Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-238
District Docket No. IIB-2016-0039E

In the Matter of

Gilberto M. Garcia

An Attorney at Law

Decision

Argued: October 17, 2019

Decided: January 23, 2020

James B. Seplowitz appeared on behalf of the District IIB Ethics Committee.

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 censure filed by the District IIB Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions

about the representation); RPC 1.5(b) (failure to set forth in writing the rate or basis of the legal fee); RPC 1.15(d) and R. 1:21-6 (recordkeeping deficiencies); and RPC 7.1(a) (false or misleading communications about the lawyer's services).

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1987. He maintains an office for the practice of law in Maywood, New Jersey.

In 2001, respondent was reprimanded for engaging in a conflict of interest after representing both a husband and a wife in litigation, while simultaneously representing the husband in divorce proceedings; using privileged information against the husband; and engaging in an impermissible fee-sharing arrangement with the husband, who was not an attorney. In re Garcia, 167 N.J. 1 (2001).

The relevant facts of this matter arise from respondent's representation of Ganesh Ramsaran, who was charged, in New York, with the murder of his wife, Jennifer Ramsaran. On December 11, 2012, Ganesh reported Jennifer missing. On May 17, 2013, law enforcement arrested Ganesh, and on May 23, 2013, a grand jury indicted him for second-degree murder. Thereafter, Ganesh was incarcerated while awaiting trial.

Ganesh initially retained attorney James Chamberlain of Norwich, New York, as his defense attorney. Chamberlain added F. Stanton Ackerman, who

had tried twenty homicide cases to verdict, to lead the defense team.

During preparation for the case, Ackerman and Chamberlain either engaged, or informed Ganesh and his father, grievant Mangra "Sam" Ramsaran, of their intent to engage, multiple expert witnesses and an investigator to assist in their defense efforts. However, Ganesh and Sam had difficulty raising the funds necessary for the attorneys' fees and anticipated experts' fees. Sam made multiple representations to Ackerman that he was working toward raising the funds to pay those fees, but, during the same timeframe, began seeking replacement counsel for Ganesh.

On November 26, 2013, based on a recommendation from a co-worker, Sam met with respondent, at respondent's New Jersey office. At that meeting, Sam provided respondent with documents related to Ganesh's case. According to Sam, after respondent reviewed those documents, he told Sam that Ganesh's attorneys "were not doing what they [were] supposed to," that "he could handle the case better," and that the other attorneys needed to be "coached." Respondent admitted that he was critical of Ganesh's attorneys to Sam, and, later, to Ganesh.

Respondent admittedly had limited criminal law experience, and had no experience in respect of homicide trials. At that time, he had been involved in only three criminal cases in New Jersey, and one in Costa Rica. Respondent had handled neither a testimonial hearing nor a trial in those cases. Rather, he had

handled only the procedural components of the cases, including extradition and bail. According to respondent, he had litigated only one criminal case. In that matter, he ultimately had informed the trial judge, "against [his] will," that he was "ineffective," resulting in another attorney's taking over the case "in the middle of the trial."[1]

Sam, Ganesh, and respondent provided differing accounts regarding respondent's characterization of his criminal law experience. Sam claimed that respondent told him he had been "involved with many murder cases before," but acknowledged that respondent had not made any specific representations that he was a "murder trial attorney." Sam claimed, however, that at their initial meeting, respondent told him that cases like Ganesh's "are very easy." According to Ganesh, respondent told him, at their first meeting, that respondent had experience in "many murder trials" and with "major crimes," and that Ganesh had a "rather simple" case. Ganesh claimed that, based on those representations, he "felt comfortable with [respondent]" as his attorney. Respondent denied having misrepresented his experience or having affirmatively represented that he was a "lawyer with murder trial experience."

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[1] It is not clear from the record what respondent meant by claiming that he had made such a serious application to a judge involuntarily.

As a result of the initial meeting with Sam, respondent was not retained to represent Ganesh at trial, but, rather, was retained to conduct an investigation into cellular antenna location data for both Ganesh's and Jennifer's phones in connection with the morning of her disappearance and murder. Sam paid $5,000 to respondent for these services. In a text message between respondent and Sam, sent the same day as the initial meeting, respondent acknowledged an obligation to prepare a retainer agreement. Respondent, however, admitted that he failed to provide Sam with a retainer agreement in respect of this $5,000 fee.

After Sam retained respondent to investigate the cellular antenna data, respondent began communicating with Ackerman. On November 29, 2013, respondent informed Ackerman that he was assisting Sam and Ganesh by reviewing the case. On December 3, 2013, Ackerman responded that it was "puzzling" that Sam and Ganesh had funds to retain respondent, when his law firm was "in desperate need of funds" for both legal and expert fees to proceed with the defense. At that point, Ackerman had retained the services of multiple expert witnesses, including a forensic pathologist, a blood splatter expert, and a DNA expert, and had additionally identified the need for an information technology expert to assist in the defense.

From December 2013 through March 2014, Ackerman repeatedly reminded respondent that Ackerman was lead defense counsel, informed

respondent that Ackerman was still awaiting the payment of legal fees and expert fees, and attempted to clarify respondent's role on the defense team. Ackerman also cautioned respondent that this was "a much more difficult case than [he could] fathom."

Specifically, Ackerman asked respondent to explain the "specialty in which you are involved," because "no one seems to [be able] tell me what that specialty may be." Respondent replied that he was not a specialist in any legal field, but, rather, had been "asked for guidance on the issue of the cell antenna location of possibly both parties, which differs, from the IT expert you're seeking to retain[.]" In this same response, without further explanation, respondent stated that "the prosecution might have spoiled and contaminated some [of the evidence] intentionally and more significantly has not provided the required discovery to prove the intent of the accused to have committed such a heinous crime."

In reply, Ackerman wrote that he was not interested in "cell antenna location of both parties," but requested that respondent "advise immediately as to [his] experience in this area and what information, if any, [ ] [he] need[s] to complete work in this area." Ackerman also raised concern regarding respondent's statement that the prosecutor may have intentionally destroyed evidence, stating that Ackerman, his co-counsel, and the myriad of retained

experts, "need an explanation" regarding respondent's representation that "the District Attorney of Chenango County has effectuated spoliation or, has intentionally contaminated any of the evidence." Ackerman stated that respondent was "now legally and ethically obligated to inform [Ackerman], Chamberlain and all of our experts as to the basis of that allegation." No further communication about respondent's experience as a cell antenna location specialist or respondent's allegation of prosecutorial misconduct occurred, and respondent never offered to Ackerman any explanation for his accusations.

Ultimately, Ganesh retained respondent as his lead defense counsel. Several months after Ganesh retained respondent, Ackerman filed a motion to withdraw as counsel of record. Ackerman's February 3, 2014 affidavit in support of that motion accused respondent of unethical communication with his client. On February 25, 2014, Ganesh discharged Ackerman and Chamberlain as his attorneys.

On March 1, 2014, Sam provided respondent $100,000 toward respondent's representation of Ganesh. Sam, Ganesh, and respondent differed widely on their understanding of the intended application of the $100,000. Respondent contended that the entire amount was for his legal fees. Alternatively, both Sam and Ganesh expressed a belief that the $100,000 sum was paid to cover both legal and expert fees. Specifically, Sam claimed that

$80,000 was for legal fees, and $20,000 was earmarked for expert fees. Ganesh maintained that $40,000 was for legal fees, and $60,000 was to be applied to expert fees.

None of the parties produced a signed retainer agreement. Instead, respondent offered into evidence a draft retainer agreement, which provided for a $450 hourly rate. Respondent also offered the accompanying meta data for the unsigned agreement, to support his position that it had been created during the representation of Ganesh. Respondent claimed that Ganesh had signed a retainer agreement, that respondent placed the agreement in the file, but that he later turned over his entire file to Ganesh's appellate counsel. Respondent testified that, as a result, he no longer had a copy of the executed retainer agreement. Both Sam and Ganesh adamantly denied receiving or signing any retainer agreement.

Because respondent is not licensed to practice law in the State of New York, on March 13, 2014, Mary Ann Kricko, Esq., respondent's spouse, filed a notice of appearance as counsel of record for Ganesh. Kricko is not a criminal litigator, and had less criminal law experience than respondent, including no criminal trial experience. On May 6, 2014, Kricko filed a motion for respondent's pro hac vice admission, in New York, to represent Ganesh. In this motion, she represented that, "[i]n accordance with the rules of this Court,

Gilberto M. Garcia, Esq. states that he concentrates in the field of civil and criminal litigation, in both State and Federal Courts." Respondent was permitted to represent Ganesh, and the court scheduled the murder trial to begin on September 3, 2014.

The week before the trial was to start, respondent asked Sam for more money. On August 24, 2014, Sam paid respondent an additional $10,000, and, on September 3, 2014, paid him yet another $10,000. According to Sam, respondent represented that the first $10,000 was for additional expert fees, and that the second $10,000 was to pay for respondent's wife to assist with the trial. Sam did not ask respondent why additional sums were needed for expert expenses, because he "didn't want to create waves because at the time I believed in him. You know, he talks a good talk."

In turn, respondent testified that he requested the first $10,000 because he had been spending significant sums preparing to defend the case and needed additional funds. Respondent denied having requested the second $10,000 payment, claiming that Sam voluntarily gave him those funds, in recognition of the hard work respondent had been performing on Ganesh's case.

Respondent also received a watch from Sam, which respondent claimed was another gift. It is unclear whether respondent solicited the watch. Also, on or about September 18, 2014, Sam paid an additional $1,500 to respondent,

which Sam alleged respondent had requested to use to entertain a New Jersey politician, who would then assist in obtaining Ganesh's release from jail. In turn, respondent claimed that he requested these funds to pay the costs for transcripts to use to prepare his closing argument. Although respondent cited to copies of checks issued to pay for transcripts to substantiate his position, the costs of the transcripts exceeded $1,500.

Respondent and Ganesh proceeded to trial without Kricko or anyone else assisting respondent. During the ethics hearing, respondent admitted that he was "in over his head" after taking on Ganesh's case. Following a three-week trial, the jury found Ganesh guilty of second-degree murder and he was sentenced to twenty-five years to life in prison. Ganesh appealed his conviction and sentence. The appellate court concluded that Ganesh had been deprived of effective assistance of counsel, but that decision was later overturned by the New York Court of Appeals, which remanded the case to the lower appellate court for consideration of other issues raised, but not determined, on appeal. Ultimately, the lower appellate court affirmed Ganesh's conviction and sentence.

On January 18, 2017, after the lower appellate court initially had determined that respondent had been ineffective in representing Ganesh, the New York Attorney Grievance Committee opened an investigation into

respondent's role as Ganesh's trial counsel. On November 21, 2017, after the ineffective finding was reversed, that New York ethics complaint was dismissed.

In his answer to the ethics complaint, and during the ethics hearing, respondent admitted that he violated RPC 1.5(b) by failing to timely provide Sam or Ganesh with a retainer agreement, and further admitted violating RPC 1.15(d) by not retaining a copy of that agreement. He denied committing the remaining allegations in the complaint.

The DEC found clear and convincing evidence that respondent violated RPC 1.4(c) by making false representations to Sam and Ganesh about his experience with murder cases, and by failing to communicate the basis or rate of his fee in a manner that enabled Sam and Ganesh to make an informed decision regarding the representation. The DEC also found that respondent violated RPC 1.5(b) by failing to communicate, in writing, the basis or rate for all or some of his fees charged; violated RPC 1.15(d) by failing to maintain a copy of the fully executed retainer agreement; and violated RPC 7.1(a) by failing to inform Ganesh that he did not have any experience with murder trials and was not familiar with New York practice. The DEC recommended that respondent receive a censure.

In his brief to us, respondent admitted having violated RPC 1.5(b). However, his admission of having violated RPC 1.15(d) was less explicit.

Respondent argued that his failure to retain a copy of the fee agreement resulted from his having turned his entire file over to Ganesh's appellate attorney. He stated that if "this violation is based on a strict liability rule, then [he] conducted [himself] unethically when [he] provided the closed file of [his] client to his lawyer and did not make copies of the documents, including the executed retainer agreement." Overall, respondent disputed the findings of the DEC, but acknowledged that he was "negligent" for failing to maintain a copy of the executed retainer agreement.

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. Specifically, the DEC's finding that respondent violated RPC 1.5(b) and RPC 7.1(a) is supported by clear and convincing evidence. We find that the RPC 1.4(c) allegation is adequately addressed by the RPC 7.1(a) violation, and, thus, determine to dismiss that charge. Finally, we determine to dismiss, for insufficient evidence, the allegation that respondent violated RPC 1.15(d).

First, in respect of the RPC 7.1(a) allegation, the record supports the finding that respondent made false representations to Sam and Ganesh about his experience with murder cases and his general knowledge of criminal law. Moreover, he misrepresented his knowledge of New York criminal practice.

Sam and Ganesh relied on those representations in deciding to discharge Ganesh's experienced defense team and to retain respondent. Respondent, thus, violated RPC 7.1(a). Because respondent's misconduct is adequately addressed by the RPC 7.1(a) finding, we, thus, determine to dismiss the RPC 1.4(c) allegation, which addresses the same facts.

We also find that respondent violated RPC 1.5(b) by failing to communicate to Sam and Ganesh, in writing, in a timely fashion, the basis or rate of his initial $100,000 fee. Although respondent maintained that he eventually provided to Ganesh a fee agreement regarding this sum, and that Ganesh signed it, respondent was unable to produce a signed copy. Respondent claimed that he provided his only fully executed copy of the retainer agreement to Ganesh's appellate attorney. Respondent produced what he claimed to be an unsigned copy of the agreement, with the accompanying meta data to support its existence. Sam and Ganesh denied that respondent ever provided them with such a retainer agreement. Regardless of the disputed testimony between Sam, Ganesh, and respondent regarding the existence of the fee agreement, we find that respondent's admitted delay in even creating the fee agreement constituted a violation of RPC 1.5(b).

However, we find RPC 1.5(b) to be inapplicable to the initial $5,000 fee that Sam paid respondent, as the evidence is insufficient for us to conclude that

those initial services constituted legal work. Moroever, in light of the disputed testimony between Sam and respondent regarding the purpose of the additional $20,000 in fees paid to respondent, we do not find sufficient evidence to support a finding that these funds required additional fee agreements.

Finally, we do not find sufficient evidence to support a violation of RPC 1.15(d), and, therefore, dismiss that charge. RPC 1.15(d) and R. 1:21-6 require attorneys to maintain client files, including fully executed retainer agreements, for seven years. Although we find that respondent failed to timely memorialize his fee, we do not find sufficient evidence to support the allegation that he failed to properly maintain the document.

In sum, respondent violated RPC 1.5(b) and RPC 7.1(a). We determine to dismiss the allegations that respondent violated RPC 1.4(c) and RPC 1.15(d). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee when he drafted a will, living will, and power of attorney, and processed a disability claim for a new client, a

violation of RPC 1.5(b); lack of diligence, failure to communicate with the client, practicing law while administratively ineligible, and failure to cooperate with an ethics investigation also found; no prior discipline in forty-year legal career); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (attorney failed to set forth in writing the basis or rate of the fee, a violation of RPC 1.5(b); failure to communicate with the client, and failure to abide by the client's decisions concerning the scope of the representation also found; no prior discipline).

Admonitions and reprimands have been imposed on attorneys who, in their quest to solicit clients, make false or misleading communications in their general advertising campaigns. See, e.g., In the Matter of Jean D. Larosiliere, DRB 02-128 (March 20, 2003) (admonition for allowing the name of a law school graduate to appear on the letterhead in a manner indicating that the individual was a licensed attorney, and allowing a California lawyer not admitted in New Jersey to sign letters on the firm's letterhead with the designation "Esq." after the attorney's name; the attorney also lacked diligence and failed to communicate with a client); In the Matter of Ernest H. Thompson, Jr., DRB 97-054 (June 5, 1997) (admonition for misleading statements in a targeted direct mail solicitation flyer sent to an individual whose residence was about to be sold at a sheriffs sale); In re Mennie, 174 N.J. 335 (2002) (reprimand

for attorney who placed a Yellow Pages advertisement that listed several jury verdict awards, including one for $7 million, even though that award had been set aside on the ground that it was "grossly excessive;" attorney placed similar ads, a week apart, in the Asbury Park Press, which misrepresented the combined number of years that the attorney and one of his partners had been practicing law); and In re Caola, 117 N.J. 108 (1989) (reprimand for attorney who sent a targeted direct-mail solicitation letter misrepresenting the number of years he was in practice, his status in the law firm, and the number and types of cases he handled).

The Court has imposed a censure when an attorney made multiple egregious advertising violations. In re Rakofsky, 223 N.J. 349 (2015). In Rakofsky, the attorney had essentially no experience when he opened a law firm, but stated on the firm's website, and in a "Yahoo Local advertisement," that he was experienced, had federal and state trial experience, and had handled many more matters than it would have been possible to handle in a single year. In the Matter of Joseph Rakofsky, DRB 15-021 (August 27, 2015) (slip op. at 13). He misrepresented that he had worked on cases involving murder; embezzlement; tax evasion; civil RICO; and securities, insurance, and bank fraud, among other serious criminal matters, as well as drug offenses, including drug trafficking. Id. at 5.

We found that Rakofsky's misrepresentations were so egregious, in fact, the representations were outright lies. Id. at 25. He did not merely inflate his credentials, but fabricated them, and conveyed the impression that he was a "super lawyer." Id. His firm's letterhead failed to indicate that two of the firm's attorneys were not licensed to practice law in New Jersey. Id. at 13. He also failed to provide a client with a writing setting forth the basis or rate of the fee, failed to maintain a file for the matter, and lacked diligence. Notwithstanding the attorney's lack of an ethics history, his inexperience and youth, the immediate withdrawal of the offending advertising, the correction of his misleading letterhead, and the lack of harm to his clients, we imposed a censure. Id. at 25.

Here, given the tremendous stakes Ganesh faced, respondent's misconduct was as reprehensible as Rakofsky's, if not worse. He made egregious misrepresentations – indeed, outright lies – in order to induce Sam and Ganesh to discharge Ackerman's experienced defense team and to retain him, inflating both his trial and criminal law experience, and failing to make clear that he had no experience practicing in New York. He then proceeded to defend a three-week murder case on his own. In respondent's own words, in respect of Ganesh's defense, he was in over his head. Whether or not his

representation was ineffective, in our view, it was certainly reckless, misguided, and based on false pretenses.

Based on the foregoing precedent, the baseline level of discipline for respondent's combined violations is a reprimand. In light of the aggravation present, including his ethics history, and the gravity of his misconduct, we determine that a censure is the appropriate quantum of discipline in this matter.

Member Singer voted for a reprimand. Member Zmirich voted for a three-month suspension. 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gilberto M. Garcia
Docket No. DRB 19-238

Argued: October 17, 2019

Decided: January 23, 2020

Disposition: Censure

Members	Censure	Reprimand	Three-Month Suspension	Recused	Did Not Participate
Clark	X				
Gallipoli	X				
Boyer	X				
Hoberman	X				
Joseph					X
Petrou	X				
Rivera	X				
Singer		X			
Zmirich			X		
Total:	6	1	1	0	1

Ellen A. Brodsky
Chief Counsel