SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-141

IN THE MATTER OF

STEVE HALLETT

AN ATTORNEY AT LAW

Decision

Argued: July 20, 2000

Decided: November 28, 2000

Maureen T. Slavin appeared on behalf of the District VII Ethics Committee.

Vera A. Carpenter 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 on a recommendation for discipline filed by the District VII Ethics Committee ("DEC"). The two-count complaint charged respondent with violations of RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation) (count one); and

RPC 1.5(a) (failure to charge a reasonable fee based on the amount involved and results obtained) (count two).

Respondent was admitted to the New Jersey bar in 1991. He maintains a law practice in Trenton, New Jersey. He has no history of discipline.

This matter was referred to the DEC by the District VII Fee Arbitration Committee, after Frederick Williams filed for fee arbitration against respondent.

At the DEC hearing, Williams testified that he had filed pro se a complaint against Susan J. Cetinkaya, in Bordentown municipal court, for making false statements in connection with obtaining a credit card, a violation of N.J.S.A. 2C:21-6b. Williams' bank had notified him that someone had applied for a credit card using the name "Fredericka" Williams and Williams' social security number. Williams determined that Cetinkaya was the applicant. The Burlington County Prosecutor's Office downgraded the charge to a violation of N.J.S.A. 2C 21-17(1), a disorderly persons offense (assuming a false identity for the purposes of obtaining a pecuniary benefit or to injure or defraud another).

The municipal court found that the prosecutor failed to make out a prima facie case and dismissed the matter. According to Williams, he was not permitted to participate in the proceedings and, when he attempted to do so, the judge threatened to find him in contempt and to have him jailed. Williams was extremely disturbed with the outcome of the proceedings because Cetinkaya had admitted her wrongdoing. He was also troubled by what he viewed as the prosecutor's failure to properly pursue the matter as well as the treatment

he received from the judge. Williams, thus, alleged that he contacted respondent to "pursue the judge and the prosecutor."

According to Williams, respondent agreed that the outcome of the proceedings was improper. Williams testified as follows: "Steve said, that was the wrong call for the judge, I'm going to appeal that and then we going [sic] after the judge." Williams, thus, understood that respondent was going to file an appeal in his behalf. Williams was not interested in filing a civil action against Cetinkaya because she had no money and, he claimed, he had never discussed that cause of action with respondent.

According to Williams, at their initial meeting, respondent told him that it would cost $1,100 to pursue the matter: $600 for transcripts and $500 as respondent's fee. Even though respondent had never before represented Williams, there was no written retainer agreement executed to memorialize their verbal agreement. Later, when Williams did not hear from respondent, he attempted to contact him by telephone on several occasions, to no avail.

On May 15, 1998, respondent filed a notice of appeal in the matter of State of New Jersey v. Susan J. Cetinkaya. Sometime thereafter, the docket clerk contacted respondent to inform him that the notice of appeal was being returned because a finding of not guilty could not be appealed. That telephone conversation was memorialized in a letter to respondent dated June 16, 1998. Exhibit C-13. Williams testified that, at some point not established in the record, respondent left a message on Williams' answering machine that "[t]he Court's

[sic] called me and they said they denied - - your appeal was denied." No letter of explanation followed the telephone call.

Williams claimed that he then telephoned respondent's office and told the secretary that he wanted a copy of the appeal file, the transcripts and any existing correspondence. The secretary offered to give respondent the message. When Williams heard nothing further from respondent, he contacted another attorney who had represented him in other matters. The attorney wrote the following letter to respondent, on September 8, 1998:

> Please be advised that I have been consulted by Frederick Williams in connection with a matter in which you undertook to represent him involving conduct of the City of Bordentown Municipal Court in the case of State vs. Susan Cetinkaya. Mr. Williams advises that he has paid a fee of $1,100.00 and that he has been unable to obtain any response from you with regard to what actions you have taken on his behalf. He would like to have either the refund of his fees or a report as to all actions taken by you on his behalf.
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> [Exhibit C-4]

When the new attorney received no reply from respondent, he independently obtained a copy of the transcripts for Williams. At that time, Williams learned that the transcripts cost only $50, not the $600 purportedly quoted by respondent. As a result, Williams filed for fee arbitration. Williams then called the court about the status of his case and learned that no appeal had been filed in his behalf because an appeal could not be pursued. According to Williams, respondent had never informed him that he could not appeal the municipal court determination.

Williams claimed that, after their initial meeting, he did not have any further contact with respondent or receive any correspondence about his matter. Respondent, however, presented several letters at the DEC hearing, addressed to Williams, that Williams denied having seen before that date. For example, respondent submitted a May 18, 1998 letter to Williams stating that a notice of appeal had been filed in Williams' behalf. Exhibit C-2. Respondent also submitted a June 18, 1998 letter to Williams claiming that he had received a call from the clerk of the Burlington case management office about his case and that Williams should contact him to discuss the matter. Exhibit C-3.

The fee arbitration hearing took place on February 25, 1999. Respondent did not attend. He later claimed that he had not received notice of the hearing, even though he had received a copy of the determination. The committee ordered respondent to refund the entire amount paid by Williams, $1,100, within thirty days. The committee found that respondent had not performed the services for which he had been retained, that is, that respondent never filed an appeal or obtained transcripts, despite his representations to the contrary.

Respondent refunded the fee to Williams on March 29, 1999. Williams deposited the check a number of weeks later. That check was, however, returned for insufficient funds on June 11, 1999. Williams testified that he wrote to respondent about the problem on June 30, 1999 and called respondent's office, both to no avail. Respondent eventually reimbursed the fee to Williams.

On the day of the fee arbitration hearing, February 25, 1999, respondent filed a civil complaint against Cetinkaya on Williams' behalf. The complaint alleged that, without Williams' prior knowledge or consent, Cetinkaya had willfully, wrongfully and maliciously applied for a credit card, fraudulently using Williams' personal information. Respondent alleged that the act violated Williams' right of privacy and demanded damages, including punitive damages, attorney's fees, costs of suit and any further relief that the court might deem proper. Exhibit C-5. Williams was not aware that respondent had filed this complaint, nor did he receive a copy of it.

By letter dated July 23, 1999, respondent was advised that the complaint would be dismissed for lack of prosecution unless good cause to the contrary could be shown. Respondent took no further action in the matter, but "faxed" a copy of the letter to Williams' new attorney. According to the new attorney, this was the only contact he had with respondent. Respondent testified that he was unable to go forward with the case because he could not locate the defendant to serve her with the complaint and, in addition, could not conduct discovery. Respondent's file, however, did not contain any letters memorializing his inability to locate and serve the defendant.

In his behalf, respondent testified that he knew that he could not appeal a finding of not guilty. He explained, however, that Williams was adamant about having him file the appeal, because Williams "wanted to get the judge and the prosecutor." Respondent alleged that Williams was irate and uncontrollable. According to respondent, "[h]e didn't give a

[s---] what I had to do, do it. And he was going to pay for it. Money was no object." 2T108[1]. Respondent asserted that he had told Williams that an appeal would be "kicked back," but that Williams wanted him to file the appeal to put something on the record indicating that the judge and the prosecutor had "done him wrong." According to respondent, Williams felt that the judge's conduct was racially motivated because Williams' ex-girlfriend (who was a friend of Cetinkaya) and mother of his child was white and he was African-American. Respondent also claimed that he advised Williams that the judge and prosecutor were immune from prosecution, unless their conduct had been criminal in nature.

Respondent stated that he had quoted Williams a flat rate for his fee to cover "Plan A" and "Plan B." Plan A was to file an appeal to the non-guilty verdict; Plan B was to sue Cetinkaya civilly. Respondent explained that, by suing Cetinkaya civilly, Williams could recoup all the monies that he had lost by going to court as his own attorney. Respondent stated that, in order for him to get to Plan B, he had to prove to Williams that Plan A was not viable. He claimed that it had occurred to him to refuse representing Williams, but explained that he was merely complying with his clients' wishes. He further stated that if he did not file the notice of appeal, another attorney would have. Respondent admitted that, even though he was aware that there was no merit to the appeal, he filed it anyway.

Respondent's reply to the ethics grievance failed to mention anything about these two courses of action. In fact, respondent's reply stated that, after he was retained, he filed the

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[1] 2T denotes the transcript of the February 17, 2000 DEC hearing.

notice of appeal and then, only after the court clerk informed him that Williams could not appeal the matter, did he have his secretary call Williams to inform him of that fact and to "set up an appointment to discuss the next course of action."

At the DEC hearing, respondent testified that, after the court clerk contacted him to advise that the municipal court's decision was not appealable, he requested a letter memorializing the conversation because Williams would not have believed him otherwise. Respondent added that Williams was "irate" and "adamant about filing the appeal."

Respondent denied that he had failed to communicate with Williams. He asserted that he and Williams were friends and had each other's home telephone numbers. He further asserted that they had had at least six conversations about the case, some in the office, others elsewhere.

Respondent's explanation about his fee was contradictory and difficult to follow. He claimed that he was not charging Williams for the appeal; that the $1,100 fee was to be spent during the course of representing Williams; that Williams was confused about the cost of the transcripts; that the money that was not used to pay for the transcripts was "left on account;" that $1,000 of the $1,100 was a retainer for attorney's fees; and that he worked for a flat rate fee — that is how he underbid most attorneys — by determining how much something would cost and how reasonably he could perform the services. Respondent also claimed that he miscalculated the fees, explaining that the full fee for the civil action would be less than $1,000. Respondent claimed that it was his practice to prepare a retainer agreement and that,

in this instance, it "slipped" his mind because it "was a stressful day." He went on to state that he had been "flabbergasted" when he reviewed the file and realized that no retainer agreement had been prepared.

Undeniably, the total charge for the transcripts was $50. See Exhibit 26. Respondent claimed that Williams mistakenly thought that he was being charged $300 per day for each transcript. Respondent claimed that, before Williams left his office, his secretary had called the transcription service about the costs and that he had advised Williams that the transcript would cost $100. As to his fees, respondent claimed that for a court appearance he ordinarily charged a flat rate of $1,000, but that he charged only $750 for municipal court appearances. Respondent's testimony did not clarify why he charged Williams $1,100.

As to the check returned for insufficient funds following the fee arbitration determination, respondent blamed it on his accountant — his estranged wife — whom he subsequently fired. Later, respondent sent Williams a cashier's check for $1,200, which included an additional $100 for incidental bank charges.

Finally, respondent claimed that he failed to appear at the fee arbitration matter because he did not receive notice of the hearing. When asked why he had not appealed the committee's determination on the basis of lack of notice, he replied that he had already decided to refund the fee to Williams.

* * *

The DEC found Williams to be a cooperative and credible witness, with no perceived animosity toward respondent and no personal stake in the outcome of the hearing (having been fully reimbursed), particularly since he was not the grievant. As explained above, the fee arbitration committee referred the matter to the DEC. On the other hand, the DEC found respondent's testimony to be less than candid and forthcoming. It found unbelievable respondent's testimony about filing a knowingly ineffective and impermissible notice of appeal to appease an insistent client. The DEC also found unbelievable respondent's testimony regarding "Plan A" and "Plan B." In fact, the DEC described it as "absurd." The DEC also found that respondent's testimony about the $1,100 fees and costs was murky and inconsistent. Also, the DEC remarked that the exhibits that respondent submitted from his file were "suspect."

The DEC found violations of RPC 1.1 (presumably (a)), for respondent's "incompetence in undertaking the representation" of Williams, as well as the "neglectful manner in which he handled same." As to the filing of the notice of appeal, the DEC found violations of RPC 1.2(d) (a lawyer shall not counsel or assist a client in conduct that the lawyer knows is illegal, criminal or fraudulent or in the preparation of a written instrument containing terms the lawyer knows are expressly prohibited by law) and RPC 1.2(e) (when a lawyer knows that a client expects assistance not permitted by law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct). The DEC also found a violation of RPC 1.3 (lack of diligence); RPC 1.5(b) (no written fee agreement); RPC 1.16

(failure to decline representation); RPC 2.1 (failure to exercise independent professional judgment and render candid advice to his client); RPC 3.1 (bringing frivolous claims), for filing the notice of appeal and civil action; and RPC 8.4(d) (conduct prejudicial to the administration of justice), for respondent's lack of compliance with the fee arbitration decision. Lastly, the DEC found violations of RPC 1.4(b) (failure to explain a matter to extent reasonably necessary to permit client to make informed decision regarding representation) and RPC 1.5(a)(4) (failure to charge a reasonable fee based on the amount involved and results obtained).

The DEC recommended the imposition of a reprimand and a one-year proctorship.

* * *

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

The DEC found Williams' testimony credible and respondent's incredible, having had the opportunity to personally observe their demeanor. Our reading of respondent's testimony, too, reveals that it was often inconsistent and not believable.

Williams testified that respondent would not reply to his telephone calls or letters. Despite respondent's claims to the contrary, Williams' testimony was bolstered by the testimony of his new attorney. In fact, Williams retained the new attorney because of his

inability to communicate with respondent. The new attorney was also unable to obtain respondent's reply to his request for information. Although this was not specifically charged in the complaint, there is clear and convincing evidence that respondent's conduct in this regard violated RPC 1.4(a) (failure to communicate with client). Under In re Logan, 70 N.J. 222, 232 (1976), the complaint is deemed amended to conform to the proofs.

Because the DEC found Williams' testimony credible, we also find that respondent failed to explain the matter to Williams to the extent reasonably necessary to permit him to make an informed decision. We, therefore, find a violation of RPC 1.4(b).

Respondent admitted that he did not give Williams a written retainer agreement. As the DEC noted, respondent's testimony about the fee agreement was extremely confusing. Thus, without a written agreement, Williams must have been equally confused about what the fee covered. Again, although this violation was not specifically charged, under In re Logan, 70 N.J. 222, 232 (1976), we deem the complaint amended to conform to the proofs and find a violation of RPC 1.5(b).

Respondent was charged with a violation of RPC 1.5(a)(4), requiring a lawyer's fee to be reasonable, based on the amount involved and the results obtained. Clearly, respondent did not obtain any result here. However, he did perform some work in connection with the matter. It is not so clear then that the amount charged would have been excessive, had respondent's efforts been properly executed. Moreover, respondent refunded the fee to Williams. We, therefore, dismissed the charge of a violation of RPC 1.5(a)(4).

The DEC also found a violation of RPC 3.1, which prohibits the filing of frivolous lawsuits even though this rule is not specifically cited in the complaint. Respondent admitted that he knew that the notice of appeal would be "kicked back." Based on this admission, we find a violation of RPC 3.1, and determine that it meets the requirements of In re Logan, supra, 70 N.J. at 232.

Finally, because the other violations found by the DEC were not charged in the complaint and there was scanty testimony on those issues, we determined it inappropriate to uphold the remaining findings on this record.

In sum, we find clear and convincing evidence of violations of RPC 1.4(a) and (b), RPC 1.5(b) and RPC 3.1.

The only mitigating factor in this matter is that respondent has no history of discipline. Generally, cases involving violations of RPC 1.4 and/or RPC 1.5(b) warrant only an admonition. See In the matter of David Lustbader, Docket No. DRB 96-470 (June 6, 1997) (admonition for violations of RPC 1.5(b)); In the Matter of Miles R. Feinstein, Docket No. DRB 96-470 (June 3, 1996) (admonition for violation of RPC 1.5(b)); In the Matter of Diane K. Murray, Docket No. DRB 97-225 (October 6, 1997) (admonition for violation of RPC 1.5(b), RPC 1.4(a) and RPC 1.3 (lack of diligence)). Here, however, respondent's conduct was exacerbated by the filing of two frivolous lawsuits — the notice of appeal and the civil suit, a violation of RPC 3.1 — and by respondent's incredible testimony.

Based on the record before us, we unanimously determined to impose a reprimand. One member recused himself.

We further determined to require respondent to take three hours of courses on municipal court practice and three hours of law office management courses provided by the Institute for Continuing Legal Education, within one year from the date of this decision. We further require respondent to provide us with proof of completion of the courses within the required period.

Finally, we further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/28/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steve Hallett
Docket No. DRB 00-141

Argued: **July 20, 2000**

Decided: **November 28, 2000**

Disposition: **Reprimand**

Members	Disbar	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 4/3/01
Robyn M. Hill
Chief Counsel