SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-037

IN THE MATTER OF

E. LORRAINE HARRIS

AN ATTORNEY AT LAW

Decision

Argued: March 18, 1999 and April 15, 1999

Decided: December 6, 1999

Lorraine A. DiCintio appeared on behalf of the District IV Ethics Committee.

Angelo J. Falciani appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). At the beginning of the March 18, 1999 hearing, respondent submitted a motion to supplement the record to include a certification of her

former secretary, Myrtle Shultz. We determined to remand the matter to the DEC solely for the purpose of allowing the presenter to take Shultz' deposition. We retained jurisdiction. On April 15, 1999, we granted respondent's motion to expand the record.

* * *

Respondent was admitted to the New Jersey bar in 1994. In a default matter, we determined on August 18, 1999 to reprimand respondent for violations of RPC 1.5(b) (failure to provide in writing the basis or rate of a fee in one case) and RPC 1.5(c) (failure to provide a written contingent fee agreement to the same client in a second case). As of the drafting of this decision, the Court had not yet issued an order in the matter.

On September 28, 1999, the Court temporarily suspended respondent for failure to provide client and financial records to the Office of Attorney Ethics ("OAE") in connection with the OAE's investigation of a grievance. By order dated October 26, 1999, respondent was restored to practice under the supervision of a proctor. The order also required that all disbursements from respondent's attorney trust and business accounts be co-signed by an attorney approved by the OAE.

* * *

This matter relates to respondent's legal fees for her representation of Adrian Russell, Jr. in connection with a criminal charge in Salem County and several motor vehicle citations

in Pittsgrove Township. The complaint charged that respondent violated RPC 1.5(a) (unreasonable and excessive fee), RPC 1.5(b) (failure to provide in writing the basis or rate of a fee) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On April 6, 1995, respondent, Russell and Russell's mother, Ethel Cranmer, signed a letter captioned "State of New Jersey v. Brent Russell Retainer and payment arrangement for Criminal case." According to the letter, a $1,000 retainer was payable to respondent immediately and "[a]ny further arrangements for representation will be made at an agreed upon fee." There was no indication whether the fee would be a flat fee or based on an hourly rate. The $1,000 retainer was paid to respondent on April 6, 1995. An additional $500 was paid on April 17, 1995.

By letter dated June 7, 1995, respondent advised Russell that he had been indicted in the criminal case. In her letter, respondent also stated the following:

> Please remit to my office the sum of $1,000.00 toward the balance due for State v. Russell, Pittsgrove and State v. Russell, Salem County. There will remain a balance of $6,000 upon receipt of the $1,000.00.

Based on that letter, Russell and Cranmer understood that respondent was charging a flat fee of $7,000 for the criminal matter. According to Russell and Cranmer, respondent had previously advised them that she would charge a flat fee of $1,500 for her representation in the motor vehicle matters. Russell and Cranmer testified that respondent never told them that she would also bill Russell for costs.

Respondent did not dispute that she had agreed to represent Russell for a flat fee of $7,000 in the criminal case and a flat fee of $1,500 in the motor vehicle matters. Respondent did not testify as to whether she had told Russell that she would bill him for costs.

Between April and December 1995, Russell paid respondent a total of $5,900 for all of the matters.[1] In addition, he sent her $60 for a motor vehicle "administrative surcharge"and $50 for a "restoration fee." According to Russell, respondent wanted Russell's driver's license restored because it would make him "look better" in the criminal case. He believed that respondent's work in getting the license restored was subsumed within the original agreement. According to respondent, however, her work on that issue was not part of the original agreement. There was no testimony elicited as to what fee respondent believed she was entitled to be paid for that work.

On or about December 12, 1995, Russell terminated respondent's services and retained new counsel. According to Russell, he was dissatisfied with respondent for two reasons: (1) she had initially assured him that he would not receive a custodial sentence and then later retracted that statement and (2) she seemed confused about his case and would forget its developments.

Respondent blamed Cranmer for the termination of her representation. She testified

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[1] There is some confusion about the total amount Russell paid to respondent. In his request for fee arbitration, Russell indicated that he paid $5,700. In her bill, respondent credited Russell with $4,700 in payments. The fee arbitration determination stated that Russell paid $5,900. The DEC found that he paid $6,400. The complaint, answer, testimony and exhibits support a finding that Russell paid $5,900 to respondent.

that Cranmer continually interfered in the case and created friction between her and Russell.

On December 18, 1995, respondent sent a letter to Russell confirming "our conversation of last week that my services in this case are terminated." She further stated that she had billed him "at the hourly rate which we agreed upon at the outset," with a "minimum charge of 2.5 hours for appearances away from my office" and for costs. Respondent indicated that a bill was enclosed with the letter.

Although Cranmer believed that a bill had, in fact, been enclosed with the letter, neither she nor Russell retained a copy of the bill. However, Cranmer believed that it was identical to the March 26,1996 invoice that led to the ethics grievance.

Respondent produced an undated four-page copy of an invoice that she allegedly sent with the letter. The invoice indicated an hourly rate of $150, except for court appearances, which were billed at $175 per hour. The bill totaled $20,310. After a credit of $4,700 for payments made, the amount due was $15,610. For some unexplained reason, respondent added the $7,000 and $1,500 flat fees to the hourly charges; Russell was, thus, billed for both the flat and the hourly fees.

On or about March 26, 1996, respondent sent another bill to Russell. The March 1996 bill is identical to the undated bill, except for an additional cover page that appears to summarize the remaining four pages.[2]

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[2] The March 1996 bill was the focus of the ethics hearing. Respondent did not produce the undated bill until late in the hearing. There was no testimony about the fact that the undated bill was identical to the March 1996 bill, except for the additional page.

Respondent testified that she never intended to charge Russell more than $8,500 for the criminal and motor vehicle matters. She did not explain her position regarding payment for her time in connection with the restoration of Russell's license, other than say that the representation was not included in the other matters.

According to respondent, the bill was generated because Cranmer insisted on receiving an invoice with respondent's time spent on the matters. According to respondent, the bill was created in haste the evening of December 12, 1995 because Cranmer wanted to personally pick it up the following day.[3] Respondent testified that Russell and Cranmer knew that she only wanted to be paid the remainder of her flat fees and that the bill was merely intended to memorialize the time spent on the cases. Respondent admitted that she never put that understanding in writing.

According to respondent, the March 1996 bill was sent by Shultz in error. Respondent also blamed Schultz for "mistakes" in the bill. She explained that the charge for 24.7 hours of time on August 1, 1995 was an error and that the 17.9 hours shown for a court appearance on that date was actually the total time for four court appearances.

Shultz did not testify. At the end of the hearing, respondent requested that the hearing be adjourned for five days so that she could attempt to find Shultz, who had moved out of

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[3] There was no explanation as to why another bill was sent with the December 18, 1995 letter if Cranmer had already picked up a copy of the bill on December 13, 1995.

state. The DEC denied that request.[4]

Cranmer, in turn, denied that she had requested an accounting of the time respondent had spent on Russell's cases. She also denied having received an invoice from respondent on December 13, 1995 or being told by respondent that she only expected to be paid the remainder owed on her flat fees.

For his part, Russell testified that Cranmer had asked for an accounting of respondent's time. He denied, however, being advised by respondent that she only wanted to be paid the remainder of her flat fee. He testified that, when he had terminated respondent's representation, she had merely told him that she would send him a bill.

As set forth above, respondent filed a motion with us to supplement the record to add Shultz's certification. We adjourned the hearing so that the DEC presenter could take Shultz' deposition. Shultz testified that, as respondent's secretary, she did all the billing for respondent, kept track of the time respondent spent on cases and transferred the work done in each case, dates and times from respondent's notes to a computer billing program. Shultz corroborated respondent's testimony that a bill based on an hourly rate had been prepared because of Cranmer's demand for an accounting of respondent's time. Shultz allowed for the possibility of some mistakes on the bill. She explained that she had prepared it in haste,

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[4] The DEC denied respondent's adjournment request because respondent had been served with the complaint more than one year prior to the hearing and the hearing had been adjourned twice at respondent's request. The basis for respondent's second adjournment request was her alleged need to undergo "testing at a hospital." The DEC granted the request on the condition that respondent provide documentation of the appointment. Respondent, however, never did so.

prompted by Cranmer's demand that it be ready for pick-up the next day. According to Shultz, respondent was not in the office at the time. Shultz also testified that both Cranmer and Russell understood that respondent was trying to collect only the balance of the flat fee. Shultz added that both she and respondent had explained the contents of the bill to both Cranmer and Russell, in detail. Shultz was unable to explain why another bill was sent to Cranmer in March 1996.

* * *

The DEC found that respondent had violated RPC 1.5(a) (excessive and unreasonable fee), RPC 1.5(b) (failure to provide in writing the basis or rate of a fee) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The DEC found that much of respondent's testimony was not credible.

The DEC recommended that respondent receive a reprimand and that she practice under the supervision of a proctor for an unspecified period of time.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

With respect to the charge that respondent failed to provide in writing the basis or rate of her fee, there is no question that the April 6, 1995 letter did not comply with the requirements of the rule. The letter stated that an agreement on the fees would be made at a future date. The only other writing was the June 7, 1995 letter, which merely advised Russell of the balance owed for the representations. Although the parties understood that the fees were $7,000 and $1,500, there were disputes as to whether costs were included in the fees and whether the flat fees covered respondent's time in connection with the license restoration. Therefore, it is clear that respondent did not comply with the provisions of RPC 1.5(b).

However, we are unable to agree with the DEC that the record clearly and convincingly demonstrates that respondent overreached Russell by inflating her bill for services rendered, in violation of RPC 1.5(b) and RPC 8.4(c). Respondent testified that Cranmer had demanded an accounting of her time and that the bill had been prepared in response to that demand. Respondent was adamant that the hourly billing had been put on the bill simply to demonstrate to Cranmer that she had spent considerable time on Russell's cases and to prove that the flat fee was much less than would have been owed on an hourly basis. Finally, respondent testified that Cranmer and Russell knew that she was not attempting to collect the fee shown on the hourly bill, only the remainder of her flat fee. Respondent's testimony on these definitive issues was supported by that of Shultz, whom we found credible. Shultz was forthright in distinguishing the facts that she remembered from

those of which she did not have a clear recollection. She also candidly differentiated between the matters of which she had personal knowledge and those she did not. Furthermore, Shultz worked for respondent for only two years. Until the Board hearing in this matter, there had been no communication between Shultz and respondent since 1996, when Shultz moved to Missouri. According to respondent, she finally located Shultz through canvassing Shultz's former neighbors. We, therefore, found no motivation for Shultz to have testified falsely.

In contrast, it is evident that Cranmer and Russell harbored antagonistic feelings toward respondent. Furthermore, although Cranmer was adamant that she never requested an accounting of respondent's time on her son's cases, Russell testified that she had.

We found, thus, no clear and convincing evidence that respondent overreached Russell by inflating her bill for services rendered, in violation of RPC 1.5(a) and RPC 8.4(c).

With respect to the DEC's recommendation that respondent be required to practice under the supervision of a proctor, the Court has already imposed such a condition in connection with a recent ethics matter involving respondent. In re Harris, 162 N.J. 42 (1999).

For respondent's failure to provide her client a writing setting forth the basis or rate of her fee, a four-member majority of the Board determined to impose an admonition. See In the Matter of George T. Daggett, Docket No. DRB 98-441 (February 23, 1999) (admonition for failure to provide client with a writing setting for the basis or rate of

attorney's fee); In the Matter of Seymour Wasserstrum, Docket No. DRB 98-173 (July 28, 1998) (admonition for failure to provide client with a written contingent fee agreement); In the Matter of Anthony F. Carracino, Jr., Docket No. DRB 97-135 (July 25, 1997) (admonition for failure to provide client with a written retainer agreement in a family action). Two members of the Board dissented, finding respondent guilty of all of the violations charged in the complaint and believing that she be suspended for three months. Three members did not participate.

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

Dated: 12/6/99

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of E. Lorraine Harris
Docket No. DRB 99-037

Argued: March 18, 1999 and April 15, 1999

Decided: December 6, 1999

Disposition: Admonition

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling				x			
Cole				x			
Boylan							x
Brody		x					
Lolla				x			
Maudsley							x
Peterson				x			
Schwartz		x					
Thompson	(on a temporary leave of absence)						x
Total:		2		4			3

By Robyn M. Hill 11/18/2000
Robyn M. Hill
Chief Counsel