegleman owed him \$2,169.72 under those provisions. Regarding the last \$300 of Eibell's settlement, respondent stated that he only paid Spiegleman that amount because she insisted. He did not agree that she was entitled to the payment.

Respondent was adamant that, by the time he accepted the loan, on June 15, 2017, he no longer was Spiegleman's attorney. In that vein, he contended that, when he asked her to give him information about Weiner, he was speaking as a friend, not a lawyer. Likewise, he asserted that, when he told Spiegleman that it was time to "chase" Weiner for "serious money," he "was simply saying" that she needed to discover reachable assets and retain a Pennsylvania attorney if those assets were in Pennsylvania. Regarding his promise to "work on the collection," that promise, when considered in the context of the "whole history" meant "her finding out assets and [him] telling her what her next step [was] to collect money."

Respondent claimed that, by August 2017, his advice to Spiegleman had become "repetitive" because it consisted of him declaring that he could not help her find assets. Although he instructed her to obtain an investigator, she was "self-sufficient" in the collection effort because "she had a son-in-law who was a lawyer and she said she'll talk to him, and she's got an investigator. She's got

it covered.” Regarding the filing of an exemplary copy of judgment, he was not the filing attorney, and he did not know who the filer was.

On whether he intended to repay the loan Spiegleman advanced to him, respondent stated that he “certainly” had such an intent but was not able to follow through because, at that time, he had filed for bankruptcy and his finances were under the control of the bankruptcy court.

In addition to his own testimony, respondent also called three witnesses who testified that he was honest and of good character.

In her summation brief, the presenter sought to withdraw the RPC 1.15(b) charge, stating that respondent’s failure to disburse the \$300 was due to a “clerical error” that had been resolved. The presenter urged the panel to sustain the remaining charges.

In his summation brief, submitted through counsel, respondent argued that he did not violate RPC 1.8(a) because he did not provide Spiegleman with legal advice with respect to the loan at issue. He compared the present matter to In re Palmieri, 76 N.J. 51 (1978), where he claimed the Court found no attorney-client relationship because the putative clients were “sophisticated businessmen” and “had not sought” the attorney’s “legal advice on the transaction forming the basis for the loan . . . and there was no billing on the part of the attorney with respect to the same.” He then pointed out that Spiegleman is a sophisticated

businesswoman and contended that:

[a]bsolutely no evidence was presented to the [p]anel to suggest that [grievant] sought and relied upon any form of legal advice from [respondent] with regard to the \$4,500 loan, nor that she would have needed to. The only inescapable conclusion is that it was done under the guise of friendship and that it should be treated precisely as that type of transaction with the rights and responsibilities that flow therefrom.

[HP5.]

Respondent also argued that he did not violate RPC 1.15(b) because In re Frost, 171 N.J. 308, 322 (2002) interprets that Rule to require “knowing[] misappropriat[ion of] funds,” and he did not know that the check made out to Spiegleman had not been sent. Respondent then contended that a violation of RPC 1.3 requires proof that the client was prejudiced, and he argued that Spiegleman was not prejudiced in this case because she could have hired another attorney to pursue collection. Lastly, respondent claimed that it was unreasonable for Spiegleman to believe that respondent had undertaken to pursue collection for her.

Respondent also submitted a pro se brief in which he argued, among other things, that (1) his representation of SPI concluded with a formal written judgment entered on May 8, 2017; (2) Spiegleman considered him her lawyer on the day of the loan not because he was representing her with respect to collection, but because she “always considered him [her] lawyer;” (3)

Spiegleman had fabricated “shear falsehood” [sic] against him in order to collect on the loan; and (4) RPC 1.8(a) was not applicable because of Spiegleman’s “business sophistication.”

Following the submission of the summation briefs, the DEC requested that the parties provide supplemental briefing to address R. 1:11-3,⁷ Van Horn v. Van Horn, 415 N.J. Super. 398 (App. Div. 2010), and In the Matter of Kevin Michael Regan, DRB 20-134 (March 22, 2021), in relation to the present case.

Accordingly, the presenter submitted a brief arguing that, under R. 1:11-3, Van Horn, and Regan, respondent was Spiegleman’s attorney on the day of the loan because the time for appeal had not yet expired.

Respondent’s counsel submitted a brief arguing that R. 1:11-3 was not applicable because in SPI’s case, there was no “further conduct of the proceedings.” Counsel distinguished Regan, arguing that in that case, the panel found an attorney-client relationship, post-judgment, because the attorney continued to communicate with the client using his professional e-mail, whereas in the present matter, the communications should not be construed in the

⁷ R. 1:11-3 provides: “The responsibility of an attorney of record in any trial court with respect to the further conduct of the proceedings shall terminate upon the expiration of the time for appeal from the final judgment or order entered therein. For purposes of appeal or certification, however, the attorney of record for the adverse party in the court below shall be considered as attorney for the respondent and notice and papers served upon that attorney shall be deemed good service until the appellant or petitioner is notified of an appearance entered by a new attorney or is given written notice by the respondent naming another attorney.”

attorney-client context given the parties' prior relationship. Regarding Van Horn, respondent asserted that the post-judgment attorney-client relationship in that case was found to exist because the attorney continued to litigate for the client.

Respondent also submitted a pro se brief acknowledging that, under R. 1:11-3, Van Horn, and Regan, he was still SPI's attorney at the time of the loan. However, he argued that (1) Spiegleman waived the protections afforded by RPC 1.8(a); (2) the loan was exempted from the requirements of RPC 1.8(a) because it was a standard commercial transaction of the type that Spiegleman generally marketed to others; and (3) "this intrusive, costly and time-consuming grievance was singularly and abusively initiated for" the collection of the loan.

On July 28, 2022, the DEC issued its report. Assessing the scope of respondent's representation, the DEC found that the presenter had not proven by clear and convincing evidence that it included collection from Weiner. The DEC found Spiegleman to be more credible than respondent; nonetheless, it concluded that her testimony on this topic was unclear, because if the parties had always intended for respondent to pursue collection, Spiegleman had no reason to pay respondent \$2,500 to complete the same task.

However, the panel concluded that respondent violated RPC 1.8(a) because the time to perfect an appeal had not expired when he accepted the loan

from Spiegleman.

Regarding the RPC 1.15(b) charge, the panel stated that it would not have sustained this charge even if the charge had not been dismissed because respondent's delay in sending the \$300 to Spiegleman was "at worst an unfortunate clerical error."

Finally, the panel dismissed the RPC 1.3 charge (which was premised on respondent's failure to pursue collection) because it determined there was not clear and convincing evidence that respondent undertook to pursue collection for Spiegleman.

The DEC determined that respondent's nearly fifty-year, unblemished disciplinary record and his good character as attested to by the three witnesses were mitigating factors. In aggravation, the DEC considered respondent's "utter lack of acceptance of responsibility and his cavalier attitude towards" Spiegleman. Finding that the mitigating and aggravating factors were in equipoise, the DEC determined to recommend the imposition of a reprimand. In so doing, the DEC relied on In re Torre, 223 N.J. 538 (2015) (reprimand is generally the appropriate discipline in cases involving conflicts of interest) (citing In re Doyle, 146 N.J. 629 (1996)).

In her submission to us, the presenter adopted the DEC's findings of facts and conclusions of law. However, she pointed out that respondent "has offered

no reasonable explanation for his continued failure to refund Grievant the money that he inappropriately borrowed from her.” The presenter requested a “heightened level of discipline” beyond a reprimand due to respondent’s lack of remorse.

Respondent’s attorney withdrew from the case without submitting a brief to us, and respondent proceeded pro se. In his brief, respondent reiterated the arguments he had made before the DEC. Additionally, he claimed that “[t]he controlling sophistication of the Grievant” relieved him of the duties imposed by RPC 1.8(a), quoting Michels, New Jersey Attorney Ethics, § 26:2-3 at 648 (2022), as follows:

RPC 1.8(a) . . . requires a lawyer who seeks a client’s consent to a business transaction with the attorney to explain the terms of the transaction in a manner that can be understood by the client. Thus, the test under RPC 1.8(a) also takes into account the “sophistication” of the client.

[Rb7.]

Respondent also asserted that Palmieri requires an attorney-client relationship with respect to the loan in order for RPC 1.8(a) to apply, a condition which respondent argued was absent in this matter.

Next, respondent argued that he did not represent Spiegleman with respect to the loan and cited to In re Schwartz, 99 N.J. 510 (1985), contending that “[u]nlike Schwartz [sic], there were not communications nor any other facts

presented to suggest that Respondent was engaged, or that Grievant believed that she had engaged respondent as her attorney with regard to the personal loan given to him”

At oral argument before us, the presenter reiterated the arguments in her brief. She additionally relied on (1) In re Monzo, 216 N.J. 331 (2013), in which the attorney received a reprimand even though he had made the client whole following an RPC 1.8(a) violation, and (2) In re Moeller, 201 N.J. 11 (2009), in which the attorney received a three-month suspension for obtaining a loan from a client which he failed to repay. She concluded by urging that we impose, at minimum, a reprimand in this case.⁸

Respondent also reiterated the arguments in his brief. He repeatedly pointed out that Spiegleman was sophisticated, even as he conceded that her sophistication did not nullify the requirements of RPC 1.8(a). He additionally contended that the timeframe for appeal mentioned in R. 1:11-3 was not applicable because there was no possibility of an appeal in the action against TBS.

⁸ The presenter also informed us of certain events that occurred after the DEC issued its decision. Although we agree that these events and the presenter’s associated allegations are concerning, we decline to consider them, as they lie outside of the record and may be the subject of a separate disciplinary proceeding.

Following a de novo review of the record, we find that the DEC's determination that respondent violated RPC 1.8(a) is supported by clear and convincing evidence. We respectfully part company with the DEC's determination that respondent did not violate RPC 1.3 or RPC 1.15(b).

As a threshold issue, there is no doubt that respondent continued to represent Spiegleman past the entry of judgment in the litigation. "At its most basic, [the attorney-client relationship] begins with the reliance by a nonlawyer on the professional skills of a lawyer who is conscious of that reliance and, in some fashion, manifests an acceptance of responsibility for it." Michels, N.J. Attorney Ethics § 13.1 at 177 (2023) (citing Palmieri, 76 N.J. at 58, 60). The relationship can begin absent an express agreement, a bill for services rendered, and the actual provision of legal services. Ibid. The relationship "may . . . be inferred from the conduct" of the attorney and "client," or from surrounding circumstances. Palmieri, 76 N.J. at 58-59.

Stated differently, an attorney-client relationship is formed when "the prospective client requests the lawyer to undertake the representation, the lawyer agrees to do so[,] and preliminary conversations are held between the attorney and client regarding the case[.]" Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996). It must, nonetheless, be "an aware, consensual relationship." Palmieri, 76 N.J. at 58. On the attorney's side, there must be a sign that the

attorney is “affirmatively accepting a professional responsibility.” Id. at 58, 60. See also Procanik by Procanik v. Cillo, 226 N.J. Super. 132, 146 (App. Div. 1988), certif. den. 113 N.J. 357 (1988) (a lawyer “must affirmatively accept a professional undertaking before the attorney-client relationship can attach.”).

Here, the record contains numerous indications that respondent accepted responsibility for representing Spiegleman past the entry of judgment against the defendants. First, the engagement letter provided for a fee contingent upon actual collection. This would have suggested to any reasonable client that collection was within the scope of representation. Respondent himself conceded as much when he asserted that the engagement letter was a “routine form” that he used in other cases, and that in those other cases he never mentioned blended fees unless he expected to collect. These assertions make clear that the letter was typically used where respondent intended to pursue collection.

Second, respondent’s desperate appeal to context cannot negate the clear dictates of RPC 1.5(c). That Rule, although uncharged in this case, clearly states that “upon conclusion of a contingent fee matter,” an attorney must provide the client with a statement indicating “the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.” It is undisputed that respondent never provided such a statement and, thus, Spiegleman reasonably relied upon him to collect on the judgment.

Third, as of August 11, 2017, the parties were still communicating regarding a “final order,” as evident by respondent’s e-mail bearing that date.

Fourth, in our view, Spiegleman’s position that, in March 2017, respondent accepted responsibility for collection, is clearly and convincingly borne out by the parties’ subsequent behavior. Specifically, on June 15, 2017, Spiegleman asked respondent what the “next step” would be because it had “been almost six weeks since the proof hearing.” If respondent had not accepted responsibility for the “next step,” he should have communicated to her that he was no longer her lawyer. However, there is no record of such a communication. To the contrary, respondent continued to function as Spiegleman’s lawyer, as evident by his August 11, 2017 e-mail regarding the status of the final order. That same date, respondent asked Spiegleman for the loan, and she agreed.

More than two months after the loan transaction, on August 24, 2017, respondent explicitly confirmed that he was still Spiegleman’s lawyer. In an e-mail exchange on that date, Spiegleman referred to respondent as “my lawyer,” and respondent agreed with her by stating “[a]nd your friend.” He then immediately added that it was time to chase Weiner for “serious money.”

On February 14, 2018, Spiegleman asked respondent “Do you intend to work on the collection?” Respondent answered: “Of course I will work on the collection.” Respondent argued that the term “work” meant that he would give

her advice if she found assets, which is inconsistent with the record in this matter. By that time, Spiegleman repeatedly had complained to respondent that he had not contributed at all to the collection process. This should have made clear to respondent that Spiegleman did not consider his inaction to be “work” and expected more from him. Yet, he assured her that he would “work,” only to continue with his inaction on the case.

Although respondent testified that he advised Spiegleman to retain a Pennsylvania-licensed attorney “long before [they] started suit,” the written evidence demonstrates otherwise. Indeed, the record reflects that it was Spiegleman who suggested retaining another attorney, while respondent repeatedly sought to prolong the professional relationship. On December 10, 2017, Spiegleman informed respondent that she did not want to talk to him and needed her file for her new attorney. Instead of simply handing over the file,⁹ respondent demanded to speak with her. On December 20, 2017, Spiegleman “dismissed” respondent as her attorney and expressed a desire to hire an attorney she had found in Pennsylvania. Instead of accepting the dismissal, respondent stated “I would like to meet with you on the Collection matter. When is a good time?” On March 21, 2018, Spiegleman plainly instructed respondent to “forget

⁹ The record does not disclose if respondent ever provided Spiegleman with her file as required by RPC 1.16.

the collection” because she had “a PA attorney working on it.” To that, respondent asserted “I have a contingency fee in that collection.” We conclude that respondent’s assertion was intended to memorialize his right to a fee for his collection efforts and, possibly, to discourage Spiegleman from hiring another attorney. Thus, despite respondent’s protestations, including before us at oral argument, the record is replete with proof that respondent represented Spiegleman when she provided him with the loan.

In Regan, we rejected arguments similar to the positions respondent has advanced. The attorney in that case was accused of sending his client a lewd and inappropriate e-mail two days after judgment. To justify his conduct, the attorney argued that, by the time the e-mail was sent, he already had informed the client that their professional relationship had ended. However, we deemed these contentions to be “without merit” because “R. 1:11-3 provides that the responsibility of an attorney of record in a trial court terminates only on the expiration of the time for appeal from the final judgment, and R. 2:4-1(a) provides that appeals from final judgments shall be filed within forty-five days of their entry.” Thus, under the same rationale applied in Regan, respondent was still the attorney of record in Spiegleman’s case.

Thus, there is no question respondent represented Spiegleman in her litigation against TBS, which, by the terms of the retainer letter respondent

prepared, included collection of the judgment obtained in the litigation. Yet, due to his lack of diligence in the representation, for nearly one year, respondent failed to assist Spiegleman with the collection of the judgment against TBS and Weiner, a violation of RPC 1.3. Instead, respondent engaged in a course of misconduct, either ignoring Spiegleman's communications to him about next steps in the litigation or accusing her of being a "brat."

Furthermore, respondent's argument that RPC 1.3 is not applicable because Spiegleman was not prejudiced is entirely meritless. First, RPC 1.3 has no such element. Second, the delay occasioned by respondent in and of itself caused financial harm to Spiegleman.

Additionally, there is no question respondent violated RPC 1.8(a) by entering into an improper business transaction with his client. He admittedly obtained a loan from Spiegleman without adhering to the requirements of that Rule. Her sophistication as a businesswoman does not negate the explicit requirements of that Rule.

Respondent's argument that, under Palmieri, he could not be found guilty of violating RPC 1.8 because he did not counsel Spiegleman with respect to the loan, given her business sophistication, strains credulity. Palmieri was completely unrelated to RPC 1.8, which forbids certain transactions with a client even if the attorney gives no legal advice with respect to the transaction. Indeed,

the enumerated protections under that RPC require the attorney requesting the loan to advise the client to seek independent counsel, and that the attorney procure a written waiver from the client.

Finally, regarding the charge that respondent violated RPC 1.15(b), it is not clear why the presenter dismissed this charge. The mere fact that respondent's delay in turning over the funds may have been a clerical error is not dispositive. The plain language of RPC 1.15(b) does not require intent, and, in fact, requires the prompt delivery of client funds, which respondent failed to provide to Spiegleman in this case.

Specifically, respondent's failure to remit \$300 of Eibell's settlement funds to Spiegleman for nearly eighteen months – and only after the DEC sent respondent a copy of Spiegleman's grievance – cannot be considered only a “clerical” error. Spiegleman repeatedly informed respondent that she wanted the \$300 of Eibell's settlement, including in e-mails and text messages to respondent on September 14, October 1, and October 16, 2017, to which respondent informed her he would “straighten that out.” However, the fact that Spiegleman even had to send those communications after Eibell agreed to settle clearly demonstrates that respondent's failure to “promptly deliver” the funds to his client violated RPC 1.15(b).

In sum, we find that respondent violated RPC 1.3, RPC 1.8(a), and RPC 1.15(b). The sole issue remaining for determination is the appropriate quantum of discipline.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client (a violation not present here). See, e.g., In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (the attorney promised to take action to remit his client's payment toward an owed inheritance tax; despite the attorney's assurances that he would act, he failed to remit the payment until two years later; the attorney also failed to return his client's telephone calls or to reply to correspondence; violations of RPC 1.3 and RPC 1.4(b); we considered, in mitigation, the attorney's unblemished disciplinary history in more than twenty-five years at the bar); In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid the fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client's calls in a timely manner); In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (the attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney

also failed to tell the clients that he never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during this time; and other family-related issues consumed his time and contributed to his inattention to the matter).

Attorneys who engage in improper business transactions with a client have received discipline ranging from an admonition to a term of suspension, depending on the number of transactions, the resulting harm to the client, and the presence of additional ethics infractions or aggravating factors. See, e.g., In the Matter of John F. O'Donnell, DRB 21-081 (September 28, 2021) (admonition for 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;” 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, we weighed, in mitigation, 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); In re Rajan, 237 N.J. 434 (2019) (reprimand for attorney who, 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 family members lent \$450,000 (\$350,000 of which was the attorney's funds) 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, we 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); In re Stanziola, 233 N.J. 401 (2018) (censure for 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 further 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 attorney who borrowed \$9,000 from a client, without observing the safeguards of RPC 1.8(a), and failed to preserve the client's case files, among other recordkeeping infractions; in aggravation, we weighed the attorney's failure to repay the client loans, despite the passage of eleven years, his improper use of his trust account in connection with the client loans, 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).

Attorneys who fail to promptly deliver funds to clients or third persons, even when accompanied by other ethics violations, ordinarily receive an admonition or a reprimand, depending on the circumstances. See In the Matter of George W. Pressler, DRB 19-423 (March 20, 2020) (admonition; the attorney, in an estate matter, deducted his entire legal fee and the administrator’s fee from a non-client beneficiary’s share of the estate without the non-client beneficiary’s authorization; in addition, he failed to disburse any funds to the non-client beneficiary for more than twenty months, in violation of RPC 1.15(b); attorney had no prior final discipline); In re Dorian, 176 N.J. 124 (2003) (reprimand; attorney failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities; attorney previously admonished for gross neglect and failure to communicate, and reprimanded for gross neglect, lack of diligence, and failure to communicate).

Considering that, in this case, the loan in question did not involve a large sum of money and the harm caused to the victim is less extensive than in other cases, the baseline quantum of discipline for respondent’s RPC 1.8(a) violation, standing alone, is an admonition. Although Torre states that a reprimand is “generally” appropriate in cases involving conflicts of interest, it also states that the penalty for violating RPC 1.8(a) ranges from an admonition to a short

suspension. 223 N.J. at 546. Considering the specific facts in this case, the appropriate baseline is an admonition, not a reprimand.

When respondent's additional misconduct – lack of diligence and failure to promptly deliver funds to his client – is added to the calculus, the baseline quantum of discipline for the totality of respondent's misconduct becomes a reprimand. However, to craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

The sole mitigating factor is respondent's lack of disciplinary history in more than fifty years at the bar, to which we accord significant weight.

The aggravating factors, however, are numerous. First, the record establishes uncharged misconduct, including RPC 1.15(c) (failure to keep separate funds in which the attorney and the client claim an interest). 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).

Respondent violated RPC 1.15(c) because under that Rule, when Spiegleman asserted that she was entitled to the last \$300 of Eibell's settlement, respondent immediately should have placed that disputed amount in his trust account. The evidence reflects that he did not do so. Both the check that he claimed was forgotten and the re-issued check he gave to respondent were

written from his business account. Moreover, if he had placed the disputed amount in his trust account, he would have noticed that his initial check was not negotiated because the recordkeeping requirements of RPC 1.15(d) would have alerted him to the uncashed checks. Thus, it is clear on this record that respondent violated RPC 1.15(c).

Additionally, respondent has displayed absolutely no remorse whatsoever. Worse, he attempted to obfuscate his obvious guilt by making false statements, such as insisting that he advised Spiegleman to seek an attorney in Pennsylvania from the beginning even though his written messages clearly demonstrate otherwise. Respondent also has displayed utter contempt for his client, sending her an e-mail with the subject line “brat city,” questioning whether she had an affair with Weiner, and repeatedly reminding her that she had “allowed” Weiner to steal from her. These discourteous comments could have been charged as violations of RPC 3.2 (failure to treat all persons involved in the legal process with courtesy and consideration).

The aggravating factors in this case counterbalance the compelling mitigation and warrant the imposition of a reprimand.

In our view, Monzo and Moeller do not point to a different result. Although the presenter is correct that Monzo received a reprimand after making the client whole – something that respondent admittedly failed to do in this case

– the penalty in Monzo was calculated based on a business transaction that involved a much larger sum¹⁰ than the \$4,500 that Spiegelman loaned to respondent. Thus, the mere fact that Monzo received a reprimand does not require that respondent be subjected to greater discipline. Moeller also is distinguishable. In that case, the attorney engaged in misconduct while the subject of a disciplinary proceeding that eventually resulted in a one-year suspension. Here, respondent has an unblemished disciplinary record and is not the subject of any additional proceedings. In sum, these cases do not require the imposition of a censure in the present matter.

Chair Gallipoli voted to recommend to the Court that respondent be suspended for three months, emphasizing, as significant aggravation, his utter lack of remorse and refusal to accept responsibility.

Member Hoberman was absent.

¹⁰ In Monzo, the client retained the attorney's firm while the attorney was in the process of acquiring a plot of land from the client.

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 I. M. Heine
Docket No. DRB 22-168

Argued: November 17, 2022

Decided: March 22, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Three-month suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo	X		
Hoberman	X		X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	1	1

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