

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-120  
District Docket No. VA-2013-0008E

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IN THE MATTER OF  
GERALD M. SALUTI, JR.  
AN ATTORNEY AT LAW

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Decision

Argued: June 18, 2015

Decided: November 10, 2015

David M. Dugan appeared on behalf of the District VA Ethics Committee.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a recommendation for a censure filed by the District VA Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.5(b) (failure to provide a client with a writing setting forth the basis or rate of the fee).

For the reasons detailed below, we determine to impose no discipline in this matter.

Respondent was admitted to the New Jersey bar in 1992. At the relevant time, he maintained a law office in Newark, New Jersey.

In 2007, respondent was admonished for misconduct spanning a two-year period. He had been retained, in September 2003, for a criminal matter. His communications with his client broke down when respondent's wife became seriously ill. In imposing only an admonition, we considered that, at the time, respondent was "beset" by his wife's illness, had made restitution to his client, and had no disciplinary history. In the Matter of Gerald M. Saluti, Jr., DRB 07-117 (June 22, 2007).

In 2012, respondent was admonished again for his 2003 representation of a client in connection with a second post-conviction relief application and potential appeal of a conviction. He violated RPC 1.5(b) by failing to communicate in writing the basis or rate of the fee to the client. There, too, we considered that respondent was experiencing personal problems at the time of his misconduct. In the Matter of Gerald M. Saluti, Jr., DRB 11-358 (June 22, 2007).

In 2013, respondent was reprimanded for failure to cooperate with an ethics investigation after he had ignored

three letters requiring a reply to a grievance. It was not until after a formal ethics complaint was filed that he retained counsel, filed an answer, and participated at the hearing. We did not find his wife's health issues as mitigation in this matter, as respondent was continuing to practice law and was accepting new cases. In re Saluti, 214 N.J. 6 (2013).

Effective February 28, 2014, the Court suspended respondent from the practice of law for three months for his failure to provide a client with a writing setting forth the basis or rate of the fee, failure to disclose a material fact to a tribunal, making false or misleading communications about his services, failure to cooperate with disciplinary authorities, violating or attempting to violate the RPCs, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engaging in conduct prejudicial to the administration of justice. In re Saluti, 216 N.J. 549 (2014). Respondent remains suspended to date.

On July 2, 2015, we received another recommendation for discipline against respondent from the DEC. That matter has not yet been determined.

Respondent and the DEC entered into a stipulation, dated May 30, 2014, which sets forth the following facts: In 2006, grievant Shahe Kasperian retained respondent to represent him in

his pursuit of a temporary restraining order against a former paramour. At the outset of the representation, Kasperian paid respondent a fee of \$2,500. In November 2011, the District VA Fee Arbitration Committee ordered respondent to return the entire fee to Kasperian. In February 2012, in the Superior Court of New Jersey, Essex County, Kasperian obtained a judgment against respondent for the fee, plus costs. In early 2013, after Kasperian was unsuccessful in collecting on the judgment, he filed the underlying grievance against respondent. In March 2013, respondent paid the judgment in full.

During its investigation of the grievance, the DEC demanded that respondent produce the entire Kasperian file, including any retainer letters. As it turned out, respondent had never sent Kasperian a retainer letter or other comparable writing that set forth the basis or rate of his fee or issued any billings or invoices to Kasperian. Respondent admitted that his failure to send Kasperian a retainer letter or comparable writing constituted a violation of RPC 1.5(b).

The stipulation further stated that "a hearing is necessary only as to the appropriate level of discipline for the admitted violation of RPC 1.5."

The DEC adopted the facts set forth in the stipulation. Accordingly, the DEC found that respondent's conduct constituted a violation of RPC 1.5(b).

In determining the quantum of discipline to impose on respondent, the DEC did not address mitigation that respondent advanced, stating erroneously that "[mitigating factors] are at the discretion of the Disciplinary Review Board to consider." The DEC, however, assigned great weight to respondent's prior ethics history, emphasizing that this matter represents his third violation of RPC 1.5(b) in an approximate eight-year timeframe. The DEC recommended that respondent receive a censure.

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

Respondent admitted in the stipulation that he failed to provide Kasperian, whom he had not regularly represented, with the required writing setting forth the basis or rate of the fee. The record, thus, supports the finding that respondent violated RPC 1.5(b).

Failure to prepare a written fee agreement, as required by RPC 1.5, even when accompanied by other infractions, typically

results in an admonition. See, e.g., In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also failed to communicate with the client, in violation of RPC 1.4(b); in addition, at some point, the attorney caused his client's complaint to be withdrawn based only on a statement from his prior lawyer that the client no longer wished to pursue the claim, in violation of RPC 1.2(a); we considered the attorney's unblemished disciplinary record in twenty-seven years at the bar and several letters attesting to the attorney's good moral character); In the Matter of A. B. Steig a/k/a A. Brett Steig, DRB 13-127 (October 25, 2013) (the attorney failed to communicate in writing the basis or rate of the fee to the client in a landlord-tenant dispute, in violation of RPC 1.5(b); although the attorney had received an admonition in 2011 for the negligent misappropriation of client funds, the conduct in that matter was unrelated to the infraction before us and, therefore, was not an indication of the attorney's failure to learn from his prior mistakes); and In the Matter of Linda M. Smink, DRB 13-115 (October 23, 2013) (the attorney violated RPC 1.5(b) by failing to communicate, in writing, the basis or rate of the fee with her client or the client's mother, who had paid the legal

fee for the appeal of a criminal conviction; the attorney also failed to inform her client that the time to file the notice of appeal had expired, as had the time to file an appeal out of time, for good cause, in violation of RPC 1.4(b); the attorney also failed to retain hard copies of her client files, in violation of RPC 1.15(d); in mitigation, the attorney had an unblemished disciplinary history in her twenty-four years at the bar).

Here, the DEC's determination to impose a censure overlooked a critical issue that must be examined in this case - the timing of the misconduct in this matter vis-à-vis the timing of respondent's other violations of RPC 1.5(b) for which he already has been disciplined.

In the instant case, Kasperian retained respondent in 2006 and filed the grievance against him in early 2013. The complaint was issued on January 8, 2014. Respondent was admonished in 2012 for a violation of RPC 1.5(b) that occurred in June of 2003. Respondent was subsequently suspended in 2014 for misconduct including, among other infractions, another violation of RPC 1.5(b) that occurred in August of 2007.

The timeline reveals that respondent's misconduct in the case at hand preceded the imposition of discipline for his two other RPC 1.5(b) transgressions. Thus, it cannot be found (as


the DEC determined and weighed heavily in aggravation) that (1) respondent failed to learn from his prior mistakes and (2) the sanction here should be increased in accordance with the concept of progressive discipline. Moreover, if the matter now before us had been consolidated with the matter for which respondent received a three-month suspension, it is unlikely that we would have imposed a harsher sanction for this additional violation of RPC 1.5(b).

Based on the foregoing, we determine that no discipline should be imposed on respondent for this misconduct.

Member Gallipoli voted to impose an admonition. Member Rivera did not participate.

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

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Gerald M. Saluti  
Docket No. DRB 15-120

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Argued: June 18, 2015

Decided: November 10, 2015

Disposition: No Discipline

<i>Members</i>	Disbar	Suspension	Admonition	No Discipline	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark				X		
Gallipoli			X			
Hoberman				X		
Rivera						X
Singer				X		
Zmirich				X		
Total:			1	6		1

  
Ellen A. Brodsky  
Chief Counsel