Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-232
District Docket No. IIIB-2016-0026E

In The Matter of

Julie Anna LaVan

An Attorney At Law

Decision

Argued: October 18, 2018

Decided: December 27, 2018

Joseph Schramm, III appeared on behalf of the District IIIB Ethics Committee.

Marshall D. Bilder 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 on a recommendation for a reprimand filed by the District IIIB Ethics Committee (DEC). The three-count formal ethics complaint charged respondent with violating RPC 1.5(b) (failure to communicate in writing the rate or basis of the fee), RPC 1.5(c) (failure to

provide a contingent fee agreement, stating the method by which the fee is to be determined), and RPC 1.15(d) (recordkeeping) (count one); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); and RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another) (count three).

For the reasons detailed below, we determine to impose a reprimand.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2006 and to the District of Columbia bar in 2011. During the relevant time frame, she maintained an office for the practice of law in Moorestown, Burlington County, New Jersey. She has no history of discipline in New Jersey.

In August 2012, Jay and Raquel Winkler retained respondent to represent them, on a contingent fee basis, in a toxic tort action against Lockheed Martin (Lockheed). At the time of the Winkler retention, respondent already had filed the matter of Michael Leese, et al. v. Lockheed Martin Corporation, in the United States District Court for the District of New Jersey (the Leese Action). The Leese Action alleged that properties adjacent to Lockheed's Moorestown, New Jersey campus were adversely affected by toxic chemicals that Lockheed had improperly released into the groundwater. In

September 2012, respondent added the Winklers as plaintiffs in the Leese Action. Lockheed was represented by attorneys Robert L. Ebby, Steven T. Miano, and Robert A. Wiygul, the grievants in this matter.

On February 4, 2013, in response to the plaintiffs' demand for payment of attorneys' fees in the Leese Action, Lockheed filed a motion to compel production of respondent's fee agreements. On April 4, 2013, respondent produced to the District Court and defense counsel a fee agreement signed by Jay Winkler. Although the Winkler fee agreement was dated, August 2, 2012, it had been executed in February 2013.[1]

Respondent testified that it was her custom and practice to provide a fee agreement to all new clients. During depositions taken in the Leese Action, the Winklers did not recall receiving a fee agreement, but Jay Winkler was aware, from the outset of the representation, that respondent would receive a thirty-percent contingent fee from any award of damages. Respondent asserted that, after she agreed to produce the Leese and Winkler fee agreements, she had searched for them in her office, to no avail. She testified that, in order to produce the Winkler fee agreement, she had reprinted it from her computer, and Jay Winkler had agreed to sign it, in order to "recreate what was already

[1] The complaint did not charge respondent with a violation of RPC 3.3(a) (lack of candor to a tribunal) in respect of this conduct.

existing." She maintained that there was no evidence that she had failed to provide the Winklers a fee agreement upon commencing the representation, and that there was no dispute that the Winklers understood the contingent fee arrangement.

Ultimately, the Leese Action was dismissed, via a settlement and release among the parties, wherein respondent and the grievants also agreed to dismiss competing motions for sanctions. Notably, the settlement agreement did not award damages to the plaintiffs, but also did not preclude the plaintiffs from raising future toxic tort claims against Lockheed, so long as such claims were based on future environmental testing.

Respondent asserted that Lockheed's counsel had filed the ethics grievance for strategic reasons, after a two-year delay, at a time when residents of Moorestown were publicly considering commencing additional lawsuits against Lockheed. She added that it was never her intention to mislead anyone or commit misconduct by producing the Winkler fee agreement, and that, in hindsight, she should have made clear to the District Court and to her adversaries that the Winkler agreement she produced was a "recreated" document. Respondent conceded that it was possible that she had not provided the Winklers with a fee agreement when she commenced their representation,

but also emphasized that she had never sought the payment of any attorneys' fees from the Winklers or Leeses.

In respect of mitigation, respondent and the DEC entered into a joint stipulation of facts, which provided that the Winklers were satisfied with respondent's representation in the Leese Action and "were not harmed by any act or omission" of respondent; respondent never charged the Winklers a fee for her representation; Jay Winkler "does not recall" signing a fee agreement at his initial meeting with respondent, but agreed that the fee agreement he ultimately signed accurately set forth the terms of the fee arrangement he accepted from the outset; and respondent has no prior discipline.

In her brief to us, respondent asserted that she "exercised poor judgment in responding to a discovery request in the heat of battle . . . Poor judgment does not prove fraud or dishonesty by clear and convincing evidence." Respondent, thus, requested that no discipline be imposed.

The DEC concluded that respondent violated RPC 1.5(b) and (c), finding that she had not provided the Winklers with the required contingent fee agreement until February 2013, when it was recreated and produced in connection with the Leese Action. Rather, respondent had improperly relied on a verbal fee agreement with Jay Winkler.

The DEC also concluded that respondent violated RPC 8.4(a) and (c), finding that she had improperly backdated the Winkler fee agreement and secured Jay Winkler's signature, seven months after the representation had commenced, in order to produce the document in connection with the Leese Action.

The DEC failed to address the allegation that respondent violated RPC 1.15(d) by failing to maintain copies of the plaintiffs' fee agreements in respect of the Leese Action.

In mitigation, the DEC considered that respondent had no prior discipline, readily admitted wrongdoing in her verified answer, and cooperated with the ethics investigation. In aggravation, the DEC emphasized that respondent "showed little remorse in her actions" and failed to mitigate or remediate her misconduct, "despite opportunities to do so." After citing applicable precedent in respect of the appropriate quantum of discipline for respondent's misconduct, the DEC recommended that respondent receive a reprimand.

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent violated RPC 8.4(a) and (c). For the reasons set forth below, we determine to dismiss the allegations that respondent violated RPC 1.5(b) and (c), and RPC 1.15(d). The DEC's

determination that a reprimand is the appropriate quantum of discipline for respondent's infractions is proper.

In respect of the RPC 8.4(a) and (c) allegations, respondent commenced the representation of the Winklers in August 2012, and added them to the plaintiffs' group in the Leese Action. Subsequently, those plaintiffs, with respondent's advice, made a demand for payment of attorneys' fees. On April 4, 2013, in response to Lockheed's motion to compel production of respondent's fee agreements with the plaintiffs, respondent produced a fee agreement signed by Jay Winkler. Respondent conceded that she failed to disclose to the District Court and to Lockheed that the fee agreement she produced had been executed in February 2013, but backdated to August 2, 2012. Specifically, she testified that, after she could not locate the Winkler fee agreement, she reprinted it from her computer, and Jay Winkler agreed to sign it, to "recreate what was already existing." The Court and this Board previously have made clear that backdating documents is a serious ethics offense. See In re Kornfeld, 207 N.J. 29 (2011). Respondent's conduct in respect of the Winkler fee agreement constituted a misrepresentation, and, thus, violated RPC 8.4(a) and (c).

The record, however, lacks clear and convincing evidence to sustain the RPC 1.5(b) and (c), and the RPC 1.15(d) allegations. Respondent testified that

it was her custom and practice to provide all new clients with fee agreements. It is undisputed that Jay Winkler was aware, from the onset of the representation, that respondent would receive a contingent fee for any award of damages. The only evidence the DEC presented to undermine respondent's position was the Winklers' deposition testimony that they did not specifically recall receiving a fee agreement, and respondent's own concession that "it was possible" that she had neglected to provide the Winklers a fee agreement at the onset of the representation. Such facts do not satisfy the burden of clear and convincing evidence required to sustain an ethics allegation. Simply put, the facts demonstrate neither that respondent provided the Winklers with a fee agreement at the outset of the representation but failed to maintain that record, as required, nor that she failed to provide the Winklers with a fee agreement. We, thus, dismiss the charges that respondent violated RPC 1.5(b) and (c), and RPC 1.15(d).

Attorneys found guilty of conduct involving dishonesty, fraud, deceit or misrepresentation generally have received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her

employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation); and In re Frey, 192 N.J. 444 (2007) (while representing a purchaser, attorney misrepresented to a real estate agent that he had received an additional deposit of $31,900; when the attorney received from his client an $11,000 installment toward the deposit, he later released those funds to his client, despite his fiduciary obligation to hold them and to remit them to the realtor).

Here, respondent misrepresented to both the District Court and Lockheed, during litigation, that she was producing the original Winkler fee agreement in support of the plaintiff's demand for attorneys' fees. She either was rectifying her failure to provide her client with a fee agreement, as RPC 1.5(b) and (c) require, or was producing a facsimile of the original fee agreement. In either event, she should have acted with candor and transparency to the tribunal and her adversaries. Worse, she enlisted her client, Jay Winkler, in perpetrating the deception. Had she simply been forthcoming with the truth,

she might not have faced any ethics charges. By behaving deceitfully, she ensured that the cover-up was worse than the crime. On balance, given her lack of prior discipline and the absence of harm to the client, we determine that a reprimand is sufficient discipline to protect the public and deter such misconduct.

Member Singer was recused. Member Joseph 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 Julie Anna LaVan
Docket No. DRB 18-232

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Decided: December 27, 2018

Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer		X	
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel