SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-026
District Docket No. VA-2011-021E

IN THE MATTER OF	:
RONALD C. HUNT	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 20, 2013

Decided: July 22, 2013

Richard Bernstein appeared on behalf of the District VA Ethics Committee.

Juliana Blackburn 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 pursuant to R. 1:20-6(C)(1), which provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, if respondent does not request an opportunity to be heard in mitigation, and if the presenter does

not request an opportunity to be heard in aggravation. Atypically, in this case, the parties entered into a stipulation of facts, which accompanies the pleadings.

The twelve-count complaint charged respondent with violating RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence); RPC 1.4(b) and (c) (failure to communicate with the client and failure to explain a matter to the extent necessary for the client to make informed decisions about the representation), RPC 1.7(b) (concurrent conflict of interest); RPC 1.15(d) (failure to comply with R. 1:21-6 (recordkeeping); RPC 1.16(a)(1) and (d) (a lawyer shall not represent a client or shall withdraw from the representation if the representation will result in a violation of the Rules of Professional Conduct and failure to protect a client's rights on termination of representation); RPC 5.1(a) (failure of a supervisory lawyer to take reasonable steps to ensure that lawyers conform their conduct to the RPCs); RPC 8.1(a) (false statement in connection with a disciplinary matter); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent conceded that he violated the charged RPCs. The parties to the stipulation recommended that we impose a

reprimand. We agree that a reprimand is the appropriate measure of discipline.

Respondent was admitted to the New Jersey bar in 1985. He has no history of discipline.

The facts that gave rise to this matter are as follows:

In November 2004, Leon De Vose, II and Delretha De Vose (the grievants) retained respondent and his law firm, Hunt, Hamlin & Ridley (the firm), to pursue a claim against several defendants, including Essex County. During the time in question, the firm employed between five and seven lawyers, including respondent and two other partners, each of whom was a "managing partner" of the firm.

The grievants' claim related to the death of their son, on September 24, 2004, while held in the Essex County jail. In November 2004, respondent sent a notice required by the New Jersey Tort Claims Act to Essex County regarding the grievants' claim. For reasons not disclosed by the record, in April 2005, respondent sent a second notice to Essex County with respect to the grievants' claim.

During the first quarter of 2005, respondent and Leon De Vose had a telephone conversation, during which De Vose asked respondent about the status of their claims. Respondent replied

that the matter was going well and that he would contact the grievants, if needed.

During the grievants' representation, a partner in the firm entered into discussions with Essex County about representing the county in an adverse possession litigations. Respondent did not inform the grievants that his partner had entered into these discussions. Ultimately, the firm and Essex County entered into a contract for services for the period from January 1, 2006 through December 31, 2006. Respondent executed the agreement on behalf of the firm, in December 2005. The agreement provided for the possible payment of up to $50,000 to the firm. The agreement also provided:

> Conflicts. The Supreme Court has stated that "[a]ttorneys who serve as counsel for governmental bodies must avoid not only direct conflicts of interest, but any situation which might appear to involve a conflict of interest." Opinion No. 415. 81 N.J. 318, 324 (1979). By entering this Agreement [the Hunt, Hamlin & Ridley Law Firm] represents to [Essex] County that the performance of the requested services hereunder does not present an actual conflict or the appearance of a conflict of interest.
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> [S¶C24.][1]

[1] S refers to the stipulation.

In fact, on execution of the agreement with Essex County, the firm had a concurrent conflict of interest, in violation of RPC 1.7(a), and an "appearance of a conflict of interest." Respondent did not inform Essex County that the firm had both a concurrent conflict of interest and "a contractual violation of an 'appearance' of a conflict of interest."

Specifically, respondent and the firm represented Essex County at the same time as the representation of the grievants. Respondent conceded, in the stipulation, that the firm should have declined to represent Essex County. During the time the firm represented the grievants, the firm did not have a formal system in place to keep track of conflicts or other matters with respect to compliance with relevant ethics rules and regulations.

In August 2006, respondent sent a letter to the grievants, notifying them that the firm was terminating their representation. The letter stated, in part, that the firm was terminating its representation because it had been designated Special Counsel for Essex County Counsel's Office. The letter also stated that "[c]onsequently, any continued representation

in your case will present a conflict of interest for [the firm]."

From the date the grievants retained the firm, November 11, 2004, to the date of respondent's letter terminating the firm's representation, August 10, 2006, neither respondent nor anyone else at the firm undertook any actions to "materially advance" the grievants' claims, other than to file the two tort claims notices. The only communications between respondent and the grievants, during that time, consisted of their initial meeting, the grievants' receipt of copies of the first and second tort claims notices, respondent's and De Vose's telephone conversation, and the letter terminating the firm's services.

RPC 1.16(a)(1) requires a termination of the representation when there is a violation of the RPCs and RPC 1.16(d) directs that the lawyer shall, among other things, provide "reasonable notice" to his or her client. Respondent did not provide notice to the grievants of the termination until eight months after termination was required and only one month prior to the expiration of the statute of limitations with respect to their claim.

In mid-October 2006, the firm sent Essex County a proposal in response to the county's request, which stated:

> There are no conflicts which [the firm] is aware of which would present an issue concerning the firm's representation of [Essex County].
>
> There are no attorneys or staff within [the firm] which are the subject of any investigations to the best of our knowledge, nor has any attorney or staff been the subject of any investigations that we are aware of.
>
> There is no litigation that [the firm] is currently involved in which may directly or indirectly affect [the firm's] ability to assist [Essex County] in any manner.
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> [S¶C38.]

The record does not reveal who wrote and/or signed the proposal. The representations in the proposal were not true because a partner in the firm (not respondent) was under investigation by disciplinary authorities and the firm had a conflict with respect to the grievants and Essex County.[2]

The firm's website and letterhead contained representations regarding the law license of Cynthia H. Hardaway, who is of counsel to the firm. Specifically, the website and the

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[2] Although respondent stipulated that there was a conflict of interest when the firm sent the proposal, the firm had terminated its representation of the grievants two months earlier.

letterhead stated that she was admitted to practice law in New York. Since 2004, however, Hardaway had been "delinquent with respect to her New York State law license."

Respondent, too, represented on the firm's website and on the firm's letterhead that he was licensed to practice law in Pennsylvania.[3] However, since 1994, respondent has been "on administrative suspension" in Pennsylvania for failure to comply with continuing education requirements and failure to pay required fees. In addition, during an interview in connection with an ethics investigation, respondent represented to the investigator that he was licensed to practice law in Pennsylvania.

Respondent stipulated that, in his position as a supervisory partner of the firm, he has not made reasonable efforts to ensure that lawyers in his firm conform their conduct to the RPCs, in violation of RPC 5.1(a).

According to the stipulation, respondent, his counsel, the "complainant," and the investigator/presenter recommended that we impose a reprimand for respondent's admitted misconduct.

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[3] The stipulation appears to use "admitted" and "licensed" interchangeably.

Their recommendation considered respondent's lack of prior discipline, his admission of misconduct, and his remorse.

In determining that respondent's violations of RPC 1.7 (conflict of interest) and RPC 1.16 (declining or terminating representation) warrant a reprimand, the district VA ethics committee (DEC) cited In re Fitchett, 184 N.J. 289 (2005), where the attorney concealed a conflict of interest and continued to represent both clients, until one client learned on its own of the conflict. Fitchett received a three-month suspension. The DEC noted that, in contrast to Fitchett, respondent notified the grievants of the conflict, advised them that he could no longer represent them, and recommended that they seek other counsel. The grievants did retain another attorney, who filed a complaint before the statute of limitations expired. The DEC also noted that respondent's actions were not egregious and did not cause economic injury to the grievants.

The DEC also pointed to Fraser v. Bovino, 317 N.J. Supr 23, 35 (App. Div. 1998), certif. den. 160 N.J. 476 (1999), holding that the return of client's file several weeks before the running of the statute of limitations period was proper withdrawal, in that it had no material adverse effect on the client's interests. Citing In re Berkowitz, 136 N.J. 134

(1994), the DEC concluded that, absent egregious circumstances, economic injury to the client, or monetary gain to the lawyer, a reprimand is the appropriate sanction for a conflict of interest.

As to respondent's violations of RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4 (failure to communicate with a client), the DEC found that they "constitute a single indiscretion, which neither rose to the level of gross neglect nor exhibited a pattern of neglect." Citing In re Hamilton, 147 N.J. 459 (1997), the DEC observed that, absent gross neglect, the customary consequence is a reprimand and that, "[even] where gross neglect is present, if only a few instances have occurred," the attorney has no disciplinary history, mitigating circumstances exist, and there are no aggravating factors, reprimands have been imposed (citing In re Zukowski, 152 N.J. 59 (1997)).

Following a de novo review of the record, we are satisfied that respondent is guilty of most of the allegations charged in the complaint. Although the stipulated facts support a finding that respondent's conduct was unethical, not all of the admitted violations are supported by the record.

The complaint charged respondent with violating RPC 5.1(a), which addresses the responsibilities of supervisory lawyers and partners in a firm. The charges were based on a litany of allegations, including, the lack of a formal system in place to check the existence of conflicts to ensure compliance with the RPCs; the representation, on respondent's webpage, the firm's website, and the firm's letterhead, that respondent was licensed to practice law in Pennsylvania, which was allegedly not true; the language in the retainer agreement that respondent signed and that the firm sent to the county that there were no actual conflicts of interest or appearances of a conflict stemming from the representation, which was not true; the untrue statements in the October 2006 proposal letter from the firm to the county, namely that no attorney at the firm had been investigated in connection with an ethics proceeding and that there were no conflicts of interest; the representation on the letterhead that the firm's of counsel was admitted in New York, when she was "delinquent" with respect to her license; respondent's violation of the recordkeeping rules in connection with his inability to

produce documents during the investigation;[4] and respondent's statement during the ethics investigation, that he was licensed in Pennsylvania. Thus, the complaint alleged that respondent had not made reasonable efforts to ensure that he and the other members of the firm conformed their conduct to the RPCs.

We determine, however, to dismiss the alleged violation of RPC 5.1(a), which provides:

> Every law firm . . . shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

Our case law has established that RPC 5.1(a) applies only to supervising lawyers. See, e.g., In re Yacavino, 110 N.J. 50, 56 (1985):

> Our Rules of Professional Conduct now make clear the ethical responsibility of a supervising attorney to take reasonable efforts to ensure "that all lawyers [in the organization] conform to the Rules of Professional Conduct." *RPC* 5.1(a). Under that Rule it is the supervising attorney's responsibility to assure that each lawyer in

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[4] This charge stemmed from respondent's inability to produce a copy of the County agreement and the invoices related to the agreement.

> the organization diligently carries out the firm's contracts of employment with clients. [Emphasis added].

The grounds on which the allegation is based are insufficient to support the charged -- and admitted -- violation. Specifically, as to respondent's and Hardaway's holding themselves out as being admitted in Pennsylvania and New York, respectively, it is unquestionable that, while they may have been admitted in those sister jurisdictions, they were not in good standing there since 1994 and 2004, respectively. That being said, respondent did not "supervise" himself and there is no indication that it was his responsibility to supervise Hardaway. Moreover, any supervision would apply to her handling of client matters, not to representations on the firm's letterhead.

The RPC 5.1 charge was also based on respondent's violation of the recordkeeping rule, in light of his inability to produce requested documents during the investigation. There is nothing in the record indicating that respondent was responsible for those records or had supervisory authority over the individual responsible for maintaining those records. Again, respondent cannot be found guilty of failure to supervise himself.

The remaining bases for the charge, the lack of formal system to check for conflicts, the misrepresentation in the proposal letter, and the misrepresentation in the retainer agreement, also do not support a finding that respondent violated RPC 5.1. The parties to the stipulation seem to be using RPC 5.1 as a "catch-all provision," alleging that it was violated based on nearly every other violation in the record. That is not the purpose of the rule.

As to the retainer agreement that respondent sent to the county, the letter misrepresented that the firm had no concurrent conflicts of interest and no appearance of a conflict. However, to find that respondent failed to supervise himself in this context is specious, at best. Indeed, the record does not reveal who authored the proposal letter. It may well have been respondent, but this is not clear. Even if he did, however, finding an RPC 5.1 violation in this regard is inappropriate. And if someone else authored it, there is no indication that respondent acted in a supervisory position over that attorney.

As to the firm's lack of formal system to check for conflicts of interest, although the record reveals that respondent was a "managing partner" of the firm, the record

contains no information on this issue, other than there was no such system in place. That may or may not have been respondent's fault but, again, he did not supervise his partners. The alleged violation of RPC 5.1(a) is, thus, dismissed.

That being said, respondent is not without blame in this matter. The stipulation states that neither respondent nor anyone at the firm took steps to "materially advance" the grievants' claim. While this language is rather vague, the complaint lists the activities that should have been taken to pursue the grievants' claim and that were not. It appears that, other than sending the two tort claims notices, respondent took no action in the matter for nearly two years. Respondent is, thus, guilty of violating RPC 1.1(a) and RPC 1.3.

With regard to RPC 1.4(b) and (c), there is no doubt that respondent failed to communicate with the grievants. During the nearly two-year course of the representation, respondent only had one telephone call with Mr. De Vose, during which respondent stated that the matter was "going well."[5] Clearly,

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[5] Respondent was not charged with misrepresentation, stemming from his statement to De Vose.

that was not the case. Respondent, therefore, violated RPC 1.4(b).

As to RPC 1.4(c), respondent did not advise the grievants that the firm was communicating with Essex County about its representation and did not advise the county that the firm was representing the grievants in a lawsuit against the county. In either scenario, the uninformed client/potential client could have chosen to take their business elsewhere, in light of the conflict. Even entering into negotiations could have given the grievants pause. Respondent, thus, violated RPC 1.4(c).

Respondent also violated RPC 1.7(b). He engaged in a per se concurrent conflict of interest by accepting the representation of Essex County, while still retained to pursue a claim against the county, on behalf of the De Voses. The county, a public entity, could not waive the conflict. RPC 1.7(b)(1).

The complaint also charged respondent with violating RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), based on his inability to produce to the DEC a copy of the firm's retainer agreement with the county, during the ethics investigation, and his inability to produce the invoices sent to the county. The record provides no information

about why respondent could not produce the requested documents. Nevertheless, pursuant to R. 1:21-6(c)(1)(C) and (E), respondent was required to maintain those records, which he did not do. He, therefore, violated RPC 1.15(d).

In addition, respondent violated RPC 1.16(a)(1) and (d). He should have declined to represent Essex County or, assuming for a moment that accepting the representation of the county was appropriate, should have immediately withdrawn from the representation of the grievants. He did neither. Respondent did not withdraw from the grievants' representation until August 2006, eight months after the firm signed an agreement to represent the county and one month before the statute of limitations would run on the grievants' claim. Fortuitously, the grievants were able to find an attorney to pursue their claim at the eleventh hour. Respondent did not act in a way to protect their interests.

The complaint also charged respondent with violating RPC 8.1(a) (misrepresentation to disciplinary authorities), in connection with his statement to the DEC that he was licensed to practice law in Pennsylvania. As previously discussed, the record supplies no indication that he was not admitted in Pennsylvania; only that he was not in good standing.

Respondent's statement was, at best, a half-truth. He may have been admitted in Pennsylvania, but to say that he was licensed implies an ability to practice there that he clearly did not possess. Respondent, thus, violated RPC 8.1(a).

Finally, respondent violated RPC 8.4(c) (misrepresentation) in connection with the retainer agreement with Essex County, which stated that the firm had neither a conflict of interest nor an appearance of a conflict of interest. Respondent, the attorney responsible for the firm's representation of the grievants, signed that letter. He knew or should have known that his agreement-letter was inaccurate.

The complaint also charged respondent with violating RPC 8.4(c) based on the representation on his letterhead that he was admitted to practice law in Pennsylvania. As stated, that is also a basis to find misconduct in this regard.

Cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re Guidone, 139 N.J. 272, 277 (1994), and In re Berkowitz, supra, 136 N.J. 134, 148. See, e.g., In re Pellegrino, 209 N.J. 511 (2010) and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien

certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures; the attorneys violated RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (attorney filed an answer to a civil complaint against him and his client and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise the buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); and In re Poling, 184 N.J. 297 (2005) (attorney engaged in a conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere). But see In

re Bjorklund, 200 N.J. 273 (2009) (admonition for attorney who engaged in a conflict of interest when he represented two criminal defendants in unrelated matters, with the potential that each of the defendants could be a witness against the other; compelling mitigation considered, including the possibility that the attorney might not have been aware of the circumstances that gave rise to the conflict, the absence of a disciplinary record in his twenty-three years at the bar, the passage of thirteen years since the infraction, and his acknowledgement of the impropriety in representing criminal defendants with potentially competing interests; although the disciplinary proceeded as a default, the discipline was not enhanced because of lack of clear and convincing evidence that the attorney's failure to file an answer was not a mistaken understanding on his part that an answer was not required because he had indicated to the Office of Attorney Ethics' attorney assigned to his case that he did not intend to contest the charges); In the Matter of Cory J. Gilman, 184 N.J. 298 (2005) (attorney admonished for an imputed conflict of interest (RPC 1.10(b)), among other violations, based upon his preparation of real estate contracts for buyers requiring the purchase of title insurance from a company owned by his

supervising partner; in imposing only an admonition, we noted the following "compelling mitigating factors": this was his "first brush with the ethics system; he cooperated fully with the OAE's investigation, and, more importantly, he was a new attorney at the time (three years at the bar) and only an associate"); and In the Matter of Carolyn Fleming-Sawyerr, DRB 04-017 (March 23, 2004) (attorney admonished for, among other things, engaging in a conflict of interest (RPC 1.7(b)) when she collected a real estate commission upon her sale of a client's house; in mitigation, we considered the attorney's unblemished fifteen-year career, her unawareness that she could not act simultaneously as an attorney and collect a real estate fee, thus negating any intent on her part to take advantage of the client, and the passage of six years since the ethics infraction).

At times, a reprimand may still result if, in addition to engaging in a conflict of interest, the attorney displays other forms of unethical behavior that are not considered serious enough to merit a suspension. See, e.g., In re Soto, 200 N.J. 216 (2009) (attorney represented the driver and the passenger in a personal injury action arising out of an automobile accident; the attorney was also guilty of gross

neglect, lack of diligence, failure to communicate with one of the clients, and failure to prepare a contingent fee agreement; no ethics history); In re Barone, 180 N.J. 518 (2004) (reprimand for attorney who engaged in conflicts of interest on two occasions by simultaneously representing driver and passenger in automobile matters; after filing the complaints, the attorney allowed them to be dismissed and took no further steps to have them reinstated; the attorney was found guilty of gross neglect, lack of diligence, and failure to communicate with clients); In re Kraft, 167 N.J. 615 (2001) (reprimand for attorney whose unethical conduct encompassed four matters; in one matter, he was found guilty of a conflict of interest by failing to explain to the client the advantages or disadvantages of pursuing her case jointly or independently of the client's co-worker, who was also represented by the attorney; in another matter, the attorney failed to clearly explain to the client his legal strategy, thereby precluding her from making an informed decision about the course of the representation and the pursuit of her claims; in all four matters, the attorney exhibited lack of diligence and failure to communicate with clients; and, in one of the matters, the attorney failed to prepare a written fee agreement); and In re Castiglia, 158 N.J. 145 (1999) (on a

motion for discipline by consent, the Court agreed that a reprimand was the appropriate discipline for an attorney who engaged in a conflict of interest by simultaneously representing various parties with adverse interests, repeatedly failed to communicate to his clients, in writing, the basis or rate of his legal fee, and witnessed the signature on a deed and affidavit of title, even though the documents had been signed outside of his presence).

Fortunately, the De Voses were able to obtain another attorney to pursue their claim. The record does not indicate that they were harmed by respondent's conflict of interest. Thus, we can take a reprimand as the starting point for the correct measure of discipline. In fact, even adding respondent's additional violations, a reprimand remains the appropriate measure of discipline. Like the attorney in Soto (reprimand), respondent was guilty of gross neglect, lack of diligence, and failure to communicate. It is true that respondent was also guilty of a recordkeeping violation and misrepresentation, a violation more serious than Soto's failure to prepare a contingent fee agreement. In our view, however, that difference does not bring this case to the realm of a censure. Although respondent put forth no mitigating factors,

we are mindful that he has practiced law in New Jersey for twenty-eight years, with no prior discipline. In addition, he readily acknowledged his wrongdoing by agreeing to proceed pursuant to R. 1:20-6. On balance, thus, a reprimand remains the appropriate measure of discipline for respondent's conduct.

Member Doremus 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 Frost, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald C. Hunt
Docket No. DRB 13-026

Argued: June 20, 2013

Decided: July 22, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			6			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel