SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-155
District Docket No. XII-2020-0022E

In the Matter of Gwyneth K. Murray-Nolan
An Attorney at Law

Argued
November 21, 2024

Decided
January 6, 2025

Jonathan P. Holtz appeared on behalf of the
District XII Ethics Committee.

Marc D. Garfinkle appeared on behalf of respondent.

Table of Contents

Introduction

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 XII Ethics Committee. The formal ethics complaint charged respondent with having violated RPC 1.7(a) and RPC 1.8 (engaging in a concurrent conflict of interest).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2002 and to the New York and District of Columbia bars in 2010. She has no disciplinary history.

During the relevant timeframe, between 2006 and 2017, she practiced law as a "senior counsel" at a law firm located in Livingston, New Jersey. Thereafter, between 2017 and 2021, she practiced law as a partner at a law firm located in Parsippany, New Jersey. Finally, since 2022, she has maintained her own practice of law in Clark, New Jersey.

Facts

Background

In 2004, Karl Halligan, John O'Connor, and Harry Hodkinson formed H&H Real Estate Investments, LLC (H&H), as co-equal owners, with the intention of opening a restaurant business. At the time of its formation, Halligan served as H&H's managing member.

In or around 2005 or 2006, H&H purchased commercial property in Union City, New Jersey (the Property), following which Halligan, O'Connor, and Hodkinson each spent $875,000 to fund a total of $2.6 million in renovations to the Property. In April 2007, Park Avenue Bar & Grill, LLC (Park Avenue), a restaurant and tavern, opened for business at the Property. Halligan, O'Connor, and Hodkinson were equal co-owners of Park Avenue, and Halligan served as the managing member.

Following the opening of Park Avenue, O'Connor and Hodkinson claimed that Halligan excluded them "from all aspects of business operations" and "refused" to provide them with "any information." In Hodkinson's view, although Park Avenue appeared to have been "doing extremely well," he and O'Connor "had no income on [the] $875,000" that they both had invested, leaving them "spinning in the wind."

In April 2012, Halligan, through counsel, filed a lawsuit against O'Connor

and Hodkinson, in the Superior Court of New Jersey, Chancery Division, seeking various forms of equitable and compensatory relief, including his manager's salary, reimbursement for sales and real estate taxes he had paid on behalf of H&H and Park Avenue, and an order compelling the sale of O'Connor's and Hodkinson's interests in the businesses. Halligan further sought a declaration regarding the valuation of his membership interests in the businesses.

In May 2012, O'Connor and Hodkinson retained Andrew Turner, Esq., to defend their interests in connection with Halligan's lawsuit. Thereafter, on May 31, 2012, O'Connor and Hodkinson filed an answer and counterclaim seeking to dissociate Halligan from the businesses. Additionally, O'Connor and Hodkinson sought damages for Halligan's purported misuse of corporate funds.

On March 18, 2014, following a multi-day bench trial, the Honorable Hector R. Velazquez, P.J.Ch., issued a modified judgment dissociating Halligan from the businesses and requiring H&H and Park Avenue to pay $793,772.50 to Halligan. Three days later, on March 21, 2014, Halligan resigned as a member of Park Avenue and H&H, allowing Hodkinson and O'Connor to become co-managing members of the businesses.

Several months later, in November 2014, O'Connor and Hodkinson filed a motion to vacate the portion of Judge Velazquez's March 18 judgment that

required H&H and Park Avenue to make payments to Halligan, given that H&H and Park Avenue were not named as parties in Halligan's underlying lawsuit. On April 6, 2015, Judge Velazquez issued an order granting the motion and permitting Halligan to file an amended complaint against H&H and Park Avenue. Judge Velazquez left, undisturbed, his decision to dissociate Halligan from the businesses.

Respondent's Retention

On May 1, 2015, O'Connor and Hodkinson retained respondent in connection with the ongoing litigation and the sale of the Property. Pursuant to their May 1, 2015 retainer agreement, respondent agreed to represent H&H, O'Connor, and Hodkinson at a $350 hourly rate. Additionally, the retainer agreement afforded the clients "the right to make the final decision as to whether, when, and how to settle their cases and as to economic and other positions to be taken with respect to issues in the case." O'Connor signed the agreement on behalf of himself, "personally," and as a member of H&H. Hodkinson, however, purportedly signed the agreement only on behalf of himself, "personally," and not as a member of H&H. Respondent did not sign the retainer agreement.

As detailed below, in November 2016 and July 2017, Hodkinson sent e-

mails to respondent and to the Superior Court, maintaining that he did not execute the retainer agreement and that his former spouse had "forged" his signature on that document. However, during the ethics hearing, Hodkinson conceded that respondent "was our lawyer for H&H." Respondent, in turn, testified that Hodkinson personally executed the retainer agreement.

On May 12, 2015, O'Connor purchased a liquor license, for $80,000, so that it could be sold with the Property.[1] However, by or around July 2015, a dispute arose between Hodkinson and O'Connor concerning the sale of the Property and the liquor license. Specifically, Hodkinson maintained that he "felt betrayed" by O'Connor for planning to sell his liquor license for "almost double the price and making himself a profit," while H&H would be forced to incur the "heavy costs and difficulties" associated with the procurement of the license.

On August 25, 2015, Halligan filed a first amended complaint against H&H, in the Superior Court of New Jersey, Law Division, seeking reimbursement for H&H's real estate taxes and compensation for his former membership interest in that business. In January and August 2016, respondent filed answers and counterclaims, on behalf of H&H, in reply to Halligan's first amended complaint. Respondent's pleadings on behalf of H&H sought damages

[1] It appears that O'Connor purchased Park Avenue's liquor license from a Bankruptcy Trustee in connection with Park Avenue's May 2015 liquidation of its assets following a Chapter 7 Bankruptcy proceeding.

for "breach of contract, conversion, and unjust enrichment."

Meanwhile, on September 23, 2015, the Superior Court of New Jersey, Chancery Division, Family Part, issued a consent order, in connection with Hodkinson's ongoing matrimonial litigation, requiring that he "cooperate with the sale of [the Property] and . . . timely sign . . . all documents that are necessary to effectuate the sale." The Family Part's order provided that, if Hodkinson failed to cooperate, Hodkinson's and his spouse's attorneys would "confer and attempt to resolve the outstanding issues." However, if a resolution could not be achieved, the order stated that Hodkinson's spouse "shall have, by virtue of this consent order, a limited power-of-attorney over [Hodkinson] enabling her to sign any and all documents on his behalf that are necessary to effectuate the sale of [the Property]." The order also stated that Hodkinson's matrimonial lawyer "must be advised of [Hodkinson's spouse's] intent to exercise her power-of-attorney in advance, at which time [Hodkinson] may apply to the [Family Part] to nullify [the] power-of-attorney." Finally, the order directed that, upon the sale of the Property, the limited power-of-attorney would "be deemed null and void," and "the net sale proceeds" would be held, in escrow, in respondent's attorney trust account (ATA).

By July 2016, respondent and Halligan's attorney were negotiating the terms of a consent order to sell the Property for $1.1 million. However, during

the ethics hearing, Hodkinson testified that he had expressed his "concerns" to O'Connor and respondent, on "numerous occasions," that he would not agree to sell the Property for less than $1.6 million, considering the extent he had expended his own funds to renovate the Property. Additionally, Hodkinson maintained that, "initially," he and O'Connor had received offers to purchase the Property for $1.6 million. In Hodkinson's view, there was "something untoward going on," and he testified that he had told respondent and Turner that he would not agree to sell the Property because no "reasonable person would" agree to reduce the sale price by $500,000.

On July 6, 2016, respondent sent Hodkinson an e-mail stating that, if O'Connor did not execute the consent order to sell the Property, she:

> would have to file a motion to be recused as your counsel. [O'Connor] has now created an issue between the two of you, known to my adversary, who has stated it to me, and told me that I cannot represent you both. Which if [O'Connor] does not agree to the consent order and the terms, I agree that I can't.
>
> [P-7.][2]

On August 11, 2016, the Honorable Jeffrey R. Jablonski, J.S.C., issued an order permitting the sale of the Property and, on August 18, H&H sold the Property for $1.1 million. At the time of the closing, Hodkinson "vehemently

[2] "P-1" through "P-23" refers to the presenter's exhibits.

opposed the sale" and "refused to sign the closing papers;" consequently, his spouse attended the closing and executed the relevant documents, pursuant to the limited power of attorney granted by the Family Part's September 23, 2015 consent order, "over [his] express and repeated objection."

During the ethics hearing, Hodkinson claimed that, after expressing his objection to the sale, respondent told him "that she would have the police called[,] . . . that I was not allowed to be here, and that my [spouse would] sign on my behalf."[3] Respondent testified that, during the closing, Hodkinson appeared to have been "intoxicated" and "was screaming" that he would not sign any documents because he did not agree with the sale. Respondent contended that the closing was "the first time" that she "ever had any problem . . . or disagreement with [Hodkinson]."

The parties stipulated that Hodkinson's spouse's attorney provided Hodkinson's matrimonial lawyer "advance notice of their intent to use the [limited] power of attorney" to facilitate the sale of the Property, pursuant to the September 2015 Family Part consent order. Following the sale of the Property, respondent deposited the $845,151.56 in net sale proceeds in her ATA.

Respondent's billing records indicate that, on August 19, 2016, one day

[3] Hodkinson maintained that Turner did not represent him in connection with the sale of the Property.

after the sale of the Property, she and Turner discussed "issues with [Hodkinson] and [a] possible conflict with our representation."

Respondent's Applications for Counsel Fees and Payment to O'Connor

On November 1, 2016, respondent sent Hodkinson and O'Connor an invoice for her legal services. The next day, Hodkinson sent respondent an e-mail claiming that his spouse had "forged" his signature on their May 2015 retainer agreement, characterizing respondent's more than $200,000 legal fee as "outrageous," and stating that he was "disputing" the totality of her invoice.

During the ethics hearing, Hodkinson stated that respondent "had billed . . . hundreds and hundreds of hours" for "conversations . . . with O'Connor," among others, after "effectuat[ing] the sale of [the Property] for $500,000 less than [what] it was [worth]." Hodkinson also claimed that respondent had not sent him any monthly invoices[4] until, at some point, he specifically requested that she "send [him] the bills to date." In Hodkinson's view, respondent and O'Connor "were totally in cahoots." Respondent, in turn, testified that, "for a certain amount of time," O'Connor and Hodkinson were paying her monthly invoices until they "expect[ed] the bill to be paid from the sale of [the

[4] The May 1, 2015 retainer agreement required respondent to send O'Connor and Hodkinson invoices for her legal services at least every ninety days.

Property]."

On November 29, 2016, Hodkinson sent respondent another e-mail, stating that he had:

> made it very clear that I have been very dissatisfied with your representation and your egregious billing. Secondly[,] this is not my bill its [H&H's] bill of which there are two members, myself and [O'Connor]. As my alleged lawyer you have completely kept me in the dark and acted on your own volition[,] billing fees at every opportunity with zero results. You were signed on to this case by [O'Connor] and [my spouse,] who to the best of my knowledge is not a member of [H&H]. Point of fact you had [my spouse] sign for the sale of the [Property] against my wishes. Aside from the legal and ethical violations, you as my supposed lawyer are now threatening to sue me, well I welcome the opportunity to challenge your opportunistic billing in court and to challenge whether you ever acted in my best interest.
>
> [P-10.]

Meanwhile, seven months later, on June 30, 2017, the Family Part issued an amended, dual final judgment of divorce in connection with Hodkinson's matrimonial matter. Among other provisions, the judgment provided that the net proceeds from the sale of the Property "shall remain in escrow . . . subject to the pending" civil litigation concerning H&H and the Property. The judgment further stated that Hodkinson's former spouse "shall have a limited power of attorney over [Hodkinson,] enabling her to sign any and all necessary documents in the event [Hodkinson] fails to cooperate with the litigation[,] including

accepting settlement offers recommended by counsel in that matter." The judgment also provided, in relevant part, that "once the net sale proceeds from the [Property] become available," such proceeds "shall be shared equally between" Hodkinson and his former spouse.

In July 2017, respondent filed a motion with the Law Division for payment of her $228,813.29 in counsel fees from the $845,578.77 in net sale proceeds that she was safeguarding in her ATA. In her supporting certification, she stated that Halligan, who was no longer a member of H&H, was "not in a position to influence how H&H obtains counsel or pay its attorneys." She also certified that she "only need[ed] the approval of my client for my bill to be paid." Further, she certified that, pursuant to O'Connor's and Hodkinson's certifications appended to her motion, she had "the approval of my client for my legal fees and costs in this matter."

In O'Connor's undated certification in support of respondent's fee application, he expressed his satisfaction with her services and requested that her fees be paid from the net proceeds of the sale of the Property.

In Hodkinson's undated certification in support of the motion, he stated that:

> both . . . O'Connor and I, as the two members of [H&H], are fully satisfied with the work of [respondent's law firm]. Specifically, we have been represented by [respondent] of the firm and she has

> represented our interests thoroughly and accurately throughout the course of this litigation. [Respondent] and her firm not only deserve to be paid for all of their hard work to date, but are required to be from the proceeds of the sale [of the Property].
>
> . . . .
>
> I have been provided with and have reviewed the legal bills of [respondent] from the initial engagement through to the present for this litigation. [Respondent's] fees are reasonable given all of the costs caused by [Halligan] . . . . I have been very pleased with [respondent's] work, despite the fact that I never envisioned that the legal fees in this case would be so high.
>
> [P-12.]

Hodkinson, however, did not sign his certification. Rather, Hodkinson's former spouse signed her name on Hodkinson's certification, purportedly based on the limited power of attorney granted by the Family Part's June 30, 2017 divorce judgment. Respondent appended a "certification of signature" to Hodkinson's certification in which she stated that Hodkinson's former spouse had "power of attorney to sign on behalf of . . . Hodkinson."

During the ethics hearing, Hodkinson characterized respondent's motion for counsel fees as "a total lie" because he disapproved of her fee application. Hodkinson also noted that respondent had drafted his certification, expressed his view that respondent "knew" that he "would completely object to" her application, and emphasized that respondent had obtained "no . . . certification

from" him in connection with her application. Respondent similarly testified that Hodkinson had refused to sign the certification in support of her fee application. She asserted that she had prepared Hodkinson's certification using "quotes . . . from prior e-mails from" Hodkinson, whom, at one point, respondent claimed "was in full support of my bill being paid in full."

Meanwhile, on July 18, 2017, while her motion for counsel fees remained pending, respondent filed another motion, this time requesting that O'Connor be paid $43,433.61 from the net proceeds of the sale of the Property. In her certification in support of the motion, respondent maintained that O'Connor had incurred significant expenses in maintaining the Property prior to its sale. Additionally, she certified that Hodkinson had "outline[d] his position in this case" in a July 11, 2016 certification,[5] in which he had expressed his opposition to Halligan's attempts to "dictate the terms of the closing" of the Property by "not want[ing] to pay reasonable closing costs, including those costs that [O'Connor] incurred to carry the [Property] and prepare [it] for sale."

During the ethics hearing, Hodkinson stated that he disapproved of respondent's motion for a $43,433.61 payment to O'Connor, that he consistently

[5] Hodkinson's July 2016 certification appeared to have been made in support of respondent's July 2016 application to the Superior Court for approval of certain closing costs. The outcome of that application, however, is unclear based on the record before us.

had objected to the sale of the Property, and that his July 2016 certification had nothing "to do with supporting a release of funds" to O'Connor. Hodkinson also noted that he "did not write" the July 2016 certification.[6]

Hodkinson's Attempt to Terminate Respondent's Representation

On July 26, 2017, following respondent's motions for counsel fees and for a payment to O'Connor, Hodkinson sent Judge Jablonski an e-mail, copying respondent, Turner, O'Connor, and Halligan and his counsel, expressing his objection to respondent's motions and noting the "conflict" that had arisen between him and O'Connor. In his e-mail, Hodkinson certified, in relevant part, that:

> O'Connor and I have not been in agreement for some time and we have not spoken or communicated in close to a year . . . . Effectively the members (O'Connor and I) have not been working together and we are in fact in direct conflict with each other and our own interests.
>
> . . . .
>
> I understand legal papers have been recently filed with the court last week and I want to make clear to the court that I never saw or approved of my certifications submitted by [respondent] in my name. In fact, I have stated in several e-mails and conversations to [respondent] that she does not represent me or the

[6] It is unclear whether Hodkinson voluntarily had executed his July 2016 certification or whether Hodkinson's wife signed Hodkinson's name on that document, pursuant to her limited power of attorney, to facilitate the sale of the Property.

> company dating back well over a year. . . . [Respondent] is in effect representing only [O'Connor] and his own private agenda.
>
> I never signed any retainer agreement with [respondent] and as managing member of [H&H,] she has excluded me from many of the proceedings. The retainer agreement was falsified by my ex-wife and I have pointed this out to [respondent] on a number of occasions.
>
> . . . .
>
> Despite all of the above, it appears documents continue to be sent to the court in my name which I have never seen or reviewed and without question [are] false and misleading to the court. My partner O'Connor is acting totally in bad faith behind my back and is in fact colluding with [respondent] with his own interest first and not mine. . . . I do not approve of ANY payment of fees to [respondent] or any costs to [O'Connor].
>
> [P-14.]

Five days later, on July 31, 2017, Hodkinson sent Judge Jablonski another e-mail, copying the same individuals, reiterating his views regarding respondent's conflicted representation. In relevant part, Hodkinson certified that:

> I informed [respondent] in March 2016 and continually up to the sale of the [P]roperty in July 2016 that she did not represent me. This was made crystal clear to her and is reflected in her invoice notes and my e-mails. . . . With respect to [Turner,] although he has acted for the most part honestly and honorably, he was aware like [respondent] of the serious conflict that existed. [Respondent] notes in her billing invoices (as early as

> August of last year and before we appeared in front of your honor) several conversations between [Turner] and herself about this conflict of interest especially after O'Connor asked for me to be removed from H&H[.] So I respectfully submit that [Turner] and [respondent] cannot stay in the case with two clients so diametrically opposed.
>
> . . . .
>
> O'Connor also wanted me removed from [H&H] and discussed this with both [respondent and Turner] behind my back and the notes of these conversations are detailed in [respondent's] invoicing.
>
> [P-14.]

During the ethics hearing, Hodkinson testified that, at the time he sent his e-mails to Judge Jablonski, he "thought [he] had nothing to lose," given that respondent was not "acting in [his] best interest," was submitting "falsified certifications to the court on [his] behalf," and, in his view, "was only interested in her fees." Hodkinson also represented that he was "on [his] own" and did not "know what to do." Additionally, Hodkinson noted that he had received "nothing . . . but conflict" from respondent, whom he claimed had attempted to "extort[]" him into paying her legal fee by threatening to "make sure that . . . Halligan [would] get everything."

On July 31, 2017, following Hodkinson's e-mails to Judge Jablonski, Halligan's counsel sent respondent and Turner an e-mail inquiring whether they would voluntarily withdraw from the representation. In reply, both respondent

and Turner simply stated "[n]o."

One day later, on August 1, 2017, Hodkinson sent respondent a letter terminating her representation of H&H "effective immediately." In his letter, Hodkinson stated that he previously had notified respondent, "via e-mails and [telephone] calls dating back to June 2016 and even earlier," that she did not represent him or "the best interests of [H&H]." Hodkinson also told respondent that "it [was] necessary to obtain new counsel that would fight for [him] and [H&H's] real interests." Following his August 1, 2017 letter, Hodkinson maintained that respondent "refused" to withdraw from the representation and "continued billing" for legal services. Indeed, in her verified answer, respondent conceded that she made no effort to withdraw as counsel for H&H and, instead, "took affirmative steps to continue" the representation and "pursue her fees . . . over [Hodkinson's] objection."

Halligan's Motion to Disqualify Respondent

Meanwhile, on August 2, 2017, Halligan filed a motion with the Superior Court to disqualify (1) respondent from representing H&H, and (2) Turner from representing Hodkinson and O'Connor in their "personal" capacities. Also, on the same date, Hodkinson sent Turner a letter terminating his representation. In his letter, Hodkinson told Turner that, based on his review of respondent's

invoices, Turner should have been "aware of [the] conflict as early as [A]ugust of [2016]," when Hodkinson claimed that O'Connor had "surreptitiously" attempted to remove him as H&H's managing member. Hodkinson also maintained that, based on his review of respondent's invoices, Turner had "many hours" of telephone conversations with respondent "discussing how [he] could remain as counsel." Hodkinson notified Turner that he had, for at least a year, "kept [him] in the dark" regarding these developments.

On August 11, 2017, Hodkinson sent Judge Jablonski another e-mail, copying respondent, Turner, Halligan's counsel, and O'Connor, stating that neither respondent nor Turner had acknowledged his attempt to terminate their representation. In his e-mail, Hodkinson also attached respondent's invoices for her legal services, and he highlighted several examples in her billing records in which she appeared to acknowledge the existence of a conflict between him and O'Connor.

Specifically, according to respondent's billing records, (1) in July 2015, respondent had a telephone conversation with O'Connor regarding "fighting with [Hodkinson] over [the] sale of [the Property] and terms;" (2) in August 2015, respondent reviewed an e-mail from O'Connor regarding the "way to break [the] impasse with [Hodkinson];" (3) in February 2016, respondent received two e-mails from Hodkinson accusing O'Connor of "theft" and

maintaining that he "does not trust" O'Connor; (4) in February 2016, respondent received an e-mail from O'Connor regarding "threats" by Hodkinson of "speaking to" Halligan's counsel; (5) in May 2016, respondent received another e-mail from O'Connor stating that he had "no leverage over [Hodkinson] at [the] time of mediation" and that he could not "align" with Hodkinson; (6); in July 2016, respondent had a telephone conversation with Hodkinson, who maintained that O'Connor was "taking [an] adverse position to his interests and the interests of H&H;" (7) thereafter, in July 2016, Hodkinson sent O'Connor an e-mail, copying respondent, stating that O'Connor had "sabotaged" the upcoming sale of the Property "and now [respondent] cannot represent both parties;" and (8) on August 22, 2016, four days after the sale of the Property, respondent received an e-mail from O'Connor regarding "issues with [Hodkinson] and [the] creation of [a] possible conflict of interest . . . [O'Connor] wants [Hodkinson] removed from H&H."

On August 14, 2017, Hodkinson sent O'Connor an e-mail, copying his former spouse, respondent, Judge Jablonski, and Halligan's attorney, accusing O'Connor of being "a perjuring low life that will do anything to further his case and at any expense." Additionally, Hodkinson characterized respondent's $228,813.29 bill for her legal services as "laughable," accused O'Connor of engaging in criminal conduct, and noted the "irreconcilable differences"

between himself and O'Connor.

Four days later, on August 18, 2017, Judge Jablonski conducted a hearing concerning Halligan's motion to disqualify respondent and Turner. During the hearing, respondent argued that "there [was] no adverse interest that exists in this case" and that H&H properly had maintained and sold the Property to "the highest bidder." Respondent further contended that "the interest of all parties, including" Hodkinson and his wife, were "aligned because they want the most amount of money" from the sale of the Property. Respondent also expressed her view that the Family Part's June 2017 judgment of divorce effectively "put [Hodkinson's former spouse] in the shoes of [Hodkinson] . . . to the extent that he was not cooperative in" the pending civil litigation concerning H&H and the Property. Respondent argued that Hodkinson was not "cooperative" in the civil litigation because he had sent e-mails directly to Judge Jablonski and purportedly had sent "privileged records to the adversary." Moreover, respondent claimed that Hodkinson's recent communications with the court "ha[d] been brought in bad faith as yet another" attempt to "tak[e] away from the totality of . . . H&H's total [funds] available for distribution [to] the H&H partners." Finally, respondent argued that Hodkinson could not unilaterally terminate her as counsel without O'Connor's consent.

Turner argued that Halligan's attempt to disqualify him as "personal"

counsel for O'Connor served only to delay the litigation.[7] Turner also contended that Hodkinson and O'Connor's interests were aligned because they both opposed Halligan's attempts to obtain the entirety of the net sale proceeds.

Additionally, during oral argument, Hodkinson testified, under oath, that he remained H&H's managing member and that he had terminated respondent as counsel for the business. Hodkinson, however, stated that Turner had "acted extremely well during the course of the litigation" and that he had discharged Turner "primarily because he [had] aligned his interests with [respondent]."

In his ruling, which he delivered from the bench, Judge Jablonski found that "a clear conflict of interest" existed between Hodkinson and O'Connor. Specifically, Hodkinson's "recent submissions" revealed that "direct adversity . . . appear[ed] to have been brewing between these individuals," demonstrating "both the existence of an actual conflict, and the realistic possibility of additional conflicts as the matter proceeds."

Judge Jablonski also closely analyzed the Family Part's June 2017 divorce judgment, which granted Hodkinson's former spouse a "limited power of attorney" to sign "any and all necessary documents in the event that [Hodkinson]

[7] During the ethics hearing, Turner claimed that his arguments before Judge Jablonski concerned only whether he could continue to represent O'Connor, considering that Hodkinson had terminated his representation.

fail[ed] to cooperate with the [civil] litigation." Judge Jablonski found that the judgment of divorce did "not say that [Hodkinson's former spouse] should in any way be replaced as a named party in the litigation, nor is the position that [Hodkinson] retains with H&H as an entity, modified or extinguished in any way." Rather, Judge Jablonski emphasized that Hodkinson's former spouse was granted only a limited power of attorney over Hodkinson if he failed to cooperate "with the litigation." Judge Jablonski, however, found that Hodkinson had "demonstrated anything but a lack of cooperation with this litigation," and respondent's use of the limited power of attorney "result[ed] in [Hodkinson] being sidelined . . . in this case." Judge Jablonski observed that, "under the circumstances presented," Hodkinson's former spouse did "not step into the shoes of [Hodkinson] in this litigation at this point in time."

Additionally, based on his review of Hodkinson's submissions, Judge Jablonski found that both respondent and Turner appeared to "have favored [O'Connor] over [Hodkinson], and have therefore potentially violated [RPC] 1.7; most significantly, the submission of documents to the [c]ourt in his name and without his review nor his approval." Judge Jablonski also highlighted O'Connor's apparent attempts to remove Hodkinson from H&H and to "discuss[] this [issue] with both counsel behind [Hodkinson's] back."

Moreover, Judge Jablonski observed that Hodkinson "had every right as

the managing member of [H&H] to terminate counsel." Judge Jablonski concluded that, because "not only a possibility exists but, more appropriately, a probability appears that [O'Connor's] and [Hodkinson's] interests will be adverse, counsel is required to completely withdraw from the representation of each client." Thereafter, Judge Jablonski advised Hodkinson and O'Connor of their right to represent themselves.

Following the hearing, Judge Jablonski issued a written order disqualifying respondent from representing H&H "as corporate counsel" and Turner from representing Hodkinson and O'Connor "as personal counsel." In his order, Judge Jablonski noted that he had "adjourned" respondent's motion for counsel fees and O'Connor's application for a $43,433.61 payment to maintain the Property.

One month later, in September 2017, respondent sent Hodkinson three e-mails requesting "documents" to support his "allegation[s] made in connection with" Halligan's motion to disqualify counsel. On September 23, 2017, Hodkinson replied to respondent and instructed her not to contact him because he was preparing to file an ethics grievance. During the ethics hearing, Hodkinson claimed that, despite her disqualification as counsel, respondent billed H&H "an additional $50,000" and "refused to acknowledge that she was disqualified."

The Appellate Division's Opinion

On September 25, 2017, Turner filed, on behalf of O'Connor, a motion for leave to appeal Judge Jablonski's August 18, 2017 disqualification order. The Appellate Division granted O'Connor's motion for leave to appeal and, on October 5, 2018, issued an opinion affirming Judge Jablonski's determination.[8] In its opinion, the Appellate Division noted that:

> Hodkinson [had] made it abundantly clear that his interests were adverse to O'Connor's. He disagreed with O'Connor's decisions regarding H&H, objected to the sale of [the Property], opposed [respondent's] fee application, opposed O'Connor's application for expenses, and knew that O'Connor [had] discussed removing him from H&H with both counsel. See RPC 1.7(a)(1).
>
> [P-22p.10.]

Additionally, the Appellate Division observed that there was "no identity of interests between Hodkinson and O'Connor," who were not "on friendly terms[] and had not communicated for more than a year." Further, although Hodkinson and O'Connor "shared an interest in minimizing Halligan's portion of the escrowed funds," the Appellate Division found that "between them their interests are wholly adverse because each seeks a greater percentage of the

[8] Respondent represented H&H on appeal and filed a brief contesting Judge Jablonski's decision to disqualify her as counsel for the business. Hodkinson appeared, pro se, for oral argument in connection with the appeal.

proceeds."

The Appellate Division also stated that "Hodkinson's conflict with his attorneys alone required" their disqualification:

> Hodkinson communicated to [respondent] that she did not represent him or his interests, and complained that she sent documents to the court in his name without his review or approval. The record suggests that [respondent] and Turner had at least the appearance of favoring O'Connor above Hodkinson, placing one client's interest above the other. See RPC 1.7(1)(2) . . . . Where Hodkinson had no working relationship with either attorney, and they in turn continued to pursue matters at O'Connor's instruction, counsel was in a position that requires removal.
>
> [P-22p.13.]

Finally, the Appellate Division found that, upon respondent's and Turner's receipt of Hodkinson's August 2017 letters terminating them as counsel, "both attorneys had to withdraw."

Proceedings Following the Appellate Division's Determination

Following the Appellate Division's decision affirming respondent's and Turner's disqualification, the Superior Court issued an order directing that the net proceeds of the sale of the Property be transferred from respondent's ATA to Halligan's counsel's escrow account.

Thereafter, in March 2019, respondent filed a renewed motion with the

Superior Court for counsel fees, in the amount of $265,676.32, in connection with her prior representation of H&H. Hodkinson, acting pro se, opposed the motion, asserting that respondent was not entitled to any legal fees because she had been disqualified from the representation. Hodkinson also expressed his view that she had billed H&H an additional $34,495 following her disqualification.

On July 26, 2019, the Superior Court granted respondent's fee application but awarded her only $207,645.80 of the $265,676.32 that she had requested.[9] Two months later, on September 27, 2019, the Superior Court denied Hodkinson's motion for reconsideration.

During the ethics hearing, Hodkinson testified that, by the conclusion of the litigation involving H&H, he received only $2,000 of the Property's net sale proceeds because Halligan "won the entire case." Specifically, after respondent received her $207,645.80 counsel fee award, Hodkinson asserted that Halligan received approximately $600,000 of the remaining net sale proceeds.

[9] The Superior Court's determination awarding respondent counsel fees is not included in the record before us.

The Parties' Positions Before the Hearing Panel

In support of her contention that she did not engage in a concurrent conflict of interest, respondent emphasized Hodkinson's testimony that both he and O'Connor equally "lost" their respective $875,000 investments into the businesses because Halligan, ultimately, succeeded in the litigation. Respondent also argued that Hodkinson could not unilaterally terminate her representation of H&H, without O'Connor's permission, because, according to her interpretation of H&H's operating agreement,[10] O'Connor and Hodkinson "had to make decisions jointly." In her view, she had only "one client," H&H, and she "acted in the best interest" of that entity. Specifically, she argued that her "role was to safeguard H&H and [Hodkinson] was basically going behind the back of the business" by trying to "make a deal" with Halligan, without O'Connor's knowledge. She characterized the representation as "no different than" providing legal advice to a corporate board consisting of members that "frequently have disagreements amongst themselves."

Respondent also claimed that, following her research regarding what she characterized as a "possible conflict," she concluded that no conflict existed because she would continue to represent the best interests of H&H. Additionally, unless both O'Connor and Hodkinson had agreed to terminate her

[10] H&H's operating agreement was not included in the record before us.

representation, she expressed her view that she could not withdraw from the representation because H&H "needed to have counsel" to safeguard its interests. Moreover, she argued that, following the sale of the Property, she was unaware that Hokinson "had any issue" until he directly contacted Judge Jablonski.

Respondent further claimed that Hodkinson knew that he stood to receive no funds from the sale the Property, given the financial obligations she claimed that he had incurred in connection with his divorce. Respondent also asserted that she had ensured that both Hodkinson and O'Connor were included in every e-mail communication concerning H&H, and she maintained that she did not "favor" O'Connor over Hodkinson. Finally, she contended that, although Hodkinson "maybe got angry with [O'Connor] or . . . felt unhappy with [the] situation," she afforded both individuals "equal say in . . . what happened with the business."

The presenter argued that respondent violated RPC 1.7 and RPC 1.8 by representing H&H – an entity with two members, Hodkinson and O'Connor, who had conflicting interests. However, rather than withdraw from the representation, she continued to represent H&H, "favoring [O'Connor] over Hodkinson," and acted against "the express and repeated objections of [Hodkinson]." The presenter emphasized that, despite numerous opportunities during the ethics hearing, respondent "never presented any relevant evidence

. . . regarding the issue of whether . . . she ethically could take the actions she took." The presenter also argued that, although respondent claimed that she had conducted research regarding her "potential" conflict of interest, she failed to disclose the nature of that research during the ethics hearing.

Moreover, the presenter underscored the fact that, in support of respondent's July 2017 application for counsel fees, she submitted Hodkinson's certification to the Superior Court expressing his satisfaction with her billing, even though she knew that "he was unhappy with her representation and called her billing practices 'criminal.'" The presenter further argued that respondent "conveniently . . . found a way to make [the] sale [of the Property] happen[,] over [Hodkinson's] objection[,]" to ensure that there were sufficient "assets to pay her large outstanding [legal] bill." The presenter asserted that her actions deprived Hodkinson of legal representation in connection with his decision to decline to sell the Property.

The presenter characterized, as irrelevant, respondent's arguments that both Hodkinson and O'Connor, ultimately, were equally unsuccessful in their litigation against Halligan. Finally, the presenter argued that respondent's attempt to depict Hodkinson "as an alcoholic" was unsuccessful and amounted to nothing more than an attempt "to smear" her former client "and avoid addressing her unethical conduct."

The Hearing Panel's Findings

As a threshold matter, the hearing panel found that, contrary to respondent's position, she not only formed an attorney-client relationship with H&H, but also with O'Connor and Hodkinson in their personal capacities. The hearing panel observed that, in addition to H&H, respondent's retainer agreement designated both Hodkinson and O'Connor, "individually," as clients. Moreover, O'Connor and Hodkinson signed the agreement in their personal capacities.

Additionally, the hearing panel found that it was reasonable for O'Connor and Hodkinson to believe that respondent "represented them individually." In support of its finding, the hearing panel highlighted respondent's July 16, 2016 e-mail to Hodkinson stating that she could not "represent" both Hodkinson and O'Connor if O'Connor would not "enter the consent order" in connection with the upcoming sale of the Property. The hearing panel also noted that, following Hodkinson's November 29, 2016 e-mail to respondent contesting her billing and referring to her as "my alleged lawyer," respondent "did nothing to disavow" Hodkinson of his understanding that respondent was his attorney, as required by RPC 1.13(d) (in dealing with an organization's members, a lawyer shall explain the identity of the client when the lawyer believes that such explanation is necessary to avoid misunderstanding on their part). The hearing panel found that

"[t]he totality of the circumstances demonstrate[d] that O'Connor and Hodkinson were in fact her clients[,] and if there had not been an agreement so stating[,] one arose by implication."

The hearing panel determined that respondent violated RPC 1.7 by favoring O'Connor over Hodkinson during the representation.[11] Noting that a "lawyer cannot have dual loyalties," the hearing panel found that O'Connor and Hodkinson "took conflicting positions" and, "in order to advance one over the other," respondent "had to divide her loyalties." The hearing panel agreed with respondent's position that Hodkinson and O'Connor, as equal owners of H&H, could not "bind the company without the consent of the other." However, the disagreement between Hodkinson and O'Connor resulted "in a conflict of interest for . . . respondent," who, after "the dispute arose . . . advocated for O'Connor's interests as opposed to the interests of Hodkinson."

Additionally, the hearing panel observed that the limited power of attorney conferred upon Hodkinson's former spouse, in connection with their matrimonial matter, did not abrogate respondent's professional duties to Hodkinson. The hearing panel found that respondent abused Hodkinson's former spouse's limited power of attorney "to advance O'Connor's position and

[11] The hearing panel, however, did not analyze whether respondent's conduct also violated RPC 1.8, as alleged in the formal ethics complaint.

to sideline Hodkinson" in connection with the sale of the Property. Following the sale, the hearing panel noted that respondent's relationship with Hodkinson deteriorated.

Further, the hearing panel found that, in connection with her July 2017 fee application, respondent submitted Hodkinson's certification to the court, signed by his former spouse, knowing that it contained "false" statements regarding Hodkinson's views of her legal fees. Rather than inform the court of Hodkinson's dissatisfaction with her billing, the hearing panel underscored how respondent submitted a certification, in her client's name, that was "directly contrary to Hodkinson's true position."

In connection with her July 2017 application for a $43,433.61 payment to O'Connor, the hearing panel observed that respondent submitted an outdated certification from Hodkinson, dated July 11, 2016. In the hearing panel's view, at the time Hodkinson executed that unrelated July 11, 2016 certification, Hodkinson had not yet "expressed his dissatisfaction" with respondent. The hearing panel found that, because respondent knew that Hodkinson "would not support" the application for a payment to O'Connor, she utilized his "stale certification to sideline Hodkinson."

In recommending the imposition of a reprimand, the hearing panel weighed, in aggravation, respondent's decision to submit a false certification to

the Superior Court to support her fee application. The hearing panel also found that respondent's failure to inform the Superior Court that Hodkinson had opposed O'Connor's reimbursement application did "not bode well for respondent's candor with the court." In mitigation, the hearing panel weighed her lack of prior discipline in her twenty-two-year career at the bar. The hearing panel also considered, in mitigation, "the unique circumstances that were created by the [limited] power of attorney granted in Hodkinson's" matrimonial matter.

The Parties' Positions Before the Board

At oral argument and in her brief to us, respondent argued that the hearing panel's recommendations were "largely based on mistruths or on evidence that was disproven." Respondent also alleged that the ethics hearing "was impacted by the obviously drunken testimony of [Hodkinson], who was loud, obstreperous, and vulgar." She further argued that she did not "sideline" Hodkinson in favor of O'Connor, and she emphasized that both members of H&H, ultimately, "suffered the same loss" in the litigation against Halligan. Moreover, even if Hodkinson had succeeded in the litigation against Halligan, respondent maintained that Hodkinson personally stood to receive nothing, given the purported financial obligations he had incurred in connection with his

divorce.

Respondent reiterated her view that she represented only H&H while Turner represented both Hodkinson and O'Connor, in their personal capacities. She further contended that, regardless of the disagreements between Hodkinson and O'Connor, she was required to continue to represent H&H. Similarly, she asserted that her "professional duties were limited" because she had "been retained for one purpose – to sell [the Property]."

Additionally, respondent maintained that Hodkinson "came to the closing of the sale of the [Property] intoxicated and screaming" and "refused to sign the sale documents, despite" Judge Jablonski's August 11, 2016 order permitting the sale of the Property.

Moreover, respondent contended that Hodkinson's July and August 2017 e-mails to Judge Jablonski "were full of falsehoods." Specifically, she claimed that Hodkinson falsely asserted that he had not (1) executed her retainer agreement, (2) spoken with O'Connor for almost a year, or (3) reviewed or approved of his certifications in support of her July 2017 motions for counsel fees and for a payment to O'Connor. Respondent also alleged that Hodkinson had misrepresented to Judge Jablonski that she had excluded Hodkinson "from many of the proceedings." Similarly, respondent denied that Hodkinson had informed her, in the months before the sale of the Property, "that she did not

represent him."

Finally, respondent argued that no actual conflict of interest arose in this matter, which, in her view, involved "two members of an LLC who had an internal conflict related to" whether one member was entitled to reimbursement for certain "expenses he had incurred personally . . . to make the [P]roperty s[ell]able." Respondent claimed that she "was aware of a possible conflict of opinion and took measures to [e]nsure that no conflict of interest arose to the best interest of [H&H]."

The presenter urged us to adopt the hearing panel's conclusions and recommendation to impose a reprimand. The presenter argued that, although respondent was aware of her conflicted representation of Hodkinson and O'Connor, she repeatedly failed, despite numerous opportunities, to withdraw from the representation. In support of his recommended sanction, the presenter noted that respondent repeatedly attempted to "override" Hodkinson's interests by abusing the limited powers of attorney granted to his former spouse. Indeed, the presenter underscored how respondent, in an attempt to obtain her substantial legal fee, provided the Superior Court a false certification of Hodkinson, improperly executed by his former spouse, that brazenly misrepresented that Hodkinson was satisfied with respondent's services. Finally, the presenter emphasized, in aggravation, respondent's failure to express any contrition for

her actions, despite the passage of several years to reflect on her behavior.

Analysis and Discipline

As a threshold matter, we determine that the hearing panel correctly found that respondent had established an attorney-client relationship with not only H&H, but also with Hodkinson and O'Connor in their personal capacities.

"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 & Hockenjos, New Jersey Attorney Ethics, (GANN 2024) at 173 (citing In re Palmieri, 76 N.J. 51, 58, 60 (1978)). 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 by surrounding circumstances. Ibid.

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. denied, 113 N.J. 357 (1988) (a lawyer "must affirmatively accept a professional undertaking before the attorney-client relationship can attach").

Applying these principles, in our view, respondent not only formed an attorney-client relationship with H&H, but also with Hodkinson and O'Connor in their personal capacities. As the hearing panel observed, respondent's retainer agreement separately identified H&H, O'Connor, and Hodkinson as her clients, whom she had agreed to represent in connection with the sale of the Property and the "ongoing litigation." Moreover, O'Connor signed respondent's agreement twice. First, he signed on behalf of himself, "personally," and second, as a member of H&H. Similarly, Hodkinson, purportedly, signed the agreement on behalf of himself, "personally."

Although Hodkinson alleged that his former spouse had forged his signature on the retainer agreement, Hodkinson's interactions with respondent demonstrate that he viewed her as his attorney. Specifically, on July 16, 2016, approximately one month before the sale of the Property, respondent sent Hodkinson an e-mail stating that, if O'Connor would not execute a consent order to sell the Property, then she "would have to file a motion to be recused as your counsel" because O'Connor had "now created an issue between the two of you,

known to my adversary, who . . . told me I cannot represent you both. Which if [O'Connor] does not agree to the consent order and the terms, I agree that I can't." In her e-mail, respondent not only acknowledged the conflicting positions between her clients, but also indicated to Hodkinson that she represented both him and O'Connor.

Further, on November 29, 2016, Hodkinson sent respondent an e-mail expressing his "dissatisf[action]" with what he described as her "egregious billing" and accusing her, "as my alleged lawyer," of keeping him "completely . . . in the dark and act[ing] on your own volition." The hearing panel correctly found that, if respondent represented only H&H and not its members, as she alleged, then she failed to correct Hodkinson's understanding of the identity of her client, as RPC 1.13(d) requires when an attorney represents only an organization as distinct from its members.

Despite respondent's argument that she represented only H&H, the express terms of her retainer agreement and her interactions with Hodkinson and O'Connor demonstrate that they reasonably inferred that she represented them both, individually, in addition to H&H. Indeed, respondent did nothing to advise O'Connor and Hodkinson of her purported view that she did not represent them in their individual capacities. See Dixon Ticonderoga Co. v. Est. of O'Connor, 248 F.3d 151, 169 (3d Cir. 2001) (noting that, in New Jersey, an attorney-client

relationship can be created in "a particular matter" if a "lawyer fails to manifest lack of consent to do so, and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services"). Based on the totality of the circumstances underlying her retention and her interactions with her clients, we determine that the hearing panel correctly concluded that respondent represented both O'Connor and Hodkinson, as well as H&H.

Violations of the Rules of Professional Conduct

Next, we are satisfied that the hearing panel's determination that respondent's conduct was unethical is fully supported by clear and convincing evidence.

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, a former client, or a third person or by a personal interest of the lawyer." Under RPC 1.7(b), however, "[n]otwithstanding the existence of a concurrent conflict of interest under paragraph (a)," a lawyer may represent a client, if:

> (1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation;
>
> (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (3) the representation is not prohibited by law; and
>
> (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Here, respondent violated RPC 1.7(a) by simultaneously representing O'Connor and Hodkinson in connection with the sale of the Property, the distribution of the net sale proceeds, and her July 2017 applications for counsel fees and for a payment to O'Connor. Hodkinson's and O'Connor's respective positions in those matters were diametrically opposed and, arguably, resulted in a nonwaivable conflict. Cf. In the Matter of Maria J. Rivero, DRB 14-310 (June 9, 2015) at 25-26 (noting the concurrent representation of a buyer and a seller constitutes a "nonwaivable" conflict because the interests of the buyer and the seller "are diametrically opposed"). Rather than withdraw from the

representation, respondent continued to perform legal work, at O'Connor's direction, to the detriment of Hodkinson.

"[J]oint representation of multiple parties whose interests are potentially diverse is permissible only 'if there is a substantial identity of interests between them in terms of defending the claims that have been brought against all defendants. The elements of mutuality most preponderate over the elements of incompatibility.'" Hill v. New Jersey Dep't of Corrections, 342 N.J. Super. 273, 309 (App. Div. 2001) (quoting Petition for Review of Opinion 552, 102 N.J. 194, 204 (1986)), certif. denied, 171 N.J. 338 (2002).

In the instant matter, there was no identity of interests between O'Connor and Hodkinson. As respondent's billing records demonstrate, she appeared to have been aware of the adversity between her clients as early as July 2015, when they began "fighting" with each other regarding the sale of the Property. Thereafter, between August 2015 and July 2016, respondent received e-mails from O'Connor regarding an "impasse" with Hodkinson, Hodkinson's threats to speak with Halligan's attorney, and O'Connor's inability to "align" with Hodkinson. During that same timeframe, respondent received e-mails from Hodkinson accusing O'Connor of "theft," taking an "adverse position" to the interests of H&H, and "sabotag[ing]" the upcoming sale of the Property.

The conflict reached a critical point in August 2016, when Hodkinson maintained that he repeatedly had informed respondent and O'Connor that he would not agree to sell the Property for $1.1 million, considering that they previously had received offers for $1.6 million. Respondent likely was powerless to stop the sale of the Property, given the September 23, 2015 Family Part consent order that granted Hodkinson's then current spouse a limited power of attorney to "sign any and all documents on [Hodkinson's] behalf that are necessary to effectuate the sale of [the Property],"[12] and Judge Jablonski's August 11, 2016 order permitting the sale of the Property. However, the fact remains that Hodkinson "vehemently opposed" O'Connor's decision to sell the Property for $1.1 million, and he refused to execute the relevant closing documents, requiring his spouse to come to the closing and execute the documents, on his behalf, pursuant to her limited power of attorney.[13] The Family Part's consent order, however, did not abrogate respondent's duty of loyalty to her clients, who each took diametrically opposed positions concerning whether to sell the Property for $1.1 million. Rather than withdraw from the

[12] The record before us is unclear whether Hodkinson's then current spouse executed the contract to purchase the Property over Hodkinson's objection, pursuant to the Family Part's consent order.

[13] As detailed above, the presenter and respondent stipulated that Hodkinson's spouse's attorney provided Hodkinson's matrimonial lawyer the required notice of Hodkinson's spouse's intent to use the limited power of attorney to facilitate the closing of the Property, pursuant to the Family Part's consent order.

representation to ensure that Hodkinson's interests could be adequately represented at the closing, respondent appeared to have directed her understandably angry and frustrated client to leave the premises so that the closing could took place without him. Four days after the sale of the Property, on August 22, 2016, O'Connor sent respondent an e-mail expressing his desire to "remove" Hodkinson from H&H.

On November 1, 2016, respondent sent Hodkinson and O'Connor an invoice requesting more than $200,000 in legal fees. On November 2 and 29, 2016, Hodkinson sent respondent e-mails characterizing her legal fees as "outrageous," "egregious," and "opportunistic;" accusing her of "billing fees at every opportunity with zero results;" and stating that he was "disputing" the totality of her invoice.

Several months later, in July 2017, respondent filed a motion with the Law Division for payment of her $228,813.29 in legal fees from the $845,578.77 in net sale proceeds that she held, in escrow, in her ATA. In her supporting certification, respondent brazenly misrepresented that she had "the approval of my client for my legal fees and costs in this matter," pursuant to O'Connor's and Hodkinson's respective certifications appended to her motion. Hodkinson's undated certification, however, mispresented that he was "very pleased with" respondent's work and that "her firm not only deserve[d] to be paid for all their

hard work to date, but are required to be from the proceeds from the sale [of the Property]." Although respondent disputed Hodkinson's contention that he did not review his certification before she submitted it to the Superior Court, she conceded that Hodkinson refused to sign the document, which he characterized as a "total lie" in light of his strenuous objection to her fee application.

To circumvent Hodkinson's refusal to sign his certification in support of her fee application, respondent simply arranged for Hodkinson's former spouse to sign her name on Hodkinson's certification, pursuant to their June 2017 divorce judgment, which granted Hodkinson's former spouse a "limited power of attorney" to sign "any and all necessary documents in the event that [Hodkinson] fail[ed] to cooperate with the [civil] litigation." However, the limited power of attorney neither substituted Hodkinson's former spouse as a party in the litigation nor replaced Hodkinson as respondent's client. Rather, it could be utilized only if Hodkinson refused to cooperate with litigation. As observed by Judge Jablonski in his August 18, 2017 ruling disqualifying respondent, Hodkinson had "demonstrated anything but a lack of cooperation with this litigation."

As the hearing panel found, respondent's actions effectively "sidelined" Hodkinson from the litigation when he became an obstacle to her efforts to obtain her substantial counsel fee. Moreover, her actions appeared to have

reinforced Hodkinson's perception that her role, at that stage of the representation, was to elevate her's and O'Connor's interests above his own. Finally, respondent's attempt to obtain her fee, under false pretenses, resulted in a clear act of dishonesty towards the Superior Court.[14]

On July 18, 2017, while her fee application remained pending, respondent filed a motion requesting that O'Connor receive a $43,433.61 payment from the Property's net sale proceedings, in light of the expenses he had incurred to maintain the Property. Although Hodkinson disapproved of O'Connor's motion, the record is unclear regarding whether respondent and Hodkinson had communicated regarding the application before she filed it. Nevertheless, respondent failed to express Hodkinson's contemporaneous position regarding O'Connor's application in her certification in support of that motion. Rather, her certification stated only that Hodkinson had "outline[d] his position in this case" in a July 11, 2016 certification. In that document, Hodkinson expressed his opposition to Halligan's attempts to "dictate the terms of the closing" of the Property by "not want[ing] to pay reasonable closing costs, including those costs that [O'Connor] incurred to carry the [Property] and prepare [it] for sale." That

[14] The formal ethics complaint did not charge respondent with having violated any RPCs in connection with her submission of Hodkinson's false certification to the Superior Court. Nevertheless, we consider such uncharged conduct in aggravation. See In re Steiert, 201 N.J. 119 (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).

outdated certification, however, did not reflect Hodkinson's contemporaneous views of O'Connor's reimbursement application.

Like her conduct in connection with her counsel fee application, respondent's actions demonstrated that, at that stage of the representation, she was effectively advocating only for O'Connor, whose interests were no longer aligned with Hodkinson. Further, rather than communicate with Hodkinson regarding his current views of O'Connor's application, respondent acted with a reckless disregard for the truth by claiming that Hodkinson's position was "outline[d]" in a certification executed one year earlier, in July 2016. As the hearing panel observed, because respondent likely knew that Hodkinson would not support O'Connor's application, she appeared to have utilized Hodkinson's "stale certification to sideline" her client.

On July 26 and 31, 2017, following respondent's applications to the Superior Court, Hodkinson, believing that he "had nothing to lose" because respondent was no longer acting as his advocate, sent Judge Jablonski multiple e-mails, copying respondent and Halligan's counsel, informing the court of the conflicted representation and the fact that he did not "approve[] of" the recent "certifications" respondent had submitted in his name. Thereafter, on August 1, 2017, Hodkinson terminated respondent's representation of H&H, "effective immediately." However, as respondent conceded in her verified answer, based

on her view that Hodkinson could not unilaterally terminate her representation of H&H, she made no effort to withdraw as counsel for H&H and, instead, "took affirmative steps to continue" the representation and "pursue her fees . . . over [Hodkinson's] objection."

In light of respondent's refusal to withdraw from the representation, on August 2, 2017, Halligan filed a motion to disqualify her, and, on August 18, Judge Jablonski granted that motion and entered an order disqualifying her as counsel for H&H.

Respondent argued that she did not engage in any conflict of interest because, in her view, her duty was to safeguard the interests of H&H, whose members were required to make "joint" decisions concerning the representation. However, her representation of H&H was materially limited by the fact that, by August 2016, Hodkinson and O'Connor, the sole members of H&H, were fundamentally at odds with each other. Specifically, respondent knew that Hodkinson "vehemently" disagreed with O'Connor's decision to sell the Property for $1.1 million. Moreover, unlike O'Connor, Hodkinson opposed her applications for counsel fees and for expenses to O'Connor. She also knew that O'Connor sought to remove Hodkinson from H&H, and that Hodkinson disagreed with O'Connor's decisions regarding that entity. Because it was impossible for respondent to represent both Hodkinson and O'Connor on a

united front, she elected to improperly proceed with the representation, at O'Connor's direction, while, effectively, leaving Hodkinson without an advocate.

Respondent also argued that Hodkinson's and O'Connor's respective interests were aligned because each sought to minimize Halligan's share of the Property's net sale proceeds. Further, she emphasized that Halligan, ultimately, succeeded in the litigation against Hodkinson and O'Connor. However, she ignored the fact that Hodkinson's and O'Connor's interests also were adverse because each sought a greater percentage of the net sale proceeds. See Wolpaw v. General Accident Insurance Co., 272 N.J. Super. 41, 45 (App. Div. 1994) (finding that, although "[t]he three insureds had the common interests of minimizing the amount of [an injured neighbor's] judgment and maximizing the percentage of fault attributable to the other defendants . . . their interests in maximizing the percentage of the other insureds' fault and minimizing their own were clearly in conflict").

Additionally, respondent's contention that the ethics hearing "was impacted by the obviously drunken testimony of [Hodkinson], who was loud, obstreperous, and vulgar" is without merit. Although Hodkinson, who testified remotely, was upset regarding the circumstances of respondent's representation, he denied having a single drink before the ethics hearing or having any "issues

with alcohol." Indeed, the panel chair prohibited respondent's counsel from pursuing that "line of questioning."

Having made those findings, we determine, however, to dismiss the related RPC 1.8 charge as inapplicable. In contrast to RPC 1.7(a), which governs "general" conflicts of interest, RPC 1.8 governs only "specific" conflicts of interest, including, among other scenarios, engaging in improper business transactions with a client, soliciting substantial gifts from a client, or obtaining literary or media rights to information relating to the representation. Because none of the specific conflicts identified in RPC 1.8 are applicable to this matter and RPC 1.7(a) more appropriately encapsulates respondent's misconduct, we determine to dismiss the RPC 1.8 charge.

In sum, we find that respondent violated RPC 1.7(a). We dismiss, as inapplicable, the charge that respondent violated RPC 1.8. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). 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), and In re Jozwiak, 256 N.J. 32 (2023) (the attorney engaged in a clear conflict of interest by representing one client in connection with his intent to sell 49% of his interest in a commercial property to another client, whom the attorney also represented in connection with the sale of his pizzeria business that operated on that same commercial property; the partial sale of the commercial property was contingent on the successful sale of the pizzeria business; specifically, the sale proceeds of the pizzeria business would be used to pay off the business owner client's debt owed to the property owner client; the attorney also negligently misappropriated $31,000 of the business owner client's sale proceeds by providing those funds to the property owner client, without the business owner client's express authorization; the attorney, however, appeared to have a reasonable, though mistaken, belief that the property owner client was entitled to those funds; in

mitigation, the attorney's misconduct was not motivated by any improper pecuniary gain, and he had no prior discipline in his forty-year career at the bar).

Harsher discipline, including terms of suspension, have been imposed when an attorney's conflict of interest has caused serious economic injury or egregious circumstances exist. See e.g., In re Ianetti, 237 N.J. 585 (2019) (censure for an attorney who simultaneously represented the straw seller of a residential property and the straw seller's father, who had decisional control over the disbursement of the sale proceeds; the attorney had maintained a longstanding friendship with the straw seller's father and had represented him in at least one legal matter and some business ventures, which were ongoing; we found that a significant risk existed that the attorney's representation of the straw seller would be materially limited by his responsibility to the straw seller's father, as well as the attorney's personal interest in maintaining his relationship with the father; in aggravation, the attorney's conflicted representation of the straw seller and his father involved "egregious circumstances;" however, in mitigation, almost ten years had elapsed since the misconduct had concluded); In re Gilbert, __ N.J. __ (2021), 2021 N.J. LEXIS 952 (three-month suspension for an attorney who concurrently represented the buyer and seller in a failed commercial real estate transaction, which resulted in significant financial harm to the prospective buyer, who canceled the deal after discovering serious

concerns with the property and business; thereafter, the seller sued the buyer for $3 million in damages, based on the buyer's alleged default; during the litigation, the buyer learned of an undisclosed $900,000 loan, inaccuracies in the business's books, and the underreporting of sales and underpayment of state and federal taxes; in our split decision, the Chair and the two Members who voted for a censure weighed, in mitigation, (1) the passage of nine years since the underlying conduct, (2) the attorney's nearly unblemished thirty-nine-year career at the bar, with the exception of a 1996 reprimand for unrelated misconduct, and (3) that the attorney's behavior was unlikely to recur; the three Members who voted for a three-month suspension weighed, in aggravation, that the attorney (1) had engaged in a known conflict of interest to further his pecuniary interest, as both the buyer and seller owed him legal fees, (2) encouraged the transaction even after the buyer could not obtain conventional financing, (3) suggested that the transaction take place as a stock sale, with bootstrap financing, and (4) directed a junior lawyer to work on the matter, thus, embroiling him in the conflict); In re Fitchett, 184 N.J. 289 (2004) (three-month suspension for an attorney who engaged in multiple conflicts of interest that arose when he continued to represent a public entity in litigation with the defendant, after he had become employed by the defendant's law firm, and then filed a suit on behalf of the defendant against the public entity; the Court

described the circumstances surrounding his conflicts of interest as "egregious" and his misconduct as "blatant and gross").

Here, like the attorney in Gilbert, who received a three-month suspension for representing both the buyer and seller in a failed commercial real estate transaction, respondent, in our view, engaged in a known conflict of interest by representing two business owners whose interests were directly adverse to each other in respect of the civil litigation concerning the disposition of their commercial property.

Specifically, in contrast to O'Connor, respondent knew that Hodkinson strenuously objected to the $1.1 million sale of the Property, strongly disagreed with her legal fee, and refused to support her application for counsel fees. Moreover, by July 2017, respondent appeared to have been aware that Hodkinson would oppose O'Connor's reimbursement application, given the adversity that had been brewing between her clients for at least two years. Additionally, although Hodkinson and O'Connor each sought to minimize Halligan's share of the net sale proceeds of the Property, Hodkinson's and O'Connor's interests were also directly adverse because they each sought a greater percentage of the proceeds.

Rather than withdraw from the representation to allow O'Connor and Hodkinson to obtain separate counsel to advocate for their individual interests,

respondent simply proceeded with the representation at the direction of O'Connor.

Respondent represented O'Connor's interests at the August 2016 closing of the sale of the Property at the price O'Connor had agreed upon and Hodkinson had rejected. By her conduct, respondent left Hodkinson without an advocate to represent his interests at the closing. Indeed, she appeared to have directed him to leave the premises so that the closing could proceed without him.

Thereafter, in July 2017, respondent disregarded Hodkinson's interests in connection with O'Connor's reimbursement motion. Because respondent likely knew that Hodkinson would not, in fact, support O'Connor's application, she carefully crafted her certification in support of that motion by claiming that Hodkinson had "outline[d]" his position regarding O'Connor's entitlement to reimbursement in a certification he had executed one year earlier. Hodkinson, however, no longer held the views he had expressed in his outdated certification. Respondent's actions prevented Hodkinson from expressing his actual and contemporaneous objections to O'Connor's application, thereby obscuring the truth from the court.

Additionally, in connection with her July 2017 motion for $228,813.29 in legal fees, respondent falsely certified to the Superior Court that Hodkinson had approved of her fee based on his certification that she had drafted and appended

to her motion. Hodkinson's certification, however, mispresented that he was satisfied with respondent's services and that she was "required" to be paid from the Property's net sale proceeds for her "hard work to date." Because she knew that Hodkinson vehemently disapproved of her legal fee, she arranged for Hodkinson's former spouse to sign her name on his certification.

Like the attorney in Gilbert, who, in an attempt to collect upon his unpaid legal fees, encouraged the real estate transaction to take place as a stock sale after the buyer could not obtain conventional financing, respondent's conduct was motivated by her pecuniary gain and constituted a clear attempt to obtain her substantial counsel fee under false pretenses. Her actions also demonstrated her willingness to abuse Hodkinson's former spouse's limited power of attorney to exclude her client from the representation and to deceive the court.

Respondent's multiple acts of dishonesty towards the Superior Court forced Hodkinson to take matters into his own hands by directly informing the court of respondent's impropriety. Respondent, however, refused to withdraw from the representation, even after Halligan's counsel had warned her of his intent to seek her disqualification, and Hodkinson had attempted to terminate her as H&H's attorney. Her refusal to withdraw from the representation, thus, needlessly wasted the judicial resources of the Superior Court, which was forced to conduct a hearing concerning her clear conflict of interest.

Nevertheless, unlike the buyer in Gilbert, who suffered significant financial harm as a direct result of the attorney's misconduct, there is no clear nexus between respondent's misconduct and the financial losses incurred by Hodkinson and O'Connor, who, following respondent's disqualification, were ultimately unsuccessful in the litigation with Halligan. Moreover, like Gilbert, who had a nearly unblemished disciplinary history in his thirty-nine-year career at the bar, respondent has had no prior discipline in her twenty-two-year career at the bar.

Conclusion

In conclusion, respondent engaged in a known conflict of interest in connection with her concurrent representation of two business owners with diametrically opposed interests. She repeatedly advanced O'Connor's positions to the detriment of Hodkinson; engaged in multiple acts of deception to the Superior Court, at times for her own pecuniary benefit; and effectively left Hodkinson without a loyal advocate in the ongoing commercial litigation. On balance, weighing the egregious circumstances underlying respondent's conflict of interest against her otherwise unblemished twenty-two-year career at the bar, we determine that a censure is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Members Campelo, Hoberman, and Petrou voted to recommend the imposition of a three-month suspension.

Member Menaker 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. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gwyneth K. Murray-Nolan
Docket No. DRB 24-155

Argued: September 19, 2024

Decided: January 6, 2025

Disposition: Censure

Members	Censure	Three-Month Suspension	Recused
Cuff	X		
Boyer	X		
Campelo		X	
Hoberman		X	
Menaker			X
Petrou		X	
Rodriguez	X		
Spencer	X		
Total:	4	3	1

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