

SUPREME COURT OF NEW JERSEY
DISTRICT IIIIB ETHICS COMMITTEE

Suzanne M. Kourlesis, Esq.
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Moorestown, NJ 08057
856-235-9881

DISTRICT IIB ETHICS COMMITTEE,	:	
	:	DOCKET NO: IIIIB-02-016E
Complainant,	:	
	:	DISCIPLINARY ACTION
vs.	:	
	:	COMPLAINT
FREDERICK FITCHETT, ESQ.	:	
	:	
Respondent,	:	R. 1:20-4

GENERAL ALLEGATIONS

1. Frederick F. Fitchett, III (hereinafter "Respondent") was admitted to the Bar of this State in 1976.
2. Respondent maintains an office at 950 South Chester Avenue, Riverside, New Jersey 08075.
3. The Grievant in this matter is Kemi Laboratories, Inc. (hereinafter "Grievant") whose address is P.O. Box 143, Columbia, Maryland 21045.
4. The principal shareholder of the Grievant is Larry McClenny, whose address is 5206 Forest Meadow Court, Ellicott City, Maryland 21043.

FIRST COUNT

1. Grievant was the Defendant in a landlord tenant action filed by the South Jersey Port Corporation, a public entity, on or about February 2, 2000.

2. Respondent represented the South Jersey Port Corporation in the lawsuit (the "Kemi Lawsuit")

3. At the time the Kemi Lawsuit was filed, Respondent was a member of the law firm of Horn, Goldberg, Gorny, Plackter, Weiss & Perskie.

4. On or about March 2, 2000, Grievant retained the services of the firm of Cureton, Caplan, Clark, Scaramella and Hunt, P.C. (the "Cureton Firm") to- represent it in the Kemi Lawsuit.

5. Sometime between the time that the lawsuit was filed and prior to the time the lawsuit was settled, the Respondent began merger/employment negotiations with the Cureton Firm.

6. Respondent began employment with the Cureton Firm on May 8, 2000 before the Kemi Lawsuit was settled.

7. Respondent advised Darryl Caplan, Esq. of the Cureton Firm immediately prior to joining the Cureton firm that the Kemi Lawsuit was settled, when Respondent knew to the contrary that it was not.

8. The Cureton Firm continued to represent Grievant in the Kemi Lawsuit after Respondent joined the Cureton Firm, before the Lawsuit was settled.

9. Respondent continued to represent SJPC in the Kemi Lawsuit after he joined the Cureton firm, before the Lawsuit was settled.

10. The fully-executed Settlement Agreement was not forwarded to Respondent by Kemi until October 8, 2000.

11. The Cureton firm continued to represent Kemi until at least June 8, 2000.

12. The Cureton Firm, via Respondent, continued to represent SJPC against Grievant in various landlord/tenant matters at least through December, 2000.

13. Respondent's conduct in its representation of SJPC while negotiating the merger/employment with/by an adversary in litigation and his continued representation of SJPC against Grievant after joining the Cureton firm, knowing that the Cureton firm continued to represent Grievant, violates in relevant "RPC 1.7 CONFLICT OF INTEREST: GENERAL RULE, which provides in relevant part, that

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless:

(1) the lawyer reasonably believes that representation will not adversely affect the relationship with the other client; and

(2) each client consents after a full disclosure of the circumstances and consultation with the client, **except that a public entity cannot consent to any such representation.**"

SECOND COUNT

14. Complainant repeats the allegations of the preceding count and paragraphs of the Complaint as though set forth at length herein.

15. The Cureton firm continued to represent Kemi until at least June 8, 2000.

16. Respondent continued to represent SJPC against Kemi in various landlord/tenant matters at least through December, 2000.

Respondent's conduct in continued representation of SJPC after the Cureton firm terminated its representation, violates RPC 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE, which provides in relevant part as follows:

(a) When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7, RPC 1.8, RPC 1.9 or RPC 2.2.

THIRD COUNT

17. Complainant repeats the allegations of the preceding count and paragraphs of the Complaint as though set forth at length herein.

Respondent's conduct in continued representation of SJPC after the Cureton firm terminated its representation violates RPC 1.9 CONFLICT OF INTEREST: FORMER CLIENT, which provides in relevant part as follows:

(a) A lawyer who has represented a client in a matter shall not thereafter

(1) represent another client in the same or a substantially related matter in which that client's interests are materially adverse to

the interests of the former client unless the former client consents after a full disclosure of the circumstances and consultation with the former client; or

(2) use information relating to the representation to the disadvantage of the former client except as RPC 1.6 would permit with respect to a client or when the information has become generally known.

(b) The provisions of RPC 1.7(c) are applicable as well to situations covered by this rule.

Date: August 17, 2003

DISTRICT IIIB ETHICS COMMITTEE

/s/ Suzanne M. Kourlesis, Esq.

Frederick F. Fitchett, Esq.
1700 West High Street
Haddon Heights, NJ 08035
856-546-1421

DISTRICT IIB ETHICS COMMITTEE,	:	
	:	DOCKET NO: IIIB-02-016E
Complainant,	:	
	:	DISCIPLINARY ACTION
vs.	:	
	:	AMENDED ANSWER
FREDERICK FITCHETT, ESQ.	:	
	:	
Respondent,	:	

Respondent, Frederick Fitchett, Esq., by way of response to the allegations of the complaint filed says as follows:

GENERAL ALLEGATIONS

1. Admitted
2. Denied. Since September 2003, Respondent has maintained an office at 1700 W. High Street, Haddon Heights, NJ 08035
3. Admitted
4. Respondent has no current knowledge of the ownership structure of Grievant at the present time.

FIRST COUNT

1. Admitted
2. Admitted
3. Admitted

4. Respondent has no knowledge of when or how the Cureton firm was retained.

5. Denied. In a telephone conference between Respondent and Jerry Cureton on the issue of when the already negotiated Settlement Agreement between Respondent's client, South Jersey Port Corporation and Kemi would be returned signed by Kemi, I offhandedly mentioned that I was leaving my association with Horn Goldberg and had negotiated an agreement with Rawle and Henderson to be employed with their Marlton and Philadelphia offices. At that time, Cureton suggested we consider the possibility of associating with his firm. We both agreed to give it further consideration, but acknowledged that we could not proceed to accomplish it until the Kemi Settlement document was signed by Kemi. My client had already agreed and signed off on the Agreement. It was the understanding of Mr. Cureton and myself that Kemi had also agreed and simply had to execute the document which had been negotiated over a course of months prior to that time.

6. Denied. To the best of Respondent's knowledge, the document had been signed and agreed to.

7. Denied. For the reasons set forth above, this allegation is unfounded and denied. Mr. Caplan was fully aware at all times of the same information as set forth above.

8. Denied. I was advised that a letter was forwarded to Grievant advising that no further services would be rendered on the matter.

9. Denied.

10. I have no knowledge as to what date Grievant may have received a fully executed document. It is clear that when Grievant signed the document, it would have been fully executed.

11. Denied for the reasons set forth in Answer to paragraph 8. I was advised that Grievant was advised that no further services would be rendered on the matter to it.

12. Subsequent thereto, the Grievant failed to make timely rent payments and actions were processed on that issue alone. A review of the summons and complaint in that matter (the docket number and pleadings are not currently in my possession). Grievant never disputed the issues or raised anything specifically related to the prior settled dispute.

13. Denied. For the factual reasons offered above, there was no conflict of interest at the time respondent took any and all actions. Respondent neither knew of, nor had available to him any information that in any way could have adversely affected the Grievant. The allegation of violation of RPC 1.7 is denied.

SECOND COUNT

14. Respondent hereby repeats each answer made to the prior allegations and incorporates them by reference herein.

15. Denied for the reasons set forth above.

16. Respondent hereby repeats its answer to paragraph 12 above. The allegation of violation of RPC 1.10 is denied

THIRD COUNT

17. Respondent hereby repeats the answers made to the allegations of the preceding count and incorporates them by reference as if fully set forth herein. The allegation of violation of RPC 1.9 is denied.

Dated: November 12, 2003 /s/ Frederick Fitchett, Respondent

Certification: I hereby certify and verify the foregoing information is correct to the best of my knowledge and belief. I understand that providing false statements or information will subject me to criminal penalties and other sanctions.

Dated: November 12, 2003 /s/ Frederick Fitchett, Respondent

Patricia P. Davis, Esquire
Hearing Panel Chair
608 Parry Boulevard
Cinnaminson, New Jersey 08077
(856) 829-9204

DISTRICT IIIB ETHICS COMMITTEE	:	Supreme Court of New Jersey
	:	District IIIB Ethics Committee
Complainant,	:	
	:	Docket No. IIIB-02-016E
	:	
vs.	:	
	:	DISCIPLINARY ACTION
FREDERICK FITCHETT, ESQ.	:	
	:	HEARING PANEL REPORT
Respondent,	:	RECOMMENDING REPRIMAND
	:	

TO THE HONORABLE CHAIR AND THE MEMBERS OF THE DISCIPLINARY REVIEW BOARD:

The District IIIB Ethics Committee Hearing Panel Respectfully shows:

I. Procedural History

1. Frederick F. Fitchett ("respondent") was admitted as a member of the bar of New Jersey in 1976, and is (or was) engaged in the practice of law at 1700 West High Street, Haddon Height, New Jersey 08035.

2. On or about August 17, 2003, a formal complaint (Exhibit P26) was filed with the District IIIB Ethics Committee and was served upon the respondent.

3. Respondent's amended answer thereto has been marked as Exhibit P27.

4. A formal hearing was held before this hearing panel consisting

of Patricia P. Davis, Esquire, Chair, Nancy T. Abbott, Esquire and Robert Zmirich on the foregoing charges on February 19, 2004, which respondent attended pro se. The matter was presented by Thomas J. Orr, Esquire. All exhibits are herewith submitted.

II. Synopsis of Allegations

5. The formal complaint filed charged the respondent with the following allegations of ethical misconduct:

A. Respondent represented the South Jersey Port Corporation ("Port") in a landlord-tenant dispute against grievant, Kemi Laboratories, Inc. ("Kemi Laboratories") who were being represented by Cureton, Caplan, Clark, Scaramella and Hunt, P.C. ("Cureton law firm.") During the litigation, respondent was negotiating his merger into/hiring by the Cureton firm. Respondent was hired by the Cureton firm and continued to represent the Port while the Cureton firm was still representing Kemi Laboratories. This violated RPC 1.7 CONFLICT OF INTEREST: GENERAL RULE, which provides in pertinent part: "(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless: (1) the lawyer reasonably believes that representation will not adversely affect the relationship with the other client; and (2) each client consents after a full disclosure of the circumstances and consultation with the client, except that a public entity cannot consent to any such representation."

B. While a member of the Cureton firm, respondent continued to represent the Port in landlord-tenant disputes against Kemi

Laboratories at least through December 2000. The Cureton firm continued to represent Kemi Laboratories until at least June 8, 2000. Respondent violated RPC 1.10 IMPUTED DISQUALIFICATION: GENERAL RULE, which provides in pertinent part as follows: "(a) When lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by RPC 1.7, RPC 1.8, RPC 1.9 or RPC 2.2."

C. Respondent's continued representation of the Port after the Cureton firm terminated its representation of Kemi Laboratories violates RPC 1.9 CONFLICT OF INTEREST: FORMER CLIENT, which provides in pertinent part: "(a) A lawyer who has represented a client in a matter shall not thereafter: (1) represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client consents after a full disclosure of the circumstances and consultation with the former client; or (2) use information relating to the representation to the disadvantage of the former client except as RPC 1.6 would permit with respect to a client or when the information has become generally known. (b) The provisions of RPC 1.7(c) are applicable as well to situations covered by this rule."

III. Findings of Fact and Conclusions

6. As a result of reviewing the testimony and exhibits, the hearing panel makes the following factual findings and conclusions:

A. The Port, as owner, and Kemi Laboratories, as tenant, entered into a 1997 lease concerning the premises situated at 1535 Broadway,

Camden, New Jersey.

B. On or about February 7, 2000, respondent was representing the Port in a landlord-tenant dispute for unpaid rent against the grievant, Kemi Laboratories. At that time, respondent was affiliated with the law firm of Horn, Goldberg, Gorny, Plackter, Weiss & Perskie.

C. Kemi Laboratories was referred to the Cureton firm by Camden City Councilman Ali Sloan El.

D. Kemi Laboratories' Maryland counsel is (or was) Michael A. Brown, Esquire, of Brown, Diffenderffer and Kearney, LLP, of Baltimore, Maryland.

E. Jerald Cureton and Darryl Caplan met with Lawrence McClenney, a principal at Kemi Laboratories, in Baltimore.

F. On or about March 2000, Kemi Laboratories retained the Cureton law firm to represent it in the landlord-tenant lawsuit, South Jersey Port Corporation v. Kemi Laboratories, Inc. The earliest entry in the Cureton firm's May 9, 2000 bill to Kemi Laboratories is dated March 10, 2000 (P-2).

G. On behalf of their respective clients, respondent and the Cureton firm undertook settlement negotiations.

H. During the course of those settlement negotiations, respondent and Jerald R. Cureton, Esquire of the Cureton firm discussed a possible job offer/merger for respondent to join the Cureton firm.

I. Should respondent join the Cureton firm, he would bring along with him, his highly desirable client, the Port.

J. Respondent met with Darryl Caplan and an agreement was reached whereby respondent would join the Cureton firm.

K. As of May 3, 2000, respondent was using Horn, Goldberg letterhead (P-15).

L. Respondent testified that he joined the Cureton firm in mid-May 2000 (page 61.) As of June 1, 2000, respondent's name was included on the letterhead for the Cureton firm (P-16).

M. Respondent was hired by the Cureton firm sometime between May 3, 2000-June 1, 2000. According to computer records, the Port was added as a client for the Cureton firm for billing purposes on May 19, 2000 (P-5).

N. The settlement agreement between the Port and Kemi Laboratories was still being actively negotiated. On April 18, 2000, Jerald Cureton sent a proposed Settlement Agreement via fax to Attorney Brown, respondent and Mr. Wheeler (of Kemi Laboratories) (P-14). On April 27, 2000, Attorney Wiertzychowski of the Cureton firm faxed a proposed Settlement Agreement proposal to respondent (P-19). On April 28, 2000, Attorney Wietrzychowski faxed versions to respondent (P-21) and to Mr. Wheeler, Kemi Laboratories and Mr. Brown (P-21). On May 1, 2000, Mr. Wheeler had changes to the agreement (P-1). On May 2, 2000, Attorney Wietrzychowski incorporated the client's changes and faxed versions to Kemi Laboratories (P-23) and to respondent (P22). On May 3, 2000, respondent faxed revisions to Jerald Cureton (P-15). On June 1, 2000, Jerald Cureton sent a proposal to Attorney Brown (P-16). The June 1, 2000 version starts: "Plaintiff,

South Jersey Port Corporation, and Defendant, Kemi Laboratories, Inc., by their respective undersigned counsel...." On June 8, 2000, Jerald Cureton sent via overnight mail a revised Settlement Agreement to Attorney Brown (P17). The language about "their respective counsel" was omitted. It appears that the June 8, 2000 version of the Settlement Agreement is the final version, which was signed and returned by Kemi Laboratories via overnight mail to respondent at the Horn, Goldberg address on October 8, 2000 (P-6).

O. Jerald Cureton, Esquire, the principal of the Cureton firm, was aware of the conflict of interest as of June 1, 2000 (P-16). In his letter, he acknowledges that respondent had joined his law firm and that the settlement agreement had not been signed.

P. Grievants, Wheeler and McClenney testified that they visited Darryl Caplan at his office to complain about the conflict of interest from respondent joining his law firm. Mr. Wheeler testified that Caplan was "standoffish and rude" (page 16).

Q. Mr. McClenney testified that he was unhappy about the settlement agreement and reluctant to sign it. He testified that he signed it "with reservations" (page 40.)

R. The settlement agreement between Kemi Laboratories and the Port was not fully executed and Fed Exed to respondent until October 8, 2000 (P-6). The documents were sent to respondent at his Horn, Goldberg address in Voorhees.

S. The Cureton firm did not notify Kemi Laboratories in writing that it would no longer be representing them.

T. While at the Cureton firm, respondent sent a series of letters to Kemi Laboratories complaining about various landlord-tenant issues. See P-7, letters dated 10/27/01, 11/1/00 and 12/7/00.

U. On or about February 27, 2001, respondent, representing the Port, filed a second landlord-tenant lawsuit against Kemi Laboratories. Respondent, as one of the attorneys in the Cureton firm, was suing one of its clients, or former clients, Kemi Laboratories.

V. The Hearing Panel finds that the two lawsuits are very similar because they both involved the same parties, the same lease and the same premises. It is incredulous that an attorney would not find that the two lawsuits were similar.

W. According to Mr. Wheeler's testimony, the attorney-client relationship between Kemi Laboratories and the Cureton firm did not terminate until spring 2001. According to Mr. McClenney's testimony (page 40), the attorney-client relationship between Kemi Laboratories and the Cureton firm did not terminate until after he had been served with the second landlord-tenant lawsuit from the Port.

X. By email dated December 20, 2001, respondent was advised to take no further representation of the Port (P-12). There was a new governor in office and the Port had retained different counsel.

Y. The Hearing Panel finds that there has been four phases of conflict.

Z. The first phase of conflict was from February to May 2000 when respondent was negotiating with the Cureton firm for employment during the course of the landlord-tenant litigation between the Port

and Kemi Laboratories. As a public entity, the Port cannot consent to dual representation. This violates RPC 1.7. This course of discussion never should have taken place until the litigation was fully concluded, including full execution of the Settlement Agreement. Respondent's loyalty to his client, the Port, might be questioned because of his cozy relationship with the Cureton law firm, allegedly representing Kemi Laboratories.

AA. The second phase of conflict was from May 2000 to October 2000 when respondent continued to represent the Port after joining the Cureton firm and the Settlement Agreement had not been fully executed. This violates RPC 1.7 and 1.10. Once respondent joined the Cureton firm, then the Cureton firm could represent neither the Port nor Kemi Laboratories. As a public entity, the Port was unable to waive the conflict.

BB. The third phase of conflict was October 2000 to December 2000 (P-7) when respondent was sending compliance letters to Kemi Laboratories as a member of the Cureton firm. This violates RPC 1.9. The grievants who were once represented by the Cureton firm were now being chastised by the Cureton firm, who had switched sides from representing Kemi Laboratories, the little guy, to the Port, the big guy.

CC. The fourth phase of conflict occurred on or about February 27, 2001 when respondent, as a member of the Cureton law firm, filed a second landlord-tenant complaint against Kemi Laboratories (P-8). The second lawsuit involved the same parties, the same lease and the same

property. This violates RPC 1.9.

IV. Determination

7. The panel has carefully considered and reviewed the testimony and evidence and has concluded that respondent's conduct constituted ethical misconduct in that he violated RPC 1.7, 1.9 and 1.10.

8. As a result, the panel recommends a reprimand against respondent. A records check indicates that respondent has been publicly reprimanded in the past, but that involved gross neglect of a client in a personal injury and worker's compensation matter with misrepresentation of the status to the client. In contrast, respondent was extremely loyal to the Port.

9. In his testimony, respondent says "I'm a little surprised as to why I'm here alone as opposed to others" (page 128). The Cureton firm is as blameworthy as respondent. The Cureton firm hired respondent knowing that the Settlement Agreement had not been signed. They attempted to dump their client, Kemi Laboratories, in order to represent a big client, the Port. They should have been aware that it would be a conflict of interest to represent the Port against their former client in a substantially similar litigation.

10. The panel recommends that a separate investigation be undertaken of Jerald Cureton, Esquire and Darryl Caplan, Esquire, preferably in another District Ethics Committee, due to a conflict of interest. Respondent could not have committed his conflict of interest without the complicity of the Cureton law firm.

District IIIB Ethics Committee

Dated: April 28, 2004

/s/ Patricia P. Davis
Hearing Panel Chair