SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-296

IN THE MATTER OF :
:
E. LORRAINE HARRIS, :
:
AN ATTORNEY AT LAW :

Decision
Default [R. 1:20-4(f)(1)]

Decided: August 18, 1999

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

Pursuant to R. 1:20-4(f)(1), the District IV Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline following respondent's failure to answer the formal ethics complaint.

The DEC served a copy of the complaint on respondent by certified mail to her last known address as it appeared in the New Jersey Lawyers Diary and Manual. The certified mail receipt was returned, indicating delivery, on May 15, 1998. The signature of the person accepting the delivery was illegible. On June 11, 1998, a second letter was sent by certified and regular mail to respondent at the same address, advising her that unless she filed an

answer to the complaint within 5 days of the date of the letter, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to the Disciplinary Review Board for the imposition of sanction. The certified mail receipt was returned, indicating delivery on June 13, 1998. Once again, the signature of the person accepting delivery was illegible. The regular mail was not returned. Respondent did not file an answer to the complaint.

On the day of the September 1998 Board meeting, respondent filed a motion with the Board to vacate the default. Although the motion was denied for lack of a meritorious defense, both to respondent's failure to answer the complaint and as to the underlying ethics charges, the Board determined to treat the information contained therein for purposes of mitigation of the disciplinary charges.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times she maintained an office in Gibbstown, New Jersey. Respondent has no prior ethics history.

According to the complaint, in June 1995 respondent was retained by Theresa Knight N'Jai to represent her in a wrongful termination from employment/employment discrimination claim. The retainer agreement signed by N'Jai and respondent at that time provided for an initial payment of $250, but did not otherwise specify the basis upon which respondent would calculate her fee. The agreement described respondent's responsibilities as "the execution and follow through of [N'Jai's] COBRA and life insurance benefits." Although respondent and N'Jai did not have any retainer agreement concerning N'Jai's

disability claim or the wrongful termination aspect of respondent's representation, respondent contacted N'Jai's medical insurance carrier and arranged for N'Jai to receive a $8,006.07 lump sum disability benefit in December 1995.

On December 4, 1995, N'Jai paid respondent an additional $1,000. Respondent then filed a charge of discrimination on N'Jai's behalf with the Equal Employment Opportunity Commission. In March 1996, when N'Jai's disability benefits were terminated at N'Jai's request, respondent contacted the Equal Employment Opportunity Commission and negotiated and arranged for N'Jai to receive a second lump sum payment of $34,577.57, which was paid in January 1997. From that amount, respondent took a total of $13,394.39: $8,644.39 as a contingent fee for that recovery and $3,500 due for prior work.

The complaint charged respondent with taking an unreasonable and excessive fee (RPC 1.5(a)); failing to communicate to the client in writing the basis or rate of the fee before or within a reasonable time after commencing representation (RPC 1.5(b)) and charging a contingency fee in which respondent had not provided a written contingency fee agreement to the client (RPC 1.5(c)).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found that the facts recited in the complaint support a finding of

unethical conduct. Because of respondent's failure to file an answer, the allegations in the complaint are deemed admitted. R. 1:20-4(f).

Respondent did not specify in writing the basis upon which she would calculate her fee, in violation of RPC 1.5(b). Additionally, respondent took a contingency fee in the second award without providing a written contingency fee agreement, in violation of RPC 1.5(c).

However, respondent's fee of $13,394.39 from the $42,583.64 awarded to N'Jai is less than a one-third contingent fee and therefore is not an excessive fee in violation of RPC 1.5(a). Accordingly, the Board determined to dismiss the charged violation of RPC 1.5(a).

As to the quantum of discipline. Conduct similar to respondent's has generally resulted in an admonition. *See In The Matter of Miles Feinstein*, Docket No. DRB 95-367 (1996) (admonition for failure to reduce fee agreement to writing), and *In The Matter of Michael G. Prestia*, Docket No. DRB 96-369 (1996) (admonition for failure to reduce fee agreement to writing and conduct involving dishonesty, fraud, deceit or misrepresentation). However, because of respondent's failure to cooperate with the disciplinary authorities, resulting in this matter coming before the Board as a default, the Board determined to raise the level of discipline and reprimand respondent. Two members voted to admonish respondent.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/18/99

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board