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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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August 3, 2022

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: **In the Matter of Steven R. Lehr**  
Docket No. DRB 22-019  
District Docket No. XIV-2017-0366E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (the OAE) in the above matter, pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board granted the motion and determined to impose a censure for respondent's violation of RPC 1.4(b) (nine instances); RPC 1.4(c) (generally, in all client matters in which he committed fee overreaching, and specifically, in connection with the Paylor-Koffi matter); RPC 1.5(a) (sixteen instances); and RPC 8.4(d) (two instances).

The stipulated facts are as follows. The OAE commenced investigation of this matter due to a referral made by Carol Ann Castelbuono, Esq., who discharged her duty to report respondent's unethical conduct, as RPC 8.3(a) requires. Castelbuono had worked part-time as an associate at respondent's firm (the Firm), in two separate periods of employment, for a total of approximately eight years.

First, in eight client matters (Elite Transcripts, Inc.; the Estate of Rochelle Lewis; the Estate of Iannoaccone; the Walker Guardianship; the Walker Foreclosure; the Estate of Paylor-Koffi; the Estate of Franklin Anthony; the Estate of Shaughnessey; and in connection with the representation of Jim Steiner), respondent admittedly imposed a prohibited, two-percent surcharge on billed fees for "costs incurred and not otherwise billed. Respondent

conceded that, pursuant to ABA Comm. on Ethics and Professional Responsibility, Formal Op. 93-379, (December 6, 1993) (entitled “Billing for Professional Fees, Disbursements and Other Expenses”), such a surcharge is prohibited and constitutes a per se violation of RPC 1.5(a). Moreover, the OAE’s investigation revealed that, in some client matters, the Firm billed clients for actuals costs and further billed clients the two-percent charge “for costs incurred and not otherwise billed.”

Respondent’s fee overreaching did not, however, occur solely in connection with the improper, two-percent surcharge. He also committed fee overreaching in the Kaczala matter; the Estate of Rochelle Lewis matter; the Walker Guardianship matter; the Paylor-Koffi matter; and the Rauch matters by engaging in “omnibus” billing without supporting billing records.

Next, respondent committed fee overreaching, by other means, in two client matters. In the Concetta Hagel matter, he improperly applied Concetta’s retainer to her son Matthew’s matter without written authorization to do so. In the Dorothy Dobak matter, he improperly retained the client’s \$610 retainer balance without her written authorization.

Respondent committed final acts of fee overreaching in the Estate of Doris Krisa matter, the Estate of Eda Sharenow matter, and the Estate of Nancy Mamis-King matter by improperly charging legal fees in addition to receiving an executor’s commission, contrary to N.J.S.A. 3B:18-6.

Respondent’s prohibited billing practices further violated RPC 1.4(b) and (c) in connection with the affected clients, because he failed to explain his fees to the extent reasonably necessary to permit the client to make informed decisions regarding the representation and each client’s responsibilities for such fees. More specifically, he also violated RPC 1.4(b) and (c) in the Paylor-Koffi matter by admittedly failing to adequately communicate with Tiffany Paylor-Sowah about the matter for which he had been retained and the manner in which she would be billed for legal services.

Finally, respondent violated RPC 8.4(d), in both Rauch bankruptcy matters, by failing to amend Disclosure of Compensation of Attorney for Debtor certifications, which inaccurately represented to the bankruptcy trustee that he was charging a \$3,500 fee per matter (totaling \$7,000). In reality, respondent charged Rauch a total fee of \$12,246.03 and, thus, was duty-bound to amend those certifications.

Respondent’s most egregious misconduct was his extensive fee overreaching. Discipline for fee overreaching has ranged from a reprimand to disbarment. See, e.g., In re Doria, 230 N.J. 47 (2017) (reprimand for attorney who refused to return any portion of a \$35,000 retainer after the client terminated the representation, a violation of RPC 1.5(a); the Board upheld a fee arbitration determination awarding the client the return of \$34,100 of the \$35,000 retainer and determined that the fee was so excessive as to evidence an intent to overreach; the attorney promptly returned the \$34,100 to the client); In re Read, 170 N.J. 319 (2002) (reprimand for attorney who charged grossly excessive fees in two estate matters and

presented inflated records to justify them; strong mitigating factors considered); In re Verni, 172 N.J. 315 (2002) (three-month suspension for charging excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his \$8,700 fee by almost half); In re Thompson, 135 N.J. 125 (1994) (three-month suspension for charging \$2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); In re Wolk, 82 N.J. 326 (1980) (disbarment for gross and intentional exaggeration of services rendered on behalf of an eight-year-old paralyzed boy and for enticing a recently-widowed client to invest in a building owned by the attorney, without properly safeguarding her rights).

In the stipulation, the OAE and respondent jointly asserted that respondent's misconduct was less egregious than that of the attorney in Wolk, who was disbarred, but arguably worse than the attorneys who received reprimands. The Board agreed with that position, considering the number of client matters in which respondent overreached, and the reckless manner in which respondent billed his clients, through diverse means. Accordingly, the Board determined that the baseline discipline for respondent's fee overreaching, alone, is a censure.

Respondent, however, further violated RPC 8.4(d) in both of Rauch's bankruptcy matters by submitting false certifications to the bankruptcy trustee. Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, and mitigating or aggravating factors. *See, e.g., In re Cerza*, 220 N.J. 215 (2015) (reprimand imposed on an attorney who failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the

client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Given respondent's violations of RPC 8.4(d), as exacerbated by his further violations of RPC 1.4(b) and (c), the baseline censure could be enhanced to a short term of suspension. However, to craft the appropriate discipline in this matter, the Board considered the application of aggravating and mitigating factors.

The Board found no aggravating factors independent of the volume of client matters in which respondent overreached and failed to communicate. However, the breadth of that aspect of respondent's misconduct was considered in setting the baseline discipline and, thus, was not further weighed in aggravation.

In respect of mitigation, the Board accorded substantial weight to respondent's unblemished disciplinary record since his 1988 admission to the bar. Moreover, respondent stipulated to his wrongdoing and consented to discipline. Years have passed since respondent committed the misconduct under scrutiny, and respondent has not engaged in any other misconduct. Respondent has already made restitution in all three estate matters in which he improperly billed legal fees following his appointment as executor. He further agreed with the Board's request that he refund to the affected clients the improper two-percent surcharge within sixty days of the Board's decision in this matter. Proof that those refunds have been remitted and the checks honored shall be provided to the OAE within that same sixty-day period. The Board determined that a term of suspension, thus, is not necessary to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 18, 2022.
2. Stipulation of discipline by consent, dated January 18, 2022.
3. Affidavit of consent, dated December 27, 2021.

4. Ethics history, dated August 3, 2022.
5. Letter from Chief Counsel Johanna Barba Jones to the parties, dated May 25, 2022.
6. Respondent's reply letter to Chief Counsel, dated June 1, 2022.

Very truly yours,

A handwritten signature in black ink, appearing to read "Johanna Barba Jones". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Johanna Barba Jones  
Chief Counsel

JBj/res

Enclosures

- c: (w/o enclosures)  
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.), Chair  
Disciplinary Review Board (e-mail)  
Charles Centinaro, Director  
Office of Attorney Ethics (e-mail and interoffice mail)  
Timothy J. McNamara, Assistant Ethics Counsel, Presenter  
Office of Attorney Ethics (e-mail)  
Charles R. Cohen, Esq., Respondent's Counsel (e-mail and regular mail)