DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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March 5, 2019

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Charles H. Lee**
Docket No. DRB 18-374
District Docket No. XIV-2018-0196E

Dear Ms. Baker:

The Disciplinary Review Board reviewed the motion for discipline by consent (three-month suspension or such lesser discipline as the Board may deem appropriate) filed by the Office of Attorney Ethics (OAE), 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 three-month suspension is the appropriate measure of discipline for respondent's violations of RPC 1.5(a) (unreasonable fee), RPC 1.5(c) (improper contingent fee), RPC 1.7(a)(2) (conflict of interest, personal interest of the lawyer), RPC 1.8(a) (improper business transaction with the client), RPC 1.15(a) (commingling), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 5.5(a)(1) (practicing law while ineligible), RPC 7.5(c) (improper law firm name), RPC 7.5(d) (improper law partnership), RPC 8.1(b) (failure to cooperate with ethics authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In respect of the Board's concern over a potential knowing misappropriation violation, the OAE obtained a certification from respondent's former law partner, Barry Fredericks, Esq. Respondent and Fredericks were partners for about one year in a firm known as Fredericks & Lee, LLP (F&L). Fredericks explained that a $2,500 payment from respondent, which had raised concern to the Board, represented respondent's repayment to Fredericks of

a loan, rather than a distribution of partnership funds. In short, no evidence was adduced that respondent had knowingly misappropriated law firm funds.

In April 2014, respondent represented Hana Clark and Unji Jeong (the Clark and Jeong matter) in an employment action against United Dental Group, LLC (UDG). On April 23, 2014, the matter settled with UDG agreeing to pay $25,000, to be split two-thirds to Clark, and one-third to Jeong.

Respondent's contingent fee agreement provided for a one-third fee on any recovery, plus expenses or in the alternative, the client could hire respondent at $550 per hour. Respondent stipulated that the agreement was for a one-third contingent fee, yet he charged an additional $941.03, which included a miscalculation based on the gross amount recovered, plus $907.50 in hourly fees. Respondent acknowledged a violation of RPC 1.5(a). Further, respondent's contingent fee agreement failed to state whether expenses were to be deducted before or after the contingent fee was calculated, a violation of RPC 1.5(c).

Respondent also commingled personal and client funds when he deposited Clark and Jeong's settlement proceed checks into the F&L business account. The Rules required him to keep those funds in the trust account, separate from his own and law firm funds and, thus, he violated RPC 1.15(a) and (d), and R. 1:21-6(a)(1).

In a separate client matter, on September 5, 2013, Raymond (Taejong) Kim retained respondent to represent him in an action against his employer, "KOTRA" (the Kim/KOTRA matter). The fee agreement provided for a one-third contingent fee on any recovery, plus expenses, and a $10,000 retainer "as additional compensation to the contingent fee," which Kim paid. The agreement alternately permitted the client to retain respondent at his $550 hourly rate, but Kim chose not to do so.

Thereafter, on a date not specified in the stipulation, respondent orally agreed to cap Kim's fee at $30,000. Kim paid an additional $20,000, which respondent had billed at his $550 hourly rate. Because respondent did not receive a recovery for this matter, he was entitled to only the $10,000 payment. Respondent stipulated that, by taking a $30,000 fee, when only $10,000 was justified, he violated RPC 1.5(a). In addition, respondent's agreement to cap his legal fee at $30,000 violated RPC 8.4(c), because he knew he was not entitled to that amount.

Respondent engaged in recordkeeping violations, as well. On March 28, 2013, Lisa Garcia retained respondent to defend a foreclosure action on real estate that she owned. He succeeded in vacating a default and reinstating Garcia's mortgage. The representation concluded in November 2013 with the dismissal of the complaint against Garcia. Although Fredericks had prohibited the continued use of his name after the dissolution of the partnership, respondent sent invoices to Garcia using F&L letterhead. Further, on April 9, 2014, respondent deposited Garcia's $700 fee into his personal account, instead of the F&L business account. Likewise, in the Kim/KOTRA matter, respondent deposited in his personal

bank account two checks from Kim, payable to F&L — a $15,000 check and a $5,000 check. Those funds should have been deposited into the F&L business account. The F&L accounts should have remained open until the law firm's affairs were wound up. Respondent's actions in the Garcia and Kim/KOTRA matters violated RPC 1.15(d) and R. 1:21-6(a)(2).

In still another matter, RAK Foods, Inc. (RAK), a New Jersey seafood importer, was controlled by Bong Rak Choi (Bong Choi), a 51% owner, and Jason Choi, the grievant, a 49% owner. In September 2014, Bong Choi retained respondent, an acquaintance, to represent RAK at respondent's $400 hourly rate.[1] On September 18, 2014, on F&L attorney letterhead, respondent memorialized their agreement in English, despite the fact that Bon Choi does not speak English.

The next day, September 19, 2014, respondent sent Bong Choi a letter on his own letterhead, in which he stated that, after a discussion "with his partner, Fredericks," the RAK matter had been assigned to respondent. However, respondent knew that statement was false when he made it, because Fredericks was no longer associated with the firm.

On October 8, 2014, Bong Choi signed a document entitled "Unanimous Written Resolution of RAK Foods, Inc.," appointing respondent as RAK's corporate secretary, and naming respondent as the sole signatory on that account. This document, dated September 18, 2014, also was in English. When entering into the business transaction with RAK, respondent neither suggested, in writing, that RAK and the Chois seek the advice of independent counsel regarding the business transaction, nor obtained their informed consent to it.

In December 2014, Jason Choi moved, leaving RAK's daily operations to Bong Choi and respondent. Between November 2014 and January 2015, respondent sent Bong Choi invoices for legal fees that included charges at his $550 hourly rate, for work performed as RAK's secretary, not as corporate counsel. Respondent also made a series of company-authorized withdrawals from RAK's corporate bank account to reimburse Bong Choi for expenses and to pay respondent's legal fees. In all, respondent made eight such withdrawals, which totaled $52,600.

Respondent stipulated that, in the RAK matter, he violated RPC 1.5(a) by collecting an unreasonable fee, having been paid $550 per hour for work performed, not as corporate counsel, but as RAK's corporate secretary; RPC 1.7(a)(2) because his representation of RAK was materially limited by his own personal interests; RPC 1.8(a) by failing to provide RAK with the required written notification prior to entering into a business transaction with the client; RPC 7.5(c) by using a firm name containing Frederick's name after he left the firm; RPC 7.5(d) and RPC 8.4(c) by implying that he still practiced law in a partnership with Frederick when he did not; and RPC 1.15(d) and R. 1:21-6(a)(2) "in that he failed to deposit fees into the [F&L] operating account or into the Charles Lee operating account."

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[1] This figure appears to be in error, as the fee agreement states a rate of $550 per hour.

Respondent was declared ineligible on August 25, 2014, for failure to pay the 2014 annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). On February 9, 2015, his name was removed from the CPF list of ineligible attorneys. However, as early as September 18, 2014, during his ineligibility period, respondent provided legal services to RAK, a violation of RPC 5.5(a)(1).

Additionally, the OAE requested respondent to produce certain books and records required to be created and maintained, first for F&L, and later, for his solo practice. Respondent could not produce monthly three-way reconciliations, client ledger cards, and trust and business account receipts and disbursements journals, because he failed to "prepare and maintain" them. Respondent stipulated that his failure to maintain those records violated RPC 1.15(d) and R. 1:21-6, and RPC 8.1(b) "in that he did not produce the records required to be maintained by R. 1:21-6."

In aggravation, the parties noted respondent's 1998 admonition for possession of .46 grams of marijuana and drug paraphernalia.

Research disclosed no case that included all of the violations to which respondent stipulated. Discipline for fee overreaching has resulted in a reprimand. See e.g., In re Read, 170 N.J. 319 (2000) (attorney charged grossly excessive fees in two estate matters and presented inflated records to justify them; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (1990) (in a real estate matter, attorney attempted to collect a $21,000 fee, including commissions on the purchase price, a reduction of the purchase price, and a sharing of the broker's fee; the attorney also had conflicting interests in the transaction); and In re Mezzacca, 120 N.J. 162 (1990) (attorney engaged in a pattern of overreaching by charging fees on gross recoveries; the attorney also delayed the return of a client's funds and failed to provide clients with written contingent fee agreements).

A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015); In re Falkenstein, 220 N.J. 110 (2014); and In re Braverman, 220 N.J. 25 (2014).

Similarly, conflicts of interest, absent egregious circumstances or serious economic harm to the clients, ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994) and In re Berkowitz, 136 N.J. 134, 148 (1994).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

When an attorney enters into a loan or other business transaction with a client, without observing the safeguards of RPC 1.8(a), the discipline has ranged from an admonition to a reprimand, in the absence of aggravating factors, such as additional ethics violations, significant harm to the client, or the attorney's prior discipline. See, e.g., In the Matter of David M. Beckerman, DRB 14-118 (July 22, 2014) (admonition) and In re Botcheos, 217 N.J. 147 (2014) (reprimand).

Attorneys found guilty of using improper or misleading attorney letterhead have received admonitions. See, e.g. In the Matter of Raymond A. Oliver, DRB 09-368 (March 24, 2010) and In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008).

Practicing law while ineligible is generally met with an admonition if the attorney is unaware of the ineligibility. Here, the stipulation is silent that respondent knew that he was ineligible when he represented RAK Foods. In addition, admonitions have sufficed when, as in the instant case, the practicing-while–ineligible violation is found alongside other less serious infractions, such as recordkeeping deficiencies and failure to cooperate with ethics investigators. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) and In the Matter of Stephen William Edwards, DRB 12-319 (January 25, 2013).

As seen above, for respondent's most serious infractions – misrepresentations to clients (two separate clients, Kim/KOTRA and RAK Foods), fee overreaching, and conflict of interest, a reprimand is required.

However, respondent is guilty of a slew of other violations as well: a combination of entering into an improper business transaction with a client; commingling; charging an improper contingent fee; practicing law while ineligible; various recordkeeping deficiencies; and failure to cooperate with ethics authorities. Together, these additional violations warrant the imposition of at least a censure.

In additional aggravation, respondent's use of Fredericks' name on his attorney letterhead was particularly brazen, having taken place after Fredericks explicitly directed him not to do so. Moreover, this is not respondent's first brush with the disciplinary system. He has a 1998 admonition for possession of marijuana and drug paraphernalia.

The parties cited no mitigation.

For respondent's numerous violations in these several client matters, combined with the aggravating factors, the Board determined that a three-month suspension is warranted.

In addition, as a condition of reinstatement, the Board required respondent to furnish to the OAE the following documents for the six months immediately preceding any term of suspension: (1) monthly three-way reconciliations; (2) client ledger cards; and (3) trust and business account receipts and disbursements journals.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated November 5, 2018.

2. Stipulation of discipline by consent, dated November 2, 2018.

3. Affidavit of consent, dated October 22, 2018.

4. Ethics history, dated March 5, 2019.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

EAB/paa
encls.
c: w/o enclosures
Bonnie C. Frost, Chair
Disciplinary Review Board (via e-mail)
Charles Centinaro, Director
Office of Attorney Ethics (via e-mail)
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