SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-249

IN THE MATTER OF :
ALEXANDER B. DRANOV :
AN ATTORNEY AT LAW :

Decision

Argued: November 20, 2003

Decided: February 3, 2004

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Robert E. Margulies 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 (a two-year suspension) filed by the District IIB Ethics Committee ("DEC").

Respondent, a sole practitioner, was admitted to the New Jersey bar in 1986. He is also a member of the Pennsylvania and the New York bars. His principal office is in Fort Lee, New Jersey, although he also practices law in the metropolitan New York area. He has no history of discipline in New Jersey.

The formal ethics complaint alleges that respondent charged Tatyana Orlova an unreasonable fee in a personal injury matter, in violation of RPC 1.5(a) (first count); created a conflict-of-interest situation by representing Ekaterina Genina against Orlova, by then a former

client, in violation of RPC 1.9(a) (second count); and violated RPC 5.3 and RPC 7.3(b) when, through his paralegal, he solicited professional employment from Orlova by in-person contact, at a time when Orlova's physical, emotional or mental state was such that she could not have exercised reasonable judgment in employing him (third count). At the times relevant to this disciplinary matter, respondent's paralegal was Bella Dashevskaya, now his wife.

A. First Count

Tatyana Orlova, a Russian immigrant, came to the United States in 1993, settling in New York City. Although her English-language skills improved over the years, in 1997, when the relevant events took place, nervousness and stress could impair her ability to read and comprehend English (IT14).[1]

On July 15, 1997, Orlova was the driver and Ekaterina Genina the passenger of a car damaged in a two-vehicle accident caused by the alleged negligence of Ahmed Shabbir, the driver of the other car. Genina, also a Russian citizen, was Orlova's friend. Although neither Orlova nor Genina sustained apparent injuries from the accident, subsequently Orlova began to experience neck and back pain, as well as headaches (1T18). Through an auto body shop mechanic, she learned of a medical clinic in Brooklyn, Metropolitan Medical Care, which had treated other Russian citizens. Orlova's and Dashevskaya's testimony on the events that followed were at sharp variance.

According to Orlova, on July 22, 1997, when she arrived for her appointment at the medical clinic, its manager, an individual identified as Mr. Alex, introduced her to Dashevskaya,

[1] 1T refers to the transcript dated March 4, 2003.
2T refers to the transcript dated March 5, 2003.
3T refers to the transcript dated April 30, 2003.

who guided her into an anteroom. Dashevskaya asked for Orlova's authorization to have respondent, an "experienced lawyer," represent her in connection with the accident (1T22-1T23). Dashevskaya and Mr. Alex's wife had been classmates. Dashevskaya, speaking in Russian, assured Orlova that respondent's office would obtain payment for her medical bills. She asked Orlova to sign a "paper," as a formality (2T23-2T24). The "paper" was a retainer agreement, which Orlova signed, allegedly without reading it or being apprised of its contents. According to Orlova, ". . . I decided to take it in trust . . . . and I signed the agreement" (1T27). Orlova described Dashevskaya's demeanor on that day as "pushy" and "aggressive" (1T24; 1T133).

Orlova testified that, when she asked Dashevskaya for a copy of the retainer agreement to review it at home "in a quiet time," Dashevskaya refused because " . . . it is not company policy to give the copies to the clients" (1T27).

Dashevskaya's version of these events differed greatly from Orlova's. Dashevskaya testified that, a few days before July 22, 1997, she received a telephone call from the medical clinic, asking if her office would be interested in representing Orlova. "And [one of the clinic's staff members] told me that the client [was] next to her and she put Ms. Orlova on the phone" (2T67; 2T68). According to Dashevskaya,

> Ms. Orlova informed me that she was involved in [an] auto accident and she doesn't know what to do . . . . And she arranged the meeting, ask [sic] me to come to the medical office and see her because she needs answer for her questions.
>
> [2T68.]

Dashevskaya testified that she had been to the medical center "several" times, always responding to a phone call from the medical center or from the client. In 1997 and 1998, more than ten patients were also clients of respondent's law firm (2T121). The firm paid no fee to the

medical office, except for a "narrative report." The fee ranged from $450 to $700 (2T119-2T120).

Dashevskaya instructed Orlova to bring certain documents to the medical clinic on Orlova's appointment date, July 22, 1997. At that meeting, which lasted one hour (2T71), Dashevskaya prepared a "data sheet" with Orlova's input, answered Orlova's numerous questions, and explained the retainer agreement to her in detail, "paragraph by paragraph," before Orlova signed it (2T77; 2T138). Dashevskaya did not give Orlova a copy of the retainer agreement at their meeting or anytime thereafter, although she was aware that either her office procedure or a rule required that the client be given a copy (2T115; 2T138). She stated that Orlova had not asked for a copy (2T148).

The retainer agreement, dated July 22, 1997, provided as follows, in relevant part:

> I hereby retain the firm of Alexander Dranov, Esq. ('Attorney') as my attorney to prosecute or settle a claim for property damage and bodily injury sustained by me.
> . . .
>
> In consideration for the legal services rendered and to be rendered by Attorney, the undersigned Client hereby authorizes Attorney to retain out of the monies recovered by reason of the above claim:
>
> THIRTY THREE AND ONE-THIRD PERCENT OF: The sum recovered less legal and expenses and disbursements, paid or to be paid by Attorney out of the amount recovered.
> . . .
>
> 3. In the event there is no recovery the client shall not be obligated to pay a fee for Attorney's services.
>
> 4. In the event Client replaces Attorney before the case is completed Client or his new attorney shall reimburse Attorney for all legal expenses and pay Attorney a reasonable value of his services performed before the replcement [sic] at the rate of $200 per hour as per Attorney's bill.
>
> [Exhibit 1.]

The retainer agreement was silent about Dashevskaya's hourly rate.

Orlova testified that, between July 22 and August 22, 1997, she called respondent's office several times. She never spoke with respondent, only with Dashevskaya. In fact, Orlova testified that she met respondent for the first time at the DEC hearing of March 4, 2003.

Dissatisfied with what she perceived as inaction on respondent's part, Orlova terminated his services by letter dated August 22, 1997. That letter stated as follows:

> Dear Mr. Dranov:
>
> Please stop all work on my case. The law firm of Wohlberg & Wohlberg, Esq., will be representing me on this mater.
>
> Very truly yours,
>
> Tatyana V. Orlova
>
> [Exhibit 2.]

Respondent did not learn of that letter until August 29, 1997, upon his and Dashevskaya's return from a vacation. By that date, Shabbir's carrier, General Accident Insurance ("GA"), had already remitted to respondent's office a check for $2,134.92, dated August 28, 1997, for the property damage portion of Orlova's claim against Shabbir (Exhibit 3). Dashevskaya called Orlova to apprise her of the receipt of the check. According to Orlova, when she asked for the check, Dashevskaya replied as follows:

> . . . [W]e are not going to do that, and we want you to come back. We want to continue work [sic] with you. This is the only way how [sic] you can receive your check.
>
> [1T43.]

Dashevskaya denied making the above statement (3T139). Although she conceded that she was "upset" by Orlova's discharge of their services, she remembered telling Orlova that " . . . if it's what she wants, she can just change attorney [sic]" (2T91).

It is undisputed that respondent did not send to Orlova either the entirety or a portion of GA's $2,134.92 check until recently, September 20, 2003.

On September 10, 1997, respondent deposited GA's check in his trust account. Although the check was made out to Orlova and respondent jointly, respondent alone endorsed the check, despite a printed notation on the back, stating that "All Payees Must Endorse" (Exhibit 3). The bank accepted the check for deposit. Orlova, who was not asked to endorse the check, was unaware that respondent had negotiated it.

At the DEC hearing, respondent testified that there is no requirement for obtaining the client's endorsement on a settlement check, prior to its deposit:

[Respondent] A check for a client has to be deposited in a bank or it will expire and become null and void. The rules do not require any authorization from the client to deposit it. The check comes, has two names on it, it is deposited in a trust account. No authorization needed. There is no rule requiring an authorization from a client to do that.

[Panel Member] What rules are you referring to?

[Respondent] Any rules. Any rules. Court rules - -

. . .

[Panel Member] You're familiar with the Uniform Commercial Code?

. . .

[Respondent] No. I don't practice in that area.

. . .

[Panel member] Are you saying you never obtain the client's signature on any settlement checks?

[Respondent] I obtain the client's signature when the client is available to do it. But New York clients, they are very often not available. Only authorize me to do it or they just don't

	care. They want to receive their money out of the check. And the sooner it gets deposited, the sooner they do it.
[Panel member]	So it's your testimony that with respect to property settlement or personal injury checks that you deposit, if they're made payable to you and the client, you negotiate it anyway, whether the client does or not?
[Respondent]	That's right . . . . And I repeat, there is not rule, ethical or otherwise, that requires an endorsement.
[Panel member]	You say 'rule.' You don't mean a statute. Since you're unfamiliar with the Uniform Commercial Code.
[Respondent]	That's right. I'm not aware of such rule.

[3T214-3T218.]

In an envelope postmarked October 25, 1997, Orlova received the following letter from respondent, dated September 23, 1997:

> Dear Ms. Orlova:
>
> On August 29, 1997 I received your letter requesting me to stop working on your auto accident case in connection with your change of attorney. As of that date this office stopped all legal work on your behalf.
>
> Your retainer agreement with me (copy enclosed) provides that in the event you discharge me as your attorney before completion of the case you will reimburse me for all legal expenses and pay a reasonable value of my services at the rate of $200 per hour as per my bill for services.
>
> The services my office has performed for you are considerable, including obtaining $2,134 for your car damage. A thank-you note from you would be nice but apparently this is too much to expect from a client like you.
>
> My bill for services is attached. It is payable upon receipt. I will hold your property damage check in escrow until I receive your payment for the work done.
>
> [Exhibit 5.]

A copy of the retainer agreement was enclosed with the letter. According to Orlova, she did not receive a copy of the retainer before that date, a contention that respondent disputed. He

testified that he had mailed a copy to Orlova "three or four days" after Orlova's and Dashevskaya's meeting of July 22, 1997. Respondent did not produce a cover letter. He stated that he might have mailed only a copy of the agreement to Orlova (3T156).

Respondent's bill to Orlova reflected 11.1 hours of services rendered on her behalf, at the rate of $200 an hour, for a total of $2,246, including $26 in expenses (Exhibit 5). The bill exceeded the settlement amount by $111.08. It did not specify which services had been provided by respondent and which work had been performed by Dashevskaya. It listed a flat rate of $200, regardless of who had rendered the services.

Dashevskaya testified that respondent had prepared the bill, based, in part, on her recollection of how much time she had spent on the file. Concededly, Dashevskaya did not maintain contemporaneous records of her billable hours and, therefore, was able to recollect only approximate dates and services. She claimed, however, that the bill did not reflect all of the numerous phone calls made by Orlova.

Dashevskaya testified that, "maybe" on the morning of the DEC hearing of March 5, 2003, respondent had calculated the breakdown of his and her services and had inserted his handwritten notations on the $2,246 bill (Exhibit 5A):

[Panel Chair] And, to your knowledge, do you know when the handwriting was inserted on Exhibit 5A?

[Dashevskaya] I don't know . . . . I saw [respondent] calculating something. But when he inserted it particular [sic] today or yesterday, I couldn't tell you.

[Panel Chair] Was it done last night or today sometime?

[Dashevskaya] Definitely not last night.

[Panel Chair] Or this morning?

[Dashevskaya] Maybe.

. . .

[Panel Chair] . . . All I'm asking you is when this additional breakdown . . . was calculated.

[Dashevskaya] Maybe today.

[2T167-2T168.]

Respondent's handwritten calculations showed the following breakdown: 7.0 hours at $275 an hour for his services and 4.1 at $80 an hour for Dashevskaya's services, for a total of $2,253, or $7 in excess of the $2,246 sum originally listed on the bill. As noted earlier, paragraph 4 of the retainer agreement provided for a rate of $200 an hour for respondent's services, in the event that Orlova retained new counsel prior to the resolution of the case (Exhibit 1).

Orlova testified that, upon reviewing respondent's invoice, she disagreed with its contents, as she was unaware of the $200 hourly rate specified in the retainer agreement (1T61; 3T22).

Although Dashevskaya contended that she had explained to Orlova the significance of paragraph 4, she admittedly did not disclose to Orlova that, if Orlova ended the representation before the completion of the case, Orlova could lose one hundred percent of the amount recovered on her behalf (2T129).

In an envelope postmarked October 27, 1997, respondent mailed the following letter to Orlova, dated October 18, 1997:

> I have not heard from you regarding my bill for services rendered. I did not hear from you regarding your property damage check.
>
> I will continue to hold your check in escrow pending receipt of payment or until November 5, 1997. If payment for services is not received before that date, I will apply the check towards the fees due me. In that case you will have an

outstanding balance of $111.08 payable to me.

[Exhibit 6.]

Despite respondent's representations to Orlova that he would hold the settlement check in escrow until the payment of his $2,246 bill (Exhibit 5) or until November 5, 1997 (Exhibit 6), he withdrew the $2,134.92 settlement funds from his trust account, sometime before October 31, 1997, and deposited them in his business account.[2] Respondent admitted that, by transferring the funds to his business account, he intended to take them — and did take them — as fees (3T220). It is undisputed that respondent did not have Orlova's authorization for the removal of the escrow funds (3T220).

On May 8, 2002, on the advice of counsel, respondent deposited $2,134.92 in his New York trust account, where, allegedly, the funds remained until respondent forwarded them to Orlova, on September 20, 2003.

At the DEC hearing, respondent argued that, despite his transfer of the settlement funds to his business account, they were still being held in escrow:

[Presenter] Did you in fact hold the payment [sic] in escrow until you received a payment?

[Respondent] I never received a payment, but I've been holding it in escrow to this day. And that's six years.

. . .

[Presenter] You consider your business account the same as your escrow account?

[Respondent] I consider any account I have an escrow account if clients'

[2] Although there is a suggestion in the record that the date on which respondent withdrew the settlement funds from his trust account was September 1997 – and the DEC so found – the presenter and respondent's counsel stipulated, at the DEC hearing, that the funds were "out of the trust account by the end of October [1997]" (2T54; 2T56).

> money are [sic] held in escrow . . . . Any account can hold an escrow account.

[3T149-3T150.]

Respondent further asserted that a trust account is not "a proper place for . . . disputed sums" (3T152).

On August 14, 2002, Orlova filed a fee arbitration request with the District IIB Fee Arbitration Committee. On August 29, 2002, the committee secretary notified Orlova that her request had been denied because it had been filed more than two years after respondent had last rendered services and because the issue of the reasonableness of the fee was encompassed in the OAE's complaint in this disciplinary matter. Although the issue of the payment of the fee appears moot, now that respondent has turned over the settlement funds to Orlova, the question of the reasonableness of the fee remains subject to our scrutiny.

B. Second Count

On July 29, 1997, seven days after Orlova retained respondent's legal services, he wrote a letter to GA, Shabbir's carrier, notifying it that Orlova had sustained bodily injuries and property damage and requesting prompt reimbursement for the property damage portion of the claim (Exhibit 50). On that same day, respondent sent a letter to General Insurance Co. ("GEICO"), Orlova's carrier, informing it that he represented Genina and that she had suffered bodily injuries from the accident. He asked GEICO to set up a PIP benefits file for Genina and make arrangements for the payment of her medical bills (Exhibit 33). On August 14, 1997, respondent again wrote to GA, this time on behalf of both Orlova and Genina (Exhibit 51). Respondent, thus, simultaneously represented Orlova and Genina against Shabbir, the driver of the other car, and also attempted to establish a claim against Orlova on behalf of Genina.

On March 23, 1998, when respondent was no longer representing Orlova, he wrote the following letter to GEICO, on behalf of Genina:

> The above claimant [Genina] is making a claim for bodily injury against your insured [Orlova]. She was negligent in failing to exercise due care in avoiding the collision.
>
> Enclosed are statements of charges and medical reports for the above claimant.
>
> Based on the foregoing, a demand is hereby made for compensation in the amount of $60,000.
>
> [Exhibit 32.]

Respondent did not obtain Orlova's consent to that letter. Respondent testified that "[t]his [was] a formal letter which I knew would not be resulting in a settlement because Ms. Orlova was not at fault with the accident" (3T178).

On August 21, 1998, GEICO informed respondent that Orlova's policy had bodily injury limits of $25,000/$50,000 and that it was in the process of reviewing Genina's medical records (Exhibit 31).

At the DEC hearing, respondent was asked what, if anything, he did, after he learned that his demand for $60,000 on behalf of Genina exceeded Orlova's policy limits:

> [Respondent] I don't think I did anything.
>
> [Panel Member] Did you notify GEICO that you were withdrawing your claim against them on behalf of Ms. Genina?
>
> [Respondent] No.
>
> [Panel Member] Did you notify GEICO that you were not seeking anything in excess of the policy limits?
>
> [Respondent] I don't recall. I don't think there was further correspondence on this. But I cannot say for sure . . . . As far as I know that was it.
>
> [3T221-3T222.]

Unable to settle Genina's claim against Shabbir, on September 28, 1998, respondent referred the file to a New York law firm, Janoff & Gurevich, pursuant to an agreement between the two firms. The agreement provided that, if respondent were unable to settle a case, he would refer it to Janoff & Gurevich for litigation. Janoff & Gurevich would act as respondent's trial counsel. If the suit produced a favorable outcome, Janoff & Gurevich would keep sixty percent of the legal fee and remit the forty percent balance to respondent.

In March 1999, Orlova was served with a summons and complaint in a suit filed by Janoff & Gurevich, naming Genina as plaintiff. The defendants were Shabbir, his father (Shamsher Ali), and Orlova (Exhibit 16). The complaint demanded judgment against the defendants in the sum of one million dollars. The summons, signed by Alexander Gurevich, listed Janoff & Gurevich as trial counsel for respondent.

Orlova testified that she was shocked to be served with this complaint (1T84). She contacted Wohlberg & Wohlberg, who recommended that she send a copy to GEICO. GEICO then appointed the law firm of Bilello & Walisever to defend her.

According to Gurevich, he had no knowledge that respondent had previously represented Orlova. Although respondent testified that his three letters to GA on behalf of Orlova (Exhibits 551, 52, and 53) were part of the <u>Genina</u> file sent to Janoff & Gurevich, Gurevich vigorously denied receiving them (3T226; 3T232; 3T244).[3]

According to respondent, he was unaware that Janoff & Gurevich had sued Orlova until sometime in 1999, when he visited that firm's office to review the files that he had referred for

[3] Respondent submitted two post-hearing affidavits to the DEC, dated May 7 and June 9, 2003. In the first affidavit, respondent stated that, "[u]pon reflection, I am not really sure that the Genina documents I gave Gurevich included those in Exhibits 51, 52 and 53." In the later affidavit, however, respondent stated that, "[a]lthough I am not 100% sure, I do believe that the Genina file I provided to Gurevich included . . . my letters set forth in Exhibits 51, 52, 53 and 74, all containing notice that Orlova had been my client. Mr. Gurevich's 'adamant' disavowal . . . . of his receipt of these letters is merely self-serving . . . . His denials therefore are hardly credible."

litigation (3T183). In October 1999, respondent wrote a letter to Janoff & Gurevich, demanding that the suit against Orlova be discontinued or, in the alternative, that his name be removed from the case (3T197, Exhibit 74). Gurevich denied receiving that letter (3T211). Respondent testified that, dissatisfied with Janoff & Gurevich's answer to his demand, on or about October 24, 1999, he attempted to file a stipulation of dismissal of the claim against Orlova (Exhibit 59), only to have it rejected by the court because the defendants' counsel had not signed it and because he was not the attorney of record (3T184).

In October 1999, unbeknownst to Gurevich, respondent settled Genina's case against Shabbir and Ali for $20,000 (Exhibits 19 and 20). Although Gurevich suggested to respondent that Shabbir and Ali's insurer had agreed to settle the case because of Janoff & Gurevich's "work and pressure" on the insurance company, respondent refused to send sixty percent of the fee to Gurevich.

In January 2000, respondent reviewed the progress of the cases referred to Janoff & Gurevich and prepared for that law firm his own summary of the status of those cases. Under the heading "Service Problems," respondent listed "Genina v. Orlova (referred 9/28/98): Not filed until 12/28/98. No service on Orlova to this date. Nothing else done" (Exhibit 27). According to respondent, ". . . this was an attempt to show my dissatisfaction with the progress" (3T186).

On February 9, 2000, Gurevich informed respondent that

> . . . under the circumstances of the [Genina] case, the settlement with one defendant effectively ends the entire case. New York Law makes it impractical to proceed with one defendant when the other settles because of harsh set off provisions. Therefore, we will not proceed further with this case.
>
> [Exhibit 28.]

C. Third Count

The facts that gave rise to this count of the complaint are described in the factual recitation of the first count. This count alleges that Orlova's physical and emotional state, at the time of her meeting with Dashevskaya, was such that she could not have exercised reasonable judgment in retaining respondent.

At the conclusion of the hearing below, the DEC found the following ethics improprieties:

A. First Count

The DEC concluded that, although respondent put some time into solving Orlova's property damage claim and most probably made some effort to resolve the personal injury portion of her claim, the bill had been prepared after he had received the check for the property damage. The DEC found that the services were "manufactured to use up all the monies received on the client's behalf" (hearing panel report at 9). The DEC also found that the fees charged were not reasonable within the meaning of RPC 1.5(a), in light of the results obtained. The DEC stated that "[i]t cannot be reasonable to charge a client 105% of the sums received in recovery" (hearing panel report at 9). The DEC noted that, although it "would be inclined to permit Mr. Dranov to retain 1/3 of the property damage as *quantum meruit* recovery for the reasonable value of his services to Orlova", because he had an impermissible conflict of interest he should "disgorge all of the fee taken from Orlova, together with interest at the statutory rate" (hearing panel report at 10).

The DEC also found that respondent violated RPC 1.5(c), "in that the contingent fee arrangement did not state the method by which the fee would be determined, and did not specify what expenses would be deducted from the recovery and whether such expenses are to be

deducted before or after the fee is calculated as required by the Rule" (hearing panel report at 10). The DEC further found that respondent's failure to obtain Orlova's endorsement on the settlement check and failure to promptly deliver to Orlova her portion of the property damage award violated RPC 1.15(b). In addition, the DEC found that respondent violated RPC 1.15(c), by transferring Orlova's settlement check to his business account before there was an accounting and severance of their interests, as required by that rule.

Finally, the DEC found that respondent violated RPC 8.4(c), by manufacturing the invoice "after the fact" and falsely representing to Orlova that he would retain the check in escrow until he received payment for services rendered.

B. Second Count

The DEC found that respondent created "an impermissible conflict of interest when he chose to represent E. Genina, the passenger in Orlova's vehicle, and then acted against Orlova's direct interest by making a claim against her insurer in excess of her policy amount" (hearing panel report at 13). The DEC also concluded that respondent violated RPC 1.9 by representing Genina in proceedings adverse to Orlova and that he violated RPC 8.1(a), mistakenly cited as RPC 8.1(c), "by attempting to mislead the OAE and the panel as to his knowledge about the activities of the Janoff firm in its suit against Orlova" (hearing panel report at 15). Finally, the DEC found that the discrepancies between respondent's answer and his testimony about the stipulation of dismissal of Genina's claim against Orlova violated RPC 8.1, presumably (a). Specifically, in paragraph 14 of his answer, respondent stated that, after he discovered that the Janoff firm had sued Orlova on behalf of Genina, he "immediately discontinued that action, and filed a stipulation of dismissal dated 11/01/99" (Exhibit 23 at 5). The DEC noted that only

during respondent's cross-examination did he admit that he had attempted to file the stipulation of dismissal.

C. Third Count

The DEC found no clear and convincing evidence that the initial meeting between Orlova and Dashevskaya was arranged by the medical center, without Orlova's knowledge. Furthermore, the DEC found no evidence that Orlova was incapable of exercising reasonable judgment at the time of the initial interview. Concluding that the presenter had not carried the burden of proving the allegations of the third count of the complaint by clear and convincing evidence, the DEC dismissed these charges against respondent.

Based on respondent's lack of knowledge of the law and of the Rules of Professional Conduct, his failure to recognize any wrongdoing, and the absence of any mitigating circumstances, the DEC recommended that he be suspended for two years. The DEC also recommended that respondent be required to complete, prior to reinstatement, "ten hours of courses in professional ethics, two hours of courses in banking transactions, and three hours in personal injury and trial practice" (hearing panel report at 20).

Following a de novo review of the record, we were satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. As seen below, however, we were unable to agree with some of the DEC's findings.

Initially, a procedural aspect of this case requires examination. With regard to the allegation that respondent charged Orlova an excessive fee, respondent's counsel argued below that the ethics system lacks jurisdiction over the issue of reasonableness of legal fees and that the appropriate forum to adjudicate such matters is the fee arbitration system. The DEC rejected

counsel's argument, ruling that, notwithstanding the absence of a decision by a fee arbitration committee, the ethics system may properly determine if an attorney's fees is reasonable, in light of the circumstances of the representation. We agree.

Rule 1:20A-4 states that, when a grievance involves aspects of both a fee dispute and a charge of unethical conduct, the fee committee shall first determine the propriety of the fee charged, unless the ethics question is of a serious or emergent nature. In that case, the fee committee shall administratively dismiss the matter and transmit it to the OAE for processing. At the conclusion of a fee arbitration proceeding, the committee shall refer to the OAE any matter that may involve unethical conduct that raises a substantial question about the attorney's honesty, trustworthiness or fitness as a lawyer, including overreaching.

Rule 1:20-3(e)(2)(D), in turn, provides that a DEC secretary shall decline jurisdiction if a grievance involves aspects of both a fee dispute and a charge of unethical conduct, unless so instructed by the Director or unless the matter is referred by the fee committee, in accordance with Rule 1:20A-4.

Here, the District IIB Fee Arbitration Committee declined Orlova's request for fee arbitration and determined, among other things, that the ethics system should examine if respondent's fee rose to the level of overreaching, since that issue was already part of the conduct being reviewed by the OAE. Although the question presented here may not be deemed of a serious or emergent nature, in essence, the fee arbitration committee referred the issue to the OAE Director, who determined to proceed with the charge of a violation of RPC 1.5(a) (unreasonable fee). The issue was, thus, properly before the DEC, who exercised jurisdiction over it.

A. First Count

Respondent committed numerous ethics improprieties in connection with Orlova's settlement funds and his fee for Orlova's representation.

The first ethics infraction occurred shortly after Orlova retained his services, when he failed to give her a copy of the retainer agreement. Although respondent testified that he had sent a copy to Orlova "three or four days" after she had signed that document, he produced no evidence, such as a cover letter, to substantiate his contention.

Orlova, for her part, testified that neither respondent nor Dashevskaya had given her a copy of the retainer, despite her request. Finding Orlova to be the more credible witness, the DEC concluded that respondent never sent a copy to Orlova. We agreed with this finding, deferring to the DEC with respect to "those intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . . " Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

Respondent contended that, in any event, the rules do not require that clients be given copies of retainer agreements. As properly pointed out by the DEC, technically, respondent is correct, in the sense that there is no such express mandate in RPC 1.5. Nevertheless, to interpret the rule otherwise would do violence to its purpose, which is to give clients adequate notice of the particulars of the representation, as well as ample opportunity to review the fee agreement in detail at any future time. This is especially critical if the client and the attorney later develop conflicting views on any of its terms. Therefore, by not providing Orlova with a copy of the fee agreement, respondent violated RPC 1.5(b).

In addition, the retainer agreement itself was deficient. It did not specify that Dashevskaya would be compensated for her services and did not spell out her hourly rate.

On the other hand, the retainer properly explained the method of calculating the contingent fee and particularized the expenses and disbursements to be deducted from the recovery. We, therefore, dismissed the DEC's finding that the retainer agreement did not comply with the requirements of RPC 1.5(c).

Respondent's next impropriety occurred when he deposited the settlement check without Orlova's endorsement. He argued below, incorrectly, that Orlova's endorsement was not required. If an instrument is payable to two payees jointly, both payees must endorse it.

U.C.C. § 3-116 (N.J.S.A. 12A:3-116) provides as follows:

> An instrument payable to the order of two or more persons
>
> . . .
>
> (b) if not in the alternative is payable to all of them and may be negotiated, discharged or indorsed only by all of them.

Moreover, even if respondent had obtained Orlova's authorization to endorse the check on her behalf, his conduct would have been improper. N.J. Advisory Comm. on Professional Ethics Opinion 635 ("Opinion 635"), 124 N.J.L.J. 1420 (December 7, 1989), prohibits such practice. The attorney may endorse the client's name only after a settlement has been consummated, the client has signed the closing statement required by Rule 1:20-7(g) and RPC 1.5(c), and a proper power-of-attorney has been obtained. Non-compliance with any of these requirements would be improper. "The practice of insurance carriers or other settlers in drawing settlement checks in the joint names of the attorney and the claimants is to protect and preserve the interests of all three parties to the transaction." In re Conroy, 546 N.J. 279, 283 (1970). Hence, by not obtaining Orlova's endorsement, respondent violated Opinion 635.[4]

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[4] Respondent's counsel's brief to us states that "respondent concedes, upon reflection, that it was inappropriate for him to deposit a check made out to himself and the client in his trust account without the client's written authorization" (Respondent's Brief and Appendix at 4).

Respondent's failure to maintain the settlement funds inviolate until the resolution of the fee dispute with Orlova amounted to unethical conduct as well. RPC 1.15(c) requires that "the portion in dispute [] be kept separate by the lawyer until the dispute is resolved." Notwithstanding respondent's representation to Orlova that the funds would be maintained in escrow, he transferred them to his business account and took them as fees. Respondent's argument that any account may serve as an escrow account, so long as the monies are not spent, shows a total lack of knowledge of an attorney's responsibilities as a fiduciary. Escrow funds must be segregated either in a trust account or in a special escrow account. A business account is an office's operational account. Funds deposited in an attorney business account belong to the attorney. They need not remain untouched, as they are no longer trust funds. Clearly, then, respondent violated RPC 1.15(c), when he failed to maintain those funds intact. Furthermore, he violated RPC 1.15(b), when he did not properly remit the settlement funds to Orlova.

On the other hand, we found no clear and convincing evidence that respondent misrepresented to Orlova, in his letter of October 18, 1997, that the check would be held in escrow "pending receipt of payment or until November 5, 1997" (Exhibit 6). The presenter and respondent's counsel stipulated that the funds were removed from the trust account sometime before October 31, 1997. In fact, when the panel chair noted that there was "a gap in that stipulation as to when the money was moved from the New Jersey trust account" and asked the presenter if that would be developed later, the presenter replied, "For our purposes, it's not necessary to pinpoint the exact date of the transfer. Merely that it was already out of the trust account by October" (2T56). It is possible, thus, that the withdrawal took place after respondent's letter of October 18, 1997 and that, when he wrote that letter, he intended to maintain the funds in escrow until November 5, 1997.

At the DEC hearing, there was considerable debate on the propriety or legitimacy of respondent's bill to Orlova. Unquestionably, as seen below, the bill was deficient in some respects. The evidence does not clearly and convincingly establish, however, that the invoice was "manufactured" and that it constituted a "fraud" upon Orlova, as found by the DEC. One of the bases for the DEC's finding was that the bill was prepared after respondent received the settlement check. In contingent fee matters, however, it is not unusual for attorneys to reconstruct the services rendered, when the representation ends before the resolution of the case. In fact, such reconstruction is essential if the attorney is to be compensated on a *quantum meruit* basis. Consequently, that respondent prepared the bill after he was discharged from the representation does not mean that he was ill-motivated.

In the same vein, a review of the services itemized on the bill does not seem to point to unnecessary activity designed to generate more fees. The nature and frequency of the services provided in Orlova's case appear reasonable. What was unreasonable — unconscionable even — was the charge of $200 an hour for Dashevskaya's services, especially when the retainer agreement provided for the payment of the reasonable value of respondent's services. Particularly outrageous was respondent's eleventh-hour explanation, contrived in the course of the DEC hearing, that $200 represented a "melded" or "blended" rate for his and Dashevskaya's services.

In light of the foregoing, we found that, although there is no evidence that respondent intentionally exaggerated the quantum of the services provided in Orlova's case, his attempt to justify the retention of the entire settlement award, by charging an inflated rate for Dashevskaya's services, amounted to overreaching. In this regard, respondent violated RPC 1.5(a) (excessive fee) and RPC 8.4(c) (conduct involving dishonesty).

The DEC recommended that respondent be required to return the entire settlement proceeds to Orlova because of his dual representation of Orlova's and Genina's interests, which were adverse, and because of the conflict created by Genina's suit against Orlova. The DEC acknowledged that, if not for what it perceived as a bar to a fee recovery (the conflicts of interest), a *quantum meruit* award would be appropriate. As we pointed out earlier, however, the issue of the payment of respondent's fee in the Orlova case presumably has been rendered moot by respondent's return of the entire settlement proceeds to Orlova.

Parenthetically, the DEC found fault with respondent's failure to inform Orlova of her right to request fee arbitration. We are unable to agree with the DEC. Rule 1:20A-6 requires such notice to the client only if the attorney intends to file a lawsuit to recover the fee. In other words, only pre-action notice is required. Since respondent did not sue Orlova for the fee, no such notice was necessary.

One other DEC finding in this count deserves mention. The DEC found that respondent's withdrawal of $3,500 in cash from his trust account, on October 30, 1997, violated Rule 1:21-6(c)(2). Although the DEC is correct that cash withdrawals from a trust account are not allowed, we made no findings in this context because the complaint did not charge respondent with this violation and the issue was not adjudicated below.

In sum, respondent committed the following ethics offenses in connection with the Orlova retainer agreement and the settlement award for Orlova's property damage: RPC 1.5(b), by not giving a copy of the retainer agreement to Orlova; Opinion 635, by not obtaining Orlova's endorsement on the check; RPC 1.15(c), by failing to segregate the settlement funds in his trust account, until the resolution of the fee dispute; RPC 1.15(b), by not promptly remitting the

settlement funds to Orlova; and finally, RPC 1.5(a) and RPC 8.4(c), by charging an unreasonable fee, calculated at an excessive rate for Dashevskaya's services.

Although respondent was not specifically charged with violations of RPC 1.5(b), RPC 1.15(b) and (c), and RPC 8.4(c), the issues were fully explored below. We, therefore, deemed the complaint amended to conform to the proofs. Rule 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

B. Second Count

Respondent embroiled himself in several conflict-of-interest situations, thereby compromising the interests of one client to the advantage of the other and breaching his duty of fidelity to both.

Respondent's first entanglement took place when he wrote letters to Shabbir's insurer on behalf of both Orlova and Genina. This simultaneous representation of driver and passenger presented an unwaivable conflict of interest. Consent and waiver do not permit an attorney to represent a driver and a passenger if they have potential claims against each other. See N.J. Advisory Comm. On Professional Ethics Opinion 188 ("Opinion 188"), 93 N.J.L.J. 789 (November 12, 1970), and Petition for Review of Opinion 552, 102 N.J. 194, 206 n.3 (1986).

More seriously, after Orlova terminated respondent's representation, he demanded that GEICO, Orlova's carrier, pay $60,000 for Genina's bodily injuries. That demand exceeded the individual limit of Orlova's policy ($25,000) by $35,000. By asserting the claim of one client against a former client, without obtaining the former client's consent after full disclosure of the circumstances and consultation with the former client, respondent violated RPC 1.9(a)(1).[5]

The most glaring instance of conflict of interest, however, occurred when Genina filed a suit against Orlova. Genina was represented by Janoff & Gurevich, who was acting as trial

[5] We rejected respondent's argument that Genina's claim was against GEICO, rather than Orlova.

counsel for respondent.[6] Although there is no clear and convincing evidence that respondent was aware of the lawsuit from its inception, he admitted that he learned about it sometime in 1999. He claimed that he immediately instructed Janoff & Gurevich to either discontinue the suit or eliminate his name from the pleadings. Seemingly, respondent believed that the removal of his name would eradicate the conflict. This belief was clearly erroneous, as respondent had a personal interest in that litigation (his forty percent fee) and, in addition, continued to maintain a professional association with Janoff & Gurevich. That there was no judgment or recovery against Orlova is irrelevant. Here, also, respondent violated RPC 1.9(a)(1), by allowing Genina's suit against Orlova to proceed. Indeed, as late as January 2000, respondent was complaining to Janoff and Gurevich about the lack of progress on the case (Exhibit 27).

In this count, too, the DEC reached some findings that are not fully supported by the proofs. Specifically, the DEC found that, "[a]lthough testimony was not taken on this issue, it appears" that respondent solicited Genina's representation (hearing panel report at 12). The DEC based that finding on paragraph 3 of an affidavit signed by Genina, which states as follows:

> . . . I received a letter from Attorney Dranov from New Jersey with an agreement outlining his services and his fee in that matter which was translated to me into Russian by Bella. Agreeing to those terms, I signed the agreement and mailed it to Mr. Dranov.
>
> [Exhibit 73.]

Nothing in that paragraph suggests that respondent solicited Genina's representation. It is possible that the retainer agreement was sent to Genina after she, for instance, contacted

[6] At the DEC hearing, respondent vigorously argued that Gurevich was aware of respondent's prior representation of Orlova. Not only is there no clear and convincing evidence of such knowledge, but, for the purposes of this proceeding, Gurevich's knowledge is of no relevance. It is respondent's conduct that is under review, not Gurevich's.

respondent's office or had an initial consultation with respondent or Dashevskaya. We, thus, found no impropriety in this regard.

Similarly, we found no clear and convincing evidence that respondent attempted to mislead the OAE and the DEC about his knowledge of the suit against Orlova, as found by the DEC. The DEC based this finding on certain correspondence by respondent, in which he mentioned the lawsuit (Exhibits 18 and 27). Those letters, however, were written in 2000, after respondent allegedly found out about the suit. Nothing in the record supports a conclusion, to a clear and convincing standard, that he knew about the suit before 1999.

The DEC further found that respondent lied, in his answer, that he had filed a stipulation of dismissal in Genina's suit against Orlova. The DEC noted that, at the hearing, it came to light that respondent had only attempted to file the stipulation of dismissal. Specifically, respondent testified that he had filed a stipulation of dismissal, but that it had been returned because it lacked the adversary's signature and because he was not the attorney of record. Here, too, we were unable to agree with the DEC. The record does not contain clear and convincing evidence that respondent intended to misrepresent that the stipulation of dismissal had been accepted by the court.

The DEC recommended that respondent be required to return the $7,000 fee that he earned from settling Genina's case. The DEC reasoned that respondent should not be allowed to benefit from a conflict-of-interest situation that he created for himself. We found this recommendation too harsh. The $7,000 fee originated from the settlement with Shabbir's insurance company. There was no judgment against Orlova. Under the circumstances, it would be unfair to disallow the fee.

In conclusion, by simultaneously representing Orlova and Genina and allowing Genina to pursue a claim against Orlova, by then a former client, respondent violated Opinion 188 and RPC 1.9(a)(1). Although the complaint did not charge respondent with a violation of Opinion 188, we deemed the complaint amended to conform to the evidence. Rule 4:9-2; In re Logan, supra, 70 N.J. 222, 232 (1976).

C. Third Count

For the same reasons expressed by the DEC, we dismissed the allegations that respondent and/or Dashevskaya solicited Orlova's representation at a time when Orlova's physical, emotional or mental state was such that she could not have exercised reasonable judgment in employing respondent.

There remains the issue of the appropriate degree of discipline for this respondent. Generally, either a reprimand or an admonition is imposed when an attorney charges an unreasonable or excessive fee. Even if the attorney's misconduct involves other violations, the discipline may still be a reprimand. See, e.g., In the Matter of Robert S. Ellenport, Docket No. 96-386 (June 11, 1997) (admonition for attorney who received a fee of $500 in excess of the contingent fee permitted by Rule 1:21-7(c), in violation of RPC 1.5(a) (unreasonable fee) and RPC 1.5(c) (improper contingent fee)); In the Matter of Angelo Bisceglie, Jr., Docket No. 98-129 (September 24, 1998) (admonition for attorney who billed the Plainfield Board of Education for work not authorized by the full Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach the level of overreaching; attorney also violated RPC 1.5(b), by failing to communicate to the Board, in writing, the basis or the rate of his fee, before or within a reasonable time after the beginning of the representation); In re Chazkel, 170

N.J. 869 (2001) (reprimand for attorney who collected an excessive fee; instead of removing his and prior counsel's respective percentage of the fee from the settlement amount, the attorney set aside prior counsel's fee from the client's portion of the settlement proceeds; the attorney then released to the client the fee owed to prior counsel, without prior counsel's consent, in violation of RPC 1.15; in addition, the attorney violated RPC 1.7(b) (conflict of interest), RPC 1.8(a) (knowingly acquiring a pecuniary interest adverse to the client), RPC 1.16(a)(1) (failure to withdraw from representation), and RPC 1.4(b) (failure to provide the client with an explanation of the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation)); In re Read, 170 N.J. 319 (2001) (reprimand for attorney who, in one matter, collected almost $100,000 in fees, when $15,000 would have been reasonable, and, in another mater, overcharged the estate by $85,000; in an effort to legitimize his exorbitant fee, the attorney presented inflated time records to the estate; compelling mitigating factors were considered); In re Cipolla, 141 N.J. 408 (1996) (reprimand for attorney who charged an unreasonable fee for services rendered, filed with the court an affidavit signed in blank by his client, did not give the client a copy of the retainer agreement or a bill for services, and engaged in a conflict-of-interest situation by representing husband and wife in a matter and then representing another client against the husband and the wife in an action arising from substantially similar circumstances); and In re Hinnant, 121 N.J. 395 (1990) (public reprimand for attorney who overreached his client by attempting to collect $21,000 in fees for his representation in a $91,000 real estate transaction; the attorney was also found guilty of conflict of interest, by acting in multiple and incompatible capacities as attorney, consultant, negotiator, and real estate broker).

Here, in addition to charging an unreasonable fee, respondent involved himself in conflict-of-interest situations. Cases involving conflict of interest, absent egregious circumstances or serious economic injury to the clients, ordinarily result in a reprimand. In re Berkowitz, 136 N.J. 134, 148 (1994). An attorney, who, like respondent, represented the driver and the passenger of a car involved in an accident received a reprimand. In re Nadel, 147 N.J. 559 (1997) (attorney violated RPC 1.7, Opinion 156, and Opinion 188, by representing a driver in a suit against the driver of another vehicle and then representing the passenger in a suit against both drivers).

Where the conflict of interest causes serious economic injury or the circumstances are more egregious, terms of suspension have been imposed. See, e.g., In re Humen, 123 N.J. 289 (1991) (two-year suspension for attorney who engaged in numerous sensitive business transactions with his client; the attorney concealed his adverse pecuniary interest from the client); In re Harris, 115 N.J. 181 (1989) (two-year suspension for attorney who induced his client to lend large sums to another client of whom the attorney was a creditor, without informing the first client of the financial difficulties of the borrowing client); In re Dato, 130 N.J. 400 (1992) (one-year suspension for attorney who represented both parties in a real estate transaction, purchased property from a client for substantially less than its actual value, and resold it ten days later for a $52,500 profit); In re Griffin, 121 N.J. 245 (1990) (one-year suspension for attorney who entered into a business transaction with a client who was unable to manage her affairs properly; the attorney did not fully disclose to the client the consequences of the transactions or advise her to seek independent counsel); In re Shelly, 140 N.J. 501 (1995) (six-month suspension for attorney who borrowed funds from his client without advising her to seek independent legal counsel and failed to keep his attorney records in accordance with Rule

1:21-6); In re Guidone, 138 N.J. 273 (1994) (three-month suspension for attorney who represented the Lion's Club in the sale of real property and then deliberately concealed his involvement in a partnership that was purchasing the property from the Lion's Club; the Court found that the conflicting interest of the attorney was both pecuniary and undisclosed); In re Hurd, 69 N.J. 316 (1976) (three-month suspension for attorney who advised his client to transfer property title to attorney's sister for twenty percent of the property's value).

Here, respondent's conflict of interest was confined to one client and did not cause her serious economic injury. It is unquestionable, however, that respondent committed serious ethics offenses in his representation of Orlova and Genina. It is equally unquestionable that, at times, his explanations fell short of the ring of truth. Moreover, he displayed an astonishing lack of familiarity with the rules of law and procedure, as well as the Rules of Professional Conduct. His inability — indeed, refusal — to acknowledge wrongdoing in many areas was troubling and was considered as an aggravating factor. Respondent offered no mitigating factors. Our review of the record revealed none. Accordingly, in order to protect the public from this respondent and preserve the confidence of the public in the legal profession, the sanction here must comport with the nature and gravity of respondent's ethics offenses.

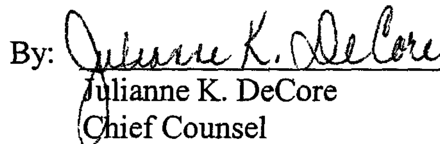
Taking into consideration the totality of respondent's conduct, we concluded that a period of suspension is required. The two-year term recommended by the DEC, however, is too severe, in light of the above case law. We, therefore, unanimously determined to suspend respondent for six months. We further determined to require him to submit, prior to reinstatement, proof of completion of the Skills and Methods courses offered by the Institute for Continuing Legal

Education, as well as ten hours of New Jersey professional responsibility courses.

Three members did not participate.

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

Disciplinary Review Board
Mary Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

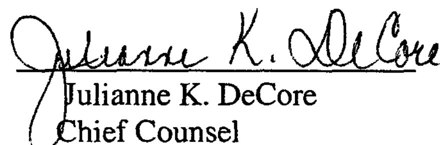
In the Matter of Alexander B. Dranov
Docket No. DRB 03-249

Argued: November 20, 2003

Decided: January 29, 2004

Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy							X
Boylan		X					
Holmes							X
Lolla		X					
Pashman		X					
Schwartz							X
Stanton		X					
Wissinger		X					
Total:		6					3


Julianne K. DeCore
Chief Counsel