SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-326
District Docket No. XIV-2013-0055E

IN THE MATTER OF	
LARRY S. GELLER	
AN ATTORNEY AT LAW	

Decision

Argued: February 18, 2016

Decided: June 22, 2016

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 reprimand, filed by the District VB Ethics Committee (DEC). On May 30, 2014, the Office of Attorney Ethics (OAE) filed a two-count complaint. Count one charged respondent with having violated RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly deliver to the client or third person funds or other property that the client or third person is entitled to receive), RPC 1.15(d) and

R. 1:21-6(a)(2) (recordkeeping), RPC 5.4(a) (sharing a legal fee with a nonlawyer), RPC 7.3(d) (compensating a person or organization to recommend or secure the lawyer's employment by a client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Count two charged violations of RPC 1.15(d) and R. 1:21-6(a)(1) and (2), RPC 5.4(a), RPC 7.3(d), and RPC 8.4(c). We determined to impose a censure.

Respondent was admitted to the New Jersey bar in 1980. On September 4, 2003, he received a reprimand for violating RPC 3.1 (frivolous claim or contention), RPC 3.2 (failure to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process), RPC 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal), RPC 3.4(e) (alluding to matters that are not relevant or supported by admissible evidence), RPC 4.4 (respect for rights of third persons), RPC 8.2(a) (false statement about the qualifications of a judge), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 8.4(g) (conduct involving discrimination). In re Geller, 177 N.J. 505 (2003).

In that matter, while representing himself in his own child support and custody dispute, respondent refused to accept adverse rulings at face value and created numerous fictions and theories to justify them. Most notably, he became convinced that

the judge had participated in ex parte conversations with the mother of his two children and persisted in that allegation, in spite of the judge's assurances to the contrary. Further, respondent believed that the judges in Monmouth County treated him unfairly because he was from Essex County and because he was Jewish. Respondent was suspicious of inequities in every forum in which he appeared, including trial courts, the Appellate Division, and the ethics hearing. Moreover, respondent failed to comply with numerous court orders, and displayed defiance in willfully refusing to do so. In the Matter of Larry S. Geller, DRB 02-467 (May 20, 2003) (slip op. at 37-44).

The facts of the matter now before us are as follows. On January 4, 2010, Jean Valme retained respondent, on a contingent fee basis, to represent him in a workers' compensation and personal injury matter arising from an accident in December 2009. The accident occurred while Valme was operating a bus for New Jersey Transit (NJT). The fee agreement set forth that respondent would be entitled to thirty-three and one-third percent of the first $500,000 recovered, as well as costs and expenses. Dumera Dumerand, a co-worker at NJT, referred Valme to respondent.

On March 30, 2012, Valme received a workers' compensation judgment of $15,450, an award of attorneys' fees of $3,090 of

which $1,855 was to be paid by NJT, and an award of medical fees for $800 to be split evenly between Valme and NJT. Liberty Mutual held a workers' compensation lien of $18,794.08 against the judgment. On September 11, 2012, in a letter to respondent, Liberty Mutual agreed to accept $11,779.39 in settlement of that lien.

Previously, on August 12, 2010, respondent had filed a third-party action to recover damages arising from the injuries that Valme had sustained in the bus accident. That action eventually settled for $40,000. According to the closing statement respondent provided to Valme, the settlement was disbursed as follows:

GROSS PROCEEDS FROM INSURANCE CARRIER	**$40,000.00**
LESS: COSTS:	
(2) Summons & Complaint	260.00
Police Report	10.00
Rehab. Report	250.00
(2) DMV	30.00
Motion	30.00
Child Support	10.00
Xerox & Printing	No Charge
TOTAL COSTS:	590.00
NET:	$39,410.00

COMP LIEN:		$18,794.00
NET:		$20,616.00
ATTORNEY FEE:		$ 6,872.00
NET:		$13,744.00
LESS:	~~Rehab. Med. (reduced)~~	~~$ 250.00~~
	Ironbound MRI (reduced)	$ 450.00
GROSS PROCEEDS TO JEAN VALME		**$13,044.00**

(Handwritten: +250 = 13,294)[1]

In 2012, respondent made the following disbursements from the Valme third-party settlement proceeds: (a) Attorney Trust Check No. 9405, payable to respondent for $1,000; (b) Attorney Trust Check No. 9406, payable to respondent for $13,177; (c) Attorney Trust Check No. 9402, payable to Valme for $11,000; (d) Attorney Trust Check No. 9403, payable to Ironbound MRI for $450; (e) Attorney Trust Check No. 9408, payable to Valme for $2,294; (f) Attorney Trust Check No. 9409, payable to Liberty

---

[1] On the Valme closing statement, respondent drew a line through the language "Rehab. Med (reduced)" and the amount of $250.00, and increased the amount of the gross proceeds to Valme to $13,294.

Mutual for $11,779; and (g) Attorney Trust Check No. 9407, payable to Dumerand for $300.

The $300 payment to Dumerand was not reflected on the closing statement that respondent provided to Valme. Although Valme did not know whether respondent had given Dumerand any money, respondent had told Valme, in a previous discussion, that he would take care of Dumerand. Valme took that to mean that respondent would pay Dumerand a commission for the referral. Valme further testified that Dumerand did not provide any services during the course of the representation, as he did not need transportation, interpreting, or any other services from him.

Initially, in his answer to the complaint, respondent claimed that Dumerand was paid for services provided, but that he was paid from respondent's own funds. During his two pre-hearing interviews, respondent had not informed the OAE that Dumerand had provided any services. At the hearing, however, respondent explained that, although he had entered the $300 disbursement to Dumerand on the Valme ledger card, the payment represented compensation for services rendered not only in connection with the Valme matter but, possibly, also for other matters. Instead of hiring an expert for the Valme matter, respondent had consulted Dumerand, a bus driver for NJT,

regarding the procedure for driving a bus to New York. Respondent admitted at the hearing that Dumerand had not provided transportation or interpreting services in the Valme matter.

When asked about the Valme closing statement, respondent acknowledged that he had listed the original lien amount, not the actual compromised amount paid ($18,794 as opposed to $11,779.39). Respondent argued that the closing statement is accurate and that the OAE should call an expert, as he was not going to "sit here and explain it to [them]." He conceded that he had not informed Valme of the full amount of the fee he took, but contended that he was not required to give his clients such notice. Respondent asserted that he is entitled to one-third of the workers' compensation lien; that if full disclosure were provided, a client might challenge the amount of the attorney's fee; that this was the way he was "taught and that's the way most lawyers do it;" that he relied on books written by the Honorable James Healy, J.S.C., that contain different exhibits in the back; and that he has been using that closing statement format "on comp cases for at least twenty years."

From the Valme settlement proceeds, respondent disbursed two checks to himself: one for $13,177 and the other for $1,000, for a total of $14,177. He testified that he computed his fee as

follows. The difference between the $18,794 workers' compensation lien and the $11,779.39 actually paid is $7,015. He added that amount to the attorney fee of $6,872 and the $590 in costs listed on the closing statement, for a total of $14,477. He took the $13,177 in fees and $1,000 in costs, and disbursed $300 to Dumerand.

The $1,000 in costs consisted of the $590 listed on the personal injury closing statement and $410 that respondent took from the settlement of the workers' compensation lien. He explained that, although he recently learned that he is statutorily entitled to take up to $750 in costs, he took only $410 in the Valme matter. He was unable to cite the statute.[2] Previously, his practice had been to take costs of $250. He also explained that the $410 does not appear on the closing statement because it is part of the workers' compensation lien. Respondent also could not remember whether he had cashed the $1,000 check or had deposited it into his business account.

Eventually, the panel questioned respondent directly on the fees he took in the Valme matter. Simply put, the panel asked respondent whether he was "double-dipping". Respondent denied

[2] In his post-hearing submission, respondent cited N.J.S.A. 34:15-40(e), which is discussed in detail below.

that he double-dipped but was unable to explain why, if the $410 was included in the lien, taking it as part of the second $1,000 check was not "double-dipping". After working through the numbers several times with the panel, respondent acknowledged a potential math error and that some money is still due Valme.

Dumerand also referred Kenol Pierre and Bernadette Dussuaux to respondent. Pierre and Dussuaux had been passengers involved in an October 2010 motor vehicle accident. They separately retained respondent to represent them, on a one-third contingent fee basis, in November 2010.

On March 7, 2012, respondent filed a joint complaint on behalf of Pierre and Dussuaux. In October 2012, he settled Pierre's and Dussuaux's personal injury matters for $12,500 and $1,000, respectively. Respondent deposited Dussuaux's settlement proceeds of $1,000 into his attorney trust account and issued a $667 check to Dussuaux and a $333 check to himself for his fee, there having been no costs in that case. Respondent did not deposit the $333 check into his attorney trust or his attorney business account. He had no recollection of the disposition of that check.

The Pierre settlement of $12,500 was paid in two checks. Respondent deposited an $8,750 check into his attorney trust account and endorsed a $3,750 check directly to Pierre.

Respondent also disbursed $4,240 to Pierre from his attorney trust account. Pierre, thus, received $8,170 of his settlement.

Respondent prepared a closing statement for the Pierre matter as follows:

GROSS PROCEEDS FROM INSURANCE CARRIER	**$12,500.00**
LESS: COSTS:	
(2) Summons & Complaint	230
Irvington Municipal Ct.	10
Child Support	10
Xerox & Printing	No Charge
TOTAL COSTS:	250
NET:	$12,250
ATTORNEY FEE:	$4,080
GROSS PROCEEDS TO KENOL PIERRE:	**$8,170**

In December 2012, respondent made the following disbursements from the $8,750 Pierre settlement proceeds: (a) Attorney Trust Check No. 9422 payable to respondent for $430;[3]

---

[3] Respondent claimed this check was for his costs. The closing statement in the Pierre matter, however, lists only $250 as costs. Respondent testified that, although zeroed out on the closing statement, he added back his costs for Xerox and

(footnote cont'd on next page)

(b) Attorney Trust Check No. 9423 payable to respondent for $3,600; (c) Attorney Trust Check No. 9420 payable to Pierre for $4,420; and (d) Attorney Trust Check No. 9421 payable to Dumerand for $300. Respondent did not recall whether he deposited the $430 check into his attorney business account. Nonetheless, the back of that check contains only respondent's handwritten endorsement, and not his stamp endorsement reflecting a deposit into his business account. Moreover, the bank that accepted the check typed on the back of the check "Cash Check $430.00."

Respondent stated that, generally, only checks for his fees are deposited into his business account. Despite claiming that he always deposits fees into his attorney business account, respondent admitted that he did not deposit the $333 in fees from the Dussuaux matter in that account. He added that, "[i]f it's a small amount like that, who cares?" As to checks for costs, he deposited them into his business account or his own

---

(footnote cont'd)

printing and took these additional costs. He did not disclose this money to the client because in his opinion, it is not the client's money.

personal account, or cashed them. Respondent believed that the disposition of costs checks did not matter.

Notably, the Pierre closing statement did not reflect the payment of any monies to Dumerand. Respondent testified that he paid Dumerand $300 for transportation services and translation services because respondent does not speak French Creole, which is the language spoken by Pierre. He denied that the $300 represented a referral fee for Dumerand. When asked whether he discussed the Dumerand fee with Pierre, respondent could not recall what he reviewed with his clients.

* * *

At the close of hearing, the DEC hearing panel asked respondent to submit (1) the authority on which he relied, including, but not limited to, a textbook allegedly written by Judge Healy in support of the manner in which he prepared his closing statement in the Valme matter, which included deducting from the settlement amount the full amount of the workers' compensation lien, rather than the amount of the compromised lien, and making that deduction before calculating his attorney's fee; (2) the authority that entitled respondent to disburse to himself $750 in costs that the workers' compensation carrier permitted to be reduced from its lien, even if respondent's costs did not amount to $750; and (3) the amount

that remains due to Valme and the calculation thereof. Additionally, the panel asked respondent to review the transcripts of his interviews by the OAE and to notify the panel whether they are, to the best of his knowledge, an accurate transcription of his statements.

Respondent provided the requested submission and stated, contrary to his testimony at the hearing, that the Valme closing statement was accurate. He asserted that the workers' compensation carrier deducted from its lien $750 in costs when it compromised its lien from $18,794 to $11,779. His calculation is as follows: $18,794 minus a one-third attorney fee and minus $750 in costs equals $11,779. Hence, he argues, the OAE has not proven any impropriety by clear and convincing evidence.

Respondent cited N.J.S.A. 34:15-40(e) as the authority for the proposition that he was entitled to recover costs of $750. Respondent also cited two treatises written by Judge Healy, but acknowledged that neither treatise contained a closing statement reflecting the type of calculations at issue in this matter.

Further, respondent submitted a brief to us arguing that the additional $410 he took for costs in accordance with the statute related to costs incurred in the prosecution of the workers' compensation case and that the $590 he itemized on the closing statement related specifically to the personal injury

matter. Respondent also complained that he was denied a "jury of his peers" because the panel chair is a "big firm banking lawyer who knows nothing about personal injury." He added that the panel chair is a "grossly overweight big firm banking lawyer and he and I couldn't be more different. He finds me cavalier."

In turn, the OAE filed a post-hearing submission with the DEC, which, among other things, recommended the dismissal of Count I-30, which alleged that respondent overpaid himself legal fees, in violation of RPC 1.15(a) and RPC 8.4(c). Additionally, the OAE recommended the dismissal of Count I-31, which alleged that respondent's failure to pay Valme the full amount of money to which he was due constituted a failure to safeguard property, in violation of RPC 1.15(b).

In its report, the DEC hearing panel expressed "serious concerns" that respondent may have overpaid himself, resulting in an under-payment to Valme. Nonetheless, since the OAE recommended the pertinent charges be dismissed, the panel accordingly dismissed Count I-30, charging a violation of RPC 1.15(a) and RPC 8.4(c), and Count I-31, charging a violation of RPC 1.15(b).

The DEC found by clear and convincing evidence that respondent's payment of $300 to Dumerand in the Valme matter was a referral fee and violated both RPC 5.4(a) and RPC 7.3(d). The

DEC found not credible respondent's testimony that he did not share legal fees with Dumerand, but rather had paid him for consulting services.

The panel, however, dismissed the remaining charges in count one. The DEC did not find clear and convincing evidence that respondent failed to deposit the $1,000 and $410 checks for cost reimbursement into his business account. Moreover, the panel determined that checks reimbursing an attorney for disbursements made on behalf of a client are not necessarily required to be deposited into the attorney business account. Hence, the panel dismissed the charged violation of RPC 1.15(d) as it relates to the Valme matter.

Further, the panel determined that the record lacked clear and convincing evidence that respondent violated RPC 8.4(c). That charge had been based on the OAE's contention that the Valme closing statement included an incorrect lien amount and an incorrect attorney fee amount, and that it failed to disclose the payment to Dumerand. Here, the DEC noted that the OAE had not offered any expert testimony that the inclusion of the entire lien amount (rather than the compromised amount) on a closing statement represented a deviation from generally accepted practices. The DEC also concluded that, if respondent had made misrepresentations on the closing statement, no

evidence was produced to demonstrate that the misrepresentations were made with the intent to deceive.

Similarly, the panel found no evidence in the record that respondent omitted the Dumerand payment from the closing statement with any intention to deceive his client. Rather, Valme testified that he was aware that respondent would "take care of Dumerand," which he understood to mean payment of a referral fee.

The hearing panel noted, however, the inconsistency between the actual disbursements that respondent made from the settlement proceeds and those reflected on the statement. Although the Valme closing statement reflected that the costs in the Valme action were $590, respondent disbursed $1,000 in costs to himself from the settlement proceeds, $410 more than his actual costs. The panel believed that respondent was not entitled to receive $410 in additional costs, but, because the OAE had recommended the dismissal of charges based on this apparent overpayment, the DEC dismissed the RPC 1.15(a) and (b) charges.

The panel determined that the record in the Pierre/Dussuaux matter contained clear and convincing evidence that respondent violated R. 1:21-6(a)(1) and RPC 1.15(d) by failing to deposit the settlement check of $3,750 into his attorney trust account.

Respondent admitted that he had endorsed the settlement check directly to Pierre instead of depositing it into his trust account first.

The panel further determined that respondent again violated RPC 1.15(d) by failing to deposit a check for fees received in the Dussuaux matter into his business checking account.

Additionally, as in the Valme matter, the DEC found that respondent's payment of $300 to Dumerand from the Pierre settlement proceeds violated both RPC 5.4(a) and RPC 7.3(d). Although respondent testified that he did not share legal fees with Dumerand, but instead paid him for transportation and translation services, the panel found that respondent was not credible on this issue and that Dumerand was paid for referring Pierre and Dussuaux to respondent.

However, the DEC did not find clear and convincing evidence that respondent failed to inform Pierre that Dumerand would receive compensation for his referral of Pierre and Dussuaux to respondent. Respondent could not recall what he discussed with his clients regarding the payment to Dumerand. The panel concluded that respondent's equivocal response did not demonstrate, by clear and convincing evidence, that he had failed to inform Pierre of the payment made to Dumerand. As a

result, the panel dismissed the charged violation of RPC 8.4(c). The DEC further determined that the record lacked sufficient evidence to find that any failure by respondent to disclose that information stemmed from an intent to deceive.

In sum, the panel found that respondent violated R. 1:21-6(a)(1) and RPC 1.15(d) by failing to deposit the $3,750 Pierre settlement check into his attorney trust account, R. 1:21-6(a)(2) and RPC 1.15(d) by failing to deposit his check for attorneys' fees in the Dussuaux matter into his business checking account, and RPC 5.4(a) and RPC 7.3(d) by paying $300 to Dumerand in each matter. The panel dismissed all other charges arising from this matter.

For the totality of respondent's conduct, the panel recommended no more than a reprimand, observing that, although respondent committed only two recordkeeping violations, his attitude toward his misconduct was cavalier and that he was unapologetic for his actions, at one point asking, "if it's a small amount, who cares?"

Additionally, the panel noted that the use of "runners" has resulted in discipline up to and including disbarment. The evidence demonstrated, however, that Dumerand referred two cases to respondent and, although he may have referred other cases to respondent, Dumerand was not a runner in the traditional sense.

He was not, for instance, scouring emergency rooms looking for new clients for respondent. Rather, he was a full-time bus operator with NJT.

In mitigation, the panel considered respondent's cooperation with the OAE by sitting for two pre-hearing interviews and producing documents from his files, and his lack of any similar prior unethical conduct over the course of thirty-five years of practicing law. The DEC panel also recognized, as an aggravating factor, respondent's refusal to testify truthfully as to why he paid Dumerand. The DEC determined that the few number of referrals by Dumerand, the relatively small amount of the payments Dumerand received, and the circumstances under which Dumerand referred Valme, Pierre, and Dussuaux, precluded the imposition of punishment greater than a reprimand.

Finally, despite the panel's belief that respondent had violated both RPC 1.15(a) and (b) in the Valme matter, it accepted the OAE's post-hearing recommendation and dismissed those charges.

* * *

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

however, with the DEC's dismissal of the RPC 1.15(a) and (b) violations in the Valme matter.

The proper procedure to dismiss charges after a hearing has been held is to file a formal motion. The panel could then rule on that motion. R. 1:20-5(d), however, limits motions to dismiss as follows:

> (d) Motion to Dismiss. No motion to dismiss a complaint shall be entertained except:
>
> (1) a prehearing motion addressed either to the legal sufficiency of a complaint to state a cause of action as a matter of law or to jurisdiction;
>
> (2) a motion to dismiss at the conclusion of the presenter's case in chief; and
>
> (3) a motion by the presenter to dismiss the complaint, in whole or in part, when
>
> (A) an essential witness becomes unavailable or
>
> (B) as a result of newly discovered or newly disclosed evidence, one or more counts of the complaint cannot be proven by clear and convincing evidence. Such motion shall be supported by the presenter's certification of the facts supporting the motion and any relevant exhibits, and shall be decided by the trier of fact.

Here, the presenter did not file a formal motion, supported by a certification as to any newly discovered or newly disclosed evidence that rendered the charges unsustainable by clear and convincing evidence. Thus, the panel's dismissal of the

violations, based solely on the OAE's recommendation, was made in a vacuum and was erroneous.

Further, not only were these charges fully litigated and vigorously defended by respondent during the hearing, but also, respondent addressed them in his post-hearing submission to the panel. It was not until several weeks after respondent's submission that the OAE recommended the dismissal of these charges, without explanation. Thus, our consideration of those charges in spite of the OAE's recommendation that they be dismissed, poses no threat to respondent's due process rights.

The record contains clear and convincing evidence that respondent violated RPC 1.15(a) by overpaying himself legal fees in the Valme matter. The third-party personal injury claim settled for $40,000. From those gross proceeds, respondent satisfied the workers' compensation lien of $11,779.39. Respondent, however, failed to account properly for the disbursement of monies for the workers' compensation lien. On the closing statement he provided to Valme, respondent listed the lien as $18,794, although it had been reduced to only $11,779.39. This amount ($18,794) is correct only in a technical sense because the compensation earned, when it provided that lien amount to respondent, included the thirty-three percent attorney fee respondent was entitled to receive in accordance

with N.J.S.A. 34:15-40(c).[4] Respondent was entitled to up to one-third of the total lien as his fee, which he did not disclose to Valme. By not accurately reflecting the true amount of the lien, respondent overpaid his legal fee according to the terms of his retainer agreement with Valme, which, in turn, resulted in an underpayment to Valme.

Respondent also admitted that he took an additional $410 in costs from the third-party settlement proceeds without listing those costs on the Valme closing statement. He argued that, in accordance with that same workers' compensation statute, he was entitled to an additional $750 in costs. The statute, however, allows an attorney to receive up to $750 in costs. It does not allow him to receive $750 in addition to his actual costs. Respondent argued that he did not receive the full $750 but only the $410. Respondent, however, itemized and deducted only $590 on the Valme closing statement and submitted no evidence of having incurred any other costs. Hence, respondent overpaid himself $410 from monies to which Valme was entitled.

---

[4] That statute provides that in a workers' compensation matter, an employee is entitled to reimbursement of expenses of suit, up to $750 and attorney's fees, not in excess of 33 1/3% of that part of the sum paid in release of a lien held by an insurance carrier or in judgment. N.J.S.A. 34:15-40(e).

In his brief to us, respondent claimed that he took, from the third-party settlement proceeds, $410 as his expenses for the workers' compensation case and that the expenses of $590 related only to the third-party personal injury case. As noted, respondent submitted no support to justify the additional $410 in costs. Moreover, in making this argument, respondent revealed that he omitted details from client closing statements that he is required to provide, a violation of RPC 8.4(c).

By improperly disbursing funds to himself, respondent failed to promptly deliver funds to Valme, which he was entitled to receive, in violation of RPC 1.15(b).

Additionally, when respondent paid himself for costs related to the Valme matter, he did so via attorney trust check #9405. The amount of the check was $1,000 ($590 from the closing statement relative to the third-party action and $410 under the workers' compensation statute). Respondent, however, failed to deposit this check into his business account. Rule 1:21-6(a)(2) requires all funds received for professional services to be deposited into an attorney's business account. The panel concluded that the Rule does not apply to reimbursement for costs. The Rule, however, makes no such distinction. Further, the advancement of costs and the reimbursement thereof are part of providing "professional services" as encompassed by the Rule.

In addressing the nature of funds required to be deposited to an attorney business account, the Advisory Committee on Professional Ethics has ruled that only monies received in connection with the practice of law should be deposited into the business account, making no distinction between fees and costs reimbursement. The requirement, the committee noted, assists in making a determination of whether "a proper accounting has been made to a client." Advisory Committee on Professional Ethics Opinion 124, 91 N.J.L.J. 108 (February 15, 1968). Finally, R. 1:21-6 requires all attorney books and financial records to be maintained in accordance with "generally accepted accounting practice." Maintaining an audit trail (by running all fee and cost payments through the business account) clearly comports with that mandate. Respondent's failure to deposit monies for cost reimbursement into his business account, thus, violated RPC 1.15(d).

Similarly, in the Pierre/Dussuaux matter, respondent issued to himself, from his attorney trust account, a $430 check for costs. He cashed this check, instead of depositing it into his attorney trust account, again, a violation of R. 1:21-6(a)(2) and RPC 1.15(d).

Also in violation of RPC 1.15(d), respondent failed to deposit his fee in the Dussuaux matter into his business

account. Respondent wrote a check to himself for $333 from his attorney trust account and cashed the check instead of depositing it, despite the claim he always deposits his fees into his business account, cavalierly dismissing his recordkeeping obligations by noting, "[i]f it's a small amount like that, who cares?"

Further, in the Pierre matter, respondent received two settlement checks on behalf of Pierre, one for $8,750 and another for $3,750. He deposited the $8,750 check into his attorney trust account, but endorsed the $3,750 check directly to Pierre. Rule 1:21-6(a)(1) requires attorneys to deposit any funds entrusted to their care as a fiduciary into a trust account. By failing to deposit these funds into his trust account first, respondent violated RPC 1.15(d).

Respondent also violated RPC 5.4(a) and RPC 7.3(d) in both the Valme and Pierre/Dussuaux matters. In each of those matters, respondent paid Dumerand $300. In the Valme matter, respondent claimed the payment was for consulting services on the bus accident. In the Pierre/Dussuaux matter, he claimed the payment covered both transportation and translation services. Respondent was unable, however, to present any evidence that supported his claim. No bill for Dumerand's services was produced, no tax documents were provided to Dumerand for his compensation, and

the payments in both matters were identical. Additionally, Valme testified that respondent told him directly that he would take care of Dumerand, which he understood to mean that respondent would pay him a referral fee.

As noted by the hearing panel, the evidence does not clearly and convincingly establish that Dumerand functioned in the role of a traditional "runner." Rather, the record supports only that he was "involved" in these two cases. This distinction, however, matters only in assessing the appropriate quantum of discipline.

Finally, respondent made misrepresentations by omission in violation of RPC 8.4(c). Both RPC 1.5(c) and R. 1:21-7 required respondent to prepare a closing statement in both client matters. These rules create a duty to disclose fully the details of the settlement disbursements in contingent fee cases. In the Valme matter, respondent did not accurately disclose the disbursement to satisfy the workers' compensation lien, he did not disclose the $410 he took for costs in addition to the costs of $590 that he listed on the Valme closing statement, and he did not disclose in either matter the $300 he paid to Dumerand. Indeed, at the ethics hearing, respondent admitted that he did not fully disclose distributions to his clients, claiming that there is no duty to do so. He explained that he intentionally

conceals the amount of his fee because he does not want his clients challenging the amount of money that he keeps for himself.

In sum, in the Valme matter, respondent violated RPC 1.15(a), (b) and (d), RPC 5.4(a), RPC 7.3(d), and RPC 8.4(c). In the Pierre/Dussuaux matter, respondent violated RPC 1.15(d), RPC 5.4(a), RPC 7.3(d), and RPC 8.4(c).

The appropriate measure of discipline in fee-sharing cases not involving a traditional runner is determined on a case-by-case basis and ranges from a reprimand to a long-term suspension, depending on the egregiousness of the conduct. See, e.g., In re Burger, 201 N.J. 120 (2010) (attorney reprimanded for paying a paralegal employee fifty percent of the legal fees generated by immigration cases the paralegal referred to the respondent); In re Agrapidis, 188 N.J. 248 (2006) (reprimand where attorney paid twelve referral fees based upon a percentage of the total fee received by the firm to his nonlawyer employees, totaling $20,000, during a four-year period; fee shares were paid through payroll, taxes were deducted, payments were kept in the ordinary course of business, and IRS 1099 forms were issued to the recipients; attorney did not know that the payment of fee shares, which he considered to be bonuses, was improper and discontinued the practice prior to the OAE's

investigation, when he "read about a somewhat similar practice in a legal periodical and recognized that sharing fees with his office staff was questionable"); In re Gottesman, 126 N.J. 376 (1991) (reprimand where employee referred personal injury and workers' compensation cases and rendered certain services thereon, in return for a portion of attorney's fees from those cases; attorney claimed that the agreement was necessitated by his inability to pay the employee a salary and believed that it was permissible to share fees with his employee, so long as that employee had rendered substantial paralegal services); In re Macaluso, 197 N.J. 427 (2009) (censure for nominal partner's participation in prohibited compensation arrangement with employee and his failure to report the controlling partner's misconduct); In re Fusco, 197 N.J. 428 (2009) (companion case to Macaluso, three-month suspension for attorney who established a fee sharing arrangement with employee that spanned eight years, generated more than 700 cases for the firm and more than $780,000 for the employee, which the attorney attempted to conceal by issuing payment checks to "AFG Enterprises," rather than to the employee directly; in addition, the attorney failed to report his nominal partner's misconduct); In re Finckenauer, 172 N.J. 348 (2002) (three-month suspension for attorney who accepted referrals from a client whom he was defending in a

murder case, in exchange for reducing the client's bill or providing legal services free of charge; other ethics improprieties also found); In re Birman, 185 N.J. 342 (2005) (on motion for reciprocal discipline, one-year suspension imposed on attorney who agreed to compensate an existing employee for bringing new cases into the office, after she offered to solicit clients for him); In re Silverman, 185 N.J. 133 (2005) (one-year suspension for attorney who paid a chiropractor a $400 fee for each case that the chiropractor referred to him); and In re Tomar et al., 196 N.J. 352 (2008) (three partners given long-term suspensions for participation in pervasive, long-term fee-sharing arrangement with employees; the payments were characterized as "bonuses" and one employee, the firm's claims manager, received "bonuses" totaling hundreds of thousands of dollars in a six-year period; given the delay in the resolution of the disciplinary matters instituted against them, the suspensions were suspended and the attorneys were placed on probation instead).

In 2014, the Supreme Court retroactively suspended an attorney for one year based on discipline imposed in New York, for conduct that, in New Jersey, constituted violations of RPC 1.15(a), RPC 1.15(d), RPC 7.3(d), RPC 8.4(c), and RPC 8.4(d). In re Gruen, supra, 218 N.J. 4. In that matter, Gruen worked in the

same building as Nelson Bloom, who also happened to be a family friend of Gruen's parents. In the Matter of David Gruen, DRB 13-212 (December 19, 2013) (slip op. at 3). Bloom referred individuals to Gruen for representation in personal injury cases and Gruen would pay Bloom a percentage of his recovery. Ibid.

Gruen was found to have engaged in an improper fee sharing/referral arrangement with a nonlawyer, in violation of RPC 7.3(d). Id. at 4. Bloom testified as such; however, Gruen claimed he was simply paying Bloom rent. The special referee in New York did not find Gruen credible on the matter.

Gruen also violated RPC 1.15(a). In sixty-three of six hundred matters, he was charged with calculating his contingent fee on the gross settlement, instead of the net sum recovered, as required by New York rules. As a result, he took over $12,000 from his clients to which he was not entitled. Id. at 6. Gruen admitted the erroneous calculations but claimed that his conduct had been based, in part, on his lack of experience and poor guidance he received from other attorneys. He also claimed he undercharged his clients for expenses, which offset his overreaching on the fees. Gruen, however, provided no records to support that contention. Id. at 6-7. Further, also in violation of RPC 1.15(a), Gruen had improperly commingled personal and/or business funds with "funds entrusted to him as a fiduciary."

Specifically, he failed to withdraw his earned legal fees from his escrow account. Id. at 8. Gruen also violated RPC 1.15(d) and RPC 8.4(d), by failing to maintain proper records of deposits and withdrawals from his attorney accounts for seven years. Id.

Gruen also violated RPC 8.4(c) and (d), by filing improper retainer and closing statements with the Office of Court Administration in New York. The local rules required the name, address, occupation, and relationship of the person referring the client on the forms. For several years, Gruen simply wrote "former client" and admitted to ethics authorities that his description was not always accurate. Id. at 5. Additionally, the forms required Gruen to report disbursements paid to others that were properly chargeable to the recovery of damages. He failed to report all of the required information. Id. at 5-6.

In mitigation, Gruen asserted that he extricated himself from his arrangement with Bloom; he cooperated with New York disciplinary authorities; he did not pose a threat to the public; his actions were not willful or intentional; he was remorseful; he had no disciplinary history; the misconduct had occurred a long time ago (2000-2004); and respondent's New York discipline had been imposed five years prior. Id. at 16. The

retroactivity of Gruen's suspension was based on the significant passage of time. Id. at 17-18.

Similarly, here, respondent improperly shared fees/paid a referral to a nonlawyer. He also made misrepresentations on closing statements about the payment of those fees, the costs associated with the client matters, and the fees he took. Ultimately, he, like Gruen, overpaid himself fees and, hence, failed to disburse proceeds to which the client was otherwise entitled. Gruen, however, overpaid himself in over sixty matters, upwards of $12,000. Here, respondent owes a significantly smaller sum to Valme.

In contrast, however, respondent is not a novice attorney. In fact, he defiantly relied on his experience to justify his behavior, stating that he has done things the same way for twenty years and even criticized the presenter during his testimony, stating, "you know, if you practiced law, it might be a little bit easier for you."

Respondent's violations do not rise to the level of those in Gruen or in the other suspension cases cited above, based on the number of client matters involved, the ultimate amount of funds overpaid to the attorney, and the scope of the established referrals. Although we consider a suspension to be too severe, the reprimand recommended by the panel is inadequate to address

respondent's misconduct. The cases in which reprimands were imposed involved only the payment of referral fees, but did not include the several other ethics violations committed here by respondent. In our view, respondent's behavior warrants more than a reprimand, based on several factors.

Respondent shows no remorse for his misconduct. In fact, his attitude regarding his handling of client funds and obligations is cavalier and exacerbated by his defiant admission that he intentionally omits details regarding his fee from his client's closing statements to foreclose any challenge his clients might pose. Respondent clearly harbors a serious disregard for his ethics obligations as an attorney. Thus, in fashioning the appropriate discipline in this case, we are particularly mindful of the need to protect the public.

Additionally, respondent's demeanor at the hearing is worth noting. He was disrespectful toward the presenter and the OAE investigator. The panel found respondent to lack credibility and to be cavalier. Respondent's poor attitude is on full display in his brief to us as he tried to minimize the panel chair's ability to deliberate on this matter, based on the panel chair's physical characteristics. In light of respondent's behavior resulting in his previous reprimand, it appears to us that he has not learned from his prior mistakes. He was rude and

disrespectful, demeanor that does not comport with the standards of our profession.

Hence, based on respondent's conduct, his cavalier and defiant attitude regarding that conduct, and a need to ensure that respondent will learn from his mistakes, as well as a need to protect the public from his continued behavior in this regard, we determine that the appropriate quantum of discipline is a censure.

Members Gallipoli, Hoberman, Rivera, and Zmirich voted to impose a three-month suspension.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Larry S. Geller
Docket No. DRB 15-326

Argued: February 18, 2016

Decided: June 22, 2016

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer			X			
Zmirich		X				
Total:		4	5			

Ellen A. Brodsky
Chief Counsel