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December 3, 2013

Mark Neary, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: In the Matter of Donald H. Larsen  
Docket No. DRB 13-183  
District Docket No. XA-2011-0045E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems warranted) filed by the District XA Ethics Committee in the above matter, 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 reprimand is the appropriate measure of discipline for respondent's stipulated violations: failing to set forth, in writing, the rate or basis of his fee (RPC 1.5(b)), engaging in a concurrent conflict of interest (RPC 1.7(a)(2)), and practicing law while ineligible (RPC 5.5(a)).

Specifically, in September 2010, respondent represented the defendants in a Hudson County Superior Court, Law Division action, filed by the Liberty Humane Society (LHS). The suit alleged that defendants, all former LHS volunteers, initiated an internet campaign to damage LHS and its officers' reputations, in retaliation for alleged animal abuse and mismanagement, at the shelter, by the plaintiff managers. Respondent also represented the volunteers as plaintiffs' counsel, in a subsequent action against LHS, filed in Hudson County Superior Court, Chancery Division.

December 3, 2013

Page 2 of 4

The LHS complaint alleged that one of respondent's clients, Brad Levy, created two Facebook "profile" pages to be used against LHS. After subpoenaing Facebook's records, LHS' counsel learned, for the first time, that respondent, not Levy, had created a December 2, 2010 Facebook profile page, using the name "Richard Kuklinski." So, too, respondent, not Levy, had created a second Facebook page under the name "Winston Wolf," a fictional character from a movie, "Pulp Fiction."

From September 26 to December 29, 2011, respondent was ineligible to practice law for having failed to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). Yet, he continued to practice law in these matters, during the period of ineligibility.

Respondent stipulated that, in both the LHS and Chancery Division lawsuits, he had failed to set forth, in writing, the rate or basis of his fee, a violation of RPC 1.5(b); he engaged in Facebook activities that LHS had attributed to his client, Levy, constituting a concurrent conflict of interest, a violation of RPC 1.7(a)(2); and his practice of law during the period of his ineligibility violated RPC 5.5(a).

The Board dismissed the remaining charges (RPC 3.3(a)(1) and (5), as well as RPC 3.7), in that they were unsupported by the stipulated facts.

Attorneys who have both engaged in a conflict of interest and failed to utilize a written fee agreement have received reprimands. 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); they also failed to memorialize the basis or rate of the legal fee charged to the business, a violation RPC 1.5(b)).

I/M/O Donald H. Larsen, DRB 13-183

December 3, 2013

Page 3 of 4


Attorneys found guilty of practicing law while ineligible (RPC 5.5(a)) have routinely received admonitions, if, as here, they are unaware of the ineligibility. See, e.g., In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009); and In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006).

In mitigation, respondent admitted his wrongdoing and consented to discipline in this matter. In aggravation, on February 8, 2013, he was reprimanded for misrepresenting the status of the matters of two clients, failing to set forth in writing the rate or basis of his fee in one of those matters, and grossly neglecting both matters. In re Larsen, 213 N.J. 39 (2013).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated May 2, 2013.
2. Stipulation of discipline by consent, dated May 2, 2013.
3. Affidavit of consent, dated May 2, 2013.
4. Ethics history, dated December 3, 2013.

Very truly yours,

  
Isabel Frank  
Acting Chief Counsel

IF/sj  
encls.

c: Bonnie C. Frost, Chair, Disciplinary Review Board  
(w/o encls.)  
Charles Centinaro, Director, Office of Attorney Ethics  
(w/o encls.)  
Matthew P. O'Malley, Chair, District XA Ethics Committee  
(w/o encls.)  
Caroline Record, Secretary, District XA Ethics Committee  
(w/o encls.)  
Donald H. Larsen, Respondent (w/o encls.)