SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-299 and 97-435

IN THE MATTER OF	:
ANTHONY F. CARRACINO	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 20, 1997

Decided: August 18, 1998

James E. Stahl appeared on behalf of the District VIII Ethics Committee.

Richard H. Kress appeared on behalf of respondent.

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

These matters were before the Board based on a recommendation for discipline filed by the District VIII Ethics Committee ("DEC"). The complaint in Docket No. DRB 97-299 charged respondent with violations of *RPC* 1.8(a) (business transaction with a client), *RPC* 5.4(a) (sharing legal fees with a nonlawyer), *RPC* 5.4(b) (forming a law partnership with a nonlawyer), *RPC* 5.4(d) (practicing law in the form of a professional corporation or

association in which a nonlawyer has an interest or control) and *R.* 1:20-3(g)(3), more appropriately *RPC* 8.1(b) (failure to cooperate with disciplinary authorities). The complaint in Docket No. DRB 97-435 charged respondent with violations of *RPC* 1.1 [presumably *RPC* 1.1(a) (gross neglect)], *RPC* 1.4 (failure to communicate with client), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *R.* 1:20-3(g)(3), more appropriately *RPC* 8.1(b).

Respondent was admitted to the New Jersey bar in 1982. He was admonished on November 30, 1995 for failure to keep his client reasonably informed about the progress of a matter and to reply to the client's numerous requests for information, in violation of *RPC* 1.4(a). Respondent received a public reprimand on January 19, 1996 for violations of *RPC* 1.3 (lack of diligence), *RPC* 1.4 (failure to communicate), *RPC* 4.1(a) (making a false statement of fact) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in two matters. He was again admonished on July 25, 1997 for failure to obtain a written fee agreement in a matrimonial matter, in violation of *RPC* 1.5.

* * *

Respondent did not attend the DEC hearing. Instead, he authorized his counsel to appear and enter into a verbal stipulation on his behalf. At the time of the hearing, respondent had recently obtained a position with a law firm. He chose not to disclose to the law firm that an ethics complaint had been filed against him. On the day of the hearing, respondent was required to appear in Arkansas. Rather than inform his law firm about the ethics hearing, he traveled to Arkansas and authorized his attorney to appear at the hearing. Through his counsel, respondent stipulated to the facts alleged in the complaint and agreed that he had violated all of the *Rules of Professional Conduct* with which he was charged.

According to the stipulation placed on the record at the hearing, on January 17, 1992 respondent entered into a partnership agreement with George K. Leontarakis, a nonlawyer. The agreement, which was amended on July 8, 1993, provided as follows:

> The Partnership shall be carried on under the name of AFC-GKL Company (herein after [sic] referred to as 'Partnership'). The Partnership has been formed for the purpose of general investment, real estate development, and 50% ownership interest in the law practice of AFC. The Partnership may engage in any and all other activities as may be necessary, incidental or convenient to carry out the business of the Partnership as contemplated by this Agreement.

The agreement further provided that Leontarakis and respondent would each have a fifty percent interest in the net profits and net losses of the partnership. The agreement also contained the following schedule:

GKL shall be entitled to the following percentages for partnership income earned from already existing business:

5% for income earned from 01/17/92 - 06/30/92
10% for income earned from 07/01/92 - 12/31/92
15% for income earned from 01/01/93 - 06/30/93
20% for income earned from 07/01/93 - 12/31/93
50% for income earned from 01/01/94 - forward

In accordance with the terms of the agreement, Leontarakis paid respondent $117,000 as his capital contribution to the partnership. Respondent gave Leontarakis a promissory note for $117,000, payable periodically as agreed by the parties, without interest. Pursuant to the agreement, respondent received a "draw" of $1,500 per week plus car expenses.

The presenter introduced into evidence a letter dated October 19, 1994, by which respondent assigned to Leontarakis eighty percent of net fees received in three matters and thirty-three percent of net fees received in a fourth matter to secure repayment of the note.

The stipulation further provided that, before entering into the partnership agreement, respondent did not advise Leontarakis of the desirability of seeking the advice of independent counsel of choice and did not obtain written consent to the representation.

Through his counsel, respondent acknowledged that, by not replying to the grievance, he failed to cooperate with the DEC investigator and, thus, violated *R.* 1:20-3(g)(3) [more properly *RPC* 8.1(b)].

In his answer to the formal complaint, respondent admitted entering into the partnership agreement with Leontarakis. He explained, however, that he did not intend to make Leontarakis a partner in his law practice. He claimed that his intent was to use the

proceeds from his law practice to repay the promissory note. Respondent denied having made any payments to from the proceeds of the law partnership. Respondent further claimed, in his answer, that he had sent a letter advising him to seek independent counsel. Respondent was unable to locate that letter. Finally, respondent conceded that he had not replied to the grievance, citing various personal problems including a divorce, foreclosure of the former marital home, notice of a lawsuit against him for several debts and personal bankruptcy.

As mentioned above, at the DEC hearing respondent's counsel and the presenter stipulated certain facts. On that occasion, respondent's counsel made the following statements, presumably by way of stipulation: (1) respondent used the capital contribution made by Leontarakis to repay respondent's personal debts; (2) Leontarakis made the loan to respondent well before the agreement was executed; the agreement, thus, represented security for the payment of the pre-existing loan; (3) respondent's financial circumstances did not permit him to repay Leontarakis; and (4) because of respondent's bankruptcy, the debt to Leontarakis was extinguished.

In mitigation of respondent's conduct, counsel argued that respondent did not understand that he "actually gave away his law practice until I showed him the language in the agreement that he himself prepared that he gave away part of his law practice and he acknowledged that, yes, he did."

Leontarakis testified that, before entering into the partnership agreement, respondent had represented him in real estate matters, a residential mortgage refinance and general

business matters. Leontarakis contended that, although the agreement provided that the purpose of the partnership was general investment and real estate development, respondent had represented to him that he would use the funds paid by Leontarakis to expand his law practice. According to Leontarakis, respondent intended to advertise, hire associates and triple or quadruple his billings using this infusion of cash; respondent predicted that Leontarakis would recoup his initial investment within twelve to eighteen months and thereafter would receive "six figures in perpetuity." Leontarakis testified that, although he had asked respondent to review the partnership books and records, respondent denied him such access. Leontarakis stated that he did not know whether respondent had taken the weekly "draw" of $1,500 from the partnership income, as permitted by the agreement. Leontarakis was adamant that he would not have given respondent any funds if he had known respondent would use them to pay his personal debts.

* * *

The DEC found that, in addition to the stipulated violations of *RPC* 1.8(a), *RPC* 5.4 (a), (b) and (d) and *R.* 1:20-3(g)(3) [more properly *RPC* 8.1(b)], respondent also violated *RPC* 8.4(c) for misrepresenting to Leontarakis that Leontarakis's capital contribution would be used for the expansion of the law firm's operation, rather than for the payment of respondent's personal debts.

The formal ethics complaint did not charge respondent with a violation of *RPC* 8.4(c). Nor was the complaint properly amended to include this charge. Indeed, although the hearing panel report refers to an amendment to the complaint, there is nothing either in the transcript of the proceeding below or in other parts of the record showing that the DEC formally amended the complaint with notice to respondent and/or his counsel of such amendment.

The DEC recommended a six-month suspension.

* * *

The Bailey - Charles Matter - **Docket No. DRB 97-435**

Pursuant to *R.* 1:20-4(f)(1), the District VIII Ethics Committee certified the record in this matter as a default directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail. The certified mail return receipt (green card) was returned, signed by respondent.

Respondent was retained to represent Wilson Bailey and Teresa Charles in connection with injuries sustained in a motor vehicle accident. On January 7, 1995 respondent wrote to the driver of the vehicle involved in the accident and her insurance carrier, explaining that he represented Bailey and Charles. Other than receiving copies of these letters, Bailey and

Charles received no contact from respondent. Respondent failed to file a complaint on behalf of Bailey and Charles.

On May 29, 1997, the DEC sent the grievance to respondent, requesting an immediate reply. Upon respondent's failure to reply, the DEC sent another letter to respondent on June 18, 1997, requesting a reply within ten days. On July 22, 1997, respondent represented that he would reply to the grievance by July 29, 1997. On July 31, 1997, the DEC notified respondent that the investigation would remain open until August 4, 1997. Respondent failed to reply to the grievance and, as noted above, failed to answer the formal complaint.

The ethics complaint charged respondent with violations of *RPC* 1.1 (presumably *RPC* 1.1(a) - gross neglect), *RPC* 1.4 (failure to communicate with client), *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and *R*. 1:20-3(g)(3), more appropriately *RPC* 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

In Docket No. DRB 97-299, following a *de novo* review of the record, the Board was satisfied that the DEC's finding of unethical conduct was supported by clear and convincing evidence.

Respondent stipulated that he violated all of the *Rules of Professional Conduct* charged in the complaint. There is no doubt that respondent's misconduct constituted a violation of *RPC* 1.8(a). Although respondent claimed in his answer that he had advised

Leontarakis, in writing, of the desirability of consulting independent counsel, respondent did not assert that he had obtained Leontarakis's written consent to the representation, as required by the rule. In any event, at the DEC hearing it was stipulated that respondent did not advise Leontarakis to seek independent counsel.

Similarly, it is unquestionable that respondent violated *RPC* 5.4(a), (b) and (d). Indeed, by agreeing to share legal fees with Leontarakis, respondent violated *RPC* 5.4(a), which prohibits fee-splitting with a nonlawyer. Both the partnership agreement and the letter dated October 19, 1994 that assigned Leontarakis an interest in various fees payable to the partnership demonstrate respondent's intention to share legal fees with a nonlawyer. Although respondent contended in his answer to the complaint that he did not violate *RPC* 5.4(a) because he had not actually paid any funds to Leontarakis, at the hearing it was stipulated that respondent did violate that rule.

It is also undeniable that respondent entered into a partnership with a nonlawyer, in which one of the activities of the partnership consisted of the practice of law, a violation of *RPC* 5.4(b), and that respondent practiced law in the form of a partnership in which a nonlawyer had an interest, a violation of *RPC* 5.4(d).

The DEC correctly found that respondent failed to cooperate with the disciplinary authorities. Although respondent eventually filed an answer to the complaint, he failed to reply to the initial grievance, thereby hindering the DEC's investigation of the case.

Moreover, it was stipulated that respondent failed to cooperate with the investigation of the matter.

As to the DEC's finding of a violation of *RPC* 8.4(c), as noted above the DEC added that charge in its hearing panel report only. The hearing transcript contains no reference to that amendment. The charge was based on Leontarakis's testimony that respondent had represented to him that his capital contribution would be used to expand the law practice Instead, it was stipulated that respondent used the funds to pay personal debts. Nothing in the record, however, gave respondent notice of the additional charge of a violation of *RPC* 8.4(c), affording him an opportunity to be heard. While *In re Logan*,70 *N.J.* 222 (1976), provides that a complaint may be amended under certain circumstances, due process requires that attorneys be given adequate notice of the charges against them. Here, the DEC failed to include any factual recitation giving rise to a violation of *RPC* 8.4(c) and, most importantly, failed to inform respondent's counsel at the hearing that it was amending the complaint to add that charge. Under these circumstances, the Board determined to dismiss the *RPC* 8.4(c) charge.

In Docket No. DRB 97-435, reviewed pursuant to *R.* 1:20-4(f)(1), the Board deemed the allegations contained in the complaint admitted. The Board was satisfied that respondent had appropriate notice of the pendency of the ethics complaint and that the record contained sufficient evidence of respondent's unethical conduct.

In summary, in Docket No. DRB 97-299, respondent shared fees with a nonlawyer, formed a partnership with a nonlawyer for the practice of law, practiced law in the form of a partnership with a nonlawyer, improperly entered into a business transaction with a client and failed to cooperate with the disciplinary authorities. In Docket No. DRB 97-435, respondent committed gross negligence, failed to communicate with a client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and failed to cooperate with disciplinary authorities.

In other cases involving fee-sharing with a nonlawyer or entering into a partnership for the practice of law with a nonlawyer, discipline has ranged widely from a reprimand to a three-year suspension. In *In re Weinroth*, 100 *N.J.* 343 (1985), the attorney returned a portion of his fee to a client, knowing that the client would, in turn, give those funds to a nonlawyer who had referred the client to the attorney's law firm. Finding that the attorney violated the disciplinary rules prohibiting fee-sharing and giving something of value for recommending an attorney, the Court imposed a public reprimand.

Similarly, a public reprimand was imposed in *In re Gottesman*, 126 *N.J.* 376 (1991), for aiding the unauthorized practice of law and sharing fees with a nonlawyer. In that case, after the attorney left a law firm to start his own practice, he entered into an agreement with a personal injury investigator employed by his former law firm. According to the investigator, he and the attorney had entered into a partnership in which the investigator's responsibilities were to bring in personal injury business for the attorney as well as to handle

non-litigation tasks. In return, the investigator received one-half of the fees resulting from the business he brought into the firm. The attorney conceded that, by paying the investigator one-third of his legal fees, he had impermissibly divided fees with a nonlawyer. In imposing a public reprimand, the Board considered, in mitigation, that the attorney was aware that his prior law firm had entered into a similar arrangement with the investigator, permitting him to perform legal services and paying him a percentage of fees. In addition, the Board took into account that the attorney compensated the investigator only for cases in which he had performed services, recognizing the impropriety of paying him when little or no services had been provided. Finally, the Board noted that the attorney had an unblemished career of seventeen years and that the misconduct had ended eleven years earlier.

In *In re Bregg*, 61 *N.J.* 476 (1972), the attorney acknowledged that he split legal fees with a non-attorney who referred cases to him. Bregg accepted referrals from an individual alleged to be an attorney in Cuba, but not admitted to the bar in any jurisdiction in the United States. He paid the individual a percentage of the fee he received from each referral. In so doing, Bregg violated *DR* 3-102, prohibiting fee-splitting, and *DR* 2-103(B) and *DR* 2-103(C), forbidding an attorney from paying compensation for referrals. Because Bregg was candid and contrite, the Court imposed only a three-month suspension.

In *In re Introcaso*, 26 *N.J.* 353 (1958), the Court addressed the issue of fee-splitting in conjunction with the use of a "runner" to solicit criminal cases. In that case, three clients testified that they were solicited by a runner to retain the attorney. The runner testified that,

in addition to those three clients, he had solicited approximately seventy criminal cases plus an unspecified number of immigration cases, six in Hudson County alone. The runner received fifty percent of the attorney's fee as compensation. The Court found overwhelming evidence that Introcaso employed a runner to solicit clients in all three matters presented, improperly divided legal fees and lacked candor in his testimony. Noting that its "immediate impulse here is to strike respondent's name from the roll of members of the bar," the Court instead determined to impose a three-year suspension. *Id.* at 361.

In this matter, respondent violated *RPC* 1.1(a), *RPC* 1.4, *RPC* 1.8(a), *RPC* 5.4(a), (b) and (c), *RPC* 8.1(b) and *RPC* 8.4(c). Respondent's violation of *RPC* 1.8(a) alone warrants a reprimand. It is well-established that, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate discipline. *In re Berkowitz,* 136 *N.J.* 134 (1994). Here, respondent also entered into a law partnership agreement with a nonlawyer, agreed to share fees with a nonlawyer, committed gross neglect, failed to communicate with a client, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and, in two matters, failed to cooperate with the disciplinary authorities. Moreover, this is respondent's fourth encounter with the disciplinary system.

Based on the foregoing, the Board unanimously determined to impose a six-month suspension. In addition, prior to reinstatement, respondent must provide proof of fitness to practice law and must continue to receive counseling until discharged. Upon reinstatement,

he must practice under the supervision of a proctor for a period of one year. One member did not participate.

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

Dated: 8/18/98

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board