SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-148
District Docket No. XIV-2011-0558E

IN THE MATTER OF	:
DAVID A. BOLSON	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 19, 2012

Decided: November 7, 2012

Melissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

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 disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having violated RPC 1.5(e) (improperly sharing fees with lawyers not in the same firm). For the reasons expressed below, we determine that a censure is warranted here.

Respondent was admitted to the New Jersey bar in 1979. He maintains a law office in South Orange, New Jersey.

In 2003, respondent was admonished for practicing law while ineligible, from September 24, 2001 to February 1, 2002, for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). In imposing only an admonition, we considered that respondent paid the assessment as soon as he became aware that he was on the Fund's list of ineligible attorneys and that he had no ethics history.

An October 2011 OAE random audit of respondent's books and records uncovered that he was paying "forwarding fees"[1] to attorneys who referred contingent fee matters to him. Respondent primarily handles workers' compensation matters. He has never been certified by the New Jersey Supreme Court Board on Attorney Certification as a certified workers' compensation law or a civil trial law attorney. Only attorneys certified by the Attorney Certification Board are permitted to divide fees for legal services with referring attorneys without regard to services performed or responsibility assumed by the referring

[1] This was the terminology used on respondent's client ledgers and checks.

attorney. R. 1:39-6.[2]

By letter dated November 21, 2011, the OAE directed respondent to "quantify," for the period from January 1, 2006 though the date of the letter, the extent of his practice of paying referral fees, by listing the names of cases where referral fees were paid and the amount of the referral fees paid. The OAE randomly selected the period to be reviewed. According to the stipulation, the period was "not meant to indicate that [the] practice began six years ago." In fact, respondent began the practice earlier, but could not accurately determine when.

Respondent submitted a list of 131 cases where he had paid referral fees to other attorneys. In 2006, he paid $25,353 for

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[2] R. 1:39-6(d) provides:

> A certified attorney who receives a case referral from a lawyer who is not a partner in or associate of that attorney's law firm or law office may divide a fee for legal services with the referring attorney . . . The fee division may be made without regard to services performed or responsibility assumed by the referring attorney, provided that the total fee charged the client relates only to the matter referred and does not exceed reasonable compensation for the legal services rendered therein. The provisions of this paragraph shall not apply to matrimonial law matters that are referred to certified attorneys.

twenty-seven matters; in 2007, $35,434.94 for nineteen matters; in 2008, $11,814 in eighteen matters; in 2009, $27,323.74 for twenty-one matters; in 2010, $29,872 for thirty matters; and in 2011, $12,634 for sixteen matters.

Of the 131 cases, 111 were "predominately" workers' compensation cases referred by Jeffrey Beckerman, an attorney with whom respondent shared office space; respondent's sister-in-law, Linda Hockstein, also an attorney, referred thirteen matters; and Andrew Moskowitz, Esq., referred two matters. Respondent paid one-third of the total legal fee to the referring attorneys. He performed all of the legal services in connection with the prosecution of the cases.

The fees paid to the referring attorneys were not quantum meruit fees. The clients were not informed about the fee division. Although the clients did not consent to the fee division arrangement, they consented to respondent's handling of their matters. The total fees awarded in all cases were reasonable and set by statute. There was no evidence that respondent did not competently handle the cases.

Respondent told the OAE investigator that he was not aware that paying referral fees was improper until he was audited by

the OAE and reviewed RPC 1.5(e).[3] The stipulation noted that respondent did not conceal the payments and freely noted, on his checks to the referring attorneys, that the fees were "forwarding fees."

As the result of the OAE investigation, respondent stopped paying "forwarding fees" to "referring attorneys."

The OAE maintained that a reprimand is the proper quantum of discipline in this matter because single instances of improper fee-sharing have resulted in admonitions. The OAE cited In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008); and In the Matter of Ellan A. Heit, DRB 04-138 (May 24, 2004). The OAE added that, when a large number of cases are involved, a

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[3] RPC 1.5(e) provides, in relevant part, that

> A division of fee between lawyers who are not in the same firm may be made only if:
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> (1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and
> (2) the client is notified of the fee division; and
> (3) the client consents to the participation of all lawyers involved; and
> (4) the total fee is reasonable.

reprimand is sufficient discipline, citing In re Trachtman, 201 N.J. 13 (2009).

The stipulation cited the following mitigating factors: 1) no clients were harmed by the conduct; 2) respondent cooperated with the investigation and entered into the disciplinary stipulation; 3) he was unaware that the conduct was prohibited, as demonstrated by his designating the payments to the other attorneys as "forwarding fees;" 4) his ethics history consisted of one 2003 admonition; and 5) he has been a member of the New Jersey bar for thirty-three years.

The OAE reasoned that it would be unfair to suspend respondent, absent notice to the Bar that such conduct could result in a harsh sanction. The OAE could point to no case where an attorney not certified under R. 1:39 paid referral fees to other attorneys, over a significant period, in a significant number of cases.

Following a full review of the stipulation, we find that it clearly and convincingly establishes that respondent's conduct was unethical.

The OAE correctly noted that there is little case law in this specific area. Most fee-sharing cases relate to attorneys sharing fees with non-lawyers, a prohibited practice under RPC 5.4(a). R. 1:39-6(d), however, permits certified attorneys to

divide legal fees for services "without regard to the services performed or responsibility assumed by the referring attorney." The only provisos are that the total fee charged to the client relate only to the matter referred and that the fee does not exceed reasonable compensation for the services rendered.

Respondent, however, is not an R. 1:39 certified attorney. Therefore, in at least 131 instances, he violated RPC 1.5(e). He did not divide the fees in proportion to the services performed by each lawyer (RPC 1.5(e)(1)); he paid them each a one-third fee and did not inform the clients about the fee division (RPC 1.5(e)(2). According to the stipulation, the clients did consent to respondent's handling of their matters and the fees awarded were reasonable and set by statute (RPC 1.5(e)(3) and (4)). Nevertheless, the rule mandates compliance with every section (e)(1) through (e)(4).

Admonitions have been imposed where one instance of fee-sharing occurred. See, e.g., In the Matter of Keith T. Smith, supra, DRB 08-187 (October 1, 2008) (attorney entered into a disproportionate fee-sharing arrangement with another attorney and failed to obtain the client's consent to the representation; the attorney was also guilty of gross neglect by allowing the client's complaint to be dismissed, failing to take steps to have it reinstated, and failing to keep the client informed

about the status of the matter) and In the Matter of Ellan A. Heit, supra, DRB 04-138 (May 24, 2004) (the attorney shared a fee with the referring attorney even though the referring attorney performed no services; the attorney was also guilty of violating RPC 7.1(a) and RPC 7.5(a) by not listing her full name and address at the top of her retainer agreement).

In In re Trachtman, supra, 201 N.J. 13, the attorney was reprimanded for violating, among other RPCs, RPC 1.5(e). Trachtman transferred 120 client files to other attorneys without obtaining his clients' consent to do so. In one of the cases, his fee-sharing agreement called for a disproportionately large fee for the amount of work he had performed. In the same matter, he was guilty of lack of diligence, failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, and failure to cooperate with disciplinary authorities. Apparently, only one attorney with whom he shared fees was not a certified trial attorney.

In assessing discipline, for Trachtman, we considered compelling mitigating factors, which included that he had sustained numerous serious injuries in a motor vehicle accident, for which he had been placed on pain medications. His serious physical injuries and attendant mental health and personal

problems became so debilitating that it compromised his ability to handle his workload. When he came to this realization, he decided to shut down his law practice. He then entered into the improper fee-sharing agreements with attorneys. Trachtman also admitted his wrongdoing and had no prior discipline in his almost twenty years at the bar.

Respondent's case is somewhat similar to Trachtman's, in terms of the number of cases involved. Trachtman violated RPC 1.5(e) by improperly transferring 120 cases. But he was guilty of improperly sharing fees in only one of the cases. Here, respondent's conduct was more serious, in that his violation of RPC 1.5(e) included improperly sharing fees in at least 131 cases. Trachtman proffered extremely compelling mitigating circumstances. Respondent's mitigation is not as persuasive: no clients were harmed, he was unaware that the conduct was prohibited, he readily admitted his wrongdoing, and he has one nine-year old admonition in his legal career spanning thirty-three years.

Respondent is not an inexperienced attorney. His claim of ignorance of the Court rules and of the Rules of Professional Conduct does not exonerate him from his misconduct here. Because his conduct continued for more than six years and involved more than 130 cases, we determine that a censure is warranted.

Member Clark 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David A. Bolson
Docket No. DRB 12-148

Argued: July 19, 2012

Decided: November 7, 2012

Disposition: Censure

Members	Disbar	Suspension	Censure	Reprimand	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel