

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-164
District Docket No. XIV-2022-0174E

In the Matter of Frederick Richard Dunne III
An Attorney at Law

Argued
October 17, 2024

Decided
January 14, 2025

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

Respondent appeared pro se.

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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 on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 1.5(a) (engaging in fee overreaching).

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

Ethics History

Respondent earned admission to the New Jersey bar in 2010, the California bar in 2010, and the New York bar in 2019. He has no prior discipline. During the relevant period, he was a partner with the law firm Dunne, Dunne & Cohen, LLC, in Kearny, New Jersey.

Facts

Respondent and the OAE entered into a disciplinary stipulation, dated July 22, 2024, which sets forth the following facts in support of respondent's admitted ethics violation.

On October 12, 2023, the OAE conducted a demand audit of respondent's

recordkeeping practices. During the interview, respondent disclosed that he had discovered that his staff was charging and collecting a \$150 fee in every personal injury matter to cover firm overhead costs, despite such practice having been stopped, as improper, following a 2017 random audit.¹ He further stated that he would review his files and refund the affected clients for the improper fee.

The OAE directed respondent to identify the affected clients and, no later than November 17, 2023, to provide with OAE with a schedule for the repayments. On November 17, 2023, respondent provided the OAE with a list of the 115 affected clients and indicated that he was beginning to issue refunds to the clients. Following a subsequent request from the OAE, respondent confirmed that his firm's practice of charging the improper \$150 fee began on October 25, 2019 and ended on September 13, 2023.

In April 2024, the OAE directed respondent to produce a copy of all negotiated checks made payable to the 115 affected clients.

On May 17, 2024, respondent replied and informed the OAE that, beginning on April 1, 2024, he sent letters to the affected clients. He provided

¹ In or around October 2017, the OAE conducted a random audit of respondent's financial records and found, in part, the same deficiency. Specifically, the OAE informed respondent that "law firm costs such as Xeroxing, telephone calls, attorney transportation expenses, etc., are non-deductible attorney overhead expenses when computing contingent legal fees pursuant to R. 1:21-7." On January 25, 2018, respondent's partner and father, Frederick R. Dunne, Jr., Esq., certified that the firm had corrected all recordkeeping deficiencies and ceased the practice of taking the \$150 fee.

the OAE with a blank copy of the letter sent to each client, as well as a list of eleven clients that he claimed had been repaid.²

On May 28, 2024, the OAE sent a letter to respondent, noting that it appeared he had not commenced issuing repayments in November 2023, as he previously had claimed, but instead began issuing repayments only recently. Consequently, the OAE directed respondent to produce, no later than May 31, 2024, copies of the negotiated checks to the eleven clients identified in his May 17, 2024 letter, as well as copies of signed and dated letters sent to all affected clients.

On May 31, 2024, respondent replied to the OAE and explained that he had sustained physical injuries which caused him to be absent from his office for a longer period than he had anticipated, but that he had begun making repayments in November 2023. He produced his bank statements which reflected reimbursements to two clients, in November 2023, and to eight clients, in April 2024.³ Respondent also provided copies of envelopes addressed to an additional ninety-six clients with postage dates from May 14 through May 17,

² Two of the eleven clients were not identified in the original list of 115 affected clients.

³ Three of the ten clients that respondent reimbursed, which included the two additional clients identified in respondent's May 17, 2024 letter, were not included in the initial list of 115 clients provided on November 17, 2023. Thus, there were 118 affected clients, for a total amount owed of \$17,700.

2024.

On June 4, 2024, respondent provided copies of unnegotiated attorney business account checks, dated June 3, 2024, each in the amount of \$150 and made payable to five additional clients.

As of the date of the disciplinary stipulation, respondent had provided to the OAE proof that he reimbursed only ten of the 118 affected clients.

Based on the forgoing facts, respondent stipulated to having violated RPC 1.5(a).

The Parties' Positions Before the Board

The OAE recommended the imposition of a reprimand for respondent's misconduct. The OAE emphasized that a prior 2017 audit revealed the same prohibited practice of charging overhead costs to clients and, at the conclusion of that audit, respondent's firm had certified that the practice of charging those fees had ceased. The OAE further noted that the prohibited practice resumed in October 2019 and stopped again in 2023, following notification by the OAE that a demand audit was forthcoming.

In support of its position, the OAE cited disciplinary precedent for matters involving the improper calculation of a legal fee. See In re Weiner, 255 N.J. 251 (2023). The OAE also cited precedent involving recordkeeping violations. See

In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022), and In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018).

In aggravation, the OAE emphasized that its 2017 audit revealed the same misconduct, and that respondent's firm had certified that the practice had ceased in 2018. Thus, despite his heightened awareness, respondent allowed his staff to resume the practice in October 2019.

In mitigation, the OAE noted that respondent has no prior discipline. Furthermore, he voluntarily disclosed the misconduct to the OAE and entered into the disciplinary stipulation, thereby accepting full responsibility for his misconduct.

The OAE also requested that respondent's discipline include a condition that he be required to submit proof, in the form of canceled checks, that all affected clients (118 identified as of the date of the stipulation) have been paid.

During oral argument before us, and in his written submission, respondent expressed remorse for charging clients the prohibited overhead fee. He asserted that, as soon as he became aware of the practice, he notified the OAE. He maintained that he began refunding his clients in November 2023 and completed the process in June 2024. Moreover, he asserted that he had issued reimbursement checks totaling approximately \$14,700, of which approximately \$4,200 had yet to be negotiated.

Respondent further stated that personal medical issues caused him to be out of his office for separate periods between October 2023 and May 2024, and thus, delayed the refund process. In addition, staffing changes caused him to hire and train new staff, which further impacted the refund process. He emphasized, however, that his firm no longer charges the overhead fee.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the stipulated facts in this matter clearly and convincingly support respondent's admitted violation of RPC 1.5(a).

Specifically, the crux of respondent's misconduct was his renewed practice of systematically charging a \$150 fee for firm overhead costs. 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"), an attorney may not bill a client for "overhead expenses generally associated with properly maintaining, staffing and equipping an office." Accordingly, we and the Court consistently have determined that such a charge is prohibited and constitutes a violation of the Rules of Professional Conduct. See In re Lehr, 258 N.J. 401 (2024) (the attorney engaged in fee

overreaching, contrary to RPC 1.15(a), by charging a two percent surcharge on billed fees to cover costs, among other misconduct), and In re Klamo, 213 N.J. 494 (2013) (the attorney engaged in a pattern of improperly charging his personal injury clients for photocopying, postage, and telephone calls, in violation of RPC 1.5(c) and R. 1:21-7(d)). Here, it is undisputed that respondent charged at least 118 clients a \$150 fee to cover overhead costs, in violation of RPC 1.5(a), despite knowing that such a practice was improper.

In sum, we find that respondent violated RPC 1.5(a). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Although the OAE relied on disciplinary precedent involving the mistaken calculation of contingent fees and recordkeeping deficiencies to support the imposition of a reprimand, we consider a different line of precedent concerning fee overreaching.

Discipline for fee overreaching ranges from a reprimand to disbarment. See, e.g., In re Doria, 230 N.J. 47 (2017) (reprimand for an 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); we 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 an attorney who charged grossly excessive fees in two estate matters and presented inflated records to justify them; strong mitigating factors considered); Lehr, 258 N.J. 401 (censure for an attorney who, in eight client matters, committed fee overreaching by charging a prohibited, two-percent surcharge on billed fees; in other client matters, the attorney committed additional fee overreaching by engaging in “omnibus” billing without supporting records, and improperly charging legal fees in addition to receiving an executor’s commission; the attorney also submitted false certifications to a bankruptcy trustee; significant mitigation); In re Verni, 172 N.J. 315 (2002) (three-month suspension for an attorney who charged excessive fees in three matters and knowingly made 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 for inflating his time); In re Wolk, 82 N.J. 326 (1980) (disbarment for an attorney’s 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).

Although respondent's practice of charging an improper overhead fee is akin to that of the attorney in Lehr, who received a censure, he lacks the egregious pattern of fee overreaching and the additional misconduct found in that matter. Specifically, the attorney in Lehr committed fee overreaching, through diverse means, including improperly charging his clients a two-percent surcharge for "costs incurred and not otherwise billed;" engaging in "omnibus" billing without supporting billing records; and charging legal fees on estate matters in addition to receiving executor's commissions. Further, the attorney improperly applied a retainer balance without prior authorization and failed to sufficiently explain his fees to numerous clients. He also submitted a false certification to the bankruptcy trustee concerning the amount of fees he was charging, in violation of RPC 8.4(d).

Based on the number of client matters in which Lehr committed fee overreaching, and the reckless manner in which he billed his clients, we determined that, standing alone, the baseline discipline for his fee overreaching was a censure. However, given Lehr's additional violations of RPC 8.4(d), as exacerbated by the further violations of RPC 1.4(b) and (c), we noted the baseline of a censure could have been enhanced to a short term of suspension.

In determining to impose a censure, rather than a term of suspension, we considered Lehr's unblemished disciplinary record of more than thirty years at the bar; his full cooperation with the disciplinary proceedings; his restitution efforts; and the number of years that had passed since the misconduct occurred.

Thus, based on disciplinary precedent, and Lehr in particular, we conclude that the baseline discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, respondent permitted his staff to resume charging contingent-fee clients a flat fee for overhead costs, despite the 2017 audit revealing and correcting the same prohibited conduct.

In mitigation, respondent stipulated to his misconduct, thereby preserving disciplinary resources. In further mitigation, he has no prior discipline in his fourteen years at the bar.

Conclusion

On balance, we conclude that the aggravating and mitigating factors are in equipoise and, thus, determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Additionally, as a condition to his discipline, we recommend that respondent be required, within thirty days of the Court's disciplinary Order in this matter, to submit proof to the OAE, in the form of canceled checks, that he repaid all affected clients. In the event any of the affected clients cannot be located, respondent shall remit those funds to the Superior Court Trust Fund, as R. 1:21-6(j) requires.

Vice-Chair Boyer and Member Menaker were absent.

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
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
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 Frederick Richard Dunne III
Docket No. DRB 24-164

Argued: October 17, 2024

Decided: January 14, 2025

Disposition: Reprimand

<i>Members</i>	Reprimand	Absent
Cuff	X	
Boyer		X
Campelo	X	
Hoberman	X	
Menaker		X
Petrou	X	
Rodriguez	X	
Spencer	X	
Total:	6	2

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