Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-286
District Docket No. I-2015-0024E

In The Matter Of	:
Joel L. Schwartz	:
Attorney At Law	:

Decision

Argued: October 18, 2018

Decided: February 15, 2019

Lisa M. Radell appeared on behalf of the District I Ethics Committee.

John A. Zohlman, III 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 a reprimand filed by the District I Ethics Committee (DEC). A seven-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to communicate with the client), RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to set forth the basis or rate of the legal

fee in writing), RPC 1.5(c) (improper contingent fee), and RPC 1.16(d) (failure to protect the client's interests upon termination of the representation). We determine to impose a reprimand.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1995. On January 10, 2013, respondent received a censure. In a personal injury matter, he violated RPC 1.5(c) for failing to provide the client with a written statement of the outcome of the matter showing the remittance to the client and the method of its determination, RPC 1.7 (conflict of interest), and RPC 1.8(a) (improper business transaction with a client). In re Schwartz, 216 N.J. 167 (2013).

We now turn to the facts in this matter. From February 2009 through March 2014, respondent represented the grievant, Joseph Bowden (Bowden), in a dispute with his brother, Firth Bowden. Bowden claimed that Firth abused a power of attorney (POA) that he held for their mother, Betty. After Betty passed away, Bowden further challenged Firth's actions as executor of her estate. Respondent's overall representation of Bowden was handled under four separate fee agreements, as discussed below.

The initial representation was memorialized by a February 3, 2009 fee agreement, which both parties signed. The agreement provided for respondent to be paid on an hourly basis for his legal services. According to respondent,

he received an initial $4,000 retainer and believed that he billed Bowden regularly for his time.

In 2009, respondent represented Bowden in respect of Betty's capacity to make her own decisions. Bowden alleged that Firth was taking advantage of his authority granted under Betty's POA, and that he had improperly changed her will so that he stood to receive two-thirds of her estate, with only one-third to Bowden. In the prior version of the will, each of them was to receive fifty percent of the estate.

In apparent response, Bowden had taken Betty to a real estate attorney to execute a new deed to her Brigantine property. He did so in an attempt to make sure that he and Firth shared equally in that property, and to defeat the provision in Betty's new will that favored Firth.

During this first representation, Firth's attorney, Robert Campbell, Esq., filed a complaint in the Superior Court of New Jersey, Atlantic County, Chancery Division, seeking a reformation of Bowden's new deed. Bowden filed a counterclaim seeking to invalidate the new will, and to recoup funds that Firth allegedly had taken from their mother without authority to do so. Christopher J. Stanchina, Esq. was named guardian ad litem for Betty, and was represented by Benjamin Podolnick, Esq. The matter went to mediation, and, on March 10, 2010, the parties reached an agreement, resulting in a consent

order, signed by the Honorable William C. Todd, P.J.Ch. That order reformed the deed so that Bowden and Firth took the Brigantine property as tenants in common, required Firth to pay Bowden a lump sum of $22,000, and invalidated the lopsided will in favor of an equal division, as contemplated by Betty's prior will. Thereafter, Podolnick assumed responsibility for Betty's finances.

According to respondent, Bowden had been satisfied with those results, and had paid for respondent's legal services without reservation or complaint. Bowden confirmed that he had been very satisfied with the first representation, and that he thought respondent's fee had been fair.

In respect of the second representation, Betty owned a Colonial Bank certificate of deposit (CD) worth approximately $250,000. Respondent, Stanchina, and Podolnick believed that Betty's CD was to be distributed equally between Bowden and Firth upon her death. After Betty's death on March 23, 2011, Bowden retained Hal Kokes, Esq. to represent him in the estate litigation, which was venued in Salem County.[1]

[1] The parties alternately refer to this matter as the "Cumberland" and "Cumberland Salem" Matter.

Respondent testified that:

> The P-O-D [payment on death] destination [sic], it turns out, was something that Firth had done when he originally purchased the CD. The only documents that were ever provided in the context of the accounting, and even when documents were requested of Mr. Campbell, were the renewal documents, none of which made any suggestion that there was a P-O-D designation.
>
> [2T29] [2]

Respondent and the other attorneys were unaware that Firth had placed a payment on death (POD) designation on the CD, giving himself the entire amount upon Betty's death. Rather, the POD designation was discovered only when Kokes obtained a copy of the original CD, during the estate litigation.

According to respondent, in the Salem County matter, the Honorable Robert G. Malestein, J.S.C., had been reticent to look beyond the four corners of the parties' earlier consent order to address questions raised about the POD designation. Therefore, Bowden retained respondent to assist Kokes in establishing Bowden's understanding of the CD ownership when he entered the consent order.

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[2] 1T refers to the transcript of the June 27, 2017 DEC hearing.
2T refers to the transcript of the June 28, 2017 DEC hearing.
3T refers to the transcript of the April 18, 2018 DEC hearing.
4T refers to the transcript of the April 19, 2018 DEC hearing.

On November 1, 2012, respondent and Bowden signed a second fee agreement, under which Bowden was to pay respondent $1,500 to appear in Salem County before Judge Malestein, and another $2,500 to file a motion in Atlantic County before Judge Todd, seeking to vacate the parties' earlier consent order. Similar to the first fee agreement, this second fee agreement provided for a "retainer" and further provided that, should a future retainer be required, the funds would be placed in trust and would "be applied against actual aggregate time charges and costs as they accrue." Respondent conceded that he did not keep time slips for the matter or send Bowden bills in respect of the second representation, despite language in the fee agreement requiring him to do so.

Respondent appeared in Salem County and filed the motion in Atlantic County. Judge Todd voided the consent order and stated on the record that he was reopening the entire case, thereby permitting Bowden to file an amended complaint to include new allegations against his brother.

According to respondent, Bowden had been very satisfied with the second representation, and never requested an accounting of the fee. Bowden confirmed that he had been "ecstatic" with the results respondent achieved in the second representation. Moreover, he had read the second agreement before signing it, and understood it to be a flat fee arrangement. He thought

respondent's fees had been fair, and had not expected an itemization of fees by the hour, as he had for the first representation.

Respondent testified that Bowden had waived several claims against Firth by entering into the consent order, including Firth's improper purchase of a car, his reimbursement for driving Betty to doctor appointments, and potential claims surrounding the sale of a second house that Betty had owned. Those concessions had taken place before Bowden learned that Firth had placed a POD designation on the CD. Once Judge Todd reopened the entire case, respondent stated, "everything that Firth had ever seemingly done wrong seemed to be fair game."

Bowden retained respondent for a third representation, to file an amended complaint. Their January 29, 2013 fee agreement, however, contained conflicting terms, similar to those in the second agreement. On the one hand, paragraphs three and five called for an attorney rate of $200 per hour, to be billed monthly. On the other hand, paragraph six called for a $3,500 monthly fee for the duration of the case. Respondent took responsibility for having drafted the agreement, but recalled that his paralegal, Carol Nelson, may have prepared it at his direction and signed it for him.

Respondent conceded the inconsistencies in the agreement, but claimed that Bowden knew that the actual arrangement was for a monthly fee of $3,500

until completion of the case. Respondent testified that Bowden had told him that he had $35,000 for legal fees. In an exchange with the presenter, respondent explained:

> Q. When you first met with Mr. Bowden, wasn't there a discussion about him paying you $3,500 per month and you telling him that there was an estimate of ten months' worth of time that would be required for his case?
>
> A. The way you're suggesting, it's backwards. And I had had experience with Judge Todd and chancery matters, and I had had cases in which the billing had been 40 or $50,000. And I had indicated to Mr. Bowden that I would try to keep it below that figure. **He had indicated that he could afford, you know** -- that I had indicated to him that Judge Todd had a history of moving his cases rather quickly, and I estimated that the case would likely be resolved with Judge Todd in under a year. And so when we designed -- came up with the fixed fee, we came up with the $3,500 a month, and if the case resolved in two months via settlement, stipulation of settlement, whatnot, he would have only paid $7,000. It was never a contemplation that I was charging him $35,000. (emphasis added)
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> [3T12 to 23.]

Bowden understood that the fee was $3,500 per month under the third agreement, whether respondent's services in any given month would have justified a higher or lower amount, based on the number of hours spent on Bowden's case. Bowden also understood that, if the matter took longer than ten

months to conclude, he would continue to be charged $3,500 per month until it was concluded.

On February 15, 2013, respondent filed an eighteen-count, 236-paragraph amended complaint that included allegations of breach of contract; undue influence; misappropriation and theft; unjust enrichment; fraud in the inducement; fraud in the execution; forgery in respect of an insurance policy; emotional distress associated with Betty's passing, disposal of the body, personal effects, and cremation; professional negligence by the funeral home; and professional malpractice by Firth, a pharmacist, for having prescribed and administered medication that allegedly hastened her passing.

Respondent conceded that the complaint contained counts in practice areas in which he had limited expertise, including malpractice insurance claims, the handling of human remains by funeral homes, and allegations of the infliction of emotional distress.

Respondent further conceded that, although he had not prepared contemporaneous time records for the third representation, he reconstructed his time in a forensic accounting of his legal services. According to that reconstruction, between January 29, 2013 and January 17, 2014, respondent spent 132.1 hours on the case, representing $26,140 at his $200 hourly rate.

When questioned why respondent had not spent the first nine months of the third representation "on offense," obtaining evidence and documentation to prove Bowden's claims, he explained that Firth's malpractice carrier, the funeral home, and Firth's personal attorney filed answers, after which a case management conference took place. All three of the defense attorneys requested time to file dispositive motions. The parties reached an agreement to defer further discovery until after their dispositive motions were resolved. Respondent then spent considerable time filing responsive pleadings and briefs in defense of Bowden's claims.

In the interim, Judge Todd retired, and the case was reassigned to the Honorable Raymond A. Batten, P.J.Ch. According to respondent, Judge Batten viewed Judge Todd's ruling reopening the case differently than had respondent. At oral argument before Judge Batten, respondent asserted that Judge Todd had reopened the entire case, such that Bowden could file an amended complaint addressing all issues in the case, including those he had waived. Nevertheless, Judge Batten determined that Judge Todd's order pertained strictly to issues involving the Colonial Bank CD. Therefore, Judge Batten entered an October 7, 2013 order dismissing fourteen counts of the amended complaint unrelated to the CD, which respondent claimed was unexpected and which he had not figured into his initial cost estimate for the representation.

According to respondent, although Bowden ran out of funds in October or November 2013, respondent continued to work on his behalf. The two met thereafter to discuss the matter, which prompted the fourth fee agreement, dated January 17, 2014. Under this new arrangement, respondent's legal fees would continue to accrue as they had before, but at the reduced rate of $1,500 per month, inclusive of all fees and costs of suit. Furthermore, those fees would be payable only if respondent "recovered any monies" on Bowden's behalf.

The complaint alleged that respondent's fourth fee agreement "does not contain any of the requirements of a contingent fee agreement." Although respondent, in his answer, admitted that the agreement did not comply with any of the requirements of a contingent fee agreement, he asserted that it was a "pseudo contingent" fee agreement. When respondent's counsel questioned Bowden about the agreement, the following exchange took place:

> Q. So the agreement that you entered into there is P-10 for identification. You understood, it's been called somewhat of a contingency agreement. Do you understand what a contingency agreement is?
>
> A. Yes.
>
> Q. What does that mean to you?
>
> A. That he would continue to be my attorney and he would charge me X amount of dollars per month, and if we won -- also he would pick up the cost for these other expenses, and then if we won, I would pay him.

Q. Okay. Were you happy?

A. I was jumping up and down. I got -- I got to keep my attorney and it didn't cost me anything.

Q. And you understood that if he was unsuccessful --

A. It wouldn't cost me anything.

Q. It wouldn't cost you anything.

A. And if I won, I would be able to write him a check.

[4T115-14 to 4T116-7.]

Respondent testified that he had never sought a percentage of the recovery in the "usual" contingency scenario. Rather, he sought to accommodate Bowden, who agreed to this "pseudo contingent" fee arrangement.

Respondent claimed to have continued to work on Bowden's matter into mid-March 2014, when he telephoned Bowden about his own severe financial difficulties. Many of respondent's clients were not paying their bills, and his cash flow was depleted to the point that he would soon be unable to pay his staff. Respondent testified about that telephone call:

> I thought it was the respectful thing to do, to -- you know, you have to understand, I mean, having represented Joe from '09 in the first litigation and then being with Joe as often as Joe came to the office over the course of the year prior, I tend to look at my clients almost like family, and so I never want to hurt them, I don't want to keep secrets from them that may affect them.

> And so I was honest with Joe and said, Joe, I'm struggling. I don't know how I can keep going. You know, I'm divorced, I've got two kids, I've got financial obligations in that direction, and I – I felt, you know, obligations to the people who worked for me, that if -- either if I wasn't able to make it, it would affect their families. I really internalized everyone's needs and I just wasn't sure how I was gonna make it.
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> [1T233-12 to 1T234-3.]

Respondent told Bowden that he intended to close his law office at the end of that month, March 2014. Bowden then asked whether respondent knew a lawyer who could help Bowden going forward, and respondent replied that he wanted to help Bowden find a new lawyer. However, respondent recollected having been unsure that he could convince a lawyer to take such a client, in light of Bowden's apparent inability to pay legal fees.

Respondent testified that, even though he had resolved to close his office, he intended to continue representing Bowden until his case was concluded. Respondent was adamant that he neither terminated the representation nor stopped working on the case.

Unbeknownst to respondent, Bowden did have access to additional funds, and within a week of their March 2014 meeting, Bowden retained Jon D. Batastini, Esq. to represent him.

On March 28, 2014, after discussing the transfer of the case with Batastini, respondent executed a substitution of attorney. Only after signing

the substitution did respondent consider the representation to be concluded. Respondent's final entry (3.5 hours) involved his June 16, 2014 court appearance with Batastini and Bowden, before Judge Batten.

Respondent testified that he had been surprised that Bowden found new counsel so swiftly, without "any money to pay me, but it would seem that he had money to pay another lawyer." Nevertheless, respondent claimed that he was relieved that Bowden found an attorney to "carry the ball across the line" for him.

Bowden testified that, after retaining new counsel, he realized that respondent had lacked diligence:

> Because in the end, the end outcome that when Mr. Batastini got the depositions and the records that I had asked for previously by at least close to a year,[3] John Batastini settled this case, closed this case within three, four months with the documentation that we got, and it would have closed earlier, quicker, if my brother hadn't decided to bring in his own medical [sic] and drug [sic] it out some more.
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> [4T141-17 to 24.]

[3] Bowden sought the medical records and deposition of a nursing home doctor named Tugman, whom he thought would testify that Betty had limited capacity when she executed certain documents at Firth's behest. Respondent did not consider this additional discovery to be necessary.

Respondent testified that, during the entire five-year representation, Bowden sent letters, called once or twice a week, and appeared at the office without an appointment once or twice a week, asking to meet with respondent. To the extent that he could, respondent accommodated those requests. Respondent testified that he informed Bowden of the events in his matter at all times.

Carol Nelson, respondent's paralegal at the time, also testified about communications with Bowden. Nelson, who worked for respondent for about four years and had twenty-five years' experience as a paralegal, indicated that Bowden had visited the office once or twice a week for all four years that she worked for respondent. Respondent would meet with Bowden whenever possible. Bowden also called the office regularly and she would update him about the status of his case.

In respect of the office closing, Nelson testified that she found a new job within a week of respondent's decision to close the office. She later learned from her sister-in-law, who remained as respondent's receptionist, that respondent had downsized to a new location. That move, combined with the reduced payroll expense resulting from Nelson's departure, permitted him to continue to operate his law office.

Bowden, too, testified that he was a regular visitor to respondent's office, appearing there about twice a week over the course of the representation. He had many meetings at respondent's office over the years, including at least six scheduled meetings with respondent. Because he was a regular visitor, there was no need to schedule frequent appointments. Moreover, if he had questions about his matter when respondent was unavailable, Nelson was able to answer them. He acknowledged that either respondent or Nelson always answered his questions about his case. Bowden noted that a special bin had been placed in the office, bearing his name, which was used when he dropped off or picked up documents.

The DEC found respondent guilty of having violated RPC 1.5(b), citing language in RPC 7.1(a)(4)(i) through (iv). RPC 7.1(a) prohibits attorneys from making false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement. The Rule provides, among other things, that a communication is false or misleading if it relates to legal fees other than (1) a statement of the fee for an initial consultation; (2) a statement of the fixed or contingent fee charged for a specific service, the description of which would not be misunderstood or be deceptive; (3) a statement of the range of fees for specific legal services, provided that certain additional information is disclosed such

that the statement would not be misunderstood or be deceptive; and (4) a statement of specified hourly rates, provided the statement makes clear that the total charge will vary according to the number of hours devoted to the matter, and in consideration of the varying hourly rates charged by different individuals assigned to the matter.

Inasmuch as respondent admitted that the third and fourth fee agreements contained conflicting terms – both hourly rate and flat fee language, they were "incomprehensible." The DEC found the third agreement particularly so. On the one hand, it called for legal services at a $200 per hour rate. On the other hand, Bowden was to pay $3,500 per month until the case concluded, without regard to the amount of work performed in any given month. Moreover, the agreement called for the preparation of monthly bills, but respondent failed to provide them.

The DEC also found a contingent fee violation under RPC 1.5(c), concluding that the agreement "plainly fails to include the information required by the Rule," specifically "the percentages that shall accrue to the lawyer."

The DEC dismissed the RPC 1.3 charge, concluding that respondent had not lacked diligence in the case. The hearing panel summarized the legal services that respondent performed in the third representation in some detail.

The hearing panel noted that, although respondent did not obtain some of the discovery that Bowden sought, he had provided substantial legal services over the course of the representation. Therefore, the DEC found a lack of clear and convincing evidence that respondent violated RPC 1.3.

As to RPC 1.4, the DEC cited the numerous communications with Bowden during the several years spanning the representation. Respondent, Nelson, and Bowden agreed that Bowden was present in respondent's office once or twice a week for years, always had his questions answered, and knew the status of his case at all times. The DEC, thus, dismissed the RPC 1.4 charge for lack of clear and convincing evidence.

The DEC also dismissed the RPC 1.5(a) charge that respondent's fee was unreasonable, focusing on the $3,500 per month, third fee agreement. Bowden agreed to pay respondent $3,500 per month, and, over nine months, paid $31,500 in fees, which Bowden thought was fair. It was only after Batastini achieved a swift settlement that Bowden questioned the value of respondent's services. The DEC concluded that, although Bowden may have hoped for a speedier result from respondent, "without Respondent's file and/or simultaneously-kept time sheets, it is difficult to determine whether the fees paid by [Bowden] were reasonable."

Likewise, the DEC dismissed the RPC 1.16(d) charge that respondent failed to take adequate steps to protect Bowden's claims upon termination of the representation. Respondent told Bowden in mid-March 2014 that he would "likely" close his office, and testified that he never stopped working for Bowden. The DEC dismissed this latter statement as not credible. Nevertheless, because Bowden found a new attorney who substituted into the case within ten days, the DEC concluded that there was a lack of clear and convincing evidence that respondent failed to protect Bowden's interests, and dismissed the RPC 1.16(d) charge.

Citing respondent's prior censure as indicative of "an indifference towards the Rules of Professional Conduct," the panel recommended a reprimand.

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

Respondent represented Bowden from 2009 through March 2014 under four separate fee agreements. Bowden expressed satisfaction with respondent's legal services and with the level of communication between them. Bowden filed his grievance only after retaining substitute counsel, who was then able to quickly resolve the matter. The record, however, is devoid of any evidence to

suggest that respondent was not diligent in his representation of Bowden. Indeed, it overwhelmingly supports the opposite conclusion.

RPC 1.3 requires a lawyer to act with diligence and promptness in representing a client. Bowden testified this was not the issue in this case. In fact, the DEC summarized the numerous legal services that respondent provided to Bowden. In the end, it was clear to the hearing panel, as it is to us, that respondent did not lack diligence. Thus, we dismiss that charge.

Likewise, it is evident from the record that respondent had open lines of communication with Bowden over the entire course of the representation. Respondent and Nelson testified that Bowden was a constant presence in the law office over the years. He visited once or twice a week and made frequent telephone calls about his matter. Bowden, too, was proud of his own "hands on" approach to the case, visiting the office often, and testifying that either respondent or Nelson always answered questions he had about the case. He even had a document bin in the office for his exclusive use. Because the record contains no evidence to suggest that respondent failed to keep his client reasonably informed about the case or to reply to his reasonable requests for information, we dismiss the RPC 1.4(b) charge.

We also dismiss the RPC 1.5(a) charge. The complaint alleged that respondent's fees were unreasonable because of internal inconsistencies within

some of the fee agreements and because respondent failed to provide Bowden with regular billing statements.

Respondent's reconstructed time sheets for the services provided pursuant to the third agreement (January through December 2013) show 132.1 attorney hours during the twelve months in question, yielding a total fee in the amount of $26,420, at the rate of $200 per hour cited in the fee agreement.

The difference between the amount Bowden paid ($31,500) and the hourly charges ($26,420) is $5,080. On its face, and in the absence of evidence, such as an analysis of the fee based on the various factors set forth in RPC 1.5(a), the $5,080 difference does not seem excessive.

However, we did consider the reasonableness of respondent's third fee, specifically, whether respondent charged Bowden a fee based on the amount he believed Bowden "could afford." Bowden told respondent that he had $35,000 for the litigation. Respondent charged Bowden $3,500 per month for ten months. These circumstances suggest that respondent may have found a simple way to exhaust all of Bowden's funds by dividing the $35,000 into ten monthly payments. Although the record might raise some concern in respect of this third fee, it does not clearly and convincingly support the conclusion that respondent's fee was unreasonable. He represented Bowden for five years, during which Bowden appeared at respondent's office on a weekly basis.

Indeed, Bowden was provided his own bin, labeled as such at respondent's office. The factors set out in RPC 1.5(a), such as the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, and the fee customarily charged in the locality for similar legal services, were not explored. Without a more detailed analysis, we cannot conclude that respondent's fee was unreasonable. Thus, we dismiss the RPC 1.5(a) charge.

The DEC correctly concluded that respondent violated RPC 1.5(b). That Rule provides, "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." The complaint alleged that RPC 1.5(b) "requires a writing so that the client is fully informed of the fee he will be charged." We agree that such is the goal of the Rule.

In all four instances, respondent provided Bowden with a writing that set forth the terms of the representation. However, as noted by the DEC, at least the second and third agreements were "incomprehensible," as they contained conflicting terms for the rate or basis of respondent's fee – both hourly and flat rate provisions. In further analysis of this RPC, the DEC considered RPC 7.1(a)(4). Subsections (ii) and (iii) require that the terms for fixed, flat rate, or contingent fees be in a manner that will not be "misunderstood or be

deceptive." Here, respondent's admittedly incomprehensible fee terms were easily misunderstood. In that context, we conclude that respondent violated RPC 1.5(b).

In respect of RPC 1.5(c), that Rule provides, in relevant part:

> A fee may be contingent on the outcome of the matter for which the service is rendered . . . A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

The DEC concluded that the fourth fee agreement, which had reduced the fee to $1,500 per month, failed to state the percentage of recovery that respondent would receive. Respondent referred to this agreement as a "pseudo" contingent fee arrangement, the contingency being whether he recovered money for Bowden. Yet, in his answer to the complaint, respondent admitted that the agreement did not contain any of the requirements of a contingent fee agreement.

RPC 1.5(c) must be read in conjunction with R. 1:21-7(a), which states,

> As used in this rule the term 'contingent fee arrangement' means an agreement for legal services of an attorney or attorneys, including any associated or forwarding counsel, under which compensation, contingent in whole or in part upon the successful

> accomplishment or disposition of the subject matter of the agreement, is to be in an amount which either is fixed or is to be determined under a formula.

We determine that respondent's fourth fee agreement was, indeed, "determined under a formula." If respondent obtained a monetary recovery, then his fee would be $1,500 per month for every month worked. Thus, respondent's admission in his answer notwithstanding, we dismiss the RPC 1.5(c) charge for lack of clear and convincing evidence that the fee agreement violated the Rules governing contingent fees.

Finally, respondent was charged with having failed to take appropriate steps to protect his client's claims upon termination of the representation. In that respect, respondent testified that he never terminated the representation, but, rather, he continued to work on the matter after the March 15, 2014 office-closing meeting with Bowden. The DEC specifically found respondent's assertion not credible.

Credibility issues aside, within a week of their meeting, Bowden had retained Batastini to take over the case. A few days later, respondent signed a substitution of attorney for Batastini and arranged for Bowden to retrieve his entire client file. Because Bowden so swiftly found substitute counsel, respondent's resolve to protect his client's interests upon the termination of the representation was never fully tested. No matter whether respondent or

Bowden terminated the representation, Bowden's claims were never actually jeopardized. On that basis, and for lack of clear and convincing evidence, we dismiss the RPC 1.16(d) charge.

In summary, in a single client matter, respondent is guilty of having violated RPC 1.5(b).

Conduct involving failure to prepare the written fee agreement required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney violated RPC 1.5(b) when he agreed to draft a will, living will and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; violations of RPC 1.3, RPC 1.4(b), RPC 5.5(a) (practicing law while ineligible), and RPC 8.1(b) (failure to cooperate with an ethics investigation) also found; in mitigation we considered that, the attorney cooperated by entering into a disciplinary stipulation, returned the entire fee, and had no disciplinary history); In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); violations of RPC 1.4(b) and RPC 1.2(a) (abide by the client's decisions regarding the representation) also found; mitigation included no

disciplinary history and character letters); and In the Matter of A. B. Steig a/k/a A. Brett Steig, DRB 13-127 (October 25, 2013) (the attorney failed to communicate, in writing, to the client in a landlord-tenant dispute, the basis or rate of the fee, a violation of RPC 1.5(b); prior admonition for unrelated misconduct did not amount to failure to learn from prior mistakes).

Here, in aggravation, respondent received a censure in 2013 for misconduct that included a violation of RPC 1.5(c) in a contingent fee matter. There, he failed to provide the client with a settlement statement showing the remittance to the client and the method of its determination. Based on this aggravating factor, and with an admonition as the baseline sanction for RPC 1.5(b) violations, we determine to impose a reprimand.

Member Singer was recused. Member Joseph did not participate.

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
Bonnie C. Frost, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joel Lee Schwartz
Docket No. DRB 18-286

Argued: October 18, 2018

Decided: February 15, 2019

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer		X	
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel