

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-425
District Docket No. XIV-2014-0338E

IN THE MATTER OF
JOSEPH D. LENTO
AN ATTORNEY AT LAW

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Decision

Argued: April 21, 2016

Decided: September 23, 2016

Hillary K. Horton 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following Pennsylvania's one-year suspension of respondent for his violation of the Pennsylvania equivalent of New Jersey RPC 5.4(a) (sharing legal fees with a nonlawyer); RPC 7.3(d) (compensating or giving anything of value to a person to recommend or secure the lawyer's employment by a client, or as a reward for

having made a recommendation resulting in the lawyer's employment by a client); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

We determine to grant the motion for reciprocal discipline and impose a reprimand.

Respondent was admitted to the Pennsylvania and New Jersey bars in 2008. At all relevant times, he maintained an office for the practice of law in Philadelphia, Pennsylvania. He has no history of discipline.

On April 4, 2013, the Pennsylvania Office of Disciplinary Counsel (ODC) filed a "Joint Petition in Support of Discipline on Consent Under Pa. R.D.E. 215(d)" (Joint Petition). On April 23, 2013, the Disciplinary Board for the Supreme Court of Pennsylvania (PaDB) approved the Joint Petition and recommended a one-year suspension, to be followed by one year of probation (with conditions). On July 17, 2013, the Supreme Court of Pennsylvania granted the Joint Petition and respondent was suspended from the practice of law for one year, followed by a one-year period of probation, with recommended conditions. Specifically, respondent was required to select a practice

monitor subject to the ODC's approval, who would periodically examine respondent's law office organization, meet with respondent monthly, answer law office management questions, file quarterly reports, and report any violations of the probation terms.

The Joint Petition set forth the factual basis for respondent's multiple Pennsylvania RPC violations. Specifically respondent agreed that, by letter dated November 10, 2011, he "reach[ed] out" to Dwayne Stevens, an employee with the First Judicial District of Pennsylvania, Curran-Fromhold Correctional Facility, Bail Unit, in an effort to expand his criminal defense practice. The letter requested an opportunity for respondent to speak to Stevens "about the prospect of a mutually beneficial business relationship." Respondent suggested they meet for lunch and, to that end, gave Stevens his phone number.

On December 26, 2011, respondent sent similar letters to eight clerical assistants assigned to the bail unit in pretrial services at the Criminal Justice Center. In addition to proposing the same "mutually beneficial business relationship," respondent explained that he was "trying to find out who posts bail in Philadelphia so that [he] can follow up on [his] end." Further, he acknowledged that, although the requested

information might be public, he was hoping they would expend the minimal effort and assist him.

During the week of January 2, 2012, respondent approached Brittany Baggio, a court employee, at the information counter at the Criminal Justice Center in Philadelphia. He asked her to take a stack of his business cards and keep them at the information counter so she could distribute them to anyone looking for a lawyer. He also offered to pay Baggio if she gave a card to a prospective client who eventually retained his services. He suggested she give her name to the client or put her initials on the back of the card so he would know the source of the referral. He said the arrangement was "just between" them. Baggio refused to accept the stack of cards. Nevertheless, he placed the stack of business cards on the information counter and left. Prior to January 10, 2012, he returned to the information counter and left a stack of his business cards with a different court employee.

Judge John W. Herron, Administrative Judge of the Court of Common Pleas, Trial Division, became aware of respondent's conduct and, by letter dated January 4, 2012, requested respondent explain the improper solicitation of referrals contained in the letters he sent to court personnel. Further, Judge Herron requested the names of all individuals to whom

respondent had made offers of compensation in exchange for business. Respondent was suspended from the court-appointed attorney list for the First Judicial District.

For this conduct, the Joint Petition established that respondent violated Pennsylvania RPC 5.4(a), RPC 7.3(a)¹, RPC 8.4(a), RPC 8.4(c) and RPC 8.4(d).

The Joint Petition found, as an aggravating factor, that respondent "had been employed by the First Judicial District as a Juvenile Probation Officer since 2003, [and] was terminated from his employment for failing to return to work." As to the mitigation, the parties agreed that respondent admitted his misconduct and had been practicing law for only three years.

For these violations, the parties agreed that a one-year suspension was the appropriate discipline, followed by a one-year period of probation (with conditions). According to the OAE's brief, respondent "properly self-reported his Pennsylvania discipline" to the New Jersey disciplinary authorities.

¹ RPC 7.3(a), which has no precise New Jersey equivalent, prohibits solicitation of professional employment, whether "in-person or by intermediary," for pecuniary gain. New Jersey RPC 7.3(d) prohibits compensating another to recommend the lawyer's employment.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Although we adopt the PaDB's factual findings, as well as its conclusion that respondent was guilty of unethical conduct, we cannot agree with its particular RPC findings. Specifically, the PaDB found that respondent's conduct violated the New Jersey equivalent of RPC 5.4(a) (sharing a fee with a nonlawyer) and RPC 7.3(d) (compensating or giving anything of value to a person to recommend or secure the lawyer's employment or as a reward for having made a recommendation resulting in the lawyer's employment by a client). Respondent, however, was unsuccessful in his attempts to convince the Pennsylvania court employees to refer business to him in return for a monetary payment. He, thus, never made any such payments. Accordingly, we cannot find that he violated those rules. Nevertheless, we do find that respondent's actions in furtherance of his intention to generate business through the court employees' referrals constituted a clear attempt to violate both RPC 5.4(a) and RPC 7.3(d). For these attempts, respondent is guilty of a violation of RPC 8.4(a), a finding also made by the PaDB.

Additionally, the record does not support a finding that respondent violated RPC 8.4(c) or RPC 8.4(d). Although respondent

admitted that he attempted to convince third parties to refer him business, nothing about his attempts involved dishonesty, fraud, deceit or misrepresentation. Therefore, we decline to find that he violated RPC 8.4(c).

Further, respondent's attempts to solicit business took place over two months and ceased promptly after Judge Herron intervened. Respondent did not secure any business as a result of his misconduct. The record contains no evidence that his conduct had any effect on the administration of justice. We, thus, decline to adopt the PaDB's finding that respondent violated RPC 8.4(d).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Paragraph (E) applies, however. In New Jersey, respondent's misconduct would merit discipline far less severe than the suspension imposed in Pennsylvania. For the reasons discussed below, in our view, respondent's misconduct warrants a reprimand.

Notwithstanding the inchoate nature of respondent's alleged violations of RPC 5.4(a) and RPC 7.3(d), in analyzing the proper quantum of discipline, we considered cases that addressed the specific RPCs that respondent attempted to violate.

In cases involving improper fee sharing with nonlawyers, the discipline has ranged from an admonition to a lengthy suspension, depending on the severity of the lawyer's conduct, the presence of other serious violations, and the lawyer's ethics history. See, e.g., In the Matter of Paul R. Melletz, DRB 12-224 (November 16, 2012) (admonition for attorney who hired a paralegal for immigration matters as an independent contractor and, for a few years, evenly divided the flat fee charged to

immigration clients); In re Agrapidis, 188 N.J. 248 (2006) (reprimand imposed where, over a four-year period, attorney shared fees with nonlawyer employees on twelve occasions by paying them a percentage of legal fees received from clients whom the employees had referred to him; the attorney was not aware of the prohibition against fee-sharing and viewed the payments as "bonuses"); In re Macaluso, 197 N.J. 427 (2009) (censure imposed on attorney, who, as a nominal partner, participated in a prohibited compensation arrangement with an employee and failed to report the controlling partner's misconduct); In re Fusco, 197 N.J. 428 (2009) (companion case to Macaluso) (attorney suspended for three months for paying a nonlawyer claims manager both a salary and a percentage of the firm's net fee recovered in personal injury matters that were resolved with the manager's "substantial involvement;" the claims manager received a larger percentage of the firm's fees in cases that he had referred to the firm; other infractions included failure to supervise nonlawyer employees and failure to report another lawyer's violation of the RPCs); and In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who agreed to share fees with a nonlawyer, entered into a law partnership agreement with a nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to

communicate with a client, engaged in conduct involving misrepresentation, and failed to cooperate with disciplinary authorities).

In facts similar to the instant matter, the Court, in In re Lisa, 169 N.J. 419 (2001), imposed a six-month suspension on an attorney for his attempt to arrange for a third party to distribute his business cards to prospective clients. Specifically, the attorney asked a corrections officer to distribute his business cards to criminal defendants in exchange for receiving a percentage of the fee earned. In the Matter of James R. Lisa, DRB 00-220 (May 29, 2001) (slip op. at 5). Although the corrections officer rejected the attorney's offer, we found that the attorney violated RPC 8.4(a) for his attempt at sharing a fee with a nonlawyer. Id. at 5, 8. Although the attorney's significant ethics history weighed heavily in our decision to impose a six-month suspension, we viewed respondent's attempt to share legal fees with a nonlawyer, albeit unsuccessful, as extremely serious. Id. at 10.

Here, the agreed facts make clear that respondent engaged in several attempts to solicit business by offering financial compensation to court employees for referrals. Specifically, respondent wrote to Dwayne Stevens and eight clerical assistants requesting an opportunity to discuss a "mutually beneficial

business relationship." Further, in January 2012, respondent asked Brittany Baggio, a court employee at the information counter at the Criminal Justice Center in Philadelphia, to distribute his business cards for individuals looking for a lawyer; in exchange, respondent offered her financial compensation. Although she refused his offer, he left a stack of his business cards on the counter. Respondent also returned later that month and left a stack of his business cards with another court employee.

Respondent's attempt to receive referrals was thwarted only by the intervention of Judge Herron, who, by letter dated January 4, 2012, informed respondent that his conduct was improper and suspended him from the court-appointed attorney list for the First Judicial District.

In his brief, respondent described his conduct as "overzealous business development efforts" and analogized it to his requests to be placed on court appointment lists. Further, he explained that he did not ask for guidance from other attorneys as to where to find the bail receipt information, for fear of competition, believing that those attorneys would then adopt his idea and, thus, obtain the same clients respondent was seeking.

The OAE recommends a reprimand, citing In re Burger, 201 N.J. 120 (2010). There, an attorney who had been practicing law

for forty-seven years, without incident, employed a paralegal who performed office tasks as well as translation services. In the Matter of Martin Burger, DRB 09-243 (slip op. at 2) (December 3, 2009). The paralegal also referred cases from her personal contacts and the attorney paid her fifty percent of the fees generated by her referrals, plus \$200 per week for her secretarial services. Id. at 2-3. The payments were made to an entity created and controlled by the paralegal, which had amassed \$230,000 in referral fees. Ibid. Through a stipulation, the attorney was found to have violated RPC 5.4(a) and RPC 7.3(d). Ibid. He received a reprimand after consideration of mitigation, including his acknowledgement of wrongdoing, character letters, and an unblemished history. Id. at 6-7.


We consider respondent's misconduct to be most analogous to that of the attorney in Lisa. Although we view respondent's unabashed attempts to solicit business through improper referral methods as serious, there is mitigation to consider. First, unlike the attorney in Lisa, who had a significant ethics history, this is respondent's first brush with the disciplinary system. Moreover, at the time of his misconduct, he was a relatively inexperienced attorney with no senior guidance. Finally, respondent admitted to his misconduct and has expressed

remorse for his mistakes. In this light, we determine to impose a reprimand for respondent's misconduct.

Member Gallipoli 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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

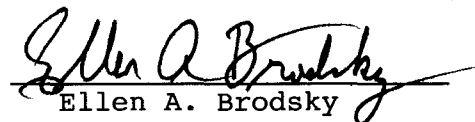
In the Matter of Joseph D. Lento
Docket No. DRB 15-425

Argued: April 21, 2016

Decided: September 23, 2016

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Boyer			X			
Clark			X			
Gallipoli						X
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			8			1


Ellen A. Brodsky
Chief Counsel