SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-245

IN THE MATTER OF

ANTHONY N. VERNI

AN ATTORNEY AT LAW

Decision

Argued: September 13, 2001

Decided: January 30, 2002

Eric Tunis appeared on behalf of the District VC Ethics Committee.

Kalman H. Geist 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 based upon a recommendation for discipline filed by the District VA Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1990. On May 8, 2001 he was reprimanded for gross neglect and failure to comply with court directives and inquiries, in violation of RPC 1.1(a), RPC 1.3 and RPC 3.4(c). In re Verni, 167 N.J. 276 (2001).

* * *

The three-count complaint alleged that respondent charged excessive fees in three

matters, in violation of RPC 1.5(a), and knowingly made false statements of material fact to disciplinary authorities, in violation of RPC 8.1(a). In each of the fee matters, the client filed for fee arbitration. Respondent was required to return to each client a portion of his fee.

I. The Bamber Matter - (District Docket No. VA 00-001E)

On or about December 23, 1998 Louis O. Bamber retained respondent to represent him in an uncomplicated divorce action. Pursuant to a retainer agreement, which called for an hourly rate of $200 per hour, Bamber paid respondent a $1,500 initial fee. In all, respondent charged Bamber $3,005.00 in legal fees. As noted below, the DEC found that respondent attempted to make the divorce case appear more complicated than it was, in order to justify a higher fee.

Respondent testified about his time entries in the case. On January 9, 1999 he charged Bamber 4.0 hours ($800) for the preparation of interrogatories. However, with the exception of one sentence at the end of question number 2 and two other words in question number 11 ("due" and "co-workers"), all twenty-eight paragraphs of those interrogatories were identical to "All-State" brand form interrogatories, which respondent denied using, when first confronted by the Office of Attorney Ethics ("OAE") investigator.

Paragraphs 24, 25, 26 and 27 of the complaint alleged the following:

> 24. In a conference with the OAE, respondent stated that he did not have 'form' Interrogatories or document production requests in his office and prepared each document request and Interrogatory individually.
> 25. Respondent told the OAE that her [sic] personally drafted the

Interrogatories numbered 7, 9, 11, 12, 14, 15, 16, 19, 21, 22, 23, 25, and 26.

26. Respondent advised the OAE that it took him four (4.0) hours to prepare the Interrogatories.

27. In fact, the Interrogatories which respondent 'prepared' are virtually identical with the All-State Legal Supply Company's Form Interrogatories which were found in respondent's file.

Respondent admitted the above allegations.

At the DEC hearing, respondent first stated that he had drafted and redrafted those interrogatories himself and that they were not All-State forms. Later on, under questioning by the presenter, respondent admitted for the first time that he had actually used All-State forms to generate the interrogatories. Respondent insisted, however, that he had made numerous revisions to them on his computer; hence, the "drafting" he had mentioned in his earlier interviews with ethics authorities. According to respondent, he "merged" various questions from the All-State forms to create his own set of interrogatories. Respondent could not explain why, after all of that activity, the result was identical in every respect to the All-State forms.

Respondent also charged Bamber 2.5 hours ($500) to "prepare request for production of documents." He acknowledged that this document, too, was prepared from forms, but insisted that he had made revisions to tailor them to Bamber's case. These "revisions" were limited to the addition of the parties' names.

Respondent was also asked to explain why he charged $550 for the preparation of Bamber's case information statement ("CIS") if, as he later acknowledged, he did not

prepare a CIS for the case. In an effort to lend some credibility to this fee entry, respondent testified as follows:

> Yeah, I physically did not prepare the Case Information Statement but I did review some financial statements but it wasn't 2.75 hours worth.

A theme emerged in respondent's testimony whereby he revised his time entries downward and blamed "key punch" errors (explained below) for his mistakes.

The fee arbitration panel found several unsupported entries in the Bamber bill, leading it to conclude that respondent should return over one-half of his fee to Bamber ($1,600). Specifically, an entry for January 12, 1999 referred to respondent's preparation for, and attendance at, a status conference before a Bergen County Superior Court judge, even though Bamber's case was venued in Essex County. Another entry for $2,000 referred to the preparation of an answer, document requests and interrogatories that, the fee arbitration panel found, should have taken only fifteen to twenty minutes to draft.

The DEC was troubled by respondent's withdrawal from the case. Fewer than three weeks after the beginning of the representation, respondent filed a motion to be relieved as counsel, citing a "conflict of interest." The motion was granted. At the fee arbitration hearing, respondent admitted that the reason for the motion was to "cut his losses," because Bamber had already fallen behind in his weekly payments on a $1,400 balance.

The fee arbitration panel said the following of respondent:

> It is the opinion of the Panel that the attorney did little of value for his client, other than to file an Answer. Indeed, the attorney may have harmed his client by leading him to believe that he was adequately represented by counsel, when

the facts presented to this Panel would suggest there is every reason to believe this was not the case. The discovery allegedly done was next to useless, it was nothing more than standard interrogatories unsuited for the specific fact situation presented to [respondent] by his client.

II. The Rebollal Matter - District Docket No. VA-00-008E

On or about August 31, 1998 Richard Rebollal, a Florida resident, retained respondent to represent him in connection with a Florida lawsuit filed by Rebollal's former employer. Rebollal's prior Florida attorney had just withdrawn from the case, which alleged that Rebollal had stolen funds and trade secrets prior to his departure from the job. Respondent agreed to represent Rebollal, even though he was not licensed to practice law in Florida and was not familiar with Florida law. According to the fee arbitration panel,

> [t]he Client's papers indicated that he paid a retainer of $2,500 to the Attorney to represent him in a Florida civil matter in September of 1998. The Client's understanding was that he needed an attorney to help him to respond to interrogatories, and took the recommendation of a friend to hire [respondent]. The Client stated that [respondent] never indicated a Florida attorney would have to be brought into the case. The Client's submission states: 'As it turns out, it *was* necessary. Two months after I had retained his services, I was notified by [respondent] *the night before the necessary court appearance*, that I would have to appear and represent *myself*, because, up to that time, he had not retained the attorney yet or filed a notice to the Court that he would be handling my case.' The Client then went on to write that [respondent] retained a Florida attorney, that the Client had to pay to the court a fine of $250 for the late filing, for which he blames [respondent][1]. The Client believed that the $2,500 retainer was more than sufficient to cover all costs, even when taking into account that $1,000 of that was used to pay the Florida attorney secured by [respondent] to do the work.

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[1]Respondent testified that Florida counsel, not Rebollal, paid the $250 court sanction.

The fee arbitration panel found as follows:

> While [respondent] took the case on September 1, 1998, his time records, and his testimony, show that he did nothing with it until November 17, 1998, the eve of the hearing date in Florida of a discovery motion by the Client's adversary, a hearing requiring a personal appearance. It appears that [respondent] then scrambled, that evening, to find a Florida attorney for Mr. Rebollal, and to Fed Ex some materials to Florida for delivery the following morning (a delivery that had to be untimely, since the hearing was scheduled for 8:45 A.M.) Subsequently, as it became apparent to [respondent] that Mr. Rebollal could not continue to pay him, [respondent] suggested that the Client settle the case by paying the full $10,000 amount demanded by the adversary.
>
> The panel finds it ludicrous for [respondent] to claim that he adequately represented the Client, or that he is entitled to claim the fees he seeks in this matter. Even [respondent] admitted, during the hearing, that he had used poor judgment and, that in retrospect, he probably should not have taken the case. The Panel believes, however, that the extent of the failure of [respondent] to adequately represent the client goes far beyond merely accepting the case.

Respondent testified about the case at the DEC hearing. Respondent claimed that Rebollal was uncooperative in answering interrogatories. It is undisputed, however, that respondent received Rebollal's handwritten answers on or about October 23, 1998. Yet, respondent did not file Rebollal's answers in time for the November 17, 1998 court hearing, which Rebollal had to attend pro se. In an attempt to shift the blame to Rebollal, respondent claimed that it was Rebollal's failure to properly complete the answers that prevented him from filing them with the court. Several days later, respondent retained Florida counsel for the case.

The DEC highlighted several problems regarding respondent's fees. For example, the DEC noted that, although respondent's hourly rate for the case was $175, some entries were

billed at $200 per hour and others were billed at $150 per hour. Respondent blamed the older computer in the office for the problem. Respondent explained that he kept handwritten time sheets that he later transferred to a computer on the other side of his office. He claimed that his primary computer could not bill time contemporaneously with the work, because it did not contain time-keeping software. Therefore, he stated, sometimes he waited a week or more to transfer his time records to the other computer. He added that, when he entered the data, he made mistakes, including his accidental change to the "default" billing rate in several matters. He stated that he did not carefully review those bills before they were sent to his clients.

On August 31, 1998 respondent billed Rebollal 3.25 hours ($487.50) for the "receipt and review [of] pleadings from clients." Respondent denied that he exaggerated the time spent on that aspect of the case, contending that he merely neglected to list the many documents reviewed that day. Likewise, on November 30, 1998 respondent billed 1.25 hours ($187.50) to review a second set of plaintiff's interrogatories. When the presenter suggested that the entry was unreasonable, respondent backed down, claiming for the first time that the entry should have listed several contemporaneous telephone conversations with Rebollal that were never otherwise mentioned in the bills.

On January 7, 1999 respondent charged Rebollal 6.0 hours ($1,200) to review "a slew" of documents forwarded to him by the Florida attorney. Respondent could not recall what those documents were or if they were relevant to the litigation. Moreover, he did not

produce those documents to validate his assertion in this regard.

Substantively, respondent did little in the case, for which he billed Rebollal a total of $4,853.[2] Respondent prepared three letters in the matter: two to the Florida attorney and one standard cover letter to the clerk of Broward County, Florida. Respondent also had Rebollal's handwritten answers to interrogatories typed out. Rebollal had never revised those initial answers, which, respondent claimed, were incomplete and unsuitable. Nevertheless, respondent filed them, claiming that he "had to file something."

Respondent's other charges had to do with document review and conferences, for which he charged Rebollal $1,755. Yet, the record consists of only a few letters to respondent, several one-page orders from the court and Rebollal's answers to interrogatories.

Respondent also spent seven hours on the telephone, mostly with the Florida attorney, who presumably was capable of handling the matter on his own. Without describing the nature of those conversations, respondent charged Rebollal $1,171 for time spent on them.

The fee arbitration panel found that, "at most, the work performed by [respondent] in this matter is worth no more than five hundred dollars ($500), if that." The panel required respondent to return $1,000 to Rebollal.

III. <u>The Young Matter</u> - District Docket No. VA-00-021E

On or about December 10, 1998 David L. Young retained respondent to represent

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[2]$1,000 of that amount constituted the Florida attorney's retainer.

him in a suit brought by his television cable provider, alleging theft of services. Young gave respondent a $5,000 retainer and agreed to pay him an hourly rate of $200. By July 8, 1999 respondent had billed Young $8,708.90 (including costs of $163.90) as legal fees. Soon thereafter, Young filed for fee arbitration.

The fee arbitration panel found that respondent had overcharged Young. In particular, the panel found that respondent's entries for December 30, 1998 were unreasonable. On that day, respondent entered 6.0 hours for researching the complaint and 8.75 hours for preparing an answer – a total of 14.75 hours – charging $2,950 for his activity that day. The panel determined that 5.0 hours was appropriate for the work. Respondent also billed 1.5 hours ($300) to prepare a form acknowledgment of service, 1.0 hours ($200) to prepare a cover letter enclosing discovery requests and nearly 1.0 hour to prepare a cover letter to the court clerk, enclosing papers for filing. The panel determined that each of these items should have taken only minutes to prepare.

Respondent's excessive billing practices continued. He charged $600 to review stock interrogatories, $500 to amend form interrogatories and, finally, $1,250 to prepare and amend a request for the production of documents.

The fee arbitration panel ultimately determined that of the $8,708.90 that respondent charged Young $4,574.50 was the reasonable fee for his services. Young had already paid a total of $7,074.50. Therefore, the panel required respondent to return $2,500 to Young.

At the DEC hearing, respondent defended the fairness of his bills. For instance, he

stated, nearly fifteen hours to prepare the complaint was a fair charge because he was not familiar with the federal law involved. Respondent explained that he had not performed all of that work on December 30, 1998 and, hence, should not have entered all of that time for that day. Likewise, respondent professed that it actually took him 1.75 hours to prepare the standard cover letter to the court clerk because he did not have a form for that letter. Therefore, according to respondent, the $300 charge was reasonable.

In addition, respondent recalled for the first time that certain documents did not take as long to prepare as his bills indicated. For example, the production of documents request did not take 6.25 hours to prepare, as it turned out. Respondent revised his position, recalling that it had required only 1.75 hours to draft. According to respondent, he made other mistakes in the bills. He stated that the old computer billing program was somehow partially responsible for his high fee bills. Respondent claimed that, once he obtained a newer program, his billing practices improved. Respondent also blamed "key punch errors" for mistakes in the bills. Admittedly, however, the "key punch errors" were his own. It is unclear from respondent's explanation how errors caused by his hitting the wrong number on the keyboard were avoided by a change in software. Nevertheless, respondent conceded that, no matter how the bills were generated, he should have reviewed them carefully before sending them to clients.

Respondent cooperated with the fee arbitration committees in each instance and returned the funds required.

* * *

The DEC found that respondent overcharged his clients in all three cases, in violation of RPC 1.5(a). In Bamber, the DEC also found that at the ethics hearing respondent falsely testified, in violation of RPC 8.1(a), that he did not use All-State forms. In addition, the DEC found that respondent violated RPC 3.3(a) (making a false statement of material fact to a tribunal) by lying to it about certain aspects of the divorce case, such as the Bambers' home ownership and Mrs. Bamber's employment. The DEC treated respondent's statements as attempts to make the divorce case appear more complicated than it actually was, in order to justify the time allegedly spent on the case.

In Rebollal, without any explanation, the DEC also found violations of RPC 3.3(a)(1) and RPC 8.4(c), although those charges are not contained in the complaint.

The DEC recommended a six-month suspension for respondent's misdeeds.

* * *

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.

Clearly, respondent charged excessive fees in these three cases. In fact, respondent overreached his clients, thereby violating RPC 1.5(a). Respondent's explanations were simply not credible. Although there is no need to reconstruct every unreasonable time entry – both the fee arbitration panel and the DEC hearing panel have done so – some examples of respondent's exaggerated charges bear mention. For example, in Bamber, it is difficult

to understand how the interrogatories, if truly drafted and redrafted by respondent, as he claimed, could have resulted in an exact replica of All-State's own forms. Respondent ultimately backed away from that story, admitting to his use of All-State forms in the preparation of the interrogatories. He continued, however, to maintain that he had made revisions to them. It is clear that respondent's claim in this respect was concocted to support unjustified charges for the preparation of that document.

In Rebollal, respondent reviewed a "slew" of documents sent to him by the Florida attorney and charged $1,200 for this review. Yet, respondent did not recall the nature of those documents, other than their relation to Rebollal's corporation, and did not produce them for the record. In fact, it is not clear that those documents related to the litigation. In so doing, respondent charged his client an excessive fee, in violation of RPC 1.5(a).

Also, in Young, respondent claimed that it took him 1.5 hours to draft a cover letter to the court clerk, charging his client $300 in the process. Here, too, respondent's fee was unreasonable, in violation of RPC 1.5(a).

Respondent alternatively tried to blame a computer and his own "key punch errors" for other obvious billing excesses in these matters. That respondent finally took some responsibility by identifying some of his time entries as "errors" is hardly laudatory. He claimed that the overcharges went unnoticed until he was before the fee arbitration committee. We found that statement not credible. The totals in respondent's bills should have alerted him to the serious discrepancies contained therein. Even the most cursory

review of those bills yields the inevitable conclusion that he intentionally inflated the fees in these matters.

In addition to overreaching his clients, respondent lied to the DEC when he stated that he had drafted the interrogatories on his own, without the use of All-State's forms. Respondent's conduct in this context violated RPC 8.1(a). In addition, those lies introduced an element of dishonesty that calls into question respondent's other explanations, such as the "key punch" and computer errors. We found that those explanations were contrived to lend credence to respondent's fees.

We were unable to agree, however, with the DEC finding of a violation of RPC 3.3(a) for respondent's statements about the Bambers' home ownership and Mrs. Bamber's employment. There is no clear and convincing evidence in the record that respondent intentionally misrepresented the facts. He could have been mistaken in his recollection of those circumstances. Therefore, we dismissed this charge.

We also disagreed with the DEC's finding of violations of RPC 3.3(a) (1) and RPC 8.4(c) in Rebollal. Not only were those charges not alleged in the complaint, but the DEC did not identify the facts establishing the bases for its findings. Therefore, we found no violations of those RPCs in Rebollal.

Cases involving either excessive fees or fee overreaching are necessarily fact-sensitive. Not every instance of unreasonable fees rises to the level of overreaching. The discipline for charging an inflated fee can range from an admonition to disbarment,

depending on the severity of the misconduct and the presence of other ethics transgressions. See, e.g., In re Bisceglie, DRB Docket No. 98-129 (September 24, 1998) (admonition imposed where the attorney's unreasonable fee of more than $80,000 was reduced to $46,500 after fee arbitration; the objectionable work, which was done for a municipal body, was not done pursuant to a resolution of the entire body, but undertaken only at the direction of one or two of the members of that body; the attorney also failed to utilize a retainer agreement, in violation of RPC 1.5(b)); In re Hinnant, 121 N.J. 395 (1990) (reprimand imposed where the attorney overreached his client by charging excessive fees; in a real estate matter, the attorney attempted to collect approximately $21,000 in fees, including commissions on the purchase price, a reduction of the purchase price and a sharing of the broker's fee; the attorney also had conflicting interests in the transaction); In re Mezzacca, 120 N.J. 162 (1990) (reprimand imposed where the attorney improperly delayed the return of client's funds, engaged in a pattern of overreaching by charging fees based on gross recovery and failed to provide clients with written contingent fee agreements); In re Thompson, 135 N.J. 125 (1994) (three-month suspension imposed where the attorney overreached a client by charging $2,250 for filing two identical motions, both of which were caused by respondent's own neglect and charging the client for the filing of a pretrial motion that was never prepared); In re Thomas, 149 N.J. 648 (1997) (six-month suspension imposed in a default matter where the attorney, in a series of four client matters, engaged in gross neglect, failure to communicate, charged an unreasonable fee, failed to utilize a written

retainer agreement, failed to maintain a bona fide office and failed to cooperate with disciplinary authorities); and In re Whitefield, 142 N.J. 480 (1995) (one-year suspension imposed where the attorney, in three client matters, engaged in gross neglect, lack of communication, charged an unreasonable fee and misrepresented the status of a DWI matter).

The most serious overreaching cases, those warranting disbarment, involve unconscionable conduct toward helpless and/or unsophisticated clients. See, e.g., In re Ort, 134 N.J. 146 (1993) (disbarment where the attorney misrepresented to the court the value of his services, charged excessive and unreasonable fees and withdrew money from an estate account without authorization) and In re Wolk, 82 N.J. 326 (1980) (disbarment where the attorney attempted to commit a fraud on a federal court and his clients, in order to obtain a legal fee greater than was due; the attorney also advised a widowed client to make a hopeless investment in a building in which the attorney had an interest and concealed the fact that the building was in foreclosure).

Here, respondent's misconduct rose to the level of overreaching, but was not so severe as to warrant disbarment or even a lengthy term of suspension. We found, however, that the presence of the element of dishonesty takes this case out of the reprimand level, even though some of the reprimand cases involved greater sums of money. For respondent's overreaching three clients and lies to ethics authorities in an attempt to justify his unreasonable fees, we unanimously determined to impose a three-month suspension. Two

members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony N. Verni
Docket No. DRB 01-2245

Argued: September 13, 2001

Decided: January 30, 2002

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley		X					
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy							X
Pashman		X					
Schwartz							X
Wissinger		X					
Total:		7					2

Robyn M. Hill 2/21/02
Robyn M. Hill
Chief Counsel