Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-021
District Docket No. IIIB-2017-0023E

In the Matter of

Richard Ledingham

An Attorney at Law

Decision

Argued: March 21, 2019

Decided: August 13, 2019

Stephanie S. Shreter appeared on behalf of the District IIIB Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for an eighteen-month suspension, filed by the District IIIB Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.5(a) (unreasonable fee) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons stated below, we recommend disbarment.

Respondent was admitted to the New Jersey bar in 1981 and the New York bar in 1988. On March 5, 2007, he received a three-month suspension for charging an excessive fee and threatening criminal prosecution in an effort to collect that fee. In re Ledingham, 189 N.J. 298 (2007). On March 30, 2015, respondent was temporarily suspended for failure to comply with a fee arbitration determination in the matter underlying this case. In re Ledingham, 220 N.J. 578 (2015). He remains suspended to date.

In 2003, Dr. Robert Binder retained respondent to draft a second codicil to a Last Will and Testament and First Codicil. A different lawyer had provided most of the estate planning for Dr. Binder and grievant, Mary Kay Binder, his wife, in 1995 and 1999. Shortly after Dr. Binder died on August 1, 2011, Mrs. Binder – who was eighty-eight-years-old at the time – retained respondent to represent her as Executrix of his estate. The retainer agreement provided for a rate of $175 per hour. Respondent did not collect a retainer. Ultimately, he billed Mrs. Binder for 674 hours, for a total fee of $120,275.25, of which she paid $88,199.68.

On May 21, 2012, when Mrs. Binder owed fees of $34,826.25, respondent offered to lower his hourly rate to $130 per hour, if she paid the balance in full. On June 11, 2012, he wrote a letter to Mrs. Binder and the Co-Trustees of Dr. Binder's estate, proposing to finish the estate and to limit the billing to $10,000

or less, through December 31, 2012, at the rate of $130 per hour, if the balance were paid. By letter dated June 27, 2012, respondent reduced the balance owed by Mrs. Binder to $15,000, and offered to finish the estate, and file all tax returns, through December 31, 2012, at no cost to the estate. Soon thereafter, Mrs. Binder terminated the representation. On July 5, 2012, respondent forgave the balance of legal fees and promised to deliver all necessary paperwork to subsequent counsel, Martin Cramer.

Cramer began the estate work anew, filed all the necessary tax returns, and billed Mrs. Binder $9,412.50. Local counsel in Vermont was engaged to handle ancillary property issues in that state, for an additional $3,500 fee.

Respondent asserts that the fees he billed to Mrs. Binder resulted from the complexity of various interwoven provisions contained within the Last Will and Testament and the First and Second Codicils. He claims that other complications included extensive investments owned by the estate, voluminous monthly buying and selling of investments with losses, and unrealized losses.

Further, because Dr. Binder owned property in Vermont, respondent was required to send correspondence to the seven beneficiaries of the estate, in accordance with the laws of Vermont, regarding property and other assets in that state. The beneficiaries lived in different parts of the United States. Respondent also billed Mrs. Binder for calling the court in Vermont on two occasions to

ascertain that local counsel in Vermont was not necessary for issuing the required notices and financial information to all the beneficiaries. Respondent claims that his work saved the estate $23,243 in New Jersey estate taxes.

According to respondent, additional complexities arose through his attempts to reduce New Jersey estate taxes, the filing of which had a statutorily prescribed nine-month deadline. He also claims that, in May 2012, he discovered additional assets, the existence of which Mrs. Binder had previously denied.

At the hearing below, Jonathan Mate, Esq., who was of counsel to Newman & Simpson, LLP, testified as an expert witness regarding the reasonableness of respondent's fee. Based on his forty-seven years of experience as a trust and estates attorney in New Jersey, Mate opined that the amount of time for the work respondent performed should not have exceeded thirty billable hours. Mate acknowledged that respondent's hourly rate, however, was well below the amount that the average attorney in New Jersey charges for estate work.

Mate asserted that, if he had represented the Binder Estate, his fee would have been $400 per hour, the work would have taken him twenty-five to thirty hours, and his total bill would have been approximately $12,000. Also, he would have referred the Vermont issues to local counsel, for an additional $3,500 fee, resulting in a maximum total fee of $15,500. In contrast, respondent completed

the Vermont work himself, and billed Mrs. Binder almost $15,000 for those services alone. According to Mate, the estate did not present unusual tax issues, and the amount of time that respondent spent on them far exceeded the number of hours that Mate, or any other estate attorney, would have billed.

The presenter challenged many of respondent's bills to Mrs. Binder. In August 2011, respondent billed 86.75 hours to review the will and two codicils "for the purposes of taking notes in regard to general terms of tax language." This billing entry appeared fifteen times on fifteen separate days in August 2011. Ten of those days included additional entries, such as "preparation of Form SS4," which is required to obtain a tax identification number. Respondent acknowledged that he had prepared the second codicil, and therefore had previously reviewed the will and first codicil, and that the will and two codicils comprised forty-three total pages. In turn, Mate testified that he thoroughly reviewed the will and two codicils in two hours.

In September 2011, respondent billed 83 hours to review "financial documents for purpose of preparing inheritance tax returns." This entry appears sixteen times on sixteen different days. Similarly, in October 2011, respondent billed Mrs. Binder 96.75 hours for review of "financial documents for preparation of notes regarding lists of assets."

Respondent did not bill Mrs. Binder for any work in November 2011. In December 2011, however, he billed her 55 hours to research mutual fund and stock prices as of August 1, 2011, to calculate the valuation of Dr. Binder's portfolio at the time of his death. This billing description appears in every entry for the month of December 2011. Respondent admitted that this information could be obtained directly from a brokerage account website as part of standard online reporting, but he neither went online for that information nor contacted any of the financial institutions for information regarding date-of-death valuations. The hearing panel asked respondent whether he customarily performed valuations for estates or whether he relied on information provided by financial institutions. Respondent replied that, although he has reached out to financial institutions for information in other matters, the law requires a calculation to be performed by adding the high point and low point for the date of death and dividing that figure in half. Respondent claimed that an attorney typically performs this calculation.

In January 2012, respondent billed another 74 hours. Many of the January entries were described as time spent to "research open issues regarding mutual funds and preparation of refunding bonds." The bulk of the time – 52 hours – was spent on "continued research on executor law, probate law, ancillary probate and estate tax law in Vermont."

In February 2012, respondent billed Mrs. Binder 82.75 hours of work. Eleven entries totaling 77 hours were spent on the "review of Vermont Ancillary Probate Procedures and obtaining facts from files and from Last Will and Testament, as well as, the First and Second Codicils, etc..." When asked how he could justify billing more than $15,000 for work related to the ancillary probate in Vermont, respondent replied that he had no knowledge or experience related to Vermont law and that an attorney is permitted to bill a client for time spent learning.

In March 2012, respondent billed another 110 hours, including for "disclaimer issues and preparing form 706, splitting of deductions." At the end of the bill to Mrs. Binder, respondent included the note, "I look forward to accomplishing a great deal in April."

In April 2012, respondent billed Mrs. Binder 87.75 hours, including multiple entries over several days for performing calculations in respect of New Jersey estate taxes to be included in various letters, and for reviewing the will and codicils for "the purpose of obtaining language to be included in tax returns."

Respondent spent May and June 2012 sending several letters to Mrs. Binder and the co-trustees, attempting to re-establish communication. As

previously mentioned, after respondent offered to reduce the balance that Mrs. Binder owed, she terminated the representation.

By letter dated July 5, 2012, respondent informed Mrs. Binder that he had forgiven all outstanding balances and that he would provide Cramer with the papers to be filed in Vermont. Respondent claims that, between July 3 and July 9, 2012, he spent 38.5 hours to complete all the tax and estate work, which he delivered to Cramer and that Cramer needed only to obtain signatures on the documents and file them. Respondent did not bill Mrs. Binder for the work he performed in July 2012.

Respondent submitted into evidence most, if not all, of his file for the Binder estate, representing the work he performed, for which he had billed Mrs. Binder. The panel reminded him repeatedly that the issue in this case was not whether he did a "technical job," as that had been stipulated, but whether the amount of time he had spent on that technical job was reasonable and worthy of the bill he submitted. He was asked to focus on the sole issue of the amount that a lawyer with his level of experience reasonably would have charged for the work that he had performed. Respondent refused to answer directly, insisting that he needed to prove his work, and that if he had not provided services to eliminate the New Jersey state taxes, he would have been sued for malpractice.

In summation, respondent contended that the underlying client matter was a complex tax issue, and that his billing is accurate and supported by documentation. He claimed that he took the time to do what was best for his client. In turn, the presenter contended that the estate and tax matter was neither novel, nor complex, as supported by expert testimony. The expert witness testified that an estate attorney in Bergen County would reasonably bill $400 per hour for this work and complete it within thirty hours, for a fee of $12,000. When the $3,500 fee for Vermont counsel is included, the total reasonable fee is $15,500. Yet, respondent had charged almost eight times that amount ($120,275.25). Therefore, the presenter argued, the amount respondent billed Mrs. Binder was unreasonable and the fees he charged were dishonest.

The DEC concluded that respondent's fee for services performed for Mrs. Binder was unreasonable. Further, the panel found that, although respondent's fee for services raised an inference of deceit, the evidence did not support such a finding, by the clear and convincing standard. Accordingly, the DEC determined that respondent violated RPC 1.5(a), but not RPC 8.4(c).

In mitigation, the DEC considered that respondent reduced his fee for legal services from $120,275.25 to $88,199.68, and that he provided some services free of charge.

In aggravation, the DEC noted that respondent collected $88,199.68 from Mrs. Binder in fees and costs for services that should have cost no more than $15,000. Additionally, the DEC rejected, as mitigation, the $23,243 tax savings obtained for the estate, reasoning that, if Mrs. Binder had known that respondent's services would cost almost four times as much as the tax savings realized, it is highly unlikely she would have consented to those services.

In further aggravation, respondent received discipline for similar misconduct in 2006. He was suspended for three months for charging a client a clearly inflated fee and threatening the client's criminal prosecution. He then engaged in similar misconduct in this case fewer than five years after serving that suspension. In that case, we found respondent's lack of contrition to be an aggravating factor. Here, too, the DEC found respondent's lack of remorse or acknowledgement of wrongdoing troubling.

The DEC did not find that respondent fabricated evidence or fraudulently billed Mrs. Binder for services that he did not perform, but, rather, that he demonstrated extremely poor judgment and an inability to perform only necessary services. After considering precedent and weighing the aggravating and mitigating factors, the DEC recommended an eighteen-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent violated RPC 1.5(a) is fully supported by clear and

convincing evidence. We are unable to agree, however, with the DEC's dismissal of the RPC 8.4(c) charge.

After reviewing respondent's entire file, Mate opined, based on his forty-seven years of experience in estate administration practice, that the total fee for handling the Binder estate should have been between $10,000 and $12,000, representing twenty-five to thirty hours of attorney time.

Respondent's failure to contact Vermont counsel to handle the Vermont probate or, at a minimum, to consult on the ancillary probate issue in that State, is inexplicable. That respondent chose to "educate" himself at the expense of the client, on its face, is not unethical; rather, the fact that he did so for 131 hours at $175 per hour, totaling almost $23,000 billed to the client, is both unethical and fraudulent. This misconduct alone supports a finding that respondent violated RPC 1.5(a) and RPC 8.4(c). Nonetheless, respondent did not stop there.

Based on the expert's opinion, respondent overbilled Mrs. Binder on most identifiable issues that arose during the administration of the estate. He also overbilled her regarding general components of the estate's administration.

Respondent spent his entire direct presentation asserting that the work he performed for Mrs. Binder was required by law, and that his work was of high quality. Despite numerous warnings from the panel that he was failing to address the substantive allegations of the complaint against him, he spent an extensive

amount of time arguing that he had provided quality services, without addressing whether those services were reasonable or necessary. The panel repeatedly directed him to explain why he believed his fee was reasonable, but respondent simply would not or could not answer. He did more of the same at oral argument before us.

Respondent failed or refused, at every turn, to understand the issue in this case. His lack of understanding is illustrated by his statement that he would have been sued for malpractice if he had not provided the services he did. Although the presenter had stipulated that the quality of respondent's services was not in question, when respondent was repeatedly confronted with the fact that he was not defending the actual charges, he simply replied that he was merely proving that he did the work. Respondent's direct presentation addressed neither the reasonableness of his fee nor the necessity for the services that he provided. Respondent simply cannot justify the egregious amount of his bill for what has been deemed a relatively ordinary tax and estate matter. The bulk of respondent's defense was that it was critical for him to eliminate the $23,243 in New Jersey estate taxes, but he ignored the fact that he billed the estate almost six times the amount of the tax savings ($120,275.25).

RPC 1.5(a) lists the following factors for consideration when determining whether a legal fee is reasonable:

1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;

2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

3) the fee customarily charged in the locality for similar legal services;

4) the amount involved and the results obtained;

5) the time limitations imposed by the client or by the circumstances;

6) the nature and length of the professional relationship with the client;

7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

8) whether the fee is fixed or contingent.

The evidence presented, including the testimony of the expert witness, establishes that, based on our analysis of the above factors, respondent violated RPC 1.5(a). As stated above, Mate, based on his forty-seven years' experience, opined that respondent repeatedly overbilled Mrs. Binder. In his view, the customary charge in Bergen County for an estate of this nature would range between $10,000 and $12,000. Therefore, the total fee in this case should not have exceeded $15,500, including the $3,500 paid to Vermont counsel. Respondent failed to establish that he obtained any specific results on behalf of

the estate from the excessive amount of time he spent on it. Indeed, Mrs. Binder hired replacement counsel to complete the matter because, although she already had paid respondent $88,410.48 of the $120,275.25 he billed her, the administration of the estate was still ongoing. Subsequent counsel, Cramer, completed the estate for less than $10,000, with an additional $3,500 billed for local counsel in Vermont. Respondent, thus, charged Mrs. Binder almost eight times the amount of the fee considered reasonable.

Similar to the instant matter, in In re Ort, 134 N.J. 146, 157 (1993), the Court determined that a lawyer's charges of $32,000 on an estate of no complexity valued at $300,000 "were utterly unreasonable and inconsistent with the factors . . . of RPC 1.5(a)." The Court noted that the time sheets that Ort submitted "reflected work performed by respondent that [it] would characterize as wasteful, excessive, and unnecessary. That violation alone calls for substantial discipline." Id. at 159-60 (citing In re Hinnant, 121 N.J. 395 (1990) (public reprimand for attorney who had charged fees amounting to overreaching and had engaged in a conflict of interest)).

Moreover, in Ort, the Court reasoned that the client "was entitled to assume that respondent was performing only the work reasonably necessary to further the objectives of the representation." Id. at 159. The Court disbarred Ort because, in addition to fee overreaching, he withdrew more than $32,000 from

the estate account as attorney's fees without informing his client and without her authorization, in violation of RPC 1.5(b) and RPC 8.4(c). Id. at 160.

Further still, in Ort, "respondent's overstated and exaggerated time sheets reflect conduct involving misrepresentation and deceit . . . in violation of RPC 8.4(c) . . ." In the Court's view, Ort's "time charges reflected in [his] time sheets bear no reasonable relationship to the responsibilities realistically imposed on respondent in the administration of the estate." Id. at 157.

Discipline for fee overreaching has ranged from a reprimand to disbarment. See, e.g., In re Read, 170 N.J. 319 (2002) (reprimand for charging grossly excessive fees in two estate matters and presenting inflated records to justify them; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (reprimand for attorney who attempted to collect a $21,000 fee in a real estate transaction, including a commission on the purchase price; conflict of interest also found); In re Verni, 172 N.J. 315 (2002) (three-month suspension for charging excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half for padding his time); In re Thompson, 135 N.J. 125 (1994) (three-month suspension for charging $2,250 to file two

identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); and In re Wolk, 82 N.J. 326 (1980) (disbarment for gross and intentional exaggeration of services rendered on behalf of an eight-year-old paralyzed boy and for enticing a recently-widowed client to invest in a building owned by the attorney, without properly safeguarding her rights).

Here, respondent billed Mrs. Binder $120,275.25 for 374 hours of legal work. Mrs. Binder paid respondent a total of $88,199.68 on those bills. Respondent's charges were, as in Ort, utterly excessive, unreasonable, and inconsistent with the factors of RPC 1.5(a).

Mrs. Binder was entitled to assume that respondent would not spend hours researching the tax exclusion issue, which was not the objective of the representation. Respondent similarly failed to disclose to Mrs. Binder that he was undertaking unnecessary services, at her expense. As in Ort, respondent's time sheets reflect a significant disconnect between the amount of work reasonably necessary to resolve the client's matter and the amount billed. In our view, that disconnect is so significant that the bills respondent sent to Mrs. Binder reflect a dishonest course of conduct, in violation of RPC 8.4(c).

As in Ort and Wolk, respondent submitted gross and exaggerated bills for the services he rendered. Moreover, we consider the added factor that Mrs. Binder is a member of a vulnerable portion of the population that the Court has noted as being subject to "the serious and growing problem of elder abuse." In re Torre, 223 N.J. 538, 548 (2015). In Torre, the Court imposed discipline on the attorney to "foster continued faith in the legal profession as a whole." The Court increased the discipline to a one-year suspension for an inappropriate transaction between Torre and his client, because it "resulted in substantial harm to a vulnerable, elderly victim". Id. at 549.

Unlike the attorney in Ort, however, respondent did not surreptitiously withdraw his attorney fees. Instead, he billed his client who, in turn, made payments to him. This distinction does not, however, save respondent from the fate of Ort.

We find that the magnitude of respondent's overreaching is overwhelming on its own. In addition, we consider that the victim of his misdeeds was a recently widowed eighty-eight-year-old who should have been enjoying that money in her twilight years. In further aggravation, respondent committed similar misconduct fewer than five years earlier, for which he was suspended. We conclude that respondent has not learned from his past misconduct but, rather, has escalated it and likely will not learn from this instance either.

The factor that tips the scales, however, is respondent's utter lack of contrition. Although at oral argument before us, he offered a general apology, he failed to show remorse when considered against the backdrop of his presentation before the DEC and again before us. Despite repeatedly being asked, prodded, and admonished to explain how his bills were reasonable, respondent continued to expound on esoteric tax issues and various continuing legal education (CLE) courses he has attended over the years.

A significant question now arises as to whether respondent's behavior can be categorized as venal or unschooled. It appears that most of respondent's professional time has been spent as an accountant. Regardless of which professional hat respondent wears, it should have been obvious to him that his billing was egregious. To us, especially to our public members, it was wholly unreasonable for him to spend 86.75 hours to review the will and two codicils – forty-three pages total – "for the purposes of taking notes in regard to general terms of tax language," wholly unreasonable to spend 83 hours to review "financial documents for purposes of preparing inheritance tax returns" and wholly unreasonable, to any individual in either profession, to bill 96.75 hours for review of "financial documents for preparation of notes regarding lists of assets." We, thus, conclude that respondent's conduct was venal.

As noted, respondent offered no mitigating factors. In aggravation, however, he has prior discipline for remarkably similar conduct. In that prior matter, respondent represented a client seeking to purchase a Sylvan Learning Center franchise for approximately $470,000. In the Matter of Richard Ledingham, DRB 06-235 (December 18, 2006) (slip op at 2). There, respondent "spent entire days, sometimes eight or nine hours per day, for several days in a row, apparently in 'lockdown' – researching, reviewing and negotiating issues that had little or no bearing on the substance of the transaction." Id. at 12-13. Respondent was hired simply to review loan documents, an unalterable lease agreement, and the non-negotiable franchise agreement Id. at 13.

In his prior matter, respondent's fee overreaching was found to have violated RPC 1.5(a) and RPC 8.4(c). He also was found to have violated RPC 3.4(g) when he threatened criminal prosecution to collect those fees from his client. Id. at 14. These violations, along with respondent's failure to appear at the DEC hearing and his lack of contrition, led us to recommend a three-month suspension. Id. at 19. The Court agreed. In re Ledingham, 189 N.J. 298 (2007).

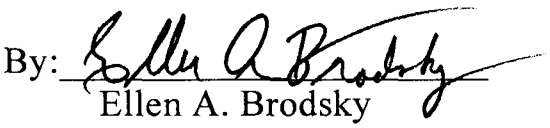
Here, respondent's fees were utterly unreasonable and inconsistent with the factors of RPC 1.5(a) to such an extent that his overreaching also violated RPC 8.4(c). In light of the magnitude of respondent's overbilling, his lack of contrition, his prior suspension for substantially similar conduct, the

vulnerability of his victim, and for the protection of the public, we recommend respondent's disbarment.

Vice-Chair Clark, and Members Boyer, Joseph, and Singer voted for a one-year suspension consecutive to respondent's temporary suspension, with the added requirement that respondent practice under the supervision of a proctor and take additional CLE courses pertaining to attorney billing.

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 Richard Ledingham
Docket No. DRB 19-021

Argued: March 21, 2019

Decided: August 13, 2019

Disposition: Disbar

Members	Disbar	One-Year Suspension	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer		X		
Gallipoli	X			
Hoberman	X			
Joseph		X		
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	4	0	0

Ellen A. Brodsky
Chief Counsel