SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-309
District Docket No. VA-2011-0028E

IN THE MATTER OF	
RAYMOND LOUIS HAMLIN	
AN ATTORNEY AT LAW	

Decision

Argued: January 16, 2014

Decided: March 21, 2014

Lan Hoang appeared on behalf of the District VA 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 discipline (reprimand) filed by the District VA Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.16(a)(1) (a lawyer shall not represent a client or, where the representation has commenced, shall withdraw from the representation of a client if (1) the representation will result in violation of the Rules of Professional Conduct or other law) and RPC 5.1(a) (every law firm, government entity and

organization authorized by the Court Rules to practice law in this jurisdiction 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 review of the matter, supplemented by oral argument, convinced us that dismissal is in order in this case.

Respondent was admitted to the New Jersey bar in 1991. He received an admonition, in 2009, for attempting to collect a $50,000 fee in a contingent fee case where there had been no discovery. In the Matter of Raymond L. Hamlin, DRB 09-051 (June 11, 2009).

By way of procedural history, at our June 2013 session, we considered a matter against Ronald C. Hunt, respondent's partner at the firm of Hunt, Hamlin & Ridley (the firm). Hunt stipulated the allegations of a twelve-count complaint.[1] We dismissed the charged violation of RPC 5.1 because the stipulation was not

[1] The stipulation was admitted as Exhibit P2 in the current matter. During the ethics hearing and in its report, the hearing panel indicated that it took judicial notice of the stipulation. The panel chair stated, however, that "[t]he document itself and the representations and the scope of the document itself will not be admitted into evidence."

entirely clear about the specific basis for that charge, but found Hunt guilty of a conflict of interest, gross neglect, lack of diligence, failure to communicate with the client, failure to decline representation, failure to protect a client's interests on termination of the representation, misrepresentation to disciplinary authorities, misrepresentation to a client and on his letterhead, and failure to comply with the recordkeeping requirements.

The same facts that gave rise to the proceeding against Hunt sparked the within matter. They are as follows:

Respondent was a founding partner of the firm. The other partners were Hunt and Terry Ridley.[2] Respondent and his two partners were each a "managing partner" of the firm. During the time in question, 2004 through 2006, the firm employed between five and seven additional attorneys and had approximately three other staff members.

In November 2004, Leon De Vose, II and Delretha De Vose retained the firm to pursue a claim against several defendants, including Essex County. The De Voses' claim related to the

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[2] Ridley passed away in November 2012.

death of their son, while being held in the Essex County jail. Hunt handled the De Voses' matter.

In November 2004, Hunt sent the notice of the De Voses' claim to Essex County, as required by the New Jersey Tort Claims Act.[3] Ultimately, however, Hunt did no additional significant work in the matter.

During the firm's representation of the De Voses, the firm replied to a request for proposal (RFP) for Essex County. Eventually, the firm and Essex County entered into a contract for services for the period January 1, 2006 through December 31, 2006.[4] Hunt executed the agreement on behalf of the firm, in December 2005. Respondent witnessed the document. The agreement provided for the possible payment of up to $50,000 to the firm.

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[3] In April 2005, Hunt sent a second notice of the claim to Essex County, after he did not receive the County's reply to the first notice.

[4] It is unclear whether there was a second RFP at issue. The hearing panel noted that there was a dispute in the record, but determined that the issue was of no moment, because both respondent and Hunt acknowledged that the firm undertook Essex County's representation in at least one matter.

Respondent testified that he had asked his partners if they had any cases against Essex County and that he had been informed that there was no prohibition to their signing the agreement with Essex County. Hunt conceded that the burden had been on him to make the firm's representation of the De Voses known to his partners.

The agreement with the County provided as follows:

> 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 [sic] this Agreement Counsel represents to the 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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> [Ex.P12.]

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), in that it was still representing the De Voses against the County.

On or before August 10, 2006, Hunt realized that there was a conflict of interest in the firm's simultaneous representation of the De Voses and the County. Hunt testified that he had

talked to Ridley about the conflict, but did not recall whether he had discussed it with respondent.

By letter dated August 10, 2006, roughly eight months after the conflict arose, Hunt notified the De Voses that the firm was terminating their representation. The letter stated, in part, that the firm was ending its representation because it had been designated Special Counsel for Essex County Counsel's Office and that, "[c]onsequently, any continued representation in your case will present a conflict of interest for the firm."

The De Voses ultimately obtained new counsel, who filed a complaint on their behalf. For reasons not revealed in the record, their case was dismissed.

To Hunt's knowledge, no one at the firm advised Essex County about the conflict. He explained that "the thinking was that [sic] would cure the problem by severing the relationship with the plaintiffs to the extent that there was one when we realized this was."

Respondent did not know about the firm's conflict of interest, because he was unaware of the firm's representation of the De Voses, with whom he had had no contact.

During and around the time that the firm represented the De Voses, 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. Both respondent and Hunt testified that the firm held meetings on Fridays, where the attorneys would discuss their cases and scheduling matters. According to Hunt, the meetings did not occur every week and not all attorneys attended every meeting, because of scheduling issues.[5] No notes were taken at the meetings. There was no formal system for communicating the matters that had been discussed. However, if a problem arose in a matter, it would be brought to the absent partner's attention.

Other than these informal procedures, there was no conflict of interest screening process in the firm. It did not maintain complete lists of current and past clients or lists of attorney affiliations or "family ties" with other entities. The firm's attorneys and staff were not trained in conflict of interest issues. Respondent testified that the partners could determine whether to take on the representation of a new client, but the associates needed the approval of a partner to accept a new matter.

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[5] As seen below, respondent contradicted Hunt's statement.

Respondent acknowledged that the RPCs require law firms to undertake reasonable efforts to ensure compliance with the rules, but took the position that there is no requirement that law firms have "formal policies" to ensure compliance. He asserted that RPC 5.1(a) "does not set forth specific, exact measures that a firm needs to undertake to satisfy its reasonable efforts under that reasonable efforts standard."

The DEC found that the firm's contemporaneous representation of the De Voses and Essex County violated RPC 1.7, because the firm's filing of the notice of claim on the De Voses' behalf against Essex County "represent[ed] patently adverse positions." In the DEC's view, although there was a violation of RPC 1.16 and, by reference, RPC 1.7, the individual responsible was Hunt, not respondent. The DEC concluded, however, that, even though respondent did not directly violate RPC 1.7 and RPC 1.16, under RPC 5.1(a) he bore responsibility for the firm's concurrent representation of Essex County and the De Voses.

The DEC concluded that respondent was one of three partners who undertook management duties for the firm. Respondent himself – not through imputed liability based on Hunt's conduct – was responsible for implementing reasonable efforts to ensure

that attorneys in the firm conformed to the RPCs. The DEC, thus, found that respondent violated RPC 5.1(a).

As to the measure of discipline, the DEC noted that attorneys who violate RPC 5.1 are generally subjected to a reprimand, citing In re Boyajian, 202 N.J. 332 (2010); In re Sills Cummis Zuckerman Radin Tischman Epstein & Gross, 192 N.J. 222 (2007); In re Daniel, 146 N.J. 490 (1996); In re Perkins, 143 N.J. 139 (1996); In re Lester, 143 N.J. 130 (1996); In re Gilbert, 144 N.J. 581 (1996); and In re Fusco, 142 N.J. 636 (1995). The DEC found no aggravating or mitigating factors to require a departure from precedent and recommended that respondent be reprimanded. The DEC further recommended that respondent "be ordered to submit a plan to implement a systematic conflict of interest screening procedure and to certify as to the implementation of the procedure, as well as training of attorneys and personnel/staff of the Firm as to the procedure." In addition, the DEC recommended that respondent and the firm be directed to reimburse the De Voses for any fees paid to the firm, if they have not already done so.

Following a de novo review of the record, we are unable to agree with the DEC's conclusion that respondent was guilty of unethical conduct.

As to RPC 1.16(a)(1), respondent did not know, at the time that the firm undertook to represent Essex County, that the firm was already representing the De Voses against Essex County. Thus, his failure to decline the representation of Essex County did not violate RPC 1.16(a)(1).

As to RPC 5.1(a), that rule states, in relevant part, that "every law firm . . . in this jurisdiction shall make reasonable efforts to ensure that member lawyers . . . undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct." Respondent argued that RPC 5.1(a) does not require formal policies to ensure compliance with the RPCs.

At oral argument before us, respondent noted that the rules do not require a formal system to check for conflicts. Rather, an attorney must "take reasonable efforts to ensure that [they] are operating within the confines of the rules." Respondent stated that his firm is often faced with potential conflicts of interest because of its representation of public entities. The firm's system has worked effectively, but for this one instance. As respondent explained, all attorneys are required to attend the firm's weekly meetings. Attorneys who are not present in the office call in to participate.

We are aware that "[t]he rule does not prescribe the steps a firm should take to meet its 'reasonable efforts' obligation." (Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering §41:2-3 at 1048 (2014)). However,

> [t]he Comments to the Model Rule suggest that reasonable "policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised." In addition, the ABA comments acknowledge that the measures required can vary based on the firm's size, structure, and the nature of its practice. . . .
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> The thrust of Rule 5.1(a), then, is that the firm should (1) provide reasonable supervision of subordinate attorneys; (2) educate all attorneys on the ethical issues likely to be encountered in the firm's practice; and (3) establish means by which the ethical concerns that arise in the firm's practice can be considered and resolved.
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> [Ibid.]

Thus, although respondent is correct that formal procedures are not required, reasonable procedures are. As a partner of the firm, respondent was among those responsible for making reasonable efforts to implement policies and procedures to

ensure that lawyers and other office personnel complied with the RPCs.

That said, however, we cannot conclude, by clear and convincing evidence, that the efforts made by the partners were insufficient to ensure that the firm's attorneys complied with the RPCs. The firm had in place a system of weekly meetings, where the lawyers would discuss their cases. True, the system failed and a conflict of interest resulted, but the failure was due to human error, and not to the firm's procedures. Imperfect human memory proved fallible. No one alerted respondent that the De Voses were the firm's clients. That failing was not the fault of whatever system the firm had in place. We cannot, thus, find that respondent was guilty of a violation of RPC 5.1(a) and determine to dismiss the complaint.

One more point warrants mention. The DEC recommended that respondent and the firm be directed to refund to the De Voses any fees paid to the firm, if they have not already done so. We refrain from imposing that requirement, as fee matters are the province of the fee arbitration committees, not the disciplinary system.

Member Doremus did not participate.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond L. Hamlin
Docket No. DRB 13-309

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Decided: March 21, 2014

Disposition: Dismiss

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark				X		
Doremus						X
Gallipoli				X		
Hoberman				X		
Singer				X		
Yamner				X		
Zmirich				X		
Total:				8		1

Isabel Frank
Acting Chief Counsel