

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 12-188 (Kim)  
and 12-189 (Kang)  
District Docket Nos. XI-2010-0008E  
and XI-2010-0009E

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IN THE MATTER OF  
DONG SUNG KIM  
AN ATTORNEY AT LAW

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IN THE MATTER OF  
NA-KYUNG KANG  
AN ATTORNEY AT LAW

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Decision

Argued: September 20, 2012

Decided: November 30, 2012

Santiago D. Orozco appeared on behalf of the District XI Ethics Committee.

Both respondents waived appearance for oral argument.

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

These matters were consolidated for hearing by the District XI Ethics Committee (DEC) and were before us on a recommendation for a reprimand for each respondent. Both complaints charged

respondents with having violated RPC 1.2(c) (a lawyer may limit the scope of the representation only if it is reasonable under the circumstances and the client gives informed consent), 1.5(a) (charging an unreasonable fee), RPC 1.5(b) (failure to communicate the basis or rate of the fee, in writing, when the lawyer has not regularly represented the client) and (d) (entering into an arrangement to charge or collect a contingent fee in a domestic relations matter or in a criminal case), RPC 3.3 (lack of candor toward a tribunal),<sup>1</sup> RPC 5.1(a) (failure to make reasonable efforts to ensure that member lawyers of a firm conform to the Rules of Professional Conduct), RPC 5.4(a) (sharing legal fees with a non-lawyer), RPC 5.4(b) (a lawyer shall not form a partnership with a non-lawyer if any of the activities of the partnership consist of the practice of law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons expressed below, we agree with the DEC's recommendation that each respondent receive a reprimand.

Respondent Kim was admitted to the New Jersey bar in 2009 and the New York bar in 2010. He is an associate with the law

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<sup>1</sup> At the conclusion of the ethics proceedings, the presenter withdrew this charge against respondent Kang.

firm of Kim, Choi & Kim, P.C., with offices in New Jersey and New York. He has no history of discipline.

Respondent Kang was admitted to the New Jersey bar in 2008. She maintains a law office in Fort Lee, New Jersey. In 2012, she was admonished for lack of diligence in a divorce matter and failure to properly communicate with the client. In the Matter of Na-Kyung Kang, DRB 11-434 (March 23, 2012).

These matters arose from respondents' affiliation with a non-lawyer, Kyung S. Kim, a/k/a Jacob Kim (Jacob), who operated several businesses, including, among others, Jacob, Ben and Young, LLC, also referred to as JB & Y and JB & Y Law Group, LLC, which name was later changed, in June 2009, to Kim & Kang Law Group, LLC. Kim & Kang was disbanded in March 2010. Some of Jacob's businesses provided financial assistance such as credit counseling, financial consulting, debt modifications, and collection work. When, as a result of these services, the clients ran afoul of the law, Jacob provided legal services for clients through the staff attorneys he employed. As explained more fully below, in May 2009, Jacob created a separate entity to provide those legal services.

Although some of the testimony of respondents was difficult to understand or interpret, seemingly because of a language

barrier, the record was clear that Jacob threatened and intimidated his employees.

Respondent Kang graduated from Michigan State Law School in 2007. At the age of twenty-seven, she was admitted to the New Jersey bar, in June 2008. In October 2007, she began working as a paralegal for a Fort Lee attorney, Diane Lee. Kang was in this country on a work visa. Lee was her sponsor.

In January 2009, Jacob hired respondent Kang and agreed to take over as her sponsor. She understood that she would be in-house counsel to a financial consulting firm. She performed legal services for Jacob's companies, including JB & Y,<sup>2</sup> JB & Y Law Group LLC, and Kim & Kang Law Group LLC, until March 2010, when she either resigned or was fired.

Respondent Kim testified that he came to the United States at the age of thirty, to attend law school. He, too, graduated from Michigan State Law School in 2008. Because of the poor economic climate, he had a difficult time finding a job.

In December 2008, before his admission to the New Jersey bar, Kim replied to an ad, on a Korean website, for a position with JB & Y. In January 2009, he was hired, on the same date as

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<sup>2</sup> The Young of Jacob, Ben & Young was Young Min Kim, the only lawyer in the partnership. At some unspecified point, Young left the partnership.

respondent Kang, as a loan modification specialist (LMS), or financial coordinator. The position did not require a law degree. Due to his immigration issues, respondent Kim "desperately" needed any job. Jacob agreed to be his sponsor.

Kim passed the New Jersey bar, in June 2009, while employed at JB & Y.

Respondent Kim claimed that he continued working as an LMS even after he was admitted to the New Jersey bar. To a limited extent (he claimed only five percent of his time), and under Jacob's orders, he performed legal services for the Kim & Kang Law Group. After he obtained his New Jersey license, he appeared in court and respondent Kim signed and filed documents as a Kim & Kang attorney. He received work assignments from Jacob, a supervising attorney, Il Yup Joo, and respondent Kang. Respondent Kim prepared bankruptcy petitions, attended creditors' meetings, and prepared answers in foreclosure matters. On March 25, 2010, he began working for the law firm of Kim, Choi & Kim, his current sponsor.

Jacob's staff who was involved in non-legal services shared office space with his legal staff. There was no distinction among the employees. There were no individual offices. Jacob's employees were all located on the second floor, at 172 Main Street, Fort Lee, New Jersey.

When respondents started working for JB & Y, there were two supervising attorneys, Il Yup Joo and Young Kim. Il Yup Joo was respondent Kang's direct supervisor. Nevertheless, Jacob and his wife, Yoon Hee Kim, also a non-lawyer, doled out legal assignments to their staff attorneys.

Initially, because of respondent Kang's unfamiliarity with JB & Y's legal needs, her responsibilities were limited. Five or six months after she was hired, she, like other JB & Y attorneys, began preparing answers to foreclosure complaints for JB & Y's defaulting clients. Jacob instructed the attorneys to prepare the answers as if the clients were pro se (ghostwriting), because the clients could not afford representation for the entire legal process. Most of the JB & Y clients could not speak English. Nevertheless, after the answers were filed, the JB & Y attorneys did nothing further for them in connection with their matters. They did not appear at case management conferences or court appearances. Neither respondent Kang nor respondent Kim prepared bills for their services nor did they provide the clients with writings setting forth the basis or rate of their fees.

Respondents prepared the pro se answers from a sample form that had been created before Jacob hired them. Jacob charged the clients \$500 to \$1,500 for the preparation of the answers,

rather than charging them on an hourly basis. The clients paid Jacob directly for legal services and sometimes for filing fees. The fees were not paid to either respondent, but went directly to Jacob. At all times, JB & Y paid respondents' salaries.

Respondents informed the clients that they were only providing limited services. Respondent Kim did not recall sending letters confirming the limited scope of the representation. Respondent Kang stated that she did not intend to deceive the clients about the extent of her services. She tried to explain to them that she would not represent them in court, but that if they wanted additional representation, they would have to pay extra. Likewise, she did not intend to deceive the court by preparing the pro se documents for her clients. If clients were unable to understand court notices, they would return and JB & Y employees would explain what else was required. Respondent Kang did not believe that the courts were aware that the JB & Y attorneys were preparing the pro se answers.

On September 24, 2009, in one such foreclosure matter, Deutsche Bank v. Chang, Judge Ellen L. Koblitz, P.J.Ch., telephoned respondent Kim, after Chang arrived at her chambers for a case management conference. Chang claimed that respondent Kim was her attorney, but would not represent her in court

because she had not paid an additional fee for those services. Even though respondent Kim had prepared the "pro se" answer for Chang, he told the judge that he did not represent Chang in the case, but that he represented her in other financial matters. He did not admit that he had prepared the answer. Respondent Kim reasoned that, because he had informed the client that he was only preparing the answer, he did not think that he had to explain the "situation" to the judge.

Respondent Kang testified that she felt uncomfortable consulting with the clients and preparing their documentation, but not pursuing their cases through the courts. She claimed that, when she expressed her concerns to attorney Joo and respondent Kim, respondent Kim suggested that it would be "best" to have a separate legal entity that did not share office space with Jacob's business.

Initially, respondent Kang was afraid to approach Jacob with that idea and waited to suggest it. When she did, Jacob agreed. Apparently, respondent Kang drew up the incorporation documents for JB & Y Law Office, LLC. In her reply to the grievance, respondent Kang stated that she wanted the firm to be independent, with respondent Kim as her partner, to have a sublease agreement with JB & Y, and to make independent decisions.

Jacob's wife had respondent Kang sign the incorporation documents, in May 2009. The firm, however, did not achieve the independence that respondent Kang desired. The "firm" remained at the same location and continued to share space with JB & Y.

Shortly after the firm's formation, attorney Joo remarked that it was improper to use a trade name for a law office. When respondent Kang relayed that information to Jacob, he chose a new name "on the spot," on June 10, 2009, the firm name was changed to Kim & Kang Law Office, LLC. Respondent Kang also signed the certificate of amendment document for the firm's name change. Respondent Kang was afraid to ask Jacob why Joo, a senior attorney in the office and her supervisor, had not signed the formation documents. As to respondent Kim, respondent Kang believed that Jacob had not asked respondent Kim to sign them because Jacob knew that she would follow his instructions and do anything he asked, while respondent Kim "dreaded signing papers" and avoided getting involved. She maintained that, even though respondent Kim was not listed as a partner on various "paper," he acted as if he were one.

According to respondent Kang, Jacob owned, managed and controlled the finances, operations, and direction of the law firm. The firm's lawyers were his employees and beholden to him. Jacob's clients became the law firm's clients if and when they

needed legal services arising from their business dealings with Jacob or his companies. Kim & Kang's only clients were those that Jacob assigned them. According to respondent Kang, Jacob controlled Kim & Kang's finances. His wife, Yoon Hee Kim, kept Kim & Kang's "books and records" and the business account checkbook. She would have respondent Kang "sign a bunch of [blank] checks."<sup>3</sup>

Respondent Kim denied knowledge of JB & Y's operations, but conceded that Jacob "apparently" operated Kim & Kang and that Jacob was both his and respondent Kang's boss.

Respondent Kang did not ask Jacob who were the named partners of the Kim & Kang law firm, because it was obvious to her; it was she and respondent Kim. There were no other attorneys named Kim working in the office at that time. Respondent Kang acknowledged, however, that although she was already an attorney when Jacob hired her, respondent Kim had been hired as a paralegal and was not yet a member of the New Jersey bar. She, nevertheless, concluded that respondent Kim was her partner because they were paid the same, despite their different status, and because both "law firm" entities were formed after respondent Kim had passed the bar exam, but before

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<sup>3</sup> Jacob himself signed at least one firm check.

he had been admitted. When asked how respondent Kim could have been a partner if his name did not appear on any formation documents, respondent Kang replied:

Jacob Kim . . . basically treated Respondent Kim and me in the same way. . . . our desks were . . . side by side. He would assign cases to Mr. Kim and - - I didn't assign any work for Mr. Kim, Jacob Kim assigned clients to him and me . . . employees of JB & Y called Mr. Kim, Kim Byunhosanium, which is a way of saying Attorney Kim even before he passed the bar. Jacob Kim introduced Respondent Kim to clients as Attorney Kim so we were - - we had similar almost same responsibilities in JB & Y.

[2T52-7 to 52-22.]<sup>4</sup>

Respondent Kang viewed respondent Kim as her equal and saw that others treated them as such, including Jacob and Jacob's wife. Each respondent had his or her own law clerks. Cases were assigned to them in "almost equal amounts." Respondent Kang never assigned work to respondent Kim. They were not to give orders to each others' employees and supervised only their own employees. They worked independently of one another. Respondent Kang had no control over respondent Kim and never tried to act as his "senior." Respondent Kang explained that, in their culture, a female is not to act as the superior to an older

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<sup>4</sup> 2T refers to the transcript of the November 22, 2011 DEC hearing.

male, which respondent Kim was. Whenever an issue arose, Jacob called both of them into the conference room to discuss it. Jacob introduced respondents to a client as partners from the law office of Kim & Kang.

Respondent Kang, therefore, concluded that respondent Kim was the "Kim" of Kim & Kang. She did not know that respondent Kim denied being the named partner, until she reviewed the ethics investigation report.

Kim & Kang not only shared office space with Jacob's company, it shared telephone numbers as well. Although Jacob set up another telephone line for Kim & Kang, the same employees answered both telephone lines and, at times, forgot and answered JB & Y, rather than Kim & Kang. Both companies were advertised in Korean papers in the same ad. According to respondent Kang, the attorneys were well aware that Kim & Kang and JB & Y were "commingled."

Respondent Kang claimed that, although there were many JB & Y lawyers over the years, the Kim & Kang firm was not in operation long enough to have had attorneys other than she, respondent Kim, and Ronen Cohen. She stated that Jacob had a "hot temper." Employees did not like working for him and quit.

Respondent Kim, in turn, maintained that he only learned about Kim & Kang's existence in the summer 2009, when he saw the

firm's letterhead and respondent Kang told him about the firm. He claimed that he was not paid by Kim & Kang, he was not a partner of the firm, did not think he was a partner, and did not act as if he were a partner. He did not have any interest in the firm, did not sign any incorporation documents, did not have any "authority for the company" or the Kim & Kang bank accounts, and was not a signatory on the firm trust account. He asserted that he did not know who the "Kim" of Kim & Kang was.

To support his contention, respondent Kim presented an affidavit that respondent Kang had prepared on his behalf, in support of his application for admission to the New York bar. The affidavit indicated that respondent Kim was an associate and employee of the Kim & Kang Law Group, LLC, and that respondent Kang was his direct supervisor. Respondent Kim maintained that, even though he and respondent Kang had been hired on the same day, she was his supervisor; he was an entry level employee of JB & Y, but she was in-house counsel. He did mostly bankruptcy cases and respondent Kang reviewed his work. Although respondent Kim denied that he knew how JB & Y operated, he conceded that, "apparently," Kim & Kang was "operated" by Jacob.

At some undisclosed point, Jacob asked respondent Kang to perform legal services for one of his businesses, American Standard Retriever, a New York company. He told her that,

because she was a New Jersey licensed attorney, although not a New York attorney, she could work as in-house counsel for the New York company and could file documents in New York courts. Respondent Kang signed and filed the documents, as he requested, without first checking to see if it was permissible. She later learned that she could not represent the company in New York and relayed that information to Jacob. He then retained the firm of Shim & Ghim to take over the representation.

At some point, Shim & Ghim filed a lawsuit against Jacob, Kim & Kang, and others (Kim v. Kim) for, among other things, trespass, defamation, assault, intentional infliction of emotional distress, and civil conspiracy. Respondent Kim admitted signing the verified answer and counterclaim in the matter, but claimed that the documents had been prepared by respondent Kang. Respondent Kang did not remember drafting the documents but recalled that Jacob had ordered respondent Kim to sign them.

On January 26, 2010, respondent Kim appeared at oral argument on a motion in the matter, on behalf of Kim & Kang.<sup>5</sup> He

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<sup>5</sup> Respondent Kim's attorney at the DEC hearing, Matthew Jeon, was the plaintiffs' attorney in the civil matter against Jacob, Kim & Kang, et al. The DEC hearing panel determined that there was no conflict of interest in Jeon's representation of both. Jeon  
(Footnote cont'd on next page)

claimed that Jacob coached him on what to say. The transcript of that proceeding showed that respondent Kim had portrayed himself as a member of the Kim & Kang firm. He had referred to the firm as "we," on a number of occasions, and had referred to Kim & Kang as "my law firm."

Respondent Kang admitted that, after Kim & Kang disbanded, she used the firm's name when she prepared the stipulation of dismissal in the Kim v. Kim lawsuit, because the lawsuit had been filed while the firm was in existence.

At one point, respondent Kim felt that something "shady" was going on with JB & Y. He did not want to keep working there and, in January 2010, expressed his intent to quit. After Jacob threatened him, he remained in Jacob's employ for an additional three months until, "suddenly," Jacob "shut the door."

As time passed, respondent Kang, too, realized that she should leave Jacob's employ. She had stayed because she believed that she could fix the problems with the firm and she also needed a job. She conceded that her efforts to remedy the situation only dragged her "deeper into trouble." Her only alternative was to resign.

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(Footnote cont'd)

argued that, because his client was not the Kim of Kim & Kang, there was no conflict.

The day before respondent Kang's resignation, Jacob had asked her to falsely testify in court, in ongoing civil litigation, presumably the Kim v. Kim matter. He instructed her to state that, even though Kim & Kang shared an office with JB & Y, she never saw Jacob or interacted with him and that there was a sublease between JB & Y and Kim & Kang. Jacob offered to retain counsel to represent Kim & Kang in the litigation, but directed respondent Kang to make similar misrepresentations to that attorney. According to respondent Kang, Jacob instructed another employee to follow her, when she met with the attorney, to ensure that she conveyed the misrepresentations.

Respondent Kang admitted that she was intimidated by Jacob and felt "trapped." Jacob was controlling and would yell and scream at her and make her cry in front of other employees. She decided to sever her relationship with Jacob, but was afraid to confront him personally. She, consequently, had her husband tender her resignation.

Afterwards, Jacob and his wife sent her threatening messages. According to respondent Kang, in addition to other threats, Jacob said that he would report her to immigration, to the bar association, and would file a lawsuit against her. He warned respondent Kang to retain a very good attorney.

Jacob scheduled a meeting with his wife and Kim & Kang employees at a Fort Lee McDonalds, which respondent Kang's husband taped. They purportedly turned over the tapes to "the authorities," but respondent Kang made no mention about any consequences from the tapes.

Respondent Kang stated that, even though she had already resigned from Jacob's employ, during the meeting at McDonald's, Jacob fired her and respondent Kim, as well as several other employees. Respondent Kim stated that he was "happy to be free" from Jacob.

Respondent Kang was concerned about her existing client files, her immigration status, and her professional reputation. She, therefore, contacted Jongsuk Kim (J.S. Kim), of Shim & Ghim, LLC, for advice. J.S. Kim was the attorney for the plaintiffs in the Kim v. Kim lawsuit. He instructed her to contact her existing clients, to file a police report (because Jacob was boxing up and moving her client files), and to change her status with immigration.<sup>6</sup>

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<sup>6</sup> The presenter offered Ex.P-10, a March 19, 2010 police report filed by respondents Kim and Kang against Kyung S. Kim (Jacob), complaining that Jacob had denied their access into their rented office space and that Jacob had all of the files and computer equipment pertaining to the Kim & Kang Law Group. Respondent Kim admitted accompanying respondent Kang to the police station, explaining that she requested him to do so.

According to respondent Kang, following that meeting with J.S. Kim, she, respondent Kim, and some other former JB & Y employees prepared and sent approximately 100 letters to clients to inform them about what had occurred and how to contact either her or respondent Kim for continued representation in their matters. As a result of those letters, approximately sixty of her clients had contacted her. Respondent Kang worked out of coffee shops or diners, until she established an office at 440 Sylvan Avenue, Englewood Cliffs. Respondent Kim secured a position with another law firm.

Respondent Kang believed that she and respondent Kim had been friends, while they were employed by Jacob and until the DEC proceedings. After they left Jacob's employ, respondent Kim would come to respondent Kang's office, after work hours, to get letters out to JB & Y clients.

Respondent Kang testified that, for a brief period, she was associated with J.S. Kim. Thereafter, they practiced law under the name of Kang & Kim Limited Liability Company. On July 14, 2010, respondent Kang filed a certificate of amendment and formation, changing the name of Kang & Kim to Kang Limited Liability Company.

On an unknown date, J.S. Kim returned to Korea, leaving respondent Kang to practice on her own. She claimed that,

nevertheless, he continued to be her mentor and that she still consulted with him about her cases, presumably through the internet. According to respondent Kang, Kang & Kim had become her visa sponsor. Once J.S. Kim left, she consulted with an immigration attorney, who purportedly advised her that, "if there is no fundamental change, you don't need to amend your Visa." As of the date J.S. Kim left, respondent Kang was acting as her own sponsor.

Ronen Cohen was an associate with the Kim & Kang Law Group for approximately six weeks, from February to mid-March 2010. His recollection of the circumstances was spotty. He was hired by respondent Kang, to whom he reported. She, respondent Kim, Jacob, and Jacob's wife interviewed him for the position. He was paid by Kim & Kang law firm checks, signed by respondent Kang. His work consisted mainly of foreclosures and sheriffs' sales. He had very little contact with respondent Kim.

Cohen assumed that respondents were the named partners of the firm, because they interviewed him for the associate position and because others reported to them. Cohen believed that Jacob, a non-lawyer, was a client of the Kim & Kang firm. Cohen handled a few of Jacob's cases.

Cohen did not understand Korean, but it appeared to him that Jacob ordered people around, including respondent Kang, and that Jacob was in charge of the operations.

Cohen left the Kim & Kang firm when he received a telephone call that the firm was going to close within the next day or two. After oral argument on a motion, in early to mid-March, an adversary from the Shim & Ghim firm told him that they "should all get away from Jacob Kim," that Jacob was a shady character, and that his relationship with Jacob could affect the rest of his career.

Cohen believed that he had conveyed the substance of that conversation to Kang. He did not know what was "going on behind the scenes," but it was his impression that Kang "was intimidated by the whole [employment] situation.". It appeared to him that she was "almost trapped as being the partner of a law firm." Shortly thereafter, he learned from Kang that the firm had dissolved. The next day, he and Kang conferred about covering all of the client files to ensure that the clients were not jeopardized, that their cases would be handled, and that the statutes of limitation would not be missed.

When Cohen tried to retrieve the client files from the New Jersey office, Yoon Hee Kim offered him the opportunity to take over the firm, to start his own firm, and to absorb the Kim &

Kang clientele. Cohen declined the offer because he saw "too many red flags;" the Kim & Kang law firm had dissolved overnight, it seemed to him "for a lack of a better word shady. [He] didn't want anything to do with it anymore, [he] just wanted to get out of there."

Respondent Kang admitted having violated RPC 1.5(b) and RPC 5.4(a) and (b). She also admitted having violated RPC 5.1(a), in that she knew that the attorneys were involved in something wrong but did not report it to the ethics authorities or stop it from happening. The attorneys worked for Jacob, a non-lawyer, who controlled them and they did not take action to separate themselves from him. She admitted that her fear of Jacob affected how she practiced law. If he ordered her to do something improper, she was afraid to confront him or to say no. If she tried to avoid it, he would scream at her or harass her.

As to mitigation, respondent Kang testified that, after leaving Kim & Kang, she provided pro bono services or charged clients only what they could afford. She also "tried to write articles" in local Korean publications to educate fellow Korean New Jersey residents. She was mentored by J.S. Kim. Currently, she is mentored by a member of the Korean/American Women's Attorney Association. Elder members of the organization have mentored her on how to manage a law office, how to perform

bookkeeping, and how to provide "good legal services to clients." She is "deeply ashamed" for what happened and will try to avoid getting involved in a similar situation.

Respondent Kim's mitigating factors, of sorts, included that he was concerned for his clients and for his law license; that he accompanied respondent Kang to the police station; that he apologized to the DEC; and that, at the relevant time, he was a newly admitted attorney and lacked experience.

Aggravating factors included respondent Kang's questionable sponsor status for her visa and her admission that she made false statements in respondent Kim's affidavit to the New York Bar Examiners. She admitted that the affidavit contained inaccurate dates for Kim's employment; that she identified herself as his direct supervisor; and that she improperly identified him as an associate, rather than a partner with the law firm of Kim & Kang. Her rationale for making those false statements was her belief that the affidavit would make a better impression with the bar authorities, if it were submitted by a supervisor.

During his summation, the presenter highlighted some points. He stated that Kim & Kang was not a bona fide law firm, because the "individuals, really didn't make decisions about the policy and procedure and practice and, of course, the money, and

so we had a situation here where there was kind of like a front." He argued that it was not necessary to establish that the clients believed it was a law firm; it was enough to show that it was "reasonable for someone dealing with the law firm to believe it was a bona fide law firm, and it really wasn't."

In the presenter's view, all three witnesses testified with a "measure of credibility and a measure of incredibility." As to respondent Kim, the presenter had difficulty believing that his command of the English language was as limited as he tried to convey. He noted that, in answering questions, respondent Kim would "take time, think, answer very slowly, often not understand the question, often not answer the question, at all, could not answer a yes or no question." The presenter believed that respondent Kim was a lot smarter than he portrayed himself and that he is a "very intelligent young man, he's an attorney licensed in New Jersey, an attorney licensed in New York, those bar exams are not for dummies . . . the phrase 'dumb like a fox' seems to run through my mind." In the presenter's view, Kim was the "Kim" of Kim & Kang. He added that respondent Kang was very truthful in her testimony, admitted violating certain ethics rules, and always maintained that respondent Kim was her partner. The presenter stressed that she had nothing to gain

from stating that to be the case and pointed out that they had been friends, during the time they worked together.

The DEC attempted to reconcile the opposing positions of respondents - respondent Kim maintained that he was not a partner or the "Kim" of Kim & Kang and, therefore, was not guilty of various ethics infractions, while respondent Kang claimed that he was the named partner of Kim & Kang and that they both violated various ethics rules.

In reconciling the evidence and assessing the credibility of the witnesses, the DEC determined that respondent Kim was a named partner. However, because the firm was conceived by Jacob and managed by Jacob and respondent Kang, respondent Kim "did not necessarily know he was the 'Kim' of Kim & Kang."

The DEC found that Jacob greatly influenced and affected the young, inexperienced, foreign-born attorneys and that respondent Kang was intimidated and fearful of Jacob, as her employer and immigration sponsor. The DEC added that respondent Kim may have been less overtly intimidated by Jacob, but was no less beholden to him. The DEC, therefore, concluded that respondents' actions should be viewed in the context of their employment and immigration status.

### DEC Findings as to Respondent Kang

The DEC noted that Jacob directed the attorneys to engage in ghostwriting answers to foreclosure complaints for JB & Y clients as pro se litigants. The DEC did not find that ghostwriting was specifically prohibited by the RPCs. The DEC found no violation of RPC 1.2(c), because there was no proof that the limitation was unreasonable and that respondent Kang did not communicate it to the clients.

As to RPC 3.3, although the presenter withdrew the charged violation, the DEC was troubled by respondent Kang's knowing submission of false statements to the New York Board of Bar Examiners. The DEC noted that her conduct in this regard could be viewed as an RPC violation but, instead, found it to be an aggravating factor.

The DEC found that respondent Kang also violated RPC 5.4(c). Not only did she admit violating this rule, but the violation was established by clear and convincing evidence, even though Kim & Kang did not collect any legal fees; all fees were paid to Jacob, who handled the payroll and even managed the firm's trust account.

The DEC also found that Kang violated RPC 5.4(b). She admitted the violation and there was clear and convincing evidence of it. The DEC found further that respondent Kang was

"a member" of JB & Y Law Group and then Kim & Kang Law Group. It added that, "[g]iven the level of fee sharing, financial oversight, client assigning and work delegation engaged in by Jacob Kim, there is no doubt that Ms. Kang engaged in the practice of law with a non-lawyer."

On the other hand, the DEC found no violation of RPC 1.5(a), given that Jacob established the fees for the firm. The DEC found, however, clear and convincing evidence that respondent Kang violated RPC 1.5(b), a rule that she admitted violating. The DEC did not find a violation of RPC 1.5(d), however.

Respondent Kang admitted and the DEC found clear and convincing evidence that she violated RPC 5.1(a), in that she was a supervising partner and knew that attorneys working for the firm were violating the Rules of Professional Conduct.

Finally, the DEC did not find clear and convincing evidence that respondent Kang violated RPC 8.4(c) or RPC 8.4(d), because she did not engage in the "type of intentional conduct proscribed by the Rules." The DEC determined that respondent Kang's submission of a false statement to the State of New York Board of Bar examiners was not undertaken with the intent to alter the administration of justice and that it was not deemed actionable by the presenter.

### DEC Findings as to Respondent Kim

As with respondent Kang, the DEC did not find that respondent Kim violated RPC 1.2(c). The DEC determined that one client did not understand the limitations of Kim's role in preparing the answer in her foreclosure matter. The DEC viewed this as an isolated misunderstanding, instead of a violation of the RPCs.

The DEC found, however, that respondent Kim violated RPC 3.3, when Judge Koblitz called him to determine whether he was representing the client in the foreclosure matter and he replied that he represented her in other matters, not in the foreclosure. The DEC noted that respondent Kim knew that he had prepared the answer, that JB & Y had been paid a fee for his services, and that he was not representing the client, as an attorney, in any other matter. The DEC remarked that, even though respondent Kim had a poor command of the English language, he understood the implications of the judge's questions and was "far from forthcoming in response to her inquiries." The DEC remarked that respondent Kim should have revealed that he had prepared the answer in the matter before the court.

The DEC found clear and convincing evidence that respondent Kim violated RPC 5.4(a) and (b), based on his sharing office

space, fees for legal services, phone numbers, work assignments, and firm management with Jacob and JB & Y. The DEC underscored that respondent Kim's activities as a lawyer were indistinguishable from his actions as a loan modification counselor, despite his attempts to draw "fine-line distinctions."

As with respondent Kang, the DEC found that respondent Kim did not establish the fees for his legal work and did not charge unreasonable fees for his services. It, therefore, did not find that his conduct violated RPC 1.5(a). It found, however, that he violated RPC 1.5(b), because he did not communicate the basis or rate of his fee, in writing, to any client. The DEC dismissed the charged violation of RPC 1.5(d) as inapplicable.

The DEC also did not find that respondent violated RPC 5.1(a) because, although he may have been the named partner of Kim & Kang, "in all likelihood he did not realize such was the case." Therefore, he did not exercise the level of control or supervision over other lawyers, necessary to find a violation of this rule.

Finally, the DEC did not find clear and convincing evidence that respondent violated RPC 8.4(c) or (d).

In assessing the appropriate degree of discipline, the DEC considered that

these two young lawyers found themselves in a most difficult situation, created by their employer and immigration sponsor, Jacob Kim. Their livelihoods and ability to remain in this country were literally in the hands of a man who intimidated and controlled their every move, resulting in various violations of the Rules of Professional Conduct. Trapped by their circumstances, the Respondents failed to take action to correct the obvious and continuous violations for over a year.

[HR17.]<sup>7</sup>

The DEC considered, as aggravating factors, that both respondents engaged in a continuous course of conduct and that both failed to take timely action to remedy that conduct, despite ample opportunity to do so. The DEC was troubled by respondent Kang's untruthful submission to the New York State Board of Bar Examiners and by respondent Kim's lack of candor towards Judge Koblitz, finding such misrepresentations to be aggravating factors.

As mitigating factors, the DEC considered that neither respondent had an ethics history (respondent Kang had not yet been admonished) and that they were both young and inexperienced and victimized by Jacob, who held their immigration status over their heads. Respondent Kang was particularly remorseful and took substantial actions, at her own expense, to see that her

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<sup>7</sup> HR refers to the hearing panel report, dated February 10, 2012.

clients were not harmed by Jacob's dissolution of Kim & Kang. Respondent Kim appeared less remorseful. Both respondents cooperated with the investigation. Finally, neither respondent engaged in the activities for their personal gain or to the detriment of clients.

The DEC recommended that each respondent be reprimanded, that each take at least "six months" of CLE classes "targeting areas of attorney ethics," and that each seek mentoring.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondents were guilty of unethical conduct was fully supported by clear and convincing evidence.

By all accounts, Jacob Kim was a tyrant, who intimidated his staff and held respondents' immigration status over their heads, in order to have them engage in improper conduct. That being said, the presenter's comments pertaining to the credibility of the witnesses was well-taken. He noted that they testified with a "measure of credibility and a measure of incredibility."

As discussed below, both respondents engaged in conduct involving a lack of candor or dishonesty to hold on to their employment and to secure their visa status. Respondents' testimony at the DEC hearing may have been similarly tainted, in an effort to protect their law licenses.

We now turn to the specific allegations against each respondent and to our findings.

### The Kang Complaint

The complaint charged respondent Kang with violating RPC 1.2(c) and RPC 3.3 for "Kim's" preparation of the Chang foreclosure answer and for his denial that he represented Chang in the matter. These charges applied to respondent Kim, not to respondent Kang, and are, therefore, dismissed. In addition, the presenter withdrew the RPC 3.3 charge. We note that respondent Kang admitted that she engaged in "ghostwriting," but claimed that she informed her clients that she was providing limited services to them, unless they were willing to pay for additional representation. There is no evidence in the record that any of her clients misunderstood the scope of the representation. Thus, even if the complaint had charged respondent Kang with violating RPC 1.2(c) for the practice of "ghostwriting," that charge could not be sustained because there is no evidence that the clients did not consent to the limited representation or that the limitation was unreasonable.

The complaint further charged that respondent Kang's conduct violated RPC 5.4(a) and (b) because the Kim & Kang firm

shared a phone line and space with another business, JB & Y, and shared clients and commingled assets with it.

RPC 5.4(a) states, in relevant part, that a lawyer or firm "shall not share legal fees with a nonlawyer." Although respondent Kang admitted violating this rule, the evidence did not establish any fee-sharing with Jacob. Respondent Kang did not set the fees, did not receive the fees, and did not share the fees. Jacob paid respondent Kang as an employee. Similarly, despite respondent Kang's admission, it is not so clear that she formed a partnership with Jacob, a nonlawyer, in violation of RPC 5.4(b). If the proofs clearly and convincingly showed that "Kim" was Jacob Kim, rather than respondent Kim, then Kang would have violated this rule. That was not the case, however. Likewise, there is no evidence to identify the partners of the JB & Y Law Group. We, therefore, dismiss these charged violations as well.

We find that the more applicable rule for the above situation is RPC 5.4(d), the violation of which was not charged in the complaint. It prohibits a lawyer from practicing with, or in the form of a limited liability entity authorized to practice law for profit, if "(1) a nonlawyer owns any interest therein . . . ." Clearly, Jacob owned and/or controlled Kim & Kang. Any attempts made by respondent Kang to disassociate the firm from

Jacob failed. Her only recourse was to quit her job, which she eventually did. Because the violation of this rule was not charged in the complaint, however, we cannot find that respondent Kang violated it. R. 1:20-4(b). But we do consider her conduct in this context to be an aggravating factor.

As to RPC 1.5(a) and (b), as stated above, respondent Kang did not set the fees for clients seeking assistance with their foreclosure matters. Jacob, not respondents, set the fee, at \$500 to \$1,000, for the drafting of an answer that was created from a form. While the fee may very well have been unreasonable, respondent Kang did not set it. We, therefore, dismiss this charged violation. Respondent Kang was guilty, however, of failing to provide writings setting forth the basis or rate of fees for her services, a violation of RPC 1.5(b). On the other hand, we found no evidence to establish a violation of RPC 1.5(d), a charged violation that we dismiss.

The complaint further charged that respondent Kang violated RPC 5.1(a). This rule relates to the responsibilities of partners, supervisory lawyers, and law firms. Section (a)(1) states:

Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work

undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

There is no clear and convincing evidence that respondent Kang supervised the lawyers in the firm. The testimony revealed that each lawyer obtained assignments from Jacob or Jacob's wife and that each supervised his or her own employees. Therefore, it cannot be said that respondent Kang had a duty, under RPC 5.1(a), to ensure that respondent Kim conformed his behavior to the RPCs. Thus, we dismiss this charged violation as well.<sup>8</sup>

The complaint also charged respondent Kang with having violated RPC 8.4(c) and (d), as well as RPC 3.3 for filing pro se answers in foreclosure matters, in order to provide Jacob with more time to work out alternative financial solutions for the client. The complaint alleged that, in so doing, respondent Kang placed the firm's interests in a superior position to the interests of the clients, who remained at risk. The complaint alleged that this constituted a pattern of dishonesty, exploitation and misrepresentations. The complaint also charged that respondent Kang's failure to disclose that she had ghostwritten answers for pro se defendants was a tactic in the

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<sup>8</sup> Respondent Kang supervised attorney Cohen for a six-week period. There is no evidence that Cohen violated any ethics rules.

litigation to gain advantage by invoking traditional judiciary leniency toward pro se litigants, while they reaped the benefits of legal assistance and advanced respondent Kang's goals of remaining in Jacob's good graces to keep her job and remain in the U.S. legally. There is no evidence in the record to support these allegations or that assisting a client to gain an advantage in litigation by drafting and answer is a violation of the RPCs. The charged violations of RPC 8.4(c) and (d) and RPC 3.3, as they relate to these actions, are, thus, dismissed.

We agree with the DEC finding, as an aggravating factor, that respondent Kang made misrepresentations in the affidavit that she prepared in support of respondent Kim's application for admission to the New York bar. She readily admitted making the misrepresentations to enhance Kim's standing with the bar admission authorities. Her testimony regarding her visa status and sponsors further put into question her regard for truthfulness.

A significant mitigating factor is that respondent Kang was a young, inexperienced attorney, who required a sponsor to legally remain in this country. Jacob, by all accounts, was a domineering and controlling employer, who wielded power over her and yelled at her, threatened and intimidated her. In fear for her visa status, respondent Kang complied with her employer's

orders, thereby violating the RPCs. After slightly more than a year of Jacob's intimidating tactics, respondent Kang finally severed her ties to him.

We make one final note as to respondent Kang. Her prior discipline, an admonition, involved conduct that occurred during this same time period and resulted, in part, from her problems with Jacob and her inability to obtain the client's file after her employment with Jacob was severed.

#### **The Kim Complaint**

The complaint charged respondent Kim with having violated RPC 1.2(c) and RPC 3.3 for his involvement in the Deutsche Bank v. Chang matter. It specifically alleged that Chang did not pay respondent Kim an additional fee to have him appear in court on her behalf. These allegations make it clear that Chang knew that the representation was limited. RPC 1.2(c) permits a lawyer to limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. There was no evidence presented that, "under the circumstances," the limitation was unreasonable. Moreover, that Chang gave informed consent to the limitation is evident from Chang's assertion to the judge that she had not paid respondent

Kim for further representation in the matter. We, therefore, dismiss this charged violation.

As to RPC 3.3, respondent Kim testified that, when Judge Koblitz called him, he told the judge that he did not represent her in the case, only in other financial matters. He did not admit preparing the "pro se" answer, because he did not think that he had to explain the situation to the judge. Because his omission was knowingly made to mislead the judge, it violated RPC 3.3.

Respondent Kim was also charged with lack of candor toward a tribunal for making misrepresentations to the court in the Kim v. Kim lawsuit. The complaint alleged that respondent Kim misrepresented that JB & Y and Kim & Kang had separate telephone lines, that Kim & Kang subleased office space from JB & Y, and that they were entities separate and apart from one another.

Lack of candor must be knowing, intentional. Respondent Kang testified that Jacob set up separate telephone lines for JB & Y and Kim & Kang, but that, sometimes, employees would use the wrong company name, when answering the phones. Therefore, respondent Kim's statement in that regard was not necessarily a misrepresentation.

As to subleasing office space from JB & Y, respondent Kang's reply to the grievance indicated that she wanted a

sublease agreement with JB & Y. If we were to accept respondent Kim's testimony as true, that is, that he was not aware of the operations of the office and was a mere associate, he might have reasonably believed that Kim & Kang had a sublease with JB & Y. Because, however, he received his "marching orders" directly from Jacob and the entities were housed at the same locale, we find that he had to have known that there was no separation between the entities. His comments to the court in this regard, thus, violated RPC 3.3.

Whether respondent Kim violated RPC 5.4(b) depends on whether he was the named partner of Kim & Kang. Respondent Kang made compelling arguments that he was the partner. She claimed that it was he who had come up with the idea to form a legal entity separate from JB & Y. Respondent Kim did not dispute her claim, but vehemently denied that he was the named partner. He also presented equally compelling evidence to support his denial: 1) Kang swore in an affidavit that he was an associate; 2) he was not admitted to the New Jersey bar, when the law firms were created; 3) his name did not appear on formation documents; 4) he was not a signatory on the firm accounts; and 5) Jacob himself may have chosen his own name for the firm, given that the first law firm's name was JB & Y Law Group, LLC, which

incorporated the initials of the first names of the JB & Y partners.

While it is likely that respondent Kim was the named partner, the evidence to support this conclusion does not rise to the level of clear and convincing. We, thus, find no violation of RPC 5.4(b).

For the same reasons expressed in our findings as to respondent Kang, we cannot find that respondent Kim violated RPC 1.5 (a) and (d), RPC 5.1(a), RPC 5.4(a), RPC 8.4(c), or RPC 8.4(d). However, like respondent Kang, respondent Kim failed to provide his clients with writings setting forth the basis or rate of his fee, a violation of RPC 1.5(b).

In sum, respondent Kim is guilty of having violated RPC 1.5(b) and RPC 3.3. Respondent Kang is guilty of having violated RPC 1.5(b).

The only issue left for determination is the proper quantum of discipline for each respondent.

Conduct in violation of RPC 1.5(b), even when accompanied by other, non-serious ethics offenses, results in an admonition. See, e.g., In the Matter of Gerald M. Saluti, DRB 11-358 (January 20, 2012) (attorney who had not previously represented the client failed to provide the client with a writing setting forth the basis or rate of the fee; prior admonition); In the

Matter of Eric S. Pennington, DRB 10-116 (August 3, 2010) (attorney did not timely provide the client with a writing setting forth the basis or rate of the fee); In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the rate or basis of his fee and, in another client matter, failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, the attorney failed to furnish the client with a writing that set forth the basis or rate of his fee; the attorney also lacked diligence in the matter); In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide the client with a writing setting forth the basis or rate of his fee); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction and failed to state in writing the basis of his fee, resulting in confusion about whether a \$400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

Lack of candor to a tribunal, either orally or in a sworn writing, has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Lawrence J.

McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand for municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that

representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Shafir, 92 N.J. 138 (1983) (an assistant prosecutor who forged his supervisor's name on internal plea disposition forms and misrepresented information to another assistant prosecutor to consummate a plea agreement received a reprimand); In re Trustan, 202 N.J. 4 (2010) (three-month suspension imposed on attorney who, among other things, submitted to the court a client's case information statement falsely asserting that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, the attorney was suspended for three months for false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked that the municipal prosecutor request a bail increase for the person charged with assaulting him); In re Coffee, 174 N.J. 292 (2002) (motion for reciprocal discipline; attorney who received a one-month suspension in Arizona was suspended for three months for submitting a false affidavit of financial information in his own divorce case and then misrepresenting at a hearing under oath that he had no assets other than those identified in the affidavit); In re Stuart, 192 N.J. 441 (2007) (three-month

suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); and In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, he obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared; the attorney was suspended for six months).

What is the appropriate degree of discipline for these respondents? The record does not disclose how many times they failed to provide writings setting forth the basis or rate of their fees, but, as the above cases demonstrated, admonitions were imposed for one instance of violating RPC 1.5(b). In addition, however, both respondents displayed dishonest conduct. It is true that their actions were controlled by an unreasonable and threatening employer. Nevertheless, nothing less than a reprimand would be adequate to address their misrepresentations. We, therefore, determine that each respondent should receive a reprimand.

We also determine to require each respondent to submit proof to the Office of Attorney Ethics (OAE) of successful completion of six hours of professional responsibility courses, to be taken within a two-year period, and that they both practice under the supervision of an OAE-approved proctor for a period of two years.

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  
Louis Pashman, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Dong Sung Kim  
Docket No. DRB 12-188

In the Matter of Na-Kyung Kang  
Docket No. DRB 12-189

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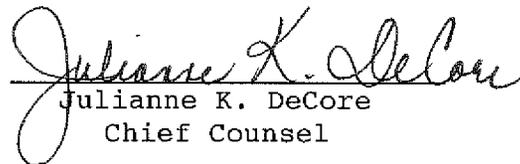
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Argued: September 20, 2012

Decided: November 30, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

  
Julianne K. DeCore  
Chief Counsel