Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-092
District Docket No. IIIA-2021-0010E

In the Matter of	:
Christopher M. Supsie	:
An Attorney at Law	:

Decision

Argued: June 21, 2023

Decided: October 11, 2023

Terry F. Brady appeared on behalf of District IIIA Ethics Committee.

Timothy R. Bieg appeared on behalf of respondent.

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

This matter previously was before us, at our April 20, 2023 session, as a post-hearing appeal from a determination by the District IIIA Ethics Committee (the DEC) to dismiss the formal ethics complaint. We determined to treat the matter as a presentment and to bring it on for oral argument. The formal ethics

complaint charged respondent with having violated RPC 1.7(a)(1) (engaging in a concurrent conflict of interest where the representation of one client will be directly adverse to another client); RPC 1.7(a)(2) (three instances – engaging in a concurrent conflict of interest where there is a significant risk that the representation of one client will be materially limited by the lawyer's responsibility to another client or by a personal interest of the lawyer); RPC 1.8(b) (prohibiting a lawyer from using information relating to the representation of a client to the disadvantage of the client unless the client provides informed consent after full disclosure and consultation); and RPC 1.8(k) (prohibiting a lawyer employed by a public entity from undertaking the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client).

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

Respondent earned admission to the New Jersey and Pennsylvania bars in 1994. He has no disciplinary history. At the relevant times, he maintained a practice of law in Forked River, New Jersey.

We now turn to the facts of this matter.

Between 2015 and 2020, respondent served as general legal counsel for the Lacey Township, New Jersey, Board of Education (the BOE) school district (the District). During that same timeframe, respondent's wife was employed as a teacher in the District and was a member of the Lacey Township Education Association (the LTA) – the local teacher's union. Specifically, respondent's wife worked as a special education teacher at Mill Pond Elementary School.

The grievant in this matter, Regina Discenza, served as an elected member of the BOE from 2015 until 2017 and, thereafter, from 2019 until 2021. Throughout her terms of service as a BOE member, Discenza voted to disapprove nearly all of respondent's legal bills, based primarily on her view that it was improper for respondent to serve as general legal counsel to the BOE while his wife worked as a special education teacher within the District.

Additionally, between 2017 and 2020, the District employed independent labor counsel responsible for "negotiating and generating" contracts with the LTA and the Lacey Township Administrators and Supervisors Association (the LTASA) – a union consisting of school principals, administrators, and supervisors with managerial authority over the LTA members.

Respondent's November 14, 2019 Memorandum to the BOE (Count I)

In accordance with "District Policy 0174," the BOE president and the Superintendent of Schools' designee, the School Business Administrator, jointly served as the "designated contact persons" for requests for legal services or advice "from contracted legal counsel," such as respondent. District Policy 0174 established the following procedures:

> The designated contact person(s) shall ensure that contracted legal counsel is not contacted unnecessarily for management decisions or readily available information contained in district materials such as Board policies, administrative regulations, or guidance available through professional source materials.
>
> All requests for legal advice shall be made to the designated contact person(s) in writing and shall be maintained on file in the district offices. The designated contact person shall determine whether the request warrants legal advice or if legal advice is necessary.
>
> The designated contact person(s) shall maintain a log of all legal counsel contact including the name of the legal counsel contacted, date of the contact, issue discussed, and length of contact.
>
> All written requests for legal advice and logs of legal counsel contacts shall be forwarded to the . . . Superintendent/School Business Administrator, who shall be responsible to review all legal bills and compare all legal bills to the contact logs and to investigate and resolve any variances.

[R-2.][1]

On November 6, 2019, the day after the 2019 BOE election, respondent received a telephone call from Shawn Giordano, the BOE president, who had just lost his bid for reelection and expressed "certain concerns" regarding the "ethical behavior" of Discenza during the school board election season. With the "private" authorization of five of the seven BOE members, excluding Discenza and another BOE member, Giordano requested that respondent conduct "research" into Discenza's potential ethics infractions.[2] During the ethics hearing, Giordano testified that he had requested such legal services from respondent in his capacity as BOE president, pursuant to District Policy 0174, and not in his "individual capacity."

On November 14, 2019, respondent submitted to the BOE a research memorandum regarding Discenza's "potential ethics violation." Respondent did not provide Discenza with a contemporaneous copy of the memorandum.

In his memorandum, respondent stated that, on October 19, 2019, Discenza submitted to a local newspaper a letter advocating for a slate of candidates running for election against two incumbent BOE members, whom

[1] "R-2" refers to respondent's second exhibit to the DEC hearing panel.
"T" refers to the transcript of the May 6, 2022 ethics hearing.
[2] Giordano claimed that four BOE members had contacted him via telephone or had approached him outside of formal committee meetings with their concerns regarding Discenza's behavior.

Discenza claimed did not "have the ability to act impartially" as it is "human nature." Specifically, Discenza allegedly described one incumbent BOE member, without referring to that member's name, as a "28-year incumbent candidate with conflicts." Discenza purportedly described another incumbent BOE member as an individual with "lifetime connections to employees." In his memorandum, respondent stated that it was "likely that" Discenza was referring to Giordano and Linda Downing, both of whom were incumbent BOE members running for re-election in 2019.[3] Respondent's memorandum also noted that Giordano, Downing, and a third individual, who was not a member of the BOE, were "running on a ticket" against a slate of three candidates supported by Discenza.

Respondent's memorandum also described a 2019 e-mail Discenza sent to undisclosed recipients. In Discenza's e-mail, she purportedly advised the recipients that Giordano, Downing, and the third individual on their election ticket were preparing to disseminate an "attack mailer" in connection with the upcoming BOE election. Discenza claimed that "most, if not all" of the information contained in the "attack mailer . . . will be lies." Finally, Discenza claimed that she needed her favored three candidates to "help" her "on the

[3] Downing was one of the BOE members who had authorized respondent to conduct research regarding Discenza's behavior.

Board" and requested that the recipients "spread the word" and "talk to your neighbors."

Additionally, respondent's memorandum described a November 1, 2019 video posted to a social media profile page associated with Discenza's favored candidates. The video purportedly contained the caption: "Thank you to Lacey School Board Member Discenza for her endorsement and support! With a new majority on the school board, we can bring a new era of change and fiscal responsibility." The video also contained a recording of Discenza in which she allegedly reiterated the statements she made to the local newspaper regarding her views of the incumbent BOE members.

Respondent's memorandum also analyzed applicable rules, regulations, and decisions governing service on a BOE that Discenza may have violated.

First, respondent advised the BOE that Discenza's letter to the local newspaper "raise[d] a number of potential ethic[s] concerns." Specifically, respondent noted that Discenza failed to disclose her status as a BOE member and failed to indicate that her letter was neither authorized nor written on behalf of the BOE, as required by New Jersey School Ethics Commission Advisory Opinion A03-07 (April 2, 2007) at 3.

Second, respondent stated that Discenza's letter contained "negative statements regarding" Giordano and Downing. Respondent claimed that

Discenza's statements regarding the inability of the incumbent candidates to "act impartially" by virtue of "human nature" had the potential to "undermine the public trust in the ability of the [BOE] to act impartially, truthfully, and fairly." In respondent's view, Discenza's letter "had the potential to compromise" the BOE's "overall integrity, as well as the integrity and political campaigns of the two cited incumbent [BOE] members." Respondent, thus, maintained that Discenza may have violated N.J.S.A. 18A:12-22(a) (noting that BOE members "must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated") and N.J.S.A. 18A:12-24.1(e) (requiring a BOE member to "make no personal promises nor take any private action that may compromise the board").

Third, respondent argued that Discenza's 2019 e-mail, which accused sitting BOE members of "being liars," had the potential to compromise public trust in the BOE. Respondent also claimed that Discenza may have disseminated her e-mail on behalf of her favored slate of candidates, in violation of N.J.S.A. 18A:12-24.1(f) (noting that a BOE member shall not "surrender [their] independent judgment to special interest or partisan political groups or to use the schools for personal gain or for the gain of friends").

Fourth, respondent analogized Discenza's conduct in connection with her e-mail to undisclosed recipients to that of the reprimanded BOE member in In

the Matter of Denise Schmidt, Berlin Borough Bd. Of Education, Camden County, C01-02 (Feb. 23, 2003), who, at the direction of a district superintendent, used school equipment to make copies of a letter containing derogatory remarks about sitting BOE members. The BOE member in Schmidt then provided copies of the derogatory letter to the district superintendent's staff. Respondent argued that Discenza committed "arguably a more significant offense" than Schmidt, who did not personally draft the disparaging letter.

Fifth, respondent alleged that Discenza's appearance in the November 1, 2019 campaign video featuring her favored slate of candidates violated the District policy prohibiting the use of social media in order to "damage the reputation of the" District.

Finally, respondent claimed that Discenza's appearance in the campaign video may have violated N.J.S.A. 18A:12-24.1(e) and (f), based on his view that the "content of the video ha[d] the potential to compromise the [BOE] by taking actions outside the scope of [Discenza's] duties." Additionally, respondent argued that the video's presence on the social media page associated with the campaign of her favored candidates could have demonstrated that Discenza had acted in conjunction with her favored slate of candidates, which conduct, in respondent's view, provided further evidence that Discenza violated N.J.S.A. 18A:12-24.1(f).

Respondent concluded his memorandum to the BOE by claiming that Discenza may have engaged in misconduct in connection with her "various communications during the 2019 school board election season." Respondent's memorandum, however, did not recommend that the BOE take any specific action.

During the ethics hearing, respondent claimed that he had prepared the memorandum for "informational purposes" and to provide the BOE with "a synopsis of the factual circumstances applied to" the relevant law. Respondent billed the BOE at least 30 hours for his work in connection with the memorandum, resulting in at least $4,500 in legal fees.

In December 2019, Giordano and other BOE members filed with the School Ethics Commission (the SEC) a complaint against Discenza based on the conduct described in respondent's memorandum. Respondent "took the acknowledgment of the [BOE] members who signed" the complaint, work which he characterized as a "ministerial service."

On January 8, 2020, respondent, at Discenza's request, provided her with a copy of his November 14, 2019 memorandum.

Following the BOE's SEC complaint against Discenza, the SEC contemplated consolidating that matter with a separate complaint filed against Giordano by two non-BOE members. Because the grievants in the separate SEC

matter against Giordano were not BOE members, respondent noted that he could represent Giordano, individually, without any conflict of interest. However, to avoid representing Giordano in connection with the BOE's SEC complaint against Discenza, respondent sent the Office of Administrative Law the following letter:

> I respectfully submit that it would be a conflict of interest for me to furnish representation to Shawn Giordano in any manner in which a then serving board member, Regina Discenza, was an adversary. [Such] a circumstance would involve the representation of one board member as to the interests of an alternate board member.
>
> [T99.]

During the ethics hearing, respondent claimed that a clear conflict of interest would have resulted had he represented Giordano before the SEC in connection with the BOE's complaint against Discenza for her behavior during the 2019 election season. Respondent maintained that such a scenario would have forced him to represent "the individual interests of one board member . . . against the individual interests of another board member."

By contrast, respondent claimed that his preparation of the November 14, 2019 memorandum did not trigger a conflict of interest because, in his view, he was representing the BOE as a whole, and not "any individual member." Although respondent acknowledged that his memorandum "may have been

negative towards" Discenza, he claimed that he was not representing the interests of Giordano against those of Discenza.

Respondent's Involvement in the District's Personnel Matters (Counts II and III)

As detailed above, respondent's wife served as a special education teacher at Mill Pond Elementary School during respondent's tenure as general legal counsel to the BOE. It also appears that respondent and his family received health benefits through his wife's union membership with the LTA.

Throughout 2018, respondent provided legal services to the BOE regarding personnel matters related to the LTA and the LTASA.

Specifically, on January 17, 2018, respondent billed the BOE 0.5 hours in connection with his attendance at "an executive" BOE session, during which a discussion took place regarding the status of "negotiations with the LTASA." Respondent claimed that, during that session, he provided no legal advice to the BOE, and "no substantive discussions" took place that required his input. Moreover, respondent maintained that the session did not "in any way" involve his wife. Rather, respondent claimed that, during that session, he only "transcribed . . . notes and prepared a memorandum" – work which he characterized as "secretarial."

On February 20, 2018, respondent billed the BOE 5.2 hours in connection with a "personnel matter involving a non-teaching staff member." Specifically, respondent researched applicable case law, reviewed the LTA contract, and prepared a memorandum to the BOE based on that research. Respondent claimed that the personnel matter "had nothing to do with [his] wife."

On May 21 and 22, 2018, respondent billed a total of 3.6 hours in connection with the BOE's inquiry regarding the hiring procedures of a new District superintendent. Specifically, following the superintendent's announcement that he intended to retire, the BOE requested that respondent describe the hiring procedures to replace the superintendent. To familiarize himself with the hiring process, respondent reviewed the superintendent's contract and the LTASA and LTA contracts. Other than providing "procedural" advice to the BOE on May 21 and 22, 2018, respondent provided no further legal services in connection with the hiring of a new superintendent.

On June 11, 2018, respondent billed the BOE exactly one hour in connection with a personnel matter involving a school guidance counselor. Respondent reviewed the LTASA contract and prepared a "file memorandum" in connection with his legal work on the matter. Respondent claimed that the personnel matter involving the guidance counselor did not involve his wife.

On June 26, 2018, respondent billed the BOE 1.6 hours in connection with

a matter involving the "transfer of teachers." Specifically, respondent prepared a "post-meeting" memorandum, which he claimed contained no legal advice regarding the teachers subject to transfer. Respondent claimed that his wife was not one of the teachers subject to a transfer and that the transfers did not "impact[]" his wife.

Finally, on November 19, 2018, respondent billed the BOE 3.5 hours in connection with a personnel matter involving a "paraprofessional" who, respondent claimed, "had no affiliation whatsoever" to his wife. In connection with that matter, respondent reviewed the LTA contract to determine the applicable "standard" regarding "the circumstances involved."

During the ethics hearing, respondent maintained that it was "very important" to review the applicable union contracts in connection with the various personnel matters in order to familiarize himself with the "terms and conditions of employment." Respondent also emphasized that he never took part in any contract negotiations with the LTA or the LTASA. Instead, separate labor counsel retained by the District conducted such negotiations. In respondent's view, he did not engage in any conflict of interest by simply reviewing the applicable union contracts and by "applying" those documents "to the facts" of the personnel matters.

The Parties' Positions Before the DEC

Following the conclusion of its case, the DEC presenter moved to dismiss the formal ethics complaint based on the view that respondent could not have engaged in a conflict of interest in connection with his November 14, 2019 memorandum because he was not serving as the personal attorney for Giordano. The presenter also sought to dismiss the charges pertaining to respondent's involvement in the District's personnel matters based on the view that the presenter could not present sufficient evidence to sustain those charges.

Following respondent's presentation and the close of the ethics hearing, the DEC presenter reversed position regarding dismissal, via written summation to the hearing panel. Specifically, the DEC presenter recommended the imposition of an admonition, arguing that respondent had violated his duty of loyalty to Discenza, as a BOE member, by preparing the November 14, 2019 memorandum, without her knowledge, which scrutinized her actions in connection with the 2019 election season. The DEC presenter acknowledged that Giordano, as the BOE president, was authorized to independently request legal services from respondent pursuant to District Policy 0174. However, the DEC presenter emphasized that District Policy 0174 did not abrogate respondent's duty to adhere to the Rules of Professional Conduct, which, in the presenter's view, prohibited respondent from acting against the interests of one

BOE member, even if the majority of the BOE had authorized such action.

The DEC presenter viewed respondent's conduct in connection with the District's personnel matters as "far less direct and damaging" than his preparation of the November 24, 2019 memorandum. However, the DEC presenter stated that respondent should have engaged in "better separation from" both the LTASA and the LTA, the union in which his wife was a member. Specifically, the DEC presenter claimed that respondent's participation in "closed" BOE "sessions" and access to confidential BOE information "create[d] at least a risk" of "compromis[ing]" the BOE's "position."

At the outset of the ethics hearing, respondent objected to the public dissemination of his November 14, 2019 memorandum, claiming that the document constituted attorney-client work product "that was never meant to be divulged in a public setting." Although the hearing panel chair acknowledged respondent's argument, it does not appear that the chair issued a protective order sealing the memorandum. Nevertheless, a handwritten notation appears on the document stating that "this exhibit [is] under [a] protective order not to be disseminated to [the] public."

In his written summation to the DEC, respondent urged the dismissal of the formal ethics complaint based on his view that he did not engage in any conflicts of interest.

Specifically, respondent argued that he could not have acted unethically because he drafted the November 14, 2019 memorandum on behalf of the BOE as a whole, rather than on behalf of Giordano individually. Respondent also emphasized that a majority of the BOE members had authorized Giordano to contact respondent, pursuant to District Policy 0174, and request that he complete the memorandum.

Respondent also analogized his conduct to the circumstances described in A.C.P.E. Opinion 327, 99 N.J.L.J. 298 (April 8, 1976). As detailed below, in that matter, an attorney sought guidance regarding whether he could disclose a censure resolution that he had drafted at the request of one BOE member against another BOE member. Respondent argued that, if the attorney in that matter did not engage in a conflict of interest, he could not have "run afoul" of the RPCs by drafting the November 2019 legal research memorandum on behalf of the BOE majority. Additionally, respondent expressed his view that no attorney, including a "special/conflict counsel," would have been able to draft the memorandum requested by Giordano.

Respondent also argued that his wife's status as a teacher and a union member within the District did not create a significant risk of materially limiting his representation of the BOE in connection with the personnel matters. Respondent stressed that the DEC failed to offer any nexus between the specific

personnel issues described in his billing entries and his wife's employment. Moreover, despite his wife's status as a union member, respondent claimed that merely reviewing union contracts in the context of personnel issues did not result in a per se conflict of interest. In support of his argument, respondent cited A.C.P.E. Opinion 492, 109 N.J.L.J. 294 (April 8, 1982). There, a BOE attorney sought guidance regarding whether he could represent the BOE in an administrative action in which he would be advocating for a budget that, ultimately, would affect his wife's employment. The A.C.P.E. held that the possibility of a conflict in that situation was "remote" and that no conflict existed. Respondent argued that, like the attorney in Opinion 492, he could not have engaged in any conflicts of interest based solely on his involvement in personnel matters that did not involve his wife.

Finally, respondent urged the DEC to consider that Discenza was motivated to file an ethics grievance against him based on his view that she held a "personal animus towards him."

The DEC Hearing Panel's Findings

In determining to dismiss the complaint, the DEC hearing panel first noted that, pursuant to District Policy 0174, Giordano, as the BOE president, served as one of the designated contact persons authorized to request legal services from respondent. The DEC also noted that District Policy 0174 did not require

a BOE resolution or vote before Giordano could request legal services from respondent. The DEC, thus, concluded respondent did not violate RPC 1.7(a)(2) in connection with his preparation of the November 14, 2019 memorandum based solely on its view that respondent "was acting for the [BOE]" and "not [for] an individual." The DEC did not conduct an analysis of the remaining charged RPCs relating to respondent's preparation of the memorandum.

Additionally, the DEC expressed concern that the allegations against respondent regarding his involvement in the District's personnel matters were based only on Discenza's examination of respondent's billing records and her "speculat[ion]" about "what they meant." The DEC also noted that Discenza merely examined respondent's billing entries "without any analysis as to [the] specific personnel issues." The DEC, thus, found no clear and convincing evidence to sustain the RPC 1.7(a)(2) charges in connection with respondent's involvement in the District's personnel matters.

The Parties' Positions Before Us and the DEC's Motion to Supplement

At oral argument and in his brief to us, respondent largely reiterated the arguments he had advanced before the DEC in support of his view that the charges against him should be dismissed.

Specifically, respondent argued that he could not have engaged in a conflict of interest in connection with his preparation of the November 2019

memorandum because, in his view, he undertook that assignment on behalf of the BOE and not Giordano individually. Respondent also stressed that District Policy 0174 permitted Giordano, as the BOE president, to request such legal services from respondent. Moreover, respondent noted that a majority of the BOE members had authorized Giordano to request that respondent complete the memorandum. Respondent further argued that, had the BOE obtained the assistance of outside counsel to complete the memorandum, that attorney still would have committed a conflict of interest pursuant to the DEC's theory underlying the formal ethics complaint.

Respondent again analogized his conduct in connection with his preparation of the memorandum to the circumstances described in A.C.P.E. Opinion 327. Specifically, respondent argued that, if the attorney in Opinion 327 was not found to have engaged in a conflict of interest in drafting a censure resolution against a BOE member, he could not have acted unethically by drafting the November 2019 memorandum on behalf of the BOE majority.

Additionally, respondent argued that the DEC failed to present clear and convincing evidence demonstrating that his involvement in the District's personnel matters resulted in a conflict of interest, considering his wife's status as a teacher and a union member within the District. Specifically, respondent maintained that the DEC's presentation was based on "speculation,"

"innuendo," and "without any analysis as to the specific personnel issues." Respondent again relied on A.C.P.E. Opinion 492, arguing that if the A.C.P.E. deemed a conflict in that matter to be "remote," he could not have engaged in any unethical conduct by merely reviewing union contracts in connection with personnel matters that did not involve his wife. Respondent also maintained that it is not per se unethical for an attorney to represent a board of education while that attorney's spouse works within that same school district.

Finally, respondent argued that the evidence presented during the ethics hearing demonstrated that Discenza held a "personal animus towards him" and, thus, had a personal motive to file an ethics grievance against him.

At oral argument before us, the presenter emphasized the view that respondent improperly investigated Discenza, one of his clients who served on the BOE, in connection with his preparation of the November 2019 memorandum. In support of the argument that respondent's conduct was unethical, the presenter stressed that members of a board of education should feel confident that their general counsel will not conduct "secret" investigations against them to their own detriment, as occurred here. The presenter further argued that respondent's reliance on District Policy 0174 was irrelevant, given that the policy did not abrogate respondent's duty to avoid taking adverse action against a client member of the BOE.

The presenter also maintained that respondent should have not involved himself in the District's personnel matters while his wife served as a teacher within the District.

On August 2, 2023, the DEC presenter filed a motion with us to supplement the record with the SEC's final agency decision in I/M/O Shawn Giordano, Lacey Township Board of Education, Ocean County (July 25, 2023). In its decision, the SEC censured Giordano for violating the statutes governing the conduct of school board members by directing respondent to conduct legal research regarding Discenza. The SEC emphasized that Giordano's "bad faith" request was made the day after he lost his bid for reelection and "was beyond the scope of his duties as a BOE member as it was motivated by his own personal animus for a political rival." The SEC also adopted the findings of an Administrative Law Judge, finding that Giordano "used school resources for personal reasons and failed to seek the [BOE's] approval for his request beyond seeking ratification for the charges." The SEC, however, made no comment regarding the propriety of respondent's conduct.

In the motion to supplement, the DEC presenter argued that the SEC's reasoning is relevant to our determination regarding whether respondent engaged in any misconduct in connection his preparation of the November 14, 2019 memorandum.

On August 8, 2023, respondent filed with us a letter in opposition to the DEC's motion, arguing that the SEC's decision does not "move[] the needle in this matter" and is silent regarding the propriety of his conduct. Respondent also noted that the SEC's decision contains no information suggesting that he had understood Giordano's motivation in directing him to complete the memorandum. Moreover, respondent argued that the SEC's finding that Giordano failed to seek approval from his fellow BOE members in making his request is contrary to the evidence established during the ethics hearing before the DEC. Specifically, during the ethics hearing in this matter, Giordano's testimony established that he had received the consent of four other BOE members, via private discussions, to direct respondent to draft the memorandum.

Analysis and Discipline

As a preliminary matter, we determine to vacate any protective order sealing the November 2019 memorandum admitted into evidence during the ethics hearing. Although a handwritten notation appeared on the memorandum indicating that the document was subject to a protective order, it does not appear, based on our review of the record, that the DEC ever issued such an order, pursuant to Court Rule, during the proceedings below. To the extent that such an order issued, we determine to unseal the document. Specifically, the work

product nature of the document does not constitute an "exceptional" circumstance prohibiting disclosure in order to protect the interests of Discenza, respondent, or any third party. See R. 1:20-9(h) (noting that, "[i]n exceptional cases, protective orders may be sought to prohibit the disclosure of specific information to protect the interests of a grievant, witness, third party, or respondent"). Indeed, Discenza, whose conduct was described in the memorandum, arguably has waived any confidentiality concerns regarding the document by filing an ethics grievance against respondent. Finally, sealing the document would run afoul of longstanding precedent regarding public access to disciplinary proceedings after formal charges have been filed. See Paff v. Director, Office of Attorney Ethics, 399 N.J. Super. 632, 643 (Law Div. 2007) (noting that, in New Jersey, "there is a right to public access and disclosure once formal charges have been filed").

Moreover, we determine to grant the DEC presenter's motion to supplement the record with the SEC's July 25, 2023 final agency decision, given that the document is otherwise publicly available. However, we stress that the SEC's decision, which did not address the propriety of respondent's actions, did not in any way affect our determination of this matter.

Turning to our de novo review of the record, we determine to respectfully part company with the DEC hearing panel's finding that respondent's conduct

was not unethical.

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

In that vein, RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists not only if "the representation of one client will be directly adverse to another client[,]" but also if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . or by a personal interest of the lawyer." Under RPC 1.7(b)(1), a public entity client cannot "consent to any" conflicted representation.

An attorney who represents a municipal body represents not only that body as a whole, but also its "individual officials . . . in the performance of their official duties." A.C.P.E. Opinion 174, 93 N.J.L.J. 132 (1970). However, if a conflict develops "between the individual member and the body," an attorney's duty of loyalty "is to the body he represents." A.C.P.E. Opinion 327, 99 N.J.L.J. 298 (1976).

Here, respondent violated RPC 1.7(a)(1) and (2) by representing a majority of the BOE members in connection with their inquiry into whether Discenza, their fellow BOE member and political opponent, had engaged in any misconduct during an election season. Specifically, respondent violated his duty of loyalty to the BOE as a whole by drafting the memorandum, on behalf of certain BOE members, and without Discenza's knowledge, detailing his research regarding her potential misconduct.

Respondent's preparation of the memorandum was directly adverse to the interests of Discenza, who, along with the other BOE members, respondent represented in their official capacities. Similarly, respondent's conduct created a significant risk that his representation of the BOE as a whole would be materially limited by his decision to assist the BOE members who sought to investigate Discenza, who remained unaware that respondent had been tasked with completing the memorandum until sometime after the BOE had filed a complaint against her with the SEC.

Although the principles set forth in Opinion 327 regarding an attorney's duty to a municipal body are applicable to this matter, we find that the circumstances of that case are distinguishable from respondent's misconduct.

In Opinion 327, an attorney for a school board questioned whether he could comply with that board's request to reveal confidential information

provided to him by a board member relating to the board's business affairs. Specifically, one member provided the attorney information to use in drafting a censure resolution against another member. The member requested that the attorney keep the information confidential in the event that he declined to introduce the resolution. Although the attorney drafted the resolution, the member declined to introduce it. Thereafter, the school board directed the attorney to disclose the draft resolution. The attorney sought guidance from the A.C.P.E. regarding his obligations to preserve confidential client information under former Disciplinary Rule 4-101(B) (a lawyer shall not knowingly reveal a confidence or secret of his client).

The A.C.P.E. began its analysis first by considering two additional opinions: A.C.P.E. Opinion 226, 95 N.J.L.J. 54 (1972), and A.C.P.E. Opinion 174, 93 N.J.L.J. 132 (1970).

In Opinion 226, the A.C.P.E. observed that an attorney for a municipality represents the whole municipality and that, in so doing, he also represents individual officials of the municipality in the performance of their official duties. In that matter, the A.C.P.E. addressed whether a conflict of interest would result if a municipal attorney's wife were elected or appointed tax collector of that same municipality. The A.C.P.E. determined that "while a situation might arise where there would be a conflict, there is no conflict per

se."

In Opinion 174, the A.C.P.E. addressed, among other issues, whether a municipal attorney could appear with a municipal official who had been subpoenaed to testify on matters involving the municipality before the State Commission on Investigations. In that matter, the A.C.P.E. once again made clear that the attorney represents the entire municipality and, in so doing, also represents the individual officials of the municipality in the performance of their duties. The A.C.P.E. noted that the attorney could properly represent the official before the Commission in connection with municipal matters. However, the A.C.P.E. cautioned that, if the official's actions or testimony ran contrary to the interests of the municipality, the attorney must withdraw from the representation.

Applying the principles set forth in Opinion 174 and Opinion 226, the A.C.P.E., in Opinion 327, observed that "there is no [per se] conflict of interest . . . in an attorney for a municipal body representing a member of that body." However, the A.C.P.E. found that "a conflict might develop between the individual member and the body, in which case" the attorney owes his duty of loyalty "to the body."

In connection with the attorney's inquiry regarding whether he could disclose the draft censure resolution to the school board, the A.C.P.E., in

Opinion 327, observed that the board member had consulted with the attorney in his capacity as counsel for the board. Consequently, the A.C.P.E. determined that the board member was in no position to demand secrecy regarding "matters germane to the board's business." Accordingly, the A.C.P.E. recommended that the attorney comply with the board's request to disclose the draft resolution. In reaching its conclusion, the A.C.P.E. emphasized that the attorney-client privilege belongs to the client (the board) "and not to the individual member whose interests . . . conflict with those of the board." Significantly, the A.C.P.E. did not discuss whether the attorney who had drafted the proposed censure resolution against the school board member had engaged in a conflict of interest.

Applying the principles of Opinion 174, Opinion 226, and Opinion 327 to the instant matter, respondent's duty of loyalty was to the entire BOE, including each of the seven members in their official capacities. Moreover, respondent knew that Discenza and Giordano were political opponents and that Discenza was actively campaigning for a slate of candidates that were opposed to Giordano and his allies. Rather than advise all the BOE members, including Discenza, regarding how to comport themselves with applicable laws and regulations during an election season, respondent violated his duty of loyalty to the entire BOE by assisting a faction of members in their effort to harm Discenza, a sitting member who was deemed a political opponent. Compounding

matters, respondent's investigation of Discenza's conduct, as a BOE member, resulted in Giordano and his colleagues filing an ethics complaint with the SEC against Discenza for the conduct described in the memorandum. Respondent even notarized the signatures of the BOE members in connection with the filing of their complaint.

Respondent argued that he could not have acted unethically because he had prepared the memorandum at the request of Giordano, the BOE president, who was authorized to request legal services from respondent pursuant to District Policy 0174. Although District Policy 0174 provided clear authority to Giordano to request legal work from respondent, that policy did not abrogate respondent's ethical obligations under the Rules of Professional Conduct. Regardless of the terms of the District Policy, RPC 1.7 prohibited respondent from engaging in a conflict of interest by performing legal services in favor of one group of BOE members to the detriment of another, conduct which clearly violated respondent's duty of loyalty to the BOE as a whole.

Moreover, despite respondent's claim that the attorney in Opinion 327 did not engage in a conflict of interest, the A.C.P.E. in that matter made no such finding. Rather, the attorney's inquiry to the A.C.P.E. in that matter dealt with his concerns regarding the confidentiality of client communications. In recommending that the attorney disclose the draft censure resolution to the entire

board, the A.C.P.E. determined the attorney-client privilege belonged to the board as a whole and not to the individual member who whose interests conflicted with that of the board. Likewise, respondent was duty-bound to act as the attorney for the entire BOE and not just for a segment of members who sought to investigate the conduct of their political opponent.

However, we determine to dismiss the charges that respondent violated RPC 1.8(b) and RPC 1.8(k) by preparing the November 2019 memorandum.

Generally, RPC 1.8(b) prohibits an attorney from using information relating to the representation of a client to the disadvantage of the client. The few instances where we have sustained that charge occur when an attorney improperly discloses confidential client information to the client's detriment. See In the Matter of Mark R. Silber, DRB 19-381 (Aug. 5, 2020) (sustaining an RPC 1.8(b) charge where an attorney shared privileged documents relating to the representation with the client's adversary, who may have used such documents against her in the future), so ordered, 244 N.J. 266 (2020), and In the Matter of David E. Tider, DRB 16-329 (May 26, 2017) (sustaining an RPC 1.8(b) charge where an attorney used confidential information in a lawsuit to the detriment of a former client), so ordered, 231 N.J. 164 (2017).

Here, it does not appear that Discenza's public campaign statements, which were the subject of respondent's memorandum, constituted the kind of

confidential client information that respondent would have been precluded from utilizing to her detriment.

Similarly, RPC 1.8(k) generally prohibits a lawyer employed by a public entity from undertaking the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide competent representation to either the public entity or the client.

Here, respondent completed the memorandum at the behest of Giordano and four other BOE members, conduct which materially limited respondent's ability to provide competent representation to the BOE as a whole. However, respondent's conduct in that regard is more appropriately encapsulated by the RPC 1.7(a)(1) and (2) charges.

Accordingly, we determine to dismiss the RPC 1.8(b) charge as a matter of law and the RPC 1.8(k) charge as duplicative of the RPC 1.7(a)(1) and (2) charges.

Additionally, we find that respondent violated both RPC 1.7(a)(2) charges in connection with his involvement in the District's personnel matters. Specifically, counts two and three of the formal ethics complaint each charged respondent with having violated RPC 1.7(a)(2) by providing legal services to the BOE related to the LTA, of which his wife was member, and to the LTASA,

which had supervisory authority over LTA members, including respondent's wife.

In In re Opinion No. 17-2012 of Advisory Committee on Professional Ethics, 220 N.J. 468 (2014), the Court noted that the "mere possibility of subsequent harm does not" constitute "a significant risk of material limitation" required to sustain an RPC 1.7(a)(2) charge. Id. at 478 (citing Model Rules of Prof'l Conduct R. 1.7, cmt. 8 (2013)). Rather, "there must be a significant risk that a lawyer's ability to consider, recommend[,] or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." Ibid. (citation omitted). To identify whether a "significant risk" exists, "the critical questions are the likelihood that a difference in interests will arise, and if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." Id. at 478-49 (citation omitted).

Here, between February and November 2018, respondent reviewed the LTA and LTASA contracts and conducted legal research in order to draft memorandum in connection with union personnel matters within the District. Additionally, in January 2018, respondent attended an executive BOE session, during which a discussion took place regarding the status of union contract

negotiations with the LTASA. In our view, respondent's personal relationship with his wife, who was a union member, created a significant risk of materially limiting his ability to provide objective representation to the BOE regarding union matters.

In A.C.P.E. Opinion 492 109 N.J.L.J. 294 (1982), the A.C.P.E. found no conflict between a school board attorney and his spouse, where the wife had been appointed temporarily as a teacher in the school district, with a possibility of a permanent teaching position. In that matter, following an election where voters rejected the district's school budget, the attorney questioned whether, if the budget was to be "heard by" an administrative law judge and, ultimately, by the Commissioner of Education, the attorney's support for the budget would represent a conflict of interest, given that teachers' salaries, including his wife's, would be an item in the budget. The A.C.P.E. found the conflict in that scenario to be too "remote" to create the likelihood of any direct conflict.

Unlike the circumstances in Opinion 492, where the attorney may have had to defend a school district's budget that already had been negotiated, respondent appeared to be actively involved in ongoing union matters within the District. Although it is undisputed that respondent was not involved in the negotiation of union contracts within the District, respondent attended at least one executive BOE session during which a discussion took place regarding the

status of contract negotiations with the LTASA.[4] Respondent's attendance at that executive BOE session, however, created a risk of compromising the BOE's negotiating position with the LTASA, via inadvertent disclosures of the BOE's positions to his wife. See A.C.P.E. Opinion 346 99 N.J.L.J. 714 (1976) (finding that an attorney, whose wife was employed as a non-tenured full-time teacher within a school district, could not serve as labor negotiator for the board of education in part because the "close relationship of a husband and wife would create the possibility of an inadvertent breach of confidence or receipt of information by the attorney's wife that might be adverse to the interests of the board").

Moreover, respondent's active involvement in the District's union personnel matters created a risk of comprising the outcome of those matters via inadvertent disclosures of confidential information to his wife. Regardless of whether the personnel matters directly implicated his wife, the risk of respondent inadvertently disclosing those matters to his wife created a further risk of comprising those matters to the potential detriment of the BOE. Finally, we find that respondent's ability to objectively represent the BOE regarding

[4] It appears, based on respondent's testimony during the ethics hearing, that an executive BOE session is not a public meeting.

union matters was further exacerbated by his personal interest in the health benefits he appeared to receive via his wife's union membership.

In sum, in connection with count one of the formal ethics complaint, we find that respondent violated RPC 1.7(a)(1) and (2). We dismiss, as a matter of law, the charge that respondent violated RPC 1.8(b). We also dismiss the RPC 1.8(k) charge as duplicative of the RPC 1.7(a)(1) and (2) charges.

In connection with counts two and three, we find that respondent violated RPC 1.7(a)(2) (two instances).

The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate quantum of discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See, also, In re Lewinson, 252 N.J. 416 (2022) (the attorney represented a wife in a divorce proceeding, which resulted in a final judgment that required the parties to equally split the proceeds of their marital home; sixteen years later, the attorney represented the wife's former husband, who sought to enforce the terms of the final judgment; the attorney immediately withdrew from the conflicted representation upon the filing of an ethics grievance; we accorded minimal weight to the attorney's disciplinary history of a reprimand and two terms of suspension, given that the

attorney had been without formal discipline for more than twenty years).

However, the quantum of discipline can be decreased to an admonition if compelling mitigation is present. See In the Matter of Roberta L. Tarkan, DRB 21-094 (Oct. 1, 2021) (the attorney advised an individual regarding the process by which to file a complaint against a property management company, the identity of which the attorney later discovered was her long-time client; weeks later, the company sent the attorney a copy of the individual's complaint and inquired whether the attorney could defend the company in the action; thereafter, the attorney contacted the individual, inquired about his intentions, and offered to mediate the dispute; the attorney also sent the individual an e-mail in which she referred to the company as her client and requested whether the individual would consent to the attorney filing an answer on behalf of the company; although the individual never provided his consent, he made an inquiry with the attorney regarding the company's answer to the lawsuit; in reply, the attorney stated that "we [had] until March 16" to file a response; we determined that the attorney had engaged in a conflict of interest by representing the individual, whose interests were directly adverse to that of the company; in mitigation, the attorney's conduct was not for financial gain and she had an otherwise unblemished thirty-year career at the bar), and In the Matter of John F. O'Donnell, DRB 21-081 (Sept. 28, 2021) (the attorney engaged in a concurrent

conflict of interest by representing a 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 attorney also provided the client a $180,000 loan, at a six-percent interest rate, in violation of RPC 1.8(a) (engaging in an improper business transaction with a client); in mitigation, the attorney had an otherwise unblemished forty-year career at the bar and his misconduct had occurred more than ten years earlier).

Here, respondent engaged in a concurrent conflict of interest by drafting the November 14, 2019 memorandum, on behalf of certain BOE members, including Giordano, and against Discenza, their fellow BOE member and political opponent. Respondent's memorandum detailed Discenza's potential misconduct committed in her capacity as a BOE member during a school board election season. As a direct result of respondent's legal conclusions in his memorandum, Giordano and other BOE members attempted to harm Discenza by filing a complaint against her with the SEC.

By assisting a group of BOE members in connection with their efforts to harm Discenza, respondent violated his duty of loyalty to the entire BOE and, arguably, injected himself into the political infighting taking place within the BOE. Respondent argued that he could not have engaged in a conflict of interest

because he had acted at the behest of the majority of the BOE. However, his argument fails to appreciate that his duty of loyalty was not confined merely to the majority of the BOE members. Rather, as the A.C.P.E. observed in Opinion 174, Opinion 226, and Opinion 327, respondent represented the entire BOE and, in so doing, represented each of the members, including Discenza, in their official capacities.

Respondent engaged in a further conflict of interest by representing the BOE in connection with union matters while his wife was a member of the LTA, a situation which created a significant risk of materially limiting his ability to provide objective representation to the BOE regarding union matters.

In mitigation, however, respondent is no longer employed by the BOE and, thus, he is unlikely to repeat his misconduct. See In the Matter of David Perry Davis, DRB 17-392 (Feb. 20, 2018) (noting, in mitigation, that although the attorney's misconduct was ill-conceived, it was also aberrational). Finally, and most significantly, like the admonished attorneys in Tarkan and O'Donnell, this matter represents respondents' first brush with the disciplinary system in his nearly thirty-year career at the bar.

On balance, given respondent's otherwise unblemished disciplinary record and the aberrational nature of his misconduct, we determine that an

admonition is sufficient discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli, Vice-Chair Boyer, and Member Joseph voted to dismiss the formal ethics complaint in its entirety, finding that respondent did not engage in any unethical conduct. In their view, respondent properly completed the November 2019 memorandum at the behest of Giordano, the BOE president, pursuant to District Policy 0174. Those Members also found no significant risk that respondent's representation of the BOE, in connection with the District's personnel matters, was materially limited by virtue of his wife's union membership within the District.

Member Rodriguez was recused.

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 Christopher M. Supsie
Docket No. DRB 23-092

Argued: June 21, 2023

Decided: October 11, 2023

Disposition: Admonition

Members	Admonition	Dismiss	Recused
Gallipoli		X	
Boyer		X	
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez			X
Total:	5	3	1

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