SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DRB Docket No. 23-207
District Docket No. XIV-2014-0485E

In the Matter of David A. Faloni, Jr.

An Attorney at Law

Argued
November 16, 2023

Decided
February 28, 2024

HoeChin Kim appeared on behalf of
the Office of Attorney Ethics.

Alan L. Zegas appeared on behalf of respondent.

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Introduction

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us as a post-hearing appeal from a determination by the District VC Ethics Committee (the DEC) to dismiss the formal ethics complaint. We determined to treat the matter as a presentment and brought it on for oral argument.

The complaint charged respondent with having violated RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation); RPC 1.5(b) (failing to set forth in writing the basis or rate of a legal fee); RPC 1.7(a)(2) (engaging in a concurrent conflict of interest where there is a significant risk that the representation of one client will be materially limited by the personal interest of the lawyer); RPC 5.4(a) (engaging in improper fee sharing with a nonlawyer); RPC 5.5(a)(2) (assisting another in the unauthorized practice of law); 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).[1]

[1] In addition to the above charges, the complaint originally charged respondent with having violated RPC 1.1(a) (engaging in gross neglect) and a second instance of the following charges:

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1995. During the relevant timeframe, he maintained a practice of law in West Caldwell and in Fairfield, New Jersey. He has no prior discipline.

Facts

Kaehall Financial Services Corporation (Kaehall) and its successor entity, United Integrity Group (United), provided estate planning services throughout New Jersey. In his amended verified answer, respondent described Kaehall as "a financial company which sold insurance products." Although Kaehall was not a law firm, it would arrange for outside attorneys to prepare estate planning documents for its clients.

In 2005, respondent first learned of Kaehall through his friend, George Nikolaou, Esq., who told respondent that Kaehall could refer "a lot of estate planning clients to him." During his November 2, 2017 demand interview with the OAE, respondent maintained that Nikolaou "presented" the opportunity from

RPC 1.4(c); RPC 1.5(b); RPC 1.7(a)(2); RPC 5.4(a); RPC 5.5(a)(2); and RPC 8.4(a). However, as detailed below, on April 4, 2022, prior to the commencement of the ethics hearing, the DEC granted the motion by the Office of Attorney Ethics (the OAE) to dismiss these charges, pursuant to R. 1:20-5(d)(3)(A) and (B), based on the OAE's proffer that it could not prove the charges by clear and convincing evidence.

Kaehall as a means to grow his law firm. Following his discussion with Nikolaou, respondent claimed that he spoke with a representative from Kaehall, following which his law firm began "cold calling" individuals whom Kaehall had referred to him. Respondent alleged that, between 2005 and 2008, he had "consulted" with approximately twenty Kaehall clients each month. Of those twenty monthly Kaehall clients, respondent maintained that he would prepare "estate plans" for fifteen such clients each month.[2] To facilitate this arrangement with Kaehall, respondent provided Kaehall "an intake sheet" for "potential clients" to complete. Thereafter, depending upon his clients' preferences, he would send the estate documents he had prepared directly to Kaehall or to his clients, after which, respondent claimed, his clients would contact him to discuss the documents. Respondent maintained that he communicated with each of his clients, either via in-person meetings or telephone, and denied ever having "utilize[d] forms provided by Kaehall" in preparing estate documents for his clients. Rather, respondent claimed that he "drafted the documents [him]self."

Also, during his 2017 demand interview, respondent claimed that, in 2017, he charged a $750 flat fee to prepare a will and a $1,000 flat fee to prepare a revocable trust. However, in 2007, he charged a $375 flat fee to prepare estate documents. Respondent alleged that Kaehall clients did not receive "a special

[2] Respondent stated that the other five monthly Kaehall clients did not pursue his legal services.

rate" and that his flat legal fee had increased from 2007 to 2017 due to "inflation." Finally, respondent maintained that he neither received any "referral fee[s]" from Kaehall nor "entered into any agreements with Kaehall."

The Curley Client Matter

In late 2004 or early 2005, Michael Curley and his wife, Connie Curley, learned of Kaehall from Bruce Woods, a family friend who also was a Kaehall representative. Michael and Connie told Woods that they were interested in Kaehall's estate planning services, following which Woods referred them to Evan Flynn, "an estate planner" and notary public from Kaehall.

During the ethics hearing, Michael claimed that Flynn had guided him and Connie "through most of the particulars and helped us in doing the paperwork indicating our wishes . . . for our will[,] . . . advanced medical directives, [and] durable power[s] of attorney, all of which were included in the . . . estate plan." Michael testified that he provided all the relevant information to Flynn and that his "understanding was that . . . Flynn, through Kaehall, would submit that information to" respondent. Consistent with that understanding, Michael claimed that Flynn had advised him and Connie that "the paperwork would be prepared by [respondent's] law firm." Michael and Connie paid Kaehall a $2,000 fee and, on March 7, 2005, Connie issued a $375 check to respondent. During

the ethics hearing, Michael expressed his view that "perhaps [the] $2,000" fee paid to Kaehall "did not include the cost of the preparation of the legal paperwork." In his amended answer, respondent denied having received any portion of the $2,000 fee from Kaehall.

In March 2005, Michael and Connie received, from respondent's law firm, a "comprehensive binder" containing their estate documents, which they had reviewed with Flynn, who notarized their contemporaneous signatures on the documents. Michael stated that he "never spoke directly with anybody" at respondent's firm and that Flynn had advised him that respondent's role was limited to preparing the estate documents. Based on his discussions with Flynn, Michael claimed that his "understanding" was that there would be "no separate contact with [respondent]. It was all handled through Kaehall at that point." Similarly, Michael noted that he never "signed any agreements" with respondent's law firm.

Five years later, during a 2010 "annual review" of their estate plan with a different Kaehall representative, Michael claimed that he and Connie discussed "making some revisions" to their 2005 estate documents. Michael claimed that he and Connie reviewed the "revisions with the . . . Kaehall representative" who requested that respondent's firm prepare the revised estate documents. Thereafter, on August 25, 2010, Michael issued a $300 check payable to

respondent's law firm. In his amended answer, respondent claimed that, on October 5, 2010, he "received a request to amend" Michael and Connie's estate documents and, approximately one month later, on November 16, 2010, respondent provided Michael and Connie with an amended revocable living trust and new last wills and testament, advance health care directives, and durable powers of attorney.

During the ethics hearing, Michael testified that he was "very satisfied" with both the "original" 2005 "estate plan," which he characterized as "very comprehensive," and the 2010 amendments, which he described as "outstanding."

In his amended answer, respondent claimed that he had no record of any "file" in connection with his 2005 preparation of Michael and Connie's estate documents. However, on April 14, 2016, almost six years after his preparation of the 2010 amended estate documents, respondent claimed that his firm contacted Michael to inquire if he needed further estate planning assistance. Respondent alleged that Michael declined any further assistance. Additionally, respondent denied having failed to execute a written fee agreement with Michael and Connie based on his view that he had provided them "an invoice" in

connection with his preparation of the 2010 amended estate documents.[3] During the ethics hearing, respondent expressed his view that, if Michael and Connie "paid [him], then [he] entered into a fee agreement with them." Moreover, respondent alleged that he and his paralegal, Kristin Snook, had communicated with Michael regarding his family's 2005 estate documents. Finally, respondent maintained that Snook's "notes" reflected that, on November 2, 2010, he had spoken with Michael regarding the 2010 amended estate documents.[4]

The Vu and Nguyen Client Matter

In 2004, a representative from Kaehall approached Vinh Vu and his wife, Mai-Uyen Nguyen, and offered to prepare their "master estate plan." Vu and Nguyen agreed to Kaehall's proposal and provided their "personal information" to the representative, who directed that Barry Bohmueller, Esq.,[5] prepare their estate plan.

On April 22, 2004, Bohmueller and Vu executed a written fee agreement in which Bohmueller agreed to prepare Vu's "estate planning documents" in

[3] A copy of that purported invoice was not included in the record before us.

[4] Snook's notes indicated that, on November 2, 2010, respondent "reviewed" the amended estate documents "for both Michael and Connie Curley." The notes also indicated that, on April 14, 2016, Michael had advised respondent's law firm that he had "no questions or changes to [his family's] estate plan."

[5] Neither respondent nor his law firm were affiliated with Bohmueller.

exchange for a flat $375 fee. In addition to Vu's $375 payment to Bohmueller, Vu made an additional $2,000 payment to Kaehall.

Three weeks later, on May 12, 2004, Vu executed a document agreeing to a limited waiver of the attorney-client privilege, allowing Bohmueller to provide the estate planning documents to Kaehall "for delivery." Two months later, on August 18, 2004, Bohmueller sent Vu and Nguyen a letter indicating that he had provided Kaehall with the estate documents that he had prepared on their behalf. During their September 11, 2020 interview with the OAE, Vu and Nguyen claimed that they never communicated with Bohmueller and had interacted only with Kaehall or United, Kaehall's successor entity.

Following their receipt of the 2004 estate planning documents, Kaehall or United conducted mandatory "annual review[s]" with Vu and Nguyen regarding their "master estate plan." Vu claimed that, during their annual reviews, Kaehall or United would offer to sell them "financial products, such as annuities and long-term care, which they never purchased."

During their 2014 annual review, Vu and Nguyen met with a United representative and requested that United revise their master estate plan so that their children could become the executors of their estates.

On February 14, 2014, Vu executed a one-page document, entitled "trust/portfolio work request," which contained respondent's letterhead,

requesting that respondent amend his and Nguyen's estate documents to allow their children to become the executors of their estates, among other powers they sought to grant to their children. During the ethics hearing, Vu claimed that United "took [their] paperwork" to respondent, whom United maintained would prepare their revised estate documents. Vu also stated that, although his genuine signature appeared on the "trust/portfolio work request" document, a representative from United otherwise completed the document. Moreover, despite the presence of respondent's letterhead on the document, Vu noted that he did not receive the document from respondent's law office but, rather, from the United representative.

Five months later, on July 17, 2014, respondent sent Vu and Nguyen revised wills; revocable living trusts; durable powers of attorney; advanced health care directives; and an invoice charging $340 for his legal services. Two months later, on October 14, 2014, Vu issued a $340 check to respondent.

During the ethics hearing, Vu claimed that he never spoke with anyone at respondent's law office and that respondent never contacted him to discuss the revised estate documents. Vu also maintained that all the United representatives that he and Nguyen had "met [were] not lawyers. They [were] typical salesman or financial type of people." In Vu's view, United served as "the go-between" respondent's "law firm and us." Additionally, Vu denied ever having executed

"a separate agreement" with respondent. Finally, Vu noted that he was satisfied with the "quality" of the estate planning documents that he had received from respondent.

In his amended answer and during the ethics hearing, respondent denied having failed to execute a written fee agreement in connection with his representation of Vu and Nguyen and claimed that his firm had "contacted" Vu in connection with his February 2014 request to amend his family's estate documents.[6] Respondent also alleged that, at some point during the representation, he and Snook had communicated with Vu regarding his family's amended estate documents. Finally, during the ethics hearing, Snook acknowledged that respondent's July 17, 2014 invoice did not constitute "a retainer agreement."

The Snyder Client Matter

In January 2008, Fred Snyder and his wife, Margaret Snyder, attended a luncheon sponsored by Kaehall at a Pennsylvania restaurant, during which a Kaehall representative gave a presentation regarding the benefits of estate planning. Following the luncheon, Fred and Margaret provided their information

[6] Respondent did not submit any documentary proof to substantiate his claim that he had executed a written fee agreement with Vu and Nguyen.

to a Kaehall representative and paid Kaehall $1,900 to prepare their estate plan. Thereafter, Kaehall provided Fred and Margaret's information to respondent, who, on February 21, 2008, issued a letter, addressed to Fred and Margaret, enclosing their revocable living trust, "pour-over" and living wills, and durable powers of attorney.

During the ethics hearing, Fred claimed that a Kaehall representative delivered respondent's February 21 letter and the accompanying estate documents to his house. Fred also maintained that the Kaehall representative reviewed the estate documents with him and Margaret, following which the representative notarized their contemporaneous signatures on the documents. Fred denied ever having communicated with respondent regarding his family's estate documents and claimed that he did not pay a separate fee to respondent to prepare the documents. Fred, however, noted that he was unaware of "how" "or whether" his $1,900 payment to Kaehall would be "split" with respondent, who did not send him an invoice for his legal services. Additionally, Fred denied ever having executed a written fee agreement with respondent and claimed that he was "satisfied" with the quality of the 2008 estate documents.

Thereafter, Fred stated that Kaehall (and, subsequently, United) conducted annual reviews of the estate documents with him and Margaret. During the annual reviews, Kaehall or United reviewed their estate plan, ensured that their

"assets were properly titled," and offered to "sell" them "long-term care insurance plans and annuities."

Additionally, in or around 2018, Fred claimed that Michelle SanGianetti, Esq., an attorney from respondent's law office, contacted him and Margaret and offered to discuss "some changes in the law." Although Fred and Margaret met with SanGianetti, they declined to have respondent's office perform any estate work.

In his amended answer, respondent noted that, although he had Fred and Margaret's "contact information in [his] computer system," he had "no record of representing them in any capacity." Respondent also expressed his belief that Fred and Margaret's client file "was lost or destroyed" when he relocated his law office. However, during the ethics hearing, respondent conceded that his amended answer was "incorrect" because he had, in fact, prepared Fred and Margaret's 2008 estate documents. Moreover, contrary to Fred's testimony, respondent claimed that Fred had paid him legal fees for his services and that he had communicated with Fred and Margaret regarding their matter. Respondent, however, conceded that he had no documentation to prove that he had received legal fees from Fred.

The Rule Client Matter

In 2014 or 2015, William Rule and his wife, Doris Rule, met with a Kaehall (or United) representative to learn more about potential estate planning services. Following the representative's presentation, William and Doris provided the representative all their relevant information in connection with their purchase of "a trust plan" and an insurance policy from Kaehall. During his April 28, 2020 telephone interview with the OAE,[7] William alleged that he had paid Kaehall $1,000 to create the "trust plan" In William's view, the $1,000 payment included the cost of all legal services.

Following their meeting with the Kaehall representative, William and Doris reviewed their "master estate plan" documents with a different Kaehall representative, who notarized their contemporaneous signatures on the documents. William claimed that he never spoke with respondent.

During respondent's September 30, 2020 demand interview, he claimed that William and Doris were his clients and that, in 2006, he had completed their "original" estate plan. Respondent alleged that, due to the passage of time, he had no record of their 2006 client file. Moreover, respondent could not recall whether he had communicated with William and Doris in connection with his purported preparation of their original 2006 estate plan.

[7] Neither William nor Doris testified at the ethics hearing.

In or around February 2019, respondent claimed that William and Doris contacted him for assistance to amend their revocable living trust. Consequently, on February 11, 2019, respondent sent William a letter requesting a $125 payment and a copy of their original "trust agreement." On March 6, 2019, respondent sent William and Doris a letter enclosing the requested amendment to their revocable living trust.

In his amended answer, respondent alleged that, prior to preparing the 2019 amendment to the revocable living trust, he discussed the amendment with William, who was satisfied with respondent's work. Finally, respondent denied having failed to execute a written fee agreement with William and Doris.[8]

Malpractice Litigation and Respondent's Compensation from United

On January 31, 2014, the Estate of Edward Wlodarczyk (the Estate) filed, in the Superior Court of New Jersey, a lawsuit against respondent and Kaehall. In its lawsuit, the Estate alleged that Wlodarczyk had obtained, through respondent and Kaehall, a "master estate plan" consisting of a revocable living trust, pour-over and living wills, and powers of attorney. The Estate alleged that respondent never met with Wlodarczyk to discuss his estate planning objectives

[8] Respondent did not submit any documentation to substantiate his claim that he had executed a written fee agreement with William and Doris.

and that the "master estate plan" failed to address those objectives, given that the documents were "superfluous," "insufficient," and "unsuitably complex." Based on the insufficiency of the estate documents, the Estate maintained that it had incurred "unnecessary" estate taxes. Among other legal theories, the Estate alleged that respondent had committed legal malpractice by ignoring Wlodarczyk's estate planning objectives and by preparing "inadequate [estate] plan documents in contravention of those objectives."

On December 16, 2014, respondent and the Estate executed a confidential settlement agreement, which resulted in the dismissal of the Estate's claims. The outcome of the litigation against Kaehall, however, is unclear based on the record before us.

On February 12, 2018, following the conclusion of the malpractice litigation, the OAE issued a subpoena for respondent's attorney trust account (ATA) and business account (ABA) records for the timeframe spanning January 1, 2011 through February 12, 2018, in order to determine whether respondent had received any payments from Kaehall or United. During his September 30, 2020 demand interview, respondent maintained that he never received any payments from Kaehall or United and that he was not "an investor" in those entities.

On February 26, 2018, the OAE received the relevant ATA and ABA bank records, which revealed that, on March 4, 2011, United issued a $625 check, made payable to respondent, which contained no description on the memo line. On March 15, 2011, respondent deposited the check in his ABA and noted "Huselton" on the deposit slip. Additionally, on April 26, 2013, United issued a $400 check, again made payable to respondent, which contained respondent's law firm name and office address on the memo line. On April 30, 2013, respondent deposited the check in his ABA and noted "Scordo" on the deposit slip.[9] The OAE discovered no additional checks issued by Kaehall or United to respondent.

During the ethics hearing, the OAE investigator admitted that he did not know the purpose of the two checks that United had issued to respondent. By contrast, respondent claimed that the $400 check represented his legal fee for "title work" that his client had paid to United "by mistake." In connection with the $625 check issued by United, respondent acknowledged that "Huselton" was his client but could not otherwise recall the purpose of that check.

[9] On April 29, 2013, respondent deposited, in his ABA, a separate $650 check issued by "Anthony Scordo, Jr., Inc." The memo line of the $650 check contained the phrase "deed work."

The OAE's Pre-Hearing Motion to Dismiss

On March 7, 2022, prior to the commencement of the ethics hearing, the OAE filed a motion to dismiss certain factual allegations and charges underlying the complaint, pursuant to R. 1:20-5(d)(3)(A) and (B). Specifically, because Wlodarczyk had passed away, the OAE sought dismissal of the factual allegations and the accompanying RPC 1.1(a); RPC 1.4(c); RPC 1.5(b); RPC 1.7(a)(2); RPC 5.4(a); RPC 5.5(a)(2); and RPC 8.4(a) charges underlying count one of the complaint. Additionally, because of his inability to recollect the relevant details of this matter, the OAE sought dismissal of the factual allegations underlying the Thomas Petty client matter detailed in count two of the complaint. Finally, because of his refusal to "engage with the OAE" in connection with "its trial preparation," the OAE sought dismissal of the factual allegations underlying the Neal Charydczak client matter detailed in count two of the complaint.

On April 7, 2022, the DEC hearing panel chair issued an order granting the OAE's motion in its entirety and dismissing the applicable charges and factual allegations.

At the conclusion of the ethics hearing, the OAE clarified that it sought the imposition of discipline only in connection with the RPC 1.4(c); RPC 1.5(b); RPC 1.7(a)(2); RPC 5.4(a); RPC 5.5(a)(2); and RPC 8.4(a) charges in

connection with the Curley, Vu, and Snyder client matters underlying count two of the formal ethics complaint. The OAE, however, neither filed a motion to dismiss the allegations underlying the William and Doris Rule client matter, pursuant to R. 1:20-5(d), nor otherwise made any reference to William or Doris Rule in its presentation during the ethics hearing.

The Parties' Positions to the DEC

In his verified answer and during his presentation to the DEC, respondent denied having engaged in any unethical conduct based on his view that he had "independent relationships" with each of his clients for whom he properly prepared estate documents. Respondent also maintained that he had communicated with each of his clients and that he had "[done] everything by the book." Additionally, respondent denied ever having been paid by United or Kaehall for providing legal services to his clients. He also claimed that United did not have "a regular practice" of "reimbursing" him for his services and emphasized that at least one of the two checks he had received from United resulted from "mistake[s] made" by United. Moreover, respondent acknowledged that he "had a referral relationship with" Kaehall but that, because another attorney had been "sanctioned by the Court," he "changed [his]

practice in estate matters" and began meeting with clients at their homes, rather than via telephone.

Regarding his "general protocol" when undertaking estate planning work on behalf of a prospective client,[10] respondent stated that his clients would complete an "intake sheet" regarding their estate planning intentions with Snook, his paralegal. Thereafter, respondent would meet with each client to review appropriate estate plans. During those meetings, respondent maintained that he would "really get into the meat and bones of everything" by explaining the role of an executor and discussing different estate planning options. In respondent's view, he would "lay out . . . a menu of everything that they could do, and they basically chose what they want." Thereafter, to achieve his clients' goals, respondent would prepare the relevant documents and "create the estate plan," following which his clients would return to his office to sign the documents in the presence of a notary. Respondent also maintained that each of his clients received a written retainer agreement setting forth his "reasonable . . . flat" legal fees. Respondent alleged that, as of February 2023, he charged a $675 flat fee for a "single will," $875 for a "joint will," and $1,295 for a trust. Additionally, respondent claimed that he charged $1,295 for a "revocable trust package," which included the trust document, a last will and testament and living

[10] Respondent claimed that estate work constituted "fifty percent" of his law practice.

will, and various powers of attorney. However, respondent acknowledged that his legal fees cost less during the timeframe underlying his representation of the clients in this matter.

Snook, who testified on respondent's behalf, described a similar intake process for new clients who "call[ed] in seeking" respondent's legal services. Specifically, Snook explained that, after respondent spoke with a prospective client, the law firm would prepare a written fee agreement outlining the scope of respondent's work. Following the firm's receipt of the client's executed fee agreement, respondent would draft the relevant estate documents, which the firm would send to the clients, via mail. Snook maintained that respondent "always" met with clients "in person." Finally, Snook claimed that respondent undertook the same intake process for clients referred from Kaehall as those who directly contacted the firm.

In its summation brief to the DEC, the OAE argued that respondent violated RPC 1.4(c) by altogether failing to communicate with the Curleys, the Snyders, and Vu and Nguyen in connection with their respective estate planning objectives and documents. The OAE maintained that the clients' collective testimony regarding respondent's lack of communication outweighed respondent's assertion that he "always" spoke with his clients.

Additionally, the OAE argued that respondent violated RPC 1.5(b) by failing to memorialize the basis or rate of his legal fee in connection with his representation of the Curleys, the Snyders, and Vu and Nguyen. Similarly, the OAE argued that respondent's respective "invoice[s]" to the Curleys and Vu and Nguyen failed to satisfy the requirements of RPC 1.5(b) because such invoices were neither "retainer agreement[s]" nor were sent to the clients "within a reasonable time after commencing the representation."

The OAE further maintained that respondent violated RPC 1.7(a)(2) by having a "referral" "relationship with Kaehall" and United, an entity from which he received "payments." The OAE asserted that, because respondent's clients learned of him "only via their Kaehall [or United] representative," respondent was required to advise his clients that his duty of loyalty rested with them, rather than with Kaehall or United. Had respondent obtained the required written conflict waivers, the OAE argued that respondent's clients would have understood his role as their attorney in the representation.

The OAE also argued that respondent violated RPC 5.4(a) by engaging in improper fee sharing with Kaehall and United, two nonlawyer entities. In support of its argument, the OAE asserted that it had discovered two checks, issued by United and made payable to respondent, both of which were associated with respondent's "client matters." Additionally, relying on Fred Snyder's

testimony, who expressed his view that his $1,900 fee paid to Kaehall also covered respondent's legal fee, the OAE argued that the two checks respondent had received from United "fit the paradigm" of an improper fee-sharing arrangement.

Finally, the OAE asserted that respondent violated RPC 5.5(a)(2) and RPC 8.4(a) by assisting Kaehall and United in the unauthorized practice of law. Specifically, because respondent altogether failed to communicate with the Curleys, the Snyders, and Vu and Nguyen, the OAE argued that Kaehall and United were left to provide legal advice to respondent's clients concerning their estate plans. The OAE did not suggest that the DEC recommend a specific quantum of discipline for respondent's misconduct.

The DEC's Findings

The DEC determined to dismiss the formal ethics complaint based on its finding that the OAE had not proven, by clear and convincing evidence, that respondent had engaged in unethical conduct.

In dismissing the RPC 1.4(c) charge, the DEC noted that the respective testimony of Michael Curley, Fred Snyder, and Vinh Vu "indicated that respondent delegated" to Kaehall "the initial task" of advising potential clients of the benefits of retaining an attorney to formulate their estate plans. The DEC

compared United or Kaehall's initial consultation with respondent's clients to that of paralegals who obtain general information from clients and then provide that information to a lawyer. The DEC observed that such a procedure was "more streamlined" and may have resulted in "real savings" to respondent's clients. Consequently, the DEC was "hesitant" to find that respondent violated RPC 1.4(c).

In dismissing the RPC 1.5(b) charge, the DEC noted that Michael Curley, Fred Snyder, and Vinh Vu each "exhibited some confusion" regarding whether respondent had advised them, at the outset of the representation, of the amount of his legal fee. The DEC stated that such confusion "may have been the result of the passage of time or poor memories." Despite acknowledging Snook's "obvious reasons to support respondent," the DEC accorded significant weight to Snook's testimony that respondent "never began work without a retainer agreement." The DEC noted that respondent's "possible" failure to execute written fee agreements with three of his clients was insufficient to sustain the RPC 1.5(b) charge. However, the DEC expressed concern that respondent failed to "discharg[e] his duty to promptly inform his clients" regarding the amount of his legal fees. The DEC noted that "the only reason [respondent] escaped a strong reprimand [was] that the evidence was so disjointed and unclear as to fail the 'clear and convincing'" standard of proof.

In dismissing the RPC 1.7(a)(2) charge, the DEC reasoned that there "never was a conflict of interest between respondent and Kaehall" or United. The DEC stated that, if respondent performed competent legal work to help his clients avoid estate taxes or "costly disputes among possible beneficiaries," the client, respondent, and Kaehall or United would each benefit.

The DEC characterized any "conflict between respondent and Kaehall [concerning] fees" as "fanciful," given that respondent could not alter the fees that Kaehall had charged to its clients. Similarly, the DEC found that respondent "never gave advice that intentionally put his clients into a position" where "they would have a further need for his services." Finally, the DEC found that, had respondent engaged in a "fraudulent scheme to sell expensive insurance products to senior citizens," as occurred in In re Bohmueller, 232 N.J. 502 (2018), then it would have found that respondent had engaged in an unethical conflict of interest. However, because each of respondent's clients had expressed their satisfaction with his legal services, the DEC did not find that respondent had engaged in any unethical conflict.

In dismissing the RPC 5.4(a) charge, the DEC found that the two checks respondent had received from United "were more than likely payments for disbursements incurred by respondent in real estate transactions."

In dismissing the RPC 5.5(a)(2) and RPC 8.4(a) charges, the DEC "concede[d] that respondent [had] assisted Kaehall" as it performed work "traditionally" handled by lawyers. However, the OAE presented no evidence that nonlawyer entities, such as Kaehall, are prohibited from discussing estate planning instruments with individuals. The DEC concluded that, because it is not "illegal" for a nonlawyer to provide estate planning advice, "it is even more clearly legal for a non-lawyer to perform the more limited role of a fact-gatherer for a lawyer."

The Parties' Positions Before the Board

During oral argument and in its brief to us, the OAE urged the imposition of a reprimand or a censure, arguing that respondent's conduct was not as severe as that of the attorney in Bohmueller, 232 N.J. 502, who, as detailed below, received a two-year suspension, and the attorney in In re Moeller, 177 N.J. 511 (2003), who received a one-year suspension. The OAE argued that respondent failed to communicate with the Curleys, the Snyders, and Vu and Nguyen regarding their estate planning documents. Additionally, the OAE contended that respondent failed to set forth in writing the basis or rate of his legal fee to those clients.

In mitigation, however, the OAE maintained that respondent's conduct is unlikely to recur, given respondent's claim that he had changed his practice in estate matters to communicate with each of his clients. Additionally, the OAE acknowledged the clients' testimony regarding their satisfaction with their estate planning documents. Finally, the OAE emphasized respondent's lack of prior discipline in his twenty-eight-year career at the bar.

Respondent urged us to dismiss all the charges against him, stressing that, despite obtaining numerous bank records for the timeframe spanning between 2011 and 2018, the OAE had discovered only two checks issued by United and made payable to him. Respondent maintained that those two checks represented his legal fees that his clients had paid to United by mistake. Accordingly, respondent alleged that the OAE did not establish that Kaehall had made any payments to him or that United had engaged in a "pattern" of reimbursing him for his legal services.

Respondent also emphasized that he routinely prepared retainer agreements for his numerous clients that he has represented throughout his lengthy legal career. In respondent's view, Michael Curley, Fred Snyder, and Vinh Vu represented only three clients who, in his view, may not have recalled receiving a written fee agreement or communicating with respondent.

Analysis and Discipline

Violations of the Rules of Professional Conduct

RPC 1.4(c) requires a lawyer to explain a matter to the extent reasonably necessary to allow the client to make informed decisions concerning the representation. Additionally, RPC 1.5(b) requires a lawyer who has not regularly represented a client to explain, in writing, the basis or rate of his legal fee "before or within a reasonable time after commencing the representation."

Here, respondent violated RPC 1.4(c) by altogether failing to communicate with the Curleys, the Snyders, and Vu and Nguyen regarding their estate plans. Similarly, respondent violated RPC 1.5(b) by failing to set forth, in writing, the basis or rate of his legal fees in connection with his representation of those same clients.

Michael Curley, Fred Snyder, and Vinh Vu each offered nearly identical versions of events concerning their interactions with Kaehall (or United) and the absence of any communication with respondent. Specifically, following a sales presentation or an initial meeting with a Kaehall representative, the clients and their spouses would meet, in-person, with another Kaehall representative, who would obtain their personal "information" and assist the clients in completing "paperwork" specifying their estate planning intentions. After receiving either a $1,900 or a $2,000 fee from the clients, the Kaehall representative would

provide their information to respondent, who would prepare the applicable estate documents. Although Fred Snyder testified that he did not provide a separate payment to respondent, both Michael Curley and Vinh Vu testified that their families each paid respondent $375 or $340, respectively, to cover his legal fees.

After preparing the estate documents, respondent would send the documents either directly to his clients or to Kaehall, which would deliver the documents to the clients. Thereafter, a Kaehall representative would meet with the clients to review the materials and notarize the clients' signatures on the documents. Following their execution of the estate documents, the clients would attend mandatory "annual reviews" of their estate plans with Kaehall, during which Kaehall would attempt to sell the clients insurance plans and annuity products. Additionally, during those annual reviews, if the clients desired to adjust their estate plans, Kaehall would transmit such requests to respondent, who would prepare amended estate documents.

In connection with this process, Michael Curley, Fred Snyder, and Vinh Vu each testified consistently that respondent neither communicated with them nor provided them a written fee agreement regarding the representation. As Vinh Vu explained, Kaehall, an entity comprised of "salesman or financial type people," served as "the go-between" respondent and his family. Indeed, as

Michael Curley testified, his understanding from Kaehall was that there would be "no separate contact with" respondent.

Although respondent insisted that he (and/or Snook) communicated with each of his clients and provided them a written fee agreement, his testimony is far less credible than the collective and substantially consistent versions of events testified to by Michael Curley, Fred Snyder, and Vinh Vu. Moreover, the clients' credibility was bolstered by the fact that each of them had expressed their satisfaction with the estate documents they had received from respondent. Further, the DEC's determination to dismiss the RPC 1.4(c) charge was not based on any credibility issues with the clients; rather, the DEC based its determination on its view that the clients may have saved money by using Kaehall, rather than respondent, to conduct initial assessments of their estate planning needs.

However, we do not view the facts of this case as akin to a situation where a nonlawyer, such as a paralegal, simply conducted basic client intake before respondent provided his clients with substantive legal advice regarding their estate planning options. Rather, respondent failed to conduct any substantive client communications during the representation, leaving his clients without a means to make informed decisions concerning their estate plans, as RPC 1.4(c) prohibits. Stated differently, respondent failed to satisfy the standard of

communication and care necessary in matters as sensitive as estate planning. Indeed, he wholly failed to communicate with the clients.

Additionally, respondent's law firm's purported communication with Michael Curley, in April 2016, and with Fred and Margaret Snyder, in 2018, was insufficient, for purposes of RPC 1.4(c), to overcome his prolonged failure to communicate with his clients, particularly given that such communications appeared to be unsolicited requests by respondent's firm to perform additional legal services years after the completion of the original estate documents.

Finally, we conclude that respondent's July 17, 2014 invoice provided to Vu and Nguyen failed to satisfy the requirements of RPC 1.5(b), given that it lacked any explanation regarding the basis or rate of his legal fee or the scope of the representation. Moreover, because respondent provided the invoice to Vu and Nguyen in the same package as the completed estate documents, he failed to afford them the opportunity to review to his legal fee "before or within a reasonable time after commencing the representation," as RPC 1.5(b) requires.

However, we decline to sustain the RPC 1.4(c) and RPC 1.5(b) charges in connection with William and Doris Rule's client matter. Although the OAE did not file a motion to dismiss the William and Doris Rule client matter, pursuant to R. 1:20-5(d), the OAE made clear, during the ethics hearing, that it sought the imposition of discipline based only on the Curley, Vu, and Snyder client matters.

Consequently, based on the OAE's decision to abandon its allegations underlying the William and Doris Rule client matter, and given that neither William nor Doris testified at the ethics hearing, we decline to sustain the RPC 1.4(c) and RPC 1.5(b) charges in connection with that matter.

Further, we determine to dismiss the remaining charges of unethical conduct.

With limited exceptions not applicable to the instant matter, RPC 5.4(a) prohibits an attorney from sharing legal fees with a nonlawyer. The OAE alleged that respondent violated this Rule by receiving, from Kaehall, legal fees from clients for whom he prepared estate documents. However, the evidence adduced at the hearing failed to establish this allegation by clear and convincing evidence.

Specifically, although Fred Snyder testified that he paid only a $1,900 fee to Kaehall and provided no separate payments to respondent to prepare his family's 2008 estate documents, Michael Curley testified that, in addition to his $2,000 payment to Kaehall, his wife had provided a separate $375 payment to respondent, in connection with their original 2005 estate documents, and an additional $300 payment to respondent, in connection with their 2010 amended estate documents. Further, Vinh Vu stated that he had provided respondent a

$340 payment to prepare his family's amended estate documents, which payment was separate from his $2,000 fee paid to Kaehall, in 2004.

Moreover, following the OAE's subpoena of respondent's January 2011 through February 2018 ATA and ABA bank records, it discovered that respondent had received no payments from Kaehall and only two payments from United. The first payment – a $625 check issued by United and made payable to respondent – contained the word "Huselton" on the accompanying bank deposit slip. During the ethics hearing, the OAE investigator conceded that he did not know the purpose of the $625 check. Moreover, although respondent could not recall the purpose of the check, he maintained that "Huselton" was his client. The second payment – a $400 check again issued by United and made payable to respondent – contained the word "Scordo" on the deposit slip. During the ethics hearing, the OAE investigator again conceded that he did not know the purpose of the check. Respondent, on the other hand, claimed that the $400 payment consisted of his legal fee for title work that his client had paid to United "by mistake."

Thus, we conclude, based on the record before us, that there is no clear and convincing evidence that respondent engaged in an improper fee-sharing arrangement with either Kaehall or United, both nonlawyer entities. Rather, it appears that respondent received, directly from his clients, a separate legal fee

unrelated to the fees that his clients had paid to Kaehall. Moreover, as the DEC correctly observed, nothing in the record contradicts respondent's claim that at least one of the two payments he had received from United constituted his legal fees paid to that entity by "mistake." Accordingly, given that respondent's clients appeared to have paid him independent legal fees for his services, and based on the OAE's inability to explain the purpose of the two payments respondent had received from United, we determine to dismiss the RPC 5.4(a) charge for lack of clear and convincing evidence.

Next, the formal ethics complaint alleged that respondent violated RPC 5.5(a)(2) and RPC 8.4(a) by assisting Kaehall and its representatives in the unauthorized practice of law. Specifically, although respondent prepared the estate documents for his clients, the complaint alleged that a Kaehall representative would review and notarize the documents with the clients without respondent present. Our decision in In the Matter of Barry O. Bohmueller, DRB 16-428 (July 12, 2017) at 4, so ordered, 232 N.J. 502 (2018), is instructive to our determination.

In Bohmueller, a reciprocal discipline matter initiating in Pennsylvania, the attorney partnered with a nonlawyer who operated an estate planning business, similar to Kaehall, and failed to counsel his clients regarding their estate planning objectives. To facilitate this arrangement, Bohmueller provided

the nonlawyer with two form documents. In the Matter of Barry O. Bohmueller, DRB 16-428 at 4. Regarding the first document, entitled "Explanation of Trust and Delivery of Trust," the nonlawyer would select the name of the "delivery agent" affiliated with the estate planning business to explain the trust "in detail." Ibid. The second document, entitled "Pennsylvania Delivery Receipt and Checklist," stated that the delivery agent was a representative of Bohmueller's law office. Id. at 4-5. Bohmueller did not supervise the "delivery agents," whose role it was to "explain[] in detail to the consumer the meaning and significance of the various legal documents" that were delivered and signed by the clients in the agent's presence. Ibid.

We determined that Bohmueller violated RPC 5.5(a)(2) by using delivery agents whom he knew "were providing legal advice and counsel" to his clients. Id. at 23. Echoing the findings of the Disciplinary Board of the Supreme Court of Pennsylvania, we found that Bohmueller "allowed the nonlawyer agents to step into his attorney role and counsel and advise his clients without his presence or oversight." Id. at 23.

Here, unlike Bohmueller, who knew that the estate planning business's "delivery agents" were providing legal advice and counsel to his clients outside of his presence, the nature of the discussions between Kaehall or United's representatives and the Curleys, the Snyders, and Vu and Nguyen are unclear

based on the record before us. Although the representatives would gather the clients' personal information and review and notarize the estate documents with the clients outside of respondent's presence, it is unclear to us whether the representatives were rendering legal advice to the clients, as occurred in Bohmueller, rather than simply identifying the relevant documents and instructing the clients on how to execute those materials. Further, although Vu testified that a Kaehall representative assisted him and Nguyen in completing their "work request" form, bearing respondent's letterhead, requesting that respondent amend their estate documents to designate their children as the executors of their estates, the nature of that task does not, on this record, clearly and convincingly demonstrate that the representative was rendering legal advice.

Finally, unlike Bohmueller, who prepared a "checklist" for the business's representatives to allow them to explain, in detail, the significance of the estate planning documents, the record before us is silent regarding whether respondent instructed Kaehall representatives to provide similar legal advice to his clients. Consequently, given the lack of clear and convincing evidence that respondent knowingly assisted Kaehall or United representatives in the unauthorized practice of law, we determine to dismiss the RPC 5.5(a)(2) and RPC 8.4(a) charges.

Next, we dismiss the charge that respondent violated RPC 1.7(a)(2), which prohibits a lawyer from engaging in a concurrent conflict of interest if there is a significant risk that the representation of one or more clients will be materially limited by the personal interest of the lawyer. The formal ethics complaint alleged that respondent engaged in such a conflict given the significant risk that his representation of Kaehall clients would be materially limited by his personal interest in receiving continued client referrals from Kaehall.

In In re Kingett, 247 N.J. 241 (2021), Kingett represented approximately 200 clients referred to him by Fidelity Estate Planning (FEP), a company specializing in trusts and annuities. In 2007, FEP referred Janet Bradford to Kingett for legal services. In the Matter of Donald Lee Kingett, DRB 19-435 (Nov. 10, 2020) at 3. Janet was a senior citizen who, since 2003, had been suffering from worsening symptoms of Alzheimer's disease. Ibid. On July 16, 2007, an FEP representative completed, for Janet, an "Estate Planning Workbook," which was developed, in part, by Kingett to gather information about FEP clients. Ibid. The workbook provided that 80% of Janet's estate, consisting only of a home of modest value, would be distributed to Melodie, her daughter, and to Melodie's children, Janet's grandchildren. Id. at 4. The estate's remaining assets would be distributed to Janet's three other children. Ibid. Although the FEP representative noted that Janet "appeared coherent" while

completing the workbook, Janet did not sign any documents herself. Ibid. Rather, Jennifer White, Janet's granddaughter and Melodie's daughter, signed Janet's name on all the documents, including Kingett's retainer agreement. Ibid. On July 17, 2007, Kingett received, via facsimile, a copy of Janet's workbook and, on August 7, 2007, Kingett received Janet's signed retainer agreement. Id. at 5.

Kingett neither spoke with Janet prior to the execution of the retainer agreement nor knew whether she had signed the agreement herself. Ibid. Kingett acknowledged that, for non-FEP estate planning clients, he typically conducted a thirty to ninety-minute interview with the client, either in his office or in the client's home, during which he would assess the client's mental capacity. Id. at 6. However, on August 27, 2007, Kingett had only an eight-minute telephone conversation with an individual whom he believed to be Janet but was, in fact, Melodie, who had "changed her voice to sound like an elderly person." Id. at 7-8. Following the eight-minute conversation, Kingett was unaware of whether "Janet" understood the nature and extent of her assets or whether she had the requisite capacity before she executed his retainer agreement. Id. at 7-8. Also on August 27, the FEP representative visited Janet's home to confirm that she had spoken with Kingett. Id. at 8. Janet, however, was not present at her home. Ibid. Rather, Melodie and Jennifer were present and informed the representative that

they had "pulled it off" and completed a five-minute telephone conversation with Kingett, whom they maintained "had no clue" that he was not speaking to Janet on telephone. Ibid. The representative, however, did not inform Kingett of this deception. Ibid.

In September 2007, Kingett prepared Janet's estate documents and submitted them to FEP for delivery to Janet, whose signature the representative claimed she had notarized on the documents. Ibid. However, the representative conceded that Jennifer, not Janet, had signed the documents. Ibid. Kingett never confirmed that Janet's documents were properly executed. Id. at 8-9. Ultimately, Janet's assets were transferred to a trust administered by an annuity company selected by FEP. Id. at 9. Following Janet's passing, the Superior Court issued orders finding that Janet did not have the requisite capacity to participate in revisions to her estate planning and that Jennifer had exercised undue influence. Ibid.

We determined that Kingett violated RPC 1.7(a)(2), among other RPCs, because his representation of Janet was materially limited by his personal and financial interest in the referrals he had received from FEP. Id. at 19. Although only one client matter was involved, we observed that Kingett had received more than $90,000 in legal fees in connection with the 200 client matters referred by FEP. Ibid. We noted that Kingett's pecuniary interest in the business that FEP

conducted was the exact type of misconduct that the RPCs were intended to prevent, due to the likelihood that those interests could compromise his ability to act in his clients' best interest. Ibid.

We acknowledged that the hundreds of FEP referrals which Kingett had received may not, standing alone, have risen to the level of a conflict of interest. Id. at 19-20. Kingett's arrangement with FEP, however, "pre-ordained" the path that each of his clients would take in their estate planning. Id. at 20. Specifically, compared with his non-FEP estate clients, Kingett spent substantially less time with his FEP-referred estate clients because his business relationship with FEP necessitated the finalization of a trust instrument "as a foregone conclusion," regardless of whether such an instrument was appropriate. Ibid. The Court, however, dismissed the RPC 1.7(a)(2) charge "for lack of clear and convincing evidence." Kingett, 247 N.J. 241.

Here, respondent's referral arrangement with Kaehall and United raises the specter of the same conflict of interest that we found in Kingett. Specifically, the Snyders, the Curleys, and Vu and Nguyen each appeared to have received substantially similar estate plans consisting of wills; revocable living trusts; durable powers of attorney; and advanced health care directives, all of which appeared to contain similar "boilerplate" language and complex legalese. These generic estate documents, coupled with respondent's failure to communicate

with these clients, suggest that respondent's referral clients from Kaehall may have received the same "pre-ordained" estate plans, regardless of whether such plans were appropriate.

However, unlike Kingett, who admitted to having spent substantially more time with his non-FEP clients, the record is silent regarding whether respondent spent substantially less time on client matters referred by Kaehall or whether those matters resulted in the same pre-ordained estate plans. Rather, respondent claimed that he charged the same flat legal fees for all his estate clients, regardless of whether they were referred by Kaehall. As we observed in Kingett, the hundreds of referrals respondent received from Kaehall, standing alone, is insufficient to establish a conflict of interest, in the absence of clear and convincing evidence that respondent's Kaehall clients invariably received the same pre-ordained estate plans, conduct which would materially limit his ability to competently represent his clients based on his personal interest in receiving Kaehall referrals. Consequently, based on the lack of clear and convincing evidence regarding respondent's usual treatment of his Kaehall clients compared with his treatment of non-Kaehall clients, and considering the Court's decision to dismiss the RPC 1.7(a)(2) charge in Kingett, we determine to dismiss the RPC 1.7(a)(2) charge in this case.

In sum, we find that respondent violated RPC 1.4(c) and RPC 1.5(b). We dismiss, for lack of clear and convincing evidence, the charges that respondent violated RPC 1.7(a)(2); RPC 5.4(a); RPC 5.5(a)(2); and RPC 8.4(a). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Attorneys who have committed misconduct in connection with their referral arrangements with "trust mills" have received discipline ranging from a reprimand to a long term of suspension, depending on the presence of aggravating factors, including the attorney's complicity in larger schemes of fraud committed by the trust mills.

In Moeller, 177 N.J. 511, the attorney filed a certificate of incorporation in New Jersey for American Estate Services, Inc., (AES), a Texas company that sold living trusts to senior citizens. In the Matter of G. Jeffery Moeller, DRB 02-463 (June 19, 2003) at 3. AES retained Moeller, who served as the company's registered agent, as a "referral attorney" to review the living trust documents for AES's clients. Id. at 3-4. Additionally, Moeller became AES's New Jersey office manager and allowed AES to use his law firm's address. Id. at 8-10. In connection with their association, Moeller and AES embarked upon a direct-

mail marketing campaign promoting living trusts and broadcasting numerous misleading statements regarding the probate process. Id. at 4-6, 15. During the ethics hearing in that matter, two county surrogates testified that elderly citizens had contacted their offices because they "were being scared out of their wits" for "being told that it would cost 18 to $24,000 for their next of kin or children . . . to admit a will [to] probate." Id. at 11.

We determined that Moeller had allowed AES to control his professional independence as a lawyer and that he engaged in a conflict of interest by allowing his responsibilities to AES to materially limit his representation of his clients, considering AES's goal to "aggressively market" living trusts to clients. Id. at 17-18. We also found that Moeller failed to explain the living trusts to the clients or discuss alternative estate planning options more suitable to their needs. Id. at 18. Further, we determined that Moeller assisted AES in the unauthorized practice of law by training AES representatives and ratifying AES procedures in connection with their client interactions regarding the trust instruments. Id. at 19. Finally, we found that Moeller shared legal fees with AES; misrepresented the amount of his legal fee to his clients; charged his clients an excessive $1,995 legal fee for doing little work "beyond ascertaining that the clients' information was correct and that it was properly inserted in the trust documents;" and

misrepresented to disciplinary authorities the nature of his relationship with AES. Id. at 19-20.

In determining that a one-year suspension was the appropriate quantum of discipline, we weighed, in mitigation, Moeller's otherwise unblemished twenty-four-year legal career and his history of public service. Id. at 23. However, in aggravation, we expressed "grave concerns" regarding the impact of the deceptive advertising campaign towards a vulnerable audience, resulting in "unsuspecting senior citizens purchas[ing] trust packages that they did not need and could not afford." Ibid. Moreover, Moeller failed to recognize the seriousness of his conduct, claiming that he was "the victim of a conspiracy" among county surrogates, who sought to "denegrat[e] living trusts." Id. at 23-24. The Court agreed with our recommended discipline.

In 2018, we determined that a two-year suspension was the appropriate quantum of discipline for an attorney who committed numerous ethics infractions in connection with his partnership with Estate Planning Advisors (EPA), an entity which conducted sales presentations to senior citizens regarding living trusts. Bohmueller, 232 N.J. 502. In that matter, Bohmueller and EPA marketed themselves via direct mail solicitation letters and seminars at restaurants, where EPA advised attendees to avoid the probate process. In the Matter of Barry O. Bohmueller, DRB 16-428 at 4. Thereafter, EPA would send

nonlawyer representatives to the homes of senior citizens who had expressed interest in living trusts. Ibid. In turn, Bohmueller would send payments to EPA based, in part, on the number clients it had referred to him. Ibid.

To facilitate EPA's sale of the living trusts, Bohmueller prepared documents for EPA's nonlawyer representatives to use in providing legal advice to clients regarding the living trusts. Id. at 4-5. Additionally, Bohmueller prepared misleading "direct mail advertisement[s]" that falsely advertised the benefits of a living trust by stating "AVOID PROBATE COURT," "MAINTAIN TOTAL CONTROL of your assets," and "AVOID COURT INVOLVEMENT should you become incompetent due to a stroke or Alzheimer's." Id. at 12. Further, in connection with one client matter, Bohmueller, through EPA, created handwritten charts for the clients which estimated the court costs to probate their estate at $70,000, when the actual costs would have ranged between $700 to $800. Id. at 12.

We determined that Bohmueller failed to perform any meaningful legal work or engage in any contact with his clients regarding their estate planning objectives. Id. at 22. Rather, we observed that Bohmueller allowed EPA's nonlawyer representatives to meet with his clients and provide them with false and misleading information. Id. at 22-24. Additionally, we determined that Bohmueller improperly compensated EPA based on the client referrals he had

received from that entity. Id. at 23-24. We also found that Bohmueller assisted EPA representatives in the unauthorized practice of law and that he engaged in a conflict of interest, given that his representation of the numerous EPA referred clients was materially limited by his responsibilities to EPA, which had a pecuniary interest in the sale of living trusts. Id. at 23. Indeed, we observed that Bohmueller's "pecuniary interests in the living trust business permeated his participation in the process[] and compromised his ability to act in his clients' best interest." Ibid.

In determining that a two-year suspension was the appropriate quantum of discipline, we weighed, in aggravation, the massive scope of EPA and Bohmueller's scheme to target a vulnerable population. Id. at 28. In mitigation, however, we weighed Bohmueller's lack of prior New Jersey discipline in his nineteen-year career at the bar. Ibid. The Court agreed with our recommended discipline.

More recently, and as detailed above, the Court reprimanded an attorney for engaging in unethical conduct in connection with his referral arrangement with FEP. Kingett, 247 N.J. 241. In that matter, between 2004 and 2009, Kingett received 300 referrals from FEP, resulting in approximately 200 client matters. In the Matter of Donald Kingett, DRB 19-435 at 2-3. For each referral, Kingett received $450, generating approximately $90,000 in fees for those 200 client

matters. Id. at 3. Kingett's referral relationship with FEP concluded in 2015. Ibid.

We noted that the record contained little information regarding what FEP had advised its clients regarding the need for an attorney. Id. at 3-4. However, because Kingett participated in developing FEP's "workbook" to gather information about FEP clients, we noted that, "presumably, the clients had little to no choice but to retain [Kingett]," particularly given Kingett's counsel's representation to us that FEP clients "were to be referred" to Kingett. Id. at 4.

The mechanism by which Kingett handled FEP referred clients resulted in significant harm to his client, Janet, who, as detailed above, was the victim of fraud by her daughter and granddaughter. Specifically, given that Kingett's only involvement with Janet consisted of a limited eight-minute telephone conversation, his preparation of several estate planning documents, and the collection of his legal fee, we found that Kingett violated RPC 1.4(c) and, thus, was unable to adequately assess whether Janet had the mental capacity to engage in estate planning. Id. at 18-19. Although Kingett prepared the estate documents for Janet, he turned those documents over to FEP, thereby allowing nonlawyers to meet with her and to provide her information regarding her estate plan. Ibid.

Moreover, we found that Kingett violated RPC 1.7(a)(2) because his referral arrangement with FEP "pre-ordained" the path that FEP clients would

take in their estate planning. Id. at 19-20. Specifically, Kingett, in comparison to the work he performed on non-FEP estate client matters, used no judgment to measure whether Janet's estate planning arrangement was appropriate because his referral relationship with FEP resulted in the finalization of a trust instrument "as a foregone conclusion." Id. at 20. We found that FEP and Kingett had engaged in a "joint venture" whereby FEP would generate business for Kingett, in addition to its own fee. Ibid.

Additionally, we found that Kingett violated RPC 5.3(a) (failing to supervise nonlawyer employes) by failing to ensure that FEP, a nonlawyer entity, conformed its conduct with the professional obligations of a lawyer. Id. at 21. Finally, we found that Kingett violated RPC 5.4(c) (permitting a person who recommends a lawyer to direct or regulate the lawyer's professional judgment in rendering legal services) by allowing FEP to direct his professional judgment in connection with his representation of Janet, given that Kingett relied upon FEP to gather Janet's personal information and signatures and to determine the course of the representation. Ibid.

We were divided, however, on the appropriate quantum of discipline for Kingett's misconduct.

Then Vice-Chair Gallipoli and Members Zmirich, Joseph, and Rivera determined that a three-month suspension was the appropriate quantum of

discipline, finding that the significant harm to Janet and her estate outweighed Kingett's otherwise unblemished thirty-six-year career at the bar. Id. at 29. Moreover, although Kingett was not solely to blame for the harm caused to Janet, had he not abdicated his professional duties as a lawyer, the harm to Janet could have been avoided. Ibid.

Then Chair Clark and Members Boyer, Hoberman, and Petrou determined that a reprimand was the appropriate quantum of discipline, given that the "intervening fraud" and Kingett's otherwise unblemished legal career served to reduce the appropriate quantum of discipline. Id. at 30.

Finally, Member Singer voted to dismiss the complaint and wrote a separate dissent, finding that Kingett's misconduct amounted to simple negligence with no ethics repercussions. Ibid.

The Court imposed a reprimand for Kingett's violations of RPC 1.4(c), RPC 5.3(a), and RPC 5.4(c), and dismissed the RPC 1.7(a)(2) charge for lack of clear and convincing evidence.

The similarities between Kingett and the instant matter are stark. Like Kingett, respondent abdicated his professional responsibilities as a lawyer by allowing nonlawyer representatives of a trust mill to handle all communications with the Snyders, the Curleys, and Vu and Nguyen. Moreover, unlike Kingett, who had engaged in a minimal eight-minute telephone conversation with his

purported client, respondent did not appear to have attempted any communication with his clients regarding the appropriateness of their estate plans or their capacity to participate in the representation. Although the Snyders, the Curleys, and Vu and Nguyen were satisfied with their estate plans and, fortunately, were not the victims of any fraud, respondent's total failure to communicate with his clients left them vulnerable to the same type of fraud that had occurred in Kingett. Despite their satisfaction with their estate documents, the clients, ultimately, either received no legal advice regarding their estate plans or improper legal advice from nonlawyer representatives of a company, which, based on the clients' collective testimony, appeared more focused on selling potentially unnecessary annuity or insurance products rather than providing neutral financial advice. Indeed, the clients' satisfaction with respondent's estate documents is likely premature, given that the adequacy of their estate plans cannot truly be assessed until their heirs are forced to utilize those materials to administer their estates.

Additionally, like Kingett, who participated in developing FEP's "workbook" to gather information about potential clients, respondent provided Kaehall a similar "intake sheet" for potential clients to complete. However, unlike Bohmueller and Moeller, who were complicit in widespread schemes of deception towards senior citizens regarding the probate process, there is no clear

and convincing evidence that respondent was complicit in a larger fraud perpetrated by a trust mill.

Moreover, like Kingett, whose misconduct underlying Janet's client matter had concluded thirteen years prior to our decision in that matter, the bulk of respondent's misconduct underlying the three client matters had concluded at least a decade ago and, since that time, he has had no discipline. See In re Alum, 162 N.J. 313 (2000) (after passage of eleven years with no further ethics infractions, discipline was tempered based on "considerations of remoteness"). Indeed, like Kingett, this matter represents respondent's first brush with the disciplinary system in his twenty-eight-year career at the bar. Finally, during the ethics hearing, respondent maintained that he has since reformed his "practice in estate matters" by ensuring that he conducts in-person meetings with each of his clients.

Conclusion

In conclusion, consistent with the disciplinary precedent set forth in Kingett, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Members Hoberman and Rodriguez were absent.

Member Joseph was recused.

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
Peter J. Boyer, Esq,
Vice-Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David A. Faloni, Jr.
Docket No. DRB 23-207

Argued: November 16, 2023

Decided: February 28, 2024

Disposition: Reprimand

Members	Reprimand	Recused	Absent
Gallipoli			X
Boyer	X		
Campelo	X		
Hoberman			X
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez			X
Total:	5	1	3

/s/ Timothy M. Ellis
Timothy M. Ellis
Chief Counsel