

# DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ., CHAIR  
EDNA Y. BAUGH, ESQ., VICE-CHAIR  
PETER J. BOYER, ESQ.  
BRUCE W. CLARK, ESQ.  
HON. MAURICE J. GALLIPIOLI  
THOMAS J. HGBERMAN  
EILEEN RIVERA  
ANNE C. SINGER, ESQ.  
ROBERT C. ZMIRICH



RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 292-1011

ELLEN A. BRODSKY  
CHIEF COUNSEL

PAULA T. GRANUZZO  
DEPUTY CHIEF COUNSEL

MELISSA URBAN  
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS

LILLIAN LEWIN

BARRY R. PETERSEN, JR.

COLIN T. TAMS

KATHRYN ANNE WINTERLE  
ASSISTANT COUNSEL

June 21, 2016

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: In the Matter of José M. Cameron  
Docket No. DRB 16-097  
District Docket No. VIII-2014-0006E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems warranted) filed by the District VIII Ethics Committee ("DEC"), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion.

In the Board's view, a reprimand is the appropriate measure of discipline for respondent's violations of RPC 1.5(a) (unreasonable fee), based on his non-compliance with R. 5:3-5(b); RPC 1.16(d) (failure to return unearned portion of advance payment); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Specifically, on March 14, 2013, grievant Maria Antunez De Salinas retained respondent to assist her in obtaining a divorce from her husband. At the initial consultation, both parties executed an Agreement to Provide Legal Services (retainer

agreement), which violated a number of provisions in R. 5:3-5(a), as described below.

A Statement of Client Rights and Responsibilities in Civil Family Actions was not attached to the agreement. R. 5:3-5(a). The agreement also failed to set forth a description of legal services that were not encompassed by its terms. R. 5:3-5(a)(2).

The agreement did not clearly identify the name of the attorney having primary responsibility for the matter or any other attorney who may provide legal services to De Salinas. R. 5:3-5(a)(6). Finally, there were no provisions in the retainer agreement addressing the effect of a counsel fee award, the right of respondent to withdraw from representation, or the availability of complementary dispute resolution. R. 5:3-5(a)(8)-(a)(10).

The retainer agreement required De Salinas to pay an initial retainer in the amount of \$2,500, which would be considered the "minimum fee," "regardless of the amount of time actually spent" on the case. De Salinas also was responsible for paying "[a]dditional costs and fees."

Further, the retainer agreement provided that respondent would not "begin any work," including filing pleadings and appearing in court, until the retainer was "paid in full." If De Salinas did not pay the full retainer (or "minimum fee"), she would lose any partial payment made. There was no provision in the retainer agreement for the return of any unearned portion of the "minimum fee" or retainer.

On February 18, 2014, De Salinas terminated respondent's representation and requested a return of the retainer she had paid. Presumably, respondent did not comply with her request, as she later initiated a fee arbitration proceeding. On November 28, 2014, a fee arbitration panel directed respondent to return the full \$2,500 retainer within thirty days. Respondent did not comply until late January 2015, after the DEC had commenced its ethics investigation.

Although the parties stipulated that the retainer agreement's non-compliance with RPC 5:3-5(a) violated RPC 1.5(a), there is no RPC that captures an attorney's failure to abide by the requirements of that subparagraph of the Court Rule. In re Franco, 212 N.J. 470 (2013); In the Matters of

Randi Kern Franco and Robert Achille Franco, DRB 12-053, 12-054, 12-055, and 12-056 (August 7, 2012) (slip op. at 70-71). Thus, the Board rejected the stipulated violation of RPC 1.5(a) on this ground.

RPC 1.5(a) does, however, apply to an attorney who, in a matrimonial matter, enters into a fee agreement with a client that requires the payment of a non-refundable fee, contrary to R. 5:3-5(b). In re Gourvitz, 200 N.J. 261 (2009) (citing Fischer v. Fischer, 375 N.J. Super. 278, 288 (App. Div. 2005), in which the Appellate Division observed that a non-refundable retainer fee provision in a matrimonial hourly fee agreement is both a violation of R. 5:3-5(b) "and unethical". In the Matter of Elliot Gourvitz, DRB 08-326 (May 12, 2009) (slip op. at 30). Thus, respondent violated RPC 1.5(a) by entering into fee agreement with De Salinas requiring the payment of a non-refundable fee.

RPC 1.16(d) requires a lawyer to refund "any advance payment of a fee that has not been earned or incurred." Respondent stipulated that he did not return the unearned retainer to his client and that his conduct in that regard violated RPC 1.16(d). The Board so found.

Although the parties stipulated to respondent's violation of RPC 1.16(d), based also on the absence of a provision in the retainer agreement requiring the return of "any unearned portion of the 'minimum fee' or retainer," neither R. 5:3-5 nor RPC 1.16 requires such a provision to appear in a retainer agreement. Therefore, the stipulated violation could not be sustained, on this basis.

Finally, in addition to RPC 1.16(d), respondent's failure to refund the unearned retainer constituted a violation of RPC 8.4(d), as a matter of law. In re Harris, 182 N.J. 594, 605 (2005) (finding that an attorney who fails to abide by a fee arbitration award violates RPC 3.4(c) and RPC 8.4(d)).

In aggravation, the parties cited respondent's 2015 reprimand. Although not specifically recited, respondent's history also includes an admonition in 2007. Mitigation included his cooperation, admission of wrongdoing, poor health, and financial condition.

Ordinarily, a violation of RPC 1.5(a) requires the imposition of an admonition. See, e.g., In re Weston-Rivera, 194 N.J. (2008) (admonition for attorney who took a contingent fee greater than that to which she was entitled; the excess fee occurred as a result of her failure to calculate the fee in compliance with R. 1:21-7(d); attorney also violated RPC 1.15(a) and RPC 1.15(d)). If the attorney commits additional infractions, including RPC 8.4(d), a reprimand may be imposed. See, e.g., In re Gourvitz, supra, 200 N.J. 261 (attorney failed to refund a client's fee in a timely fashion and charged two other clients a non-refundable retainer in their matrimonial actions). Reprimands also have been imposed in cases involving a violation of RPC 8.4(d) that have included other serious misconduct. See, e.g. In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)); In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; his ethics history included two private reprimands and an admonition; significant mitigating factors present; and In re Geller, 177 N.J. 505 (2003) (attorney failed to comply with court orders (at times defiantly) and the special ethics master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, the Board considered that the attorney's conduct had occurred in the course of his own child custody case).

Respondent's misconduct is not nearly as serious as that of the attorneys in Cerza, Gellene, and Geller. Moreover, although

June 21, 2016

Page 5 of 5

respondent has an ethics history, consisting of an admonition and a reprimand, the attorney in Gellene had a history of what amounted to three admonitions; yet, he received a reprimand for misconduct more serious than respondent's. Thus, the Board determined a reprimand to be the appropriate discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 10, 2016.
2. Stipulation of discipline by consent, dated March 3, 2016.
3. Affidavit of consent, dated February 25, 2016.
4. Ethics history, dated June 21, 2016.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EAB/sl  
encls.

c: (w/o encls.)

Bonnie C. Frost, Chair, Disciplinary Review Board  
Charles Centinaro, Director, Office of Attorney Ethics  
Willard C. Shih, Chair, District VIII Ethics Committee  
John J. Zefutie, Jr., District VIII Investigator  
Barry J. Muller, Secretary, District VIII Ethics Committee  
Isabel McGinty, Statewide Ethics Coordinator  
Office of Attorney Ethics  
José M. Cameron, Respondent