DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

RICHARD J. HUGHES JUSTICE COMPLEX
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November 21, 2023

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

Re: **In the Matter of Michael Keith Parmelee**
Docket No. DRB 23-216
District Docket No. XIV-2021-0049E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.7(a)(2) (engaging in a concurrent conflict of interest); RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation); RPC 1.15(b) (failing to promptly deliver funds to an entitled party); and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6).

The stipulated facts, addressing both respondent's misconduct across five client matters and his recordkeeping violations, are as follows.

Advances to Clients

Between September 2015 and April 2020, respondent advanced funds to three clients – Tamer Fawzy, Mohamed Eid, and Shaun Franklin – totaling $20,410, during his respective representation of each. Respondent provided interest-free financial assistance to these three clients using his personal funds, with the understanding that he would be repaid from any future settlement proceeds. Respondent maintained that, prior to advancing funds to each client, he assessed whether the potential settlement would be sufficient to cover the loan amount. Respondent admitted that, by loaning money to Fawzy, Eid, and Franklin, he improperly acted as both their attorney and their creditor.

In the Fawzy client matter, on September 10, 2015, Fawzy retained respondent, on a contingent fee basis, to represent him in a workers' compensation matter. During the course of the representation, respondent loaned $10,360 to Fawzy, via twenty-one disbursements, from his personal funds.

Respondent tracked the amount of each payment he made to Fawzy via an application on his cellular telephone, but otherwise failed to memorialize the terms of the loan or the dates each advance occurred. The loans were not advances for court costs or litigation expenses, but instead for Fawzy's personal use, including court fines, child support, and personal expenses.

Fawzy's workers' compensation case settled for $30,000 and, on July 5, 2018, respondent deposited the settlement check, payable to "Tamer Fawzy & Neandross Parmelee & Associates" in his ATA. Respondent did not have a written agreement with Fawzy regarding the disbursement of the settlement proceeds; however, respondent maintained that Fawzy had authorized him to disburse the funds to entitled parties as he deemed appropriate. Respondent disbursed $10,000 to himself, via three payments, representing Fawzy's repayment of the loan. Although he still was owed $360 on the loan, respondent informed the OAE that he would not seek satisfaction of the outstanding balance.

As of September 6, 2022, respondent still held $10,860 in his ATA on Fawzy's behalf. Respondent stated that he was holding the money to satisfy existing Medicaid liens; however, he failed to disburse the remainder of the funds to Medicaid because, according to the stipulation, he was "unsuccessful in determining the amount of Fawzy's existing Medicaid liens." Accordingly, on January 12, 2023, respondent deposited those funds with the New Jersey Superior Court Trust Fund Unit (the SCTFU), via an ATA check in the amount $10,860.

In the Eid client matter, on August 28, 2015, Eid retained respondent, on a contingent fee basis, to represent him in a workers' compensation matter. Over the course of the representation, respondent loaned $5,100 to Eid, interest free, from his personal funds. The loans were not advances for court costs or litigation expenses, but instead money for Eid to "live on" and, twice, to pay for airfare to Egypt to visit Eid's dying parents.

Respondent admitted that he failed to prepare a promissory note governing the terms of the loan, but tracked the loan amounts, which were all cash payments, on an application on his cellular telephone. Eid died before his worker's compensation case was resolved and, as of October 2, 2023 (the date of the disciplinary stipulation), his case was still pending and respondent remained the attorney of record. Respondent informed the OAE that, although he had not recouped the $5,100 he had loaned to Eid, he would not seek repayment from Eid's estate.

In the Franklin client matter, on March 14, 2016, Franklin retained respondent, on a contingent fee basis, to represent him in a personal injury action. During the course of the representation, respondent loaned $4,950 to Franklin, interest free, via multiple disbursements from his personal funds. Respondent memorialized some of the loan payments on Franklin's billing statement, denoted as "Cash advance of $," along with the amount of the payment. Respondent also made payments to Franklin, via two personal checks dated May 18 and 31, 2016, for $500 and $200 respectively, containing the notations "loan." Respondent admitted that the loans were not advances for court costs or litigation expenses, but instead for Franklin's personal use, including for rental payments and personal expenses.

Franklin's personal injury action settled for $21,000. On August 17, 2016, respondent deposited a partial settlement check in his ATA, in the amount of $1,000, payable to "Shaun Franklin & Neandross Parmelee & Associates." On May 25, 2018, respondent received the remainder of the settlement proceeds and, on May 30, 2018, deposited the check, in the amount of $20,000, payable to "Shaun Franklin & Neandross Parmelee & Associates," in his ATA.

Respondent did not have a written agreement with Franklin regarding the disbursement of the settlement proceeds; however, respondent stated that he had Franklin's verbal permission to disburse the funds to entitled parties. On March 31, 2018, respondent reimbursed himself $4,950, in repayment of the money he had loaned to Franklin.

Concurrent Conflict of Interest - The J.D. and Armstrong Client Matters

Beginning in 2017 and continuing until 2021, respondent represented J.D.,[1] on a pro bono basis, in at least twenty-seven criminal and municipal court matters, including in defense of charges for simple assault; disturbing the peace; receiving stolen property; and various motor vehicle offenses.

In October 2020, respondent represented Thomas Armstrong, also on a pro bono basis, in connection with disorderly conduct and simple assault charges pending in Hazlet Municipal Court. At the time, Armstrong was engaged in a romantic relationship with J.D. Respondent also represented Armstrong, on a pro bono basis, in seven additional criminal and municipal court matters, including charges of simple assault; burglary; criminal trespass; and disorderly conduct.

On October 30, 2020, Armstrong allegedly assaulted J.D. and was charged with simple assault, a disorderly persons offense, contrary to N.J.S.A. 2C:12-1(a)(1), by the Middletown Township Police Department (the Middletown I matter). Less than two months later, on December 8, 2020, Armstrong again allegedly assaulted J.D., within the jurisdiction of Middletown Township and, again, was charged with simple assault. (the Middletown II matter).

On February 15, 2021, respondent entered his appearance on behalf of Armstrong in both the Middletown 1 and Middletown II matters and requested discovery from the Middletown Township Police Department. On February 22 2021, respondent received the discovery and, while reviewing it, discovered that J.D., his client, was the alleged victim in both matters.

Respondent admitted that he represented J.D., albeit in different court matters, while concurrently representing Armstrong in the Middletown I and Middletown II municipal court matters.

Respondent admitted that, after learning J.D. was the victim and material witness in the Middletown I and Middletown II matters, he did not withdraw as Armstrong's attorney. Respondent further admitted that, despite the conflict of interest created by his simultaneous representation of J.D. and Armstrong, he failed to obtain written informed consent from both of his clients, as RPC 1.7(b)(1) requires.

[1] The initials "J.D." (Jane Doe) are used to anonymize the client's identify as a victim of domestic violence.

On March 5, 2021, Armstrong again allegedly assaulted J.D. and was charged with simple assault by the Tinton Falls Police Department (the Tinton Falls matter). On March 20, 2021, respondent entered his appearance on behalf of J.D., as the victim in the Tinton Falls matter and, on behalf of J.D., requested the dismissal of the charges against Armstrong.

Respondent admitted that he had represented Armstrong, albeit in different matters, while concurrently representing J.D. in the Tinton Falls municipal court matter.

Respondent admitted that J.D. was a material witness on behalf of the prosecution in the Tinton Falls matter. Despite the fact that Armstrong, his client in other matters, was the defendant, respondent agreed to represent J.D., the victim, in the Tinton Falls matter. Respondent acknowledged that his simultaneous representation of J.D. and Armstrong created a conflict of interest. Further, respondent admitted that, despite the conflict of interest created by his simultaneous representation of J.D. and Armstrong, he failed to obtain written informed consent from both of his clients, as RPC 1.7(b)(1) requires.

Respondent's Recordkeeping Violations

Respondent maintained his attorney trust account (ATA) and attorney business account (ABA) with TD Bank. The OAE's investigation revealed the following recordkeeping deficiencies: improper ATA and ABA designations (R. 1:21-6(a)(2)); electronic transfers from ATA without proper authorization (R. 1:21-6(c)(1)(A)); and inactive funds in ATA (R. 1:21-6(d)).

On September 29, 2022, respondent notified the OAE that he had corrected the designations on his ATA and ABA. The inactive ATA balance ($10,860), representing the remainder of the Fawzy settlement funds, had persisted for more than four years. Following the commencement of the OAE's investigation, on January 12, 2023, respondent issued a check, payable to the SCTFU, in the amount of $10,860. Respondent resolved his recordkeeping deficiencies to the OAE's satisfaction.[2]

Based on the above facts, the parties stipulated that respondent violated RPC 1.7(a)(2); RPC 1.8(e); RPC 1.15(b); and RPC 1.15(d).

[2] The OAE stated that its investigation did not reveal the misappropriation of client funds.

Following a review of the record, the Board determined to grant the motion for discipline by consent and found that the stipulated facts clearly and convincingly support the charges of misconduct.

Specifically, 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 if "the representation of one client will be directly adverse to another client" or "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."

Respondent represented Armstrong, the defendant, in the Middletown I and Middletown II matters, in defense of charges of simple assault perpetrated against J.D., the victim, while he simultaneously represented J.D. in other court matters. Subsequently, in the Tinton Falls matter, when Armstrong was charged with assaulting J.D., for the third time, respondent represented J.D., in her capacity as victim. At the same time, respondent admittedly continued to represent Armstrong in unrelated court matters. Accordingly, respondent created a significant risk that his representation of one client would be materially limited by his representation of the other. Respondent failed to obtain each client's informed written consent and, thus, he engaged in a concurrent conflict of interest, in violation of RPC 1.7(a)(2).

Next, the record clearly and convincingly demonstrates that respondent violated RPC 1.8(e) which, with limited exceptions, prohibits a lawyer from providing financial assistance to a client in connection with pending or contemplated litigation. Respondent violated this Rule by admittedly providing advances of the anticipated settlement proceeds to his clients – Fawzy, Eid, and Franklin – in each of their respective matters. See In re Zonies, 235 N.J. 336 (2018) (finding that the attorney violated RPC 1.8(e) by loaning funds to a client in anticipation of settlement). Although respondent may have acted out of genuine concern for the financial well-being of his clients, his conduct still violated the Rule.

Further, respondent violated RPC 1.15(b) by failing to promptly disburse the $10,860 balance that remained in his ATA on behalf of Fawzy. Respondent held the funds upon his understanding that there were outstanding Medicaid liens to be paid. However, he failed to promptly disburse those funds to Medicaid, an entitled third party and, instead, allowed the funds to languish. Consequently, the funds remained in his ATA for four years, until he deposited them with the SCTFU.

Finally, respondent violated RPC 1.15(d) by holding an inactive balance of client funds in his ATA for an extended period of time and making improper electronic authorizations from his ATA to his ABA. He also had incorrectly designated his ATA and ABA accounts.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. See, e.g., In re Drachman, 239 N.J. 3 (2019) (the attorney engaged in a conflict of interest by recommending that his clients use a title insurance company in eight, distinct real estate transactions, without disclosing that he was a salaried employee of that company; there was no evidence of serious economic injury to the clients; the attorney also violated RPC 5.5(a)(1) by practicing law while ineligible to do so; no prior discipline); In re Simon, 206 N.J. 306, 321 (2011) (the attorney filed an action for legal fees against a client while concurrently representing the same client in defense of a murder charge; no prior discipline); In re Pellegrino, 209 N.J. 511 (2010), and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures, violations of RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business).

Attorneys who improperly provide financial assistance to clients typically receive an admonition. See In the Matter of Craig Joseph Kobrin, DRB 15-320 (February 2, 2016) (the attorney advanced $1,500 to a client out of altruism without requiring interest), and In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (the attorney provided small, interest-free loan to three clients; the attorney also signed a client's name and had his secretary notarize the signature).

Reprimands have been imposed in cases where the attorneys have advanced funds to more than one client through multiple loans, engaged in additional misconduct, or had prior discipline. See In re Kazer, 189 N.J. 299 (2007) (the attorney loaned funds to eleven clients who needed financial assistance, totaling $29,000, over span of nine years; no prior discipline), and In re Beran, 181 N.J. 535 (2004) (the attorney routinely advanced funds to clients while representing them in personal injury cases; the attorney made seventy-seven advances (multiple advances to the same clients), totaling $17,705; the attorney was unaware of the inherent conflict of interest in this practice and had been moved by his clients' need of funds; the attorney also negligently misappropriated client funds, and committed recordkeeping violations; no prior discipline).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney commingled and committed several recordkeeping violations, including failure to perform three-way reconciliations, improper account designation, and failure to preserve images of processed checks).

In the Board's view, respondent's misconduct is most analogous to the attorneys in Kazer, Powell, and Beran, who were reprimanded for making multiple loans to clients and, like Powell and Beran, had committed other minor misconduct, including recordkeeping violations. Respondent, however, also engaged in a concurrent conflict of interest by simultaneously representing J.D. and Armstrong which, standing alone, would warrant a reprimand. Thus, based upon the totality of respondent's misconduct across multiple client matters, respondent's misconduct could be met with a censure. To craft the appropriate discipline, however, the Board also considered mitigating and aggravating factors.

In mitigation, respondent has no prior formal discipline in his twenty-seven years at the bar. In re Convery, 166 N.J. 298, 308 (2001). Further, he stipulated to his misconduct. Moreover, respondent's misconduct was not motivated by venality or pecuniary gain. Indeed, his representation of Armstrong and J.D. was pro bono, and his monetary advances were intended to assist clients who were in financial need. While these facts do not obviate respondent's obligation to adhere to the Rules of Professional Conduct, the Board considered them in mitigation. There is no aggravation to consider.

On balance, the Board determined, based upon the compelling mitigation, that a reprimand is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated October 2, 2023.

2. Stipulation of discipline by consent, dated October 2, 2023.

3. Affidavit of consent, dated September 29, 2023.

4. Ethics history, dated November 21, 2023.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/res
Enclosures

c: (w/o enclosures)
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair
Disciplinary Review Board (e-mail)
Johanna Barba Jones, Director
Office of Attorney Ethics (e-mail and interoffice mail)
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