SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 00-220

IN THE MATTER OF

JAMES R. LISA

AN ATTORNEY AT LAW

Decision

Argued: October 19, 2000

Decided: May 29, 2001

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

This matter was before us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1984. He formerly maintained an office for the practice of law in Jersey City, Hudson County.

In 1995 respondent received an admonition for using his trust account as a business account and failing to correct recordkeeping deficiencies. *In the Matter of James R. Lisa*, Docket No. 95-124 (May 23, 1995). Respondent was suspended from the practice of law for three months, effective March 24, 1998, for violating *RPC* 8.4(b) (committing a criminal

act that reflects adversely on the lawyer's fitness to practice law. *In re Lisa,* 152 *N.J.* 455 (1998). In that matter, respondent stipulated that he was guilty of being under the influence of cocaine, having unlawful constructive possession of cocaine and having unlawful possession of drug paraphernalia. On March 23, 1999 respondent was suspended for one year for knowingly making a false statement of material fact to a court, practicing law while suspended and displaying dishonest conduct and conduct prejudicial to the administration of justice. *In re Lisa*, 158 *N.J.* 5 (1999). More recently, we dismissed a matter charging respondent with violations of *RPC* 3.4 (a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document having potential evidentiary value). *In the Matter of James R. Lisa*, Docket No. DRB 00-045 (February 6, 2001). That matter is awaiting Supreme Court review.

The three-count complaint charged respondent with violations that included soliciting clients at the Hudson County Correctional Center, in violation of *RPC* 7.3(b)(1)(3)(4) (count one), and soliciting a corrections' officer to distribute his business card in exchange for a percentage of fees earned, in violation of *RPC* 5.4(a) and *RPC* 8.4(a), (b), (c) and (d) (count two). The third count of the complaint was withdrawn at hearing because of an inability to locate witnesses.

This case was referred to the DEC by the Hudson County Prosecutor's Office, which did not prosecute respondent.

The first count of the complaint alleges that respondent improperly solicited clients

from the Hudson County Correctional Center. The primary witness in both the first and second count of the complaint was Corrections' Officer Michael Sottilare. Between February and August 1996, one of Sottilare's responsibilities was to escort attorneys into the "professional visiting" area of the county jail. He would then bring the prisoners from their cells to the meeting rooms. He and other corrections' officers maintained a log book noting all professional visits. Upon arrival at the jail respondent would present a list of inmates that he wanted to see, as did other attorneys. Sottilare contended that respondent spent very little time with each inmate (allegedly unlike other attorneys) and that the large number of inmates respondent visited differed significantly from those of other attorneys. Sottilare also stated that many of the inmates did not request a visit with respondent and did not wish to meet with him.

In large part, respondent was unable to produce to the DEC investigator sufficient written proofs that it was appropriate for him to meet with the inmates in question. Some affidavits concerning representation, together with retainer agreements, were provided. No inmates testified before the DEC.

Contrary to Sottilare's testimony, logs maintained by the jail for professional visits (exhibit C-2) demonstrate that, for the period in question, not only did respondent see a large number of inmates (127 inmates during thirty separate visits to the jail), but that other attorneys also saw a great number of inmates during their frequent visits. In addition, respondent called as witnesses two other county corrections' officers, Samuel Broughton

and Samuel Frye, who testified that it was not unusual for attorneys to see a large number of inmates during each visit. Frye and Broughton also testified that the time spent by respondent with each inmate was not shorter or longer than time spent by other attorneys with their current and potential clients. This information was confirmed by a former co-worker of respondent, attorney Francis Cutruzzula. He testified that he sees as many as twelve clients at each visit. He noted, however, that his large inmate clientele was, in part, the result of a contract with the Hudson County Public Defender's Office. In addition, unlike respondent, Cutruzzula maintains a master client list on his computer and apparently keeps records concerning his visits to the jail. Similarly, attorney Alphonso Robinson testified that he usually sees a large number of clients at each visit, including potential clients who telephone him at his office or whose relatives seek his assistance.

Although respondent's physical evidence was limited, in addition to the testimony noted above, he presented testimony from Michele Billotti, a former "volunteer" secretary who worked for him approximately thirty hours per week during this period. Billotti indicated that she received so many calls from jail from former clients, current clients and potential clients that she developed a particular form to be utilized in recording the calls. She recognized some of the names on the list prepared by the presenter, but did not recall anything in particular concerning any of the individuals. She further indicated that records of the various telephone contacts should be available in files that she maintained during the time of her "volunteer" work. Despite these claims, no records were provided to the DEC.

As to the second count, Sottilare contended that respondent had approached him

concerning a business arrangement of sorts: in return for providing business cards to inmates, respondent promised Sottilare ten percent of the fee from any resulting business. Sottilare indicated that, at that point, he reported the incident to Lieutenant (now Captain) Matthews, who was essentially the internal affairs' officer for the corrections' officers. At that time, Sottilare advised Matthews that he would not consider wearing a wire, which Matthews indicated would have to be handled through the Prosecutor's Office. Two weeks after the initial incident, which occurred between May and June 1996, Sottilare answered a call from respondent, at which time respondent stated, "I got to get them cards to you." Sottilare responded, "O.K." and reported the call to Matthews. Although respondent's counsel contended that Sottilare waited more than two months to report the incident, the transcript shows that Sottilare immediately reported the first incident to his supervisor. He thereafter reported the second event immediately. However, corrections' officials apparently did not refer the matter to the Prosecutor's Office for an additional month and a half.

Captain Matthews' testimony did not contradict Sottilare's comment concerning being wired, as claimed by respondent's counsel. Rather, Matthews' comment confirms that the corrections' department was not in a position to conduct any undercover investigation, which would have to be referred to the Prosecutor's Office.

* * *

The DEC concluded that respondent violated *RPC* 7.3 (b)(4), as to count one. The

charged violations of *RPC* 7.3 (b)(1) and *RPC* 7.3(b)(3) were dismissed. As to the second count, the DEC found unequivocal the testimony that respondent's actions violated *RPC* 5.4(a) (sharing legal fees with a non-lawyer). Additionally, the DEC found violations of *RPC* 8.4(a) (violation of a Rule of Professional Conduct). The DEC did not find violation of *RPC* 8.4(b), (c) or (d).

The DEC recommended a suspension for six months, to be served concurrently to respondent's current suspension.

* * *

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. We are unable, however, to agree with the specific findings of the DEC and conclude that the record supports a finding of a violation of *RPC* 8.4(a) only.

We found this case troubling on a number of levels. Respondent neither provided requested information nor cared to testify. Other jurisdictions have held that, in disciplinary matters, an attorney must assert his privilege against self-incrimination on a question-by-question basis and must still answer those questions that would not elicit a criminally inculpatory response. *See, e.g., In re Zisook,* 430 *N.E. 2d* 1037 (Ill. 1982). In other proceedings, including judicial disciplinary proceedings, it has long been the rule that a respondent's failure to testify as to facts peculiarly within his or her knowledge and directly affecting him or her is an important circumstance for the fact-finder's consideration. *See In*

re Peoples, 250 *S.E. 2d* 890, 915 (N.C. 1978); *State v. Posterino,* 193 *N.W. 2d* (Wis. 1972); *Mariner Midland Bank v. Russo*, 427 *N.Y.S. 2d* (1980) (Court of Appeals held that an attorney's failure to testify in his own behalf in a disciplinary proceeding may "count against him").

As to the charge that respondent improperly solicited clients, there is no clear and convincing evidence that respondent did so in the true sense of the word. Rather, testimony presented by a former "secretary" indicates that respondent's visits were requested either by the inmate or by family members, or that the inmate was already either a current or former client of respondent or a client of attorney Peter Willis, for whom respondent then worked. There is no proof that respondent otherwise sought out the inmates. On that basis, there is no clear and convincing evidence that respondent was actually soliciting the representation of any of these inmates. Moreover, even assuming that respondent was soliciting inmate-clients, the conduct in question does not appear to fall within the purview of *RPC* 7.3, specifically, *RPC* 7.3(b)(4).

A brief analysis of *RPC* 7.3 is in order. *RPC* 7.3(a) provides that a lawyer may initiate personal contact with a prospective client for the purposes of obtaining professional appointment, subject to the requirements of paragraph (b). Thus, obviously, conduct by an attorney is appropriate, unless it is specifically prohibited by a subsection of paragraph (b), which provides that,

> a lawyer shall not contact, or send a written communication to a prospective client for the purpose of obtaining professional employment if: (1) the lawyer

> knows or reasonably should know that the physical, emotional and mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or... (3) the communication involves coercion, duress or harassment; or (4) the communication involves unsolicited direct contact with the prospective client within thirty days after a specific mass disaster event, when such contact concerns potential compensation arising from the event....

The DEC properly found that respondent did not violate either *RPC* 7.3(b)(1) or (b)(3). However, we cannot agree with the DEC's conclusion that *RPC* 7.3(b)(4) was violated. There is no indication that any of these clients were in any way involved in a "specific mass-disaster event" - a necessary element of a violation of *RPC* 7.3(b)(4). We, therefore, dismissed count one of the complaint because there is no indication that respondent was directly soliciting clients and that, even if he was, the solicitation violated *RPC* 7.3(b)(1), (b)(3) or (b)(4). Nor is there any indication that any other subsection of *RPC* 7.3(b) was implicated.

In the second count, the DEC found a violation of *RPC* 5.4(a), which prohibits sharing legal fees with a non-lawyer except in certain limited conditions, none of which are relevant here. The DEC also found a violation of *RPC* 8.4(a), which provides that it is professional misconduct to violate or to attempt to violate the *Rules of Professional Conduct*, knowingly assist or induce another to do so, or do so through the acts of another. The record supports a finding that respondent attempted to set up an inappropriate fee-sharing situation with Sottilare. Had respondent actually supplied the business cards to Sottilare or had there been some other overt act to share the legal fees or reach an agreement

to share legal fees, then a violation of *RPC* 5.4(a) could be found. That is not the case, however. While it is clear that respondent attempted to violate *RPC* 5.4(a), no actual violation of that rule occurred. However, given the clear and convincing evidence of that attempt, we find that respondent violated *RPC* 8.4(a) by attempting to set up an inappropriate fee-sharing arrangement.

Use of runners or inappropriate fee-sharing has previously resulted in discipline ranging from a reprimand to disbarment. *In re Frankel,* 20 *N.J.* 588 (1956) (attorney suspended for two years for paying percent of his net fee to solicit personal injury clients over a period of at least one year. The Court noted that more severe discipline would be imposed in future cases); *In re Introcaso,* 26 *N.J.* 353 (1958) (three-year suspension where, in pre - *Frankel* case, attorney employed a runner to solicit clients in three matters, improperly divided legal fees and lacked candor in his testimony); *In re Bregg,* 61 *N.J.* 476 (1972), (three-month suspension where attorney paid part of his fees to a runner from whom he accepted referrals; the Court commented that the attorney in *Bregg* lacked the "studied and hardened disregard for ethical standards, accompanied by a total lack of candor" present in both *Frankel* and *Introcaso*); *In re Meaden,* 155 *N.J.* 357 (1998) (attorney reprimanded for initiating contact with victims of gas explosion, including one who was visibly upset, and for sending letters to sixteen other victims); *In re Pajerowski,* 156 *N.J.* 509 (1998) (attorney disbarred for admitted violation of eighteen *RPCs* in using a runner to solicit personal injury clients over a nearly four-year period).

Unlike *Meaden*, this respondent had to know that his attempted conduct was prohibited. We cannot find, however, that respondent demonstrated the "studied and hardened disregard for ethical standards, accompanied by a total lack of candor" as found in *In re Bregg*, *supra,* 61 *N.J.* at 478. On the other hand, respondent's serious disciplinary history shows that either he is unable or refuses to conform to the high ethics standards expected of members of the profession. Although respondent's attempt to share legal fees with a non-lawyer did not come to fruition, we nevertheless viewed his conduct as extremely serious and unanimously determined to impose a consecutive six-month suspension. One member did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: MAY 29 2001

Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James R. Lisa
Docket No. DRB 00-220

Argued: October 19, 2000

Decided: May 29, 2001

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan							X
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		8					1

Robyn M. Hill 6/11/01
Robyn M. Hill
Chief Counsel