SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-235

IN THE MATTER OF	:
RICHARD LEDINGHAM	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 19, 2006

Decided: December 18, 2006

Jeffrey L. Clutterbuck appeared on behalf of the District IIA Ethics Committee.

Respondent appeared pro se.

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

This matter came before us on a recommendation for discipline (reprimand) by the District IIA Ethics Committee ("DEC"). The complaint alleged, and the DEC found, that respondent charged an excessive fee and, when trying to collect that fee, attempted to gain an unfair advantage by threatening criminal action for "theft of services." The DEC recommended a reprimand; we recommend a three-month suspension.

Respondent was admitted to the New Jersey bar in 1981. He has no prior discipline.

On June 16, 2003, Karen Ferwerda, the grievant, retained respondent to represent her in the purchase of a Sylvan Learning Center franchise for approximately $470,000. The following day, respondent prepared a fee agreement under which he agreed to "draft a contract, and in addition, an escrow agreement, a note, tax elections, as well as any and all other documents, and any and all research that may be necessary in order to accomplish a Closing concerning this business transaction." Respondent was to be paid at a rate of $175 per hour, plus disbursements. Respondent further agreed to "send a bill out to [Ferwerda] at the end of every month which is payable on receipt. However, I will ask you to defer payment on these bills for a limited period of time." The letter did not specify the reason for a deferral.

Respondent claimed that, over the next five months, he accumulated $51,450 in fees and $1,292.57 in expenses. He sent no monthly fee bills to Ferwerda during that time. On December 1, 2003, after the closing, respondent sent Ferwerda a bill for the entire amount.

He requested payment as follows:

> In order to help your cash flow a little further, if you can, please make two checks

> out as soon as you receive the bill. One in the amount of $5,000 and one in the amount of $10,000. Those checks may be cashed immediately. The balance of $37,742.57 should be dated before December 25.
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> [Ex.C-5.]

At the DEC hearing, Ferwerda testified that she met with respondent on three occasions between June and December 2003, and that she brought her checkbook each time, prepared to pay respondent something against the bill. Yet, respondent told her that he would take care of the billing "at the end" of the representation. On only one occasion did respondent give her any indication of the likely amount of his bill, at the end of September 2003, when he told her that "we had several thousand dollars to date".[1]

With regard to work performed, Ferwerda testified that respondent assisted in the review of Small Business Administration ("SBA") loan documents, for which she had been approved but which she had not pursued. Instead, she procured funds on her own. Respondent also reviewed the Sylvan lease agreement, but did not negotiate changes to it, because it was

[1] A review of respondent's bill indicates that, as of September 30, 2003, he had billed 182 hours ($31,850) and costs of $529.75.

an assumable lease; the Sylvan franchise agreement was a "take it or leave it" proposition.

Ferwerda was "taken aback" by respondent's large bill, and first spoke with him about it on December 15, 2003. In a telephone call to Ferwerda that day, respondent pressed her for payment. Ferwerda testified:

> And I said, yes, that I was — I had transferred the funds and that I was sitting down to do bills within the next several days and they would be sent to him . . . . And that there was no problem with the first two checks, and they would be sent out in the next several days when I did bills, but that considering the size of the third check [for $37,742.57], that my finances had all been allocated at that point to the sale, which I was just into, and my initial payrolls, and so on, so I needed to go elsewhere to find a large block of money, so that would not be immediate, but I would pay what I could as I could until the amount was . . . satisfied.
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> [T14-20 to T15-7.][2]

Four days later, on December 19, 2003, and before Ferwerda sat down to pay bills, respondent visited the school unannounced. According to Ferwerda,

> [h]e walked in and at first said, well it's very nice, I'm glad to see you're busy, things are going well, and he started off conversationally asking and inquiring how

[2] "T" refers to the transcript of the February 10, 2006 DEC hearing.

> things were going. And he sat down and said, you know, I haven't received the checks. I said, well, that's because I did not sit — mail my bills yet, but I have the checkbook here, I can give you these two. And I did. I wrote out the $5,000 and the $10,000 check that he wanted. He wanted them separately. And he then insisted that I write the third check.
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> [T16-3 to 13.]

Ferwerda explained to respondent that she did not have $32,000 on hand in her account and, therefore, could not write a check right then. "He said, yes you can. I can just put it in my bedside stand, I won't deposit it until you tell me to . . . And I refused. And he stayed there, probably about an hour-and-a-half while I had people coming in and out, and I had to get up and leave and then come back." According to Ferwerda, respondent finally left with only the two checks totaling $15,000.

Thereafter, respondent called Ferwerda during the first week of January 2004, requesting payment of the balance of his bill. He followed it closely with a message on Ferwerda's answering machine at the school. According to Ferwerda, "It was a rather detailed and — it was actually a very embarrassing message to have anybody hear that." She also recalled that he had said, "He trusted me to pay him, that I was not fulfilling my obligations, and that I needed to deal with my finances

immediately and remit the check that he's waiting for, that it should have been to him by the end of December."

Ferwerda had no further contact with respondent until she received a February 16, 2004 letter from him, which read as follows:

> I wish to inform you that the facts of your case indicate to me that you have committed a crime in New Jersey under New Jersey Statute 2C:20-8, which is entitled 'Theft of Services.' A copy of the law is enclosed as part of this Certified Letter. If you do not pay the bill in full by March 10, 2004, I will then contact the Bergen County Prosecutor's Office to report this as a crime, which the facts support. In regard to previous unrelated theft cases, I have contacted Mr. David Yackt at 201-646-2043 and Mr. Ike Gavzy at 201-646-2334, both of whom are Bergen County Prosecutors, at the Bergen County Prosecutor's Office located in Hackensack, New Jersey.
>
> I will also notify the lawyer for Strategies for Success, Inc., which may very well accelerate the note by making the entire balance due and payable due to the Seller's rights to protect its security under the note payable. That will be a problem for the Landlord, also. In addition, concerning your principal residence, a snowball effect will develop thereby possibly causing an acceleration on the note payable related to the residence, once the bank is notified regarding these facts. In addition, I will notify Sylvan Learning Center of the pending prosecution and they may immediately revoke your license, which will end your income from the enterprise. Moreover, your license to teach in the State of New Jersey may be revoked or suspended upon notification.

> Most important of all, you have three children, and they need you as a wage earner for the future. That was the biggest reason for purchasing Sylvan Learning Center — it was the best scenario for your family.
>
> [Ex.C-7.]

Ferwerda recalled her feelings at the time:

> I was stunned. I was stunned. And I was extremely upset, extremely worried. I mean, truthfully, I mean, I'm not a lawyer, and everything he said in here I believed he could make happen, and I wasn't quite sure what would happen. I basically had visions of my life disappearing. I mean, he said my home could disappear, my franchise could disappear, my teaching license could disappear, you know, and he's talking about criminal action. And I had no idea if this truly was a criminal action that would involve incarceration. I mean, I, I was just absolutely stunned by this.
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> [T24-12 to 23.]

Ferwerda found the eleven-page bill rife with questionable charges. Several grouped charges bear mention. Between July 21, 2003 and August 5, 2003, respondent spent eighty-five hours preparing an "operating agreement" and an "asset purchase agreement." Neither of those agreements, in draft or completed form, was in the record before us. Respondent also billed Ferwerda forty-seven hours for studying one four-page section of the Internal Revenue Code, §197, dealing with amortization of intangibles.

Respondent charged Ferwerda for seventy hours of alleged preparation and review of a "new contract." It appears from respondent's billing entries that he may have reviewed more than one draft of the contract, but here, too, no documents support the billing charges. Indeed, the only documents for our review were a one-page IRS Form SS-4 "Application for Employer Identification Number" and a two-page Form 2848, "Declaration of Representative." Respondent charged Ferwerda two-and-one-half hours to fill out those forms by hand.

Shortly after receiving respondent's February 16, 2004 letter, Ferwerda discussed it with her accountant, who was "appalled" by respondent's fee. The accountant then referred her to another attorney, who helped Ferwerda file a fee arbitration claim. At some point in time, the attorney reported the matter to ethics authorities.

Respondent filed a lengthy, meandering answer, but did not support it with documentation of the underlying transaction, the closing, or events thereafter. Nor did he appear at the DEC hearing, despite his obligation to do so.[3] In his answer, he attempted to "waive" appearance at the hearing "in order to

[3] R. 1:20-6(C)(2)(D) states that a "Respondent's presence at all hearings is mandatory."

expedite this matter." Therefore, respondent's version of events must be gleaned from his initial reply to the grievance and his answer to the formal ethics complaint.

According to respondent's answer, on March 18, 2004, after the fee arbitration request was filed, but before a hearing, he returned to Ferwerda the $15,000 already paid, and forgave the balance of the fee. He did so, he claimed, even though he believed he had earned the entire fee, out of concern for Ferwerda and her company.

Respondent explained his fee on the ground that the seller "constantly" changed the terms of the sale, forcing modifications to the contract. He claimed that the issues implicated by Internal Revenue Code §197, for which he billed forty-seven hours, were novel to him and required great study.[4] Respondent did not give more details to the entries in his bill, choosing instead to highlight only "primary," not "secondary and tertiary" issues that had required his intense scrutiny. Respondent claimed that, had Ferwerda utilized the SBA funding, as she had originally discussed, the closing agent would have charged a $15,000 fee.

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[4] In a December 23, 2005 letter to the DEC, respondent elaborated on his explanation for the extensive charges on that single issue (Ex.C-1).

Respondent pointed to his hourly rate as being very low ($175) for someone of his qualifications as both an attorney and a CPA. He also stated that his fee could have been higher, had he charged her for all of the services provided, including telephone calls, certain faxes, and hand-delivery of documents to the seller's attorneys.

The presenter gave some additional perspective in his closing remarks to the DEC panel:

> I do this type of work, and for the amount of effort that should be involved for a representation of an asset purchase of about $400,000, it doesn't include real estate, that really doesn't include negotiating the lease, it includes review of a lease, review of the franchise agreement, and an asset purchase agreement, I mean it just — I think it is extremely excessive . . . .
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> [T46-8 to 16.]
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> There are economies of time, there are what the client's expectations are, what the reasonable — what your reasonable role should be. And whether or not you spend that time in reviewing and negotiating, you shouldn't.
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> [T47-13 to 18.]

In his answer, respondent said that his February 16, 2004 letter was sent not in an effort to collect his fee, but again, out of concern for his client: "[t]he letter was sent merely to

prevent Mrs. Ferwerda from committing a crime":

> I thought it was my responsibility to do that based on prior seminars in ethics over the years. In all likelihood, Mrs. Ferwerda did not know the statute, and that is why I informed her. In addition, some people do not care whether they commit a crime, but may hesitate if they learn that it can affect their credit rating and their finances, especially if they have a family and three children.
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> [A¶19.][5]

Respondent maintained that he never really intended to involve the county prosecutor in criminal proceedings or to contact either Sylvan Learning Centers about Ferwerda's franchise, or any of the other parties named in his letters. Once more, he stated, his main concern was for Ferwerda: "[a]s the lawyer for the company, I felt that I just couldn't have someone committing a crime which is closely involved in the company, knowing that I was the lawyer who represented the company . . . ."

As to the reference to Ferwerda's children in his February letter, respondent claimed that his purpose was to prevent

[5] "A" refers to respondent's answer to the ethics complaint.

Ferwerda from committing a crime, which somehow might jeopardize her children's two percent interest in the new franchise.[6]

The DEC found that respondent's fee was unreasonable, in violation of RPC 1.5(a) and that his February 2004 letter constituted a threat to present criminal charges in order to collect his fee, in violation of RPC 3.4(g). The DEC also found a violation of RPC 8.4(c), concluding that the excessive charges for the "Power of Attorney and an SS-4 Form, researching Internal Revenue Section 197, preparing an Operating Agreement and preparing a Purchase Agreement" constituted dishonesty, deceit or fraud.

The DEC dismissed the charge of failure to set the rate or basis of the fee in writing (RPC 1.5(b)), noting that the June 17, 2003 fee agreement satisfied that rule.

The DEC recommended a reprimand.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent's misconduct was hardly subtle. With regard to the fee, he purportedly spent entire days, sometimes eight or

[6] Respondent also claimed that Ferwerda put a "stop payment" on a $1,000 check, in early February 2004. Ferwerda was not questioned about that assertion.

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. Further, respondent presented nothing to substantiate the time charges underlying the bill. Nothing in the record refuted Ferwerda's compelling testimony that respondent's services should have been limited to review of the SBA loan documents, an unalterable lease agreement, and the franchise agreement, itself a non-negotiable contract.

It was incumbent upon respondent to appear at the DEC hearing to justify his fees. Instead, he left a record for us that bespeaks a gross overreaching, in violation of RPC 1.5(a). His refund of the $15,000 portion of the bill actually paid – under the stimulus of an arbitration demand – was not exonerating. Likewise, we conclude that the DEC's finding that the charges were so clearly inflated as to constitute dishonesty within the meaning of RPC 8.4(c) is amply supported by the record.

The DEC correctly dismissed the RPC 1.5(b) charge, however, because the parties utilized a written fee agreement for the representation.

With respect to RPC 3.4(g), the DEC correctly found that respondent had improperly threatened Ferwerda with criminal

prosecution in order to collect his excessive fee. The rule states that a lawyer shall not:

> (g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.

Respondent's February 2004 letter could hardly have been more heavy-handed. His defense that he was only "bluffing" about contacting the prosecutors, and that his primary concern was to prevent his client from committing a crime was wholly self-serving and unconvincing. The issue is not whether respondent intended to carry through with his threat, but the effect it could be expected to have, and did have, on his client. There can be no justification for subjecting one's client to this kind of pressure.

As to the quantum of discipline, discipline for fee overreaching has ranged from a reprimand to disbarment. In re Read, 170 N.J. 319 (2000) (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 (1990) (reprimand for attempt 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 Mezzacca, 120 N.J. 162 (1990) (reprimand for, among other things, taking contingent fees based on gross

recovery amounts and failing to provide written fee agreements); 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 $550 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 never prepared; misrepresentations considered in aggravation and illness considered in mitigation); In re Ort, 134 N.J. 146 (1993) (disbarment for charging a $32,000 fee on a $300,000 estate, and withdrawing fees from estate account without client's knowledge and consent; the attorney also obtained a home equity loan on estate property against client's instructions); 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).

Threatening criminal charges to obtain an unfair advantage in a civil matter leads to discipline ranging from an admonition to a suspension. See, e.g., In re Levow, 176 N.J. 505 (2003) (admonition where, in a medical malpractice suit, the attorney sent a letter to the client's doctor mentioning "criminal assault" and stating that the client had been directed to contact "all relevant and proper authorities"); In the Matter of Mitchell J. Kassoff, DRB 96-182 (December 30, 1996) (admonition for attorney who, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent the same day that the attorney received a letter from the other driver's insurance company denying his damage claim); In the Matter of Christopher Howard, DRB 95-215 (August 1, 1995) (admonition for threatening to file a criminal complaint for unlawful conversion if client's co-shareholder did not return the client's personal property); In re Hutchins, 177 N.J. 520 (2003) (reprimand for attorney who, in attempting to collect a debt on behalf of a client, told the debtor that he had no alternative but to recommend to his client that civil and criminal remedies be pursued); In re McDermott, 142 N.J. 634 (1995) (reprimand for attorney who filed criminal charges for theft of services against a client and her parents after the

client stopped payment on a check for legal fees); In re Neff, 185 N.J. 241 (2005) (censure for unilaterally aborting, without a clear right to do so, a real estate transaction; for seizing buyer's file and removing documents without authorization, for threatening buyer's counsel with criminal prosecution and, when faced with his refusal to leave the office building without his client's records, calling the police on a complaint for trespass; we found that Neff's purpose in threatening criminal prosecution was to coerce the buyer's attorney into agreeing and acknowledging that the transaction had been nullified by the buyer's failure to pay Neff an extra fee for the delayed closing); In re Supino, 182 N.J. 530 (2005) (three-month suspension for threatening criminal charges against former wife, the court administrator, and police officers in order to obtain improper advantage in the attorney's own child-custody and visitation case; the attorney also exhibited a pattern of rude and intimidating behavior toward judges, the court administrator, and law enforcement authorities); In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening criminal prosecution against an individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney ordinarily charged in a criminal

matter "of this type"); and In re Barrett, 88 N.J. 450 (1982) (three-year suspension for serious misconduct in five matters, including improperly altering a document previously consented to by another attorney before presenting it to a court, and filing a criminal complaint with the purpose of coercing a party into reaching a civil settlement).

We believe that respondent's RPC 3.4(g) violation is more serious than that found in the admonition and reprimand cases, insomuch as he threatened his client's ruination in all aspects of her life, even including her ability to provide for her children. In addition, he did so attempting to secure payment of a clearly exorbitant fee. On the other hand, respondent did not go to the same lengths as Dworkin (one-year suspension), who was already involved in civil litigation at the time of his threat, or Barrett (three-year suspension), who also altered a "consented to" document without telling his adversary, and then filed a criminal complaint to coerce the settlement of a civil matter.

We are mindful that respondent has no prior discipline in his twenty-five years at the bar. In aggravation, however, we have considered his lack of contrition, and his failure to appear at the hearing below.

Respondent's threats of criminal prosecution in an effort to collect a grossly excessive fee, coupled with his non-appearance at the DEC hearing despite his obligation to appear, makes a three-month suspension the appropriate level of discipline in this case. Member Neuwirth did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the presentation of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard Ledingham
Docket No. DRB 06-235

Argued: October 19, 2006

Decided: December 18, 2006

Disposition: Three-month suspension

Members	Six-month Suspension	Three-month suspension	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Neuwirth					X
Stanton		X			
Wissinger	X				
Total:	1	7			1

Julianne K. DeCore
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Chief Counsel