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Garden State CLE presents:

Common Ethical Issues in a Real Estate Closing

Lesson Plan

Table of Contents

1. False Statements on RESPA Sheet

[The RESPA must be a true and accurate account of the funds that are disbursed in connection with the closing.]

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The Real Estate Settlement Procedures Act of 1974. P.L. 93–533 (RESPA) and the amendments of 1975 P.L. 94–205; U.S. 12 U.S.C.A. 2601 et seq. imposes certain restrictions and procedures with respect to "federally related mortgage loans" on residential real property. The regulations issued by the Department of Housing and Urban Development under RESPA appear in the Federal Register, Vol. 41, No. 109, June 4, 1976.

A lender within the coverage of RESPA is an institution the deposits of which are insured by the Federal Savings and Loan Corporation (FSLIC), the Federal Deposit Insurance Corporation (FDIC), or any other agency of the Federal Government, or which is regulated by the Federal Home Loan Bank Board, or any other agency of the Federal Government. It appears to this Committee that a vast majority of the residential mortgage loans now made in this State are controlled by the provisions of RESPA.

The concern of Congress expressed in RESPA was to insure that consumers were provided with timely information on the nature and costs of the real estate settlement process and were protected from unnecessarily high settlement charges. RESPA requires that when a borrower makes an application for a mortgage loan, the lender must give him an information booklet entitled "Settlement Costs." This booklet has been prepared by the Office of Consumer Affairs Regulartory Functions, U.S. Department of Housing and Urban Development (HUD). The lender must also provide a good faith estimate of the closing costs.

HUD Regulations (Title 24, Chapter XX, Para. 3500, 3500.7(c)) provide that where the lender requires that a particular attorney be used to provide legal services and requires that the borrower pay all or a portion of the cost of such services, regardless of the interest to be represented by the provider (attorney), the lender is required to include in the good faith estimate a statement which clearly designates the corresponding estimated charges, states the name and address of the provider (attorney) designated by the lender, the services which will be rendered by the provider (attorney), the fact that the lender's estimate is based upon the charges of the designated provider (attorney) and a statement whether or not the provider (attorney) has a business relationship with the lender.

RPC 4.1. Truthfulness in Statements to Others

- **(a)** In representing a client a lawyer shall not knowingly:
  - **(1)** make a false statement of material fact or law to a third person; or
  - **(2)** fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.
- **(b)** The duties stated in this Rule apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.

RPC 8.4. Misconduct

It is professional misconduct for a lawyer to:

- **(a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- **(b)** commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- **(c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- **(d)** engage in conduct that is prejudicial to the administration of justice;
- **(e)** state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- **(f)** knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;
- **(g)** engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

In re Barrett, 207 N.J. 34 (2011)

Attorney reprimanded for misrepresenting that a RESPA statement that he signed was a complete and accurate account of the funds received and disbursed as part of the transaction; the RESPA reflected the payment of nearly $61,000 to the sellers, whereas the attorney disbursed only $8700 to them; the RESPA also listed a $29,000 payment by the buyer, who paid nothing; finally, two disbursements totaling more than $24,000 were left off the RESPA altogether; the attorney had no record of discipline.

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In re Mulder, 205 N.J. 71 (2011)

Reprimand for attorney who certified that the RESPA that he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the RESPA was meant to satisfy a second mortgage; in fact, there was no second mortgage encumbering the property; the attorney's recklessness in either making or not detecting other inaccuracies on the RESPA, on the deed, and on the affidavit of title were viewed as aggravating factors; mitigating circumstances justified only a reprimand.

In re Aqrait, 171 N.J. 1 (2002)

Reprimand for attorney who, despite being obligated to escrow a $16,000 deposit shown on a RESPA, failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the attorney's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee.

In re Scott, 192 N.J. 442 (2007)

Censure for attorney who failed to review the real estate contract before the closing; failed to resolve liens and judgments encumbering the property; prepared a false HUD-I statement misrepresenting the amount due to the seller, the existence of a deposit, the receipt of cash from the buyer, and the amount of her fee, which was disguised as disbursements to the title company; prepared a second HUD-I statement listing a "Gift of Equity" of $41,210.10; issued checks totaling $20,000 to the buyer and to the mortgage broker, based on undocumented loans and a repair credit, without obtaining the seller's written authorization; failed to submit the revised HUD-I to the lender; failed to issue checks to the title company, despite entries on the HUD-I indicating that she had done so; misrepresented to the mortgage broker that she was holding a deposit in escrow; and failed to disburse the balance of the closing proceeds to the seller; violations included RP_~C l.l(a) (gross neglect), RPC 1.15(b), the attorney had received a prior admonition and a reprimand.

In re De La Carrera, 181 N.J. 296 (2004)

Three-month suspension in a default case in which the attorney, in one real estate matter, failed to disclose to the lender or on the RESPA the existence of a second mortgage taken by the sellers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two settlement statements that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by arranging for a loan from one client to another and representing both the private holder of a second mortgage and the buyers/borrowers.

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In re Swidler, 205 N.J. 260 (2011)

Six-month suspension imposed in a default matter; in a real estate transaction in which the attorney represented both parties without curing a conflict of interest, the attorney acted dishonestly in a subsequent transfer of title to property; specifically, in the first transaction, the buyer, Rai, gave a mortgage to Storcella, the seller; the attorney, who represented both parties, did not record the mortgage; later, the attorney represented Rai in the transfer of title to Rai's father, a transaction of which Storcella was unaware; the attorney did not disclose to the title company that there was an open mortgage of record; the attorney was also guilty of grossly neglecting Storcella's interests, depositing a check for the transaction in his business account, rather than his trust account, and failing to cooperate with disciplinary authorities; prior reprimand and three-month suspension.

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In re Fink, 141 N.J. 231 (1995)

Six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, failed to witness a power of attorney and lied to a prosecutor about the RESPA

See also In re Egenberg, ___ NJ ___ (2012) (Reprimand)

No waiver of conflict representing multiple clients at closing

Misrepresentation as to amount of legal fee

Note the issues in this case occurred many years later following a dispute among the principals.

This Misconduct Can Also Constitutes Federal Bank Fraud
See 18 USCA S 1001 and 1010

§ 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, [and/or] imprisoned not more than 5 years[.]

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§ 1010. Department of Housing and Urban Development and Federal Housing Administration transactions

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Department of Housing and Urban Development for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by such Department, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Department, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income, shall be fined under this title or imprisoned not more than two years, or both.

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2. Concurrent Conflicts & Self-Dealing

"Although, at times, it is possible for an attorney to represent a buyer and a seller, that representation is permissible only AFTER the contract has been executed and, importantly, when the requirements of RPC 1.8 [and 1.7(a)] have been met; namely the terms are fair and have been disclosed to the client, advice that the client seek independent counsel has been given, and the client has consented, in writing, to the representation.

In re Ansetti, slip opinion page 18 [DRB 11-415 and 12-024]

RPC 1.8. Conflict of Interest: Current Clients; Specific Rules

- **(a)** A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
  - **(1)** the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;
  - **(2)** the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and
  - **(3)** the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- **(b)** Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client after full disclosure and consultation, gives informed consent

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
    - **(1)** the representation of one client will be directly adverse to another client; or
    - **(2)** there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
    - **(1)** each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
    - **(2)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
    - **(3)** the representation is not prohibited by law; and
    - **(4)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

ACPE Opinion 243

We do conclude, however, that one attorney should not represent both parties in connection with the preparation and execution of a contract of sale. Generally, it is at this stage of negotiations for the sale of property that a buyer and a seller have their greatest difficulties. Their interests are in conflict if for no other reason than the buyer wishes to obtain the property as cheaply as possible and the seller wishes to get the highest price. At this juncture, also, there can and frequently do arise disputes concerning fixtures to be left in the premises, assumption of mortgages, mortgage contingencies, and other matters in which there can be serious disagreements, in all of which the interests of the buyer and seller will be diametrically opposed.

Further difficulties are presented if the same attorney tries to represent both parties at the closing, where there may be disputes about the changed condition of the property between the date of the contract of sale and the closing, adjustments of taxes and assessments, and escrow funds. Other matters might be mentioned, but these suffice to point up the danger involved. In such situations, the attorney cannot exercise his independent professional judgment in behalf of one client without adversely affecting the other.

We, therefore, conclude that, assuming full disclosure and consent, the practice of one attorney representing both the borrower and the lender may present problems in some instances, but is not unethical and is not precluded by decisional law and should be approached with great caution. However, the representation of a buyer and a seller in connection with the preparation and execution of a contract of sale of real property is so fraught with obvious situations where a conflict may arise that one attorney shall not undertake to represent both parties in such a situation.

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(Approved by In re Lanza, 65 NJ 347 (1974)

See also ACPE Opinion 398 (1978)

In re Kamp, 40 NJ 588, 595-96 (1963)

Full disclosure requires the attorney not only to inform the prospective client of the attorney's relationship to the seller, but also to explain in detail the pitfalls that may arise in the course of the transaction which would make it desirable that the buyer have independent counsel. The full significance of the representation of conflicting interests should be disclosed to the client so that he may make an intelligent decision before giving his consent. If the attorney cannot properly represent the buyer in all aspects of the transaction because of his relationship to the seller, full disclosure requires that he inform the buyer of the limited scope of his intended representation of the buyer's interest and point out the advantages of the buyer's retaining independent counsel.

A similar situation may occur, for example, when the buyer of real estate utilizes the services of the attorney who represents a party financing the transaction. To the extent that both parties seek a marketable title, there would appear to be no conflict between their interest. Nevertheless, a possible conflict may arise concerning the terms of the financing, and therefore at the time of the retainer the attorney should make clear to the buyer the potential area of conflict. In addition, if the buyer's interests are protected only to the extent that they coincide with those of the party financing the transaction, the attorney should explain the limited scope of this protection so that the buyer may act intelligently with full knowledge of the facts.

In re Dolan, 76 NJ 1, 12-13 (1978)

While tenable arguments have been made in favor of a complete bar to any dual representation of buyer and seller in a real estate transaction, on balance we decline to adopt an inflexible per se rule. Confining ourselves to the type of situation before us (assuredly there are others, entirely unrelated to financial pressures), the stark economic realities are such that were an unyielding requirement*13 of individual representation to be declared, many prospective purchasers in marginal financial circumstances would be left without representation. That being so, the legal profession must be frank to recognize any element of economic compulsion attendant upon a client's consent to dual representation in a real estate purchase and to be circumspect in avoiding any penalization or victimization of those who, by force of these economic facts of life, give such consent.

This opinion should serve as notice that henceforth where dual representation is sought to be justified on the basis of the **1082 parties' consents, this Court will not tolerate consents which are less than knowing, intelligent and voluntary. Consents must be obtained in such a way as to insure that the client has had adequate time manifestly not provided in the matter under consideration to reflect upon the choice, and must not be forced upon the client by the exigencies of the closing. This applies with equal force to the dual representation of mortgagor and mortgagee.

In re Poling, 184 NJ 297 Reprimand imposed on attorney who engaged in conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title insurance from a title company that he owned – a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere.

In re Mott, 186 N.J. 367 (2006)

Reprimand for conflict of interest imposed on attorney who prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain.

3. Equity-stripping

[Also known as a "sale/leaseback fraud."]

Definition:

In this type of transaction, the broker usually finds an "investor" to purchase the distressed property, with no actual money down. ~o the contrary, the "investor" usually walks away from the purchase with cash in his or her pocket, while the sellers are left with little to no money from the "sale" of their home. After the closing, the sellers remain in the property and lease it for about a year or so until their credit is restored, at which point they re-purchase the property from the "investor." That usually never happens because the "sellers" (the former owners) are still not able to keep up with the costs of the property, which put it into foreclosure in the first place.

In re Barrett, 207 NJ 34 (2011) (Reprimand) (Slip opinion page 5) DRB 10-435

In re Khorozian, 205 N.J. 5 (2011)

Censure imposed on attorney who represented the buyer in a fraudulent transaction in which a "straw buyer" bought the seller's property in name only, with the understanding that the seller would continue to reside there and would buy back the property after one year; the seller was obligated to pay a portion of the monthly carrying charges; the attorney prepared four distinct HUD-I forms, two of which contained misrepresentations of some sort, such as concealing secondary financing or misstating the amount of funds that the buyer had contributed to the acquisition of the property; aggravating factors included the fact that the attorney changed the entries on the forms after the parties had signed them and that he either allowed his para-legal to control an improper transaction or knowingly participated in a fraud and then feigned problems with recall of the important events and the representation.

In re Alum, 162 N.J. 313 (2000)

One-year suspended suspension for attorney who participated in five real estate transactions involving "silent seconds" and "fictitious credits"; the attorney either failed to disclose to the primary lender the existence of secondary financing or prepared and signed false RESPA statements showing repair credits allegedly due to the buyers; in this fashion, the clients were able to obtain one hundred percent financing from the lender; because the attorney's transgressions had occurred eleven years before and, in the intervening years, his record had remained unblemished, the one-year suspension was suspended.

In re Soriano, 206 NJ 138 (2011) (Censure)

Soriano **involved a fraudulent sale whereby the sellers conveyed their property to a family friend for no consideration. The parties agreed that the sellers would remain in the property and restore their credit, by making the mortgage payments and paying other expenses associated with the running of a household. Once their credit was restored, they would buy their house back from the family friend.**

Soriano, the only attorney involved with the transaction, prepared an addendum to the agreement of sale, noting that the sellers had granted the buyer an $88,000 "gift of equity." The RESPA, however, did not identify this gift. Moreover, according to the RESPA, the buyer paid more than $86,000 at closing, instead of the actual amount of ZERO. Further, the RESPA stated that the sellers had received nearly$130,000 when, in fact, they had "actually received much less." A successor mortgage company filed a foreclosure action, and the sellers were never able to repurchase their house.

In choosing to censure Soriano, we observed that the buyer had suffered harm as a result of the transaction because, after the purchase, the sellers' failure to make the mortgage payments resulted in a foreclosure proceeding being instituted against her. Further, we noted, Soriano never drafted a document confirming the parties' agreement that the sellers would be able to buy the property back from the buyer after they had rehabilitated their credit history. Moreover, he had certified to the accuracy of the RESPA, which he conceded had contained false information. He also engaged in 12 other dishonest conduct pertaining to the buyer's loan application, which misrepresented that the property would be her primary residence. Finally, the attorney had been reprimanded previously for having abdicated his responsibilities as an escrow agent in a business transaction and for misrepresenting to the sellers that he held the escrow funds.

4. Drawing on Uncollected funds

ACPE Opinion 454 (1980) "An attorney may not draw on trust funds "for ... purposes, such as the disbursement of the settlement proceeds of a negligence case, regardless of whether certified, cashier's or bank checks have been deposited but have not yet cleared...."

[By way of a 1984 amendment to this Opinion, a limited exception exists for real estate or commercial closings involving the transfer of property "where it is either essentially or commercially desirable that trustee checks be issued against certified, bank or cashier's checks that have not cleared." The ACPE has since extended the exception to include savings and loan checks. However, a personal check or, a "company check" does not satisfy those requirements.]

In re Moras, 131 NJ 164, 170 (1993)

Attorneys must not advance trust funds to accommodate clients. That the advance is drawn against the client's personal or business check makes no difference. The reason is that the attorney is gambling with his or her trust funds in the hope that the client's check will clear. Attorneys may draw against checks deposited in their trust accounts only in the limited circumstances of real estate or commercial closings in which the attorneys have received certified, bank, savings and loan, or cashiers' checks. In the future, attorneys who improperly draw against other checks deposited in their trust accounts will run the risk of a more severe penalty, including disbarment.

5. Lapping

In re Konopka, 126 NJ 225, 233 (1991) (Six-month suspension)

This Court's unwavering position has been that when you take a client's funds without the client's permission, it is wrong, totally wrong, whether or not you intend to return the money, whether or not indeed you *do* return it. Practically every attorney who knowingly misappropriates intends to return the money, and many do, usually by taking it from another client, and the theft is often not discovered until the attorney gets to the end of the road where there is that last client from whom he or she has taken money but for whom he or she can find no new funds to steal from other clients. This "lapping," the use of one client's account to make up for a shortage in another, repeated on and on, and sometimes undetected, is the most common form of knowing misappropriation. Clients should not have to endure the agony of worrying whether the lawyer will indeed make good on his or her intent to return the client's money, or whether the lawyer's family will be able to, or whether the lawyer will be able to make up the money from other clients.

In re Brown, 102 NJ 512, 514-15 (1986) (Disbarment)

Respondent's explanation-and the heart of his defense-is that in March 1978 he deposited in his trust account a $20,000 check of a client, Astroscope, Inc. Instead of waiting for the funds to clear the account before disbursing them, as required by *DR* 9-102, respondent issued checks in accordance with the client's instructions. When the bank dishonored the $20,000 check, the client was unable to make good on the check. The result, then, was a $20,000 deficiency in respondent's trust account. The client thereafter filed for bankruptcy.

Rather than reveal this unhappy turn of events to all the affected parties and to the attorney disciplinary authorities, or take steps towards restitution of the monies lost, respondent continually invaded the trust funds of one client to pay another. As respondent's brief puts it,

[h]e was forced into a process commonly known as "lapping," whereby the designated funds of one client are used to pay for another client's needs. However, [because respondent was] a sole practitioner, the sum was too great for respondent to make up.

This “lapping” process continued for more than four years, up until the time of the audit.

Respondent's difficulties were compounded in April 1980, when the Internal Revenue Service seized $8,098 from an interest-bearing escrow account that respondent had opened on behalf of his client Johnson. The account was characterized by a couple of peculiarities: it was not denominated as a “trust account,” and the social security number on the account was respondent's, not the client's. The IRS took custody of the funds to pay outstanding liens on personal taxes owed by respondent. Again respondent resorted to “lapping” in order to pay off Johnson. The result was that as of April 1980 his trust account was short more than $28,000, rather than the original $20,000.

Respondent's effort to make up the shortage from the time it was originally created by his drawing on funds not yet cleared by the bank consisted of his leaving earned legal fees in his trust account. Although this may have made a dent in the shortage from time to time, it did not come near returning the account to an in-trust condition during the four-year span. As the auditor concluded on the basis on respondent's records and admissions in the course of the audit,

Mr. Brown intentionally used new client trust funds to cover deficiencies from prior matters, as well as for office expenditures, on a routine and regular basis.

See also In re Iulo, 115 NJ 498 (1989) (Disbarment following criminal conviction)

6. Legal Fees at Closing

RPC 1.5. Fees

- **(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:**
  - **(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
  - **(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**
  - **(3) the fee customarily charged in the locality for similar legal services;**
  - **(4) the amount involved and the results obtained;**
  - **(5) the time limitations imposed by the client or by the circumstances;**
  - **(6) the nature and length of the professional relationship with the client;**
  - **(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;**
  - **(8) whether the fee is fixed or contingent.**
- **(b) <u>When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.</u>**

<u>In re Gahwyler, 208 NJ 353 (2011) (Censure)</u>

As to the rules that respondent did violate, it is clear that he did not comply with the requirements of RPC 1.5(b), at least as to [his new clients]. He conceded that the parties were told of his fee arrangement only orally. Because, however, he had represented Mr. Cleveland in a prior real estate transaction, we do not find a violation of RPC 1.5(b) as to him. As to the [new clients], our conclusion differs. Respondent had not previously represented them and, therefore, had to convey to them the basis or rate of his fee, in writing.

See also In re Egenberg, ___ NJ ___ (2012) (Reprimand) DRB 11-418

7. Reporting & Enforcement

RULE 1:14. Codes of Ethics

The Rules of Professional Conduct and the Code of Judicial Conduct of the American Bar Association, as amended and supplemented by the Supreme Court and included as an Appendix to Part I of these Rules, and the Code of Conduct for Judiciary Employees, also included as an Appendix to Part I of these Rules, shall govern the conduct of the members of the bar and the judges and employees of all courts of this State.

When appropriate, the words "partnership," "attorney," and "lawyer" shall be construed to include professional corporations and limited liability entities for the practice of law, as well as attorney employees, agents, shareholders and members thereof, and attorneys acting as "of counsel" thereto.

RULE 1:18. Duty of Judges

It shall be the duty of every judge to abide by and to enforce the provisions of the Rules of Professional Conduct, the Code of Judicial Conduct and the provisions of R. 1:15 and R. 1:17.

RPC 8.3. Reporting Professional Misconduct

- **(a)** A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- **(b)** A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- **(c)** This Rule does not require disclosure of information otherwise protected by RPC 1.6.

No reported real estate cases to date. But see:

In re Berkowitz, 136 N.J. 134, 147 (1994) ("Lawyers are expected to be fully versed in the ethics rules that regulate their conduct. Ignorance or gross misunderstanding of these rules does not excuse misconduct") and In re Eisenberg, 75 N.J. 454 , 456-57 note 1 (1978):

"We view with increasing concern the practice of attorneys facing discipline by this Court to treat the applicable disciplinary rules as terra incognita. Although this astonishing lack of familiarity with the rules is sometimes characterized as a "defense," ignorance of our ethical rules and case law cannot be permitted to diminish responsibility for conduct in violation of these rules."