SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-337

IN THE MATTER OF

LARRY J. McCLURE

AN ATTORNEY AT LAW

Decision

Argued: November 21, 2002

Decided: February 24, 2003

Glenn R. Reiser appeared on behalf of the District II-B Ethics Committee.

Raymond F. Flood appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District II-B Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1971. He maintains an office for the practice of law in Hackensack, New Jersey. In February 1999, respondent received an admonition by consent for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and

RPC 1.5.

The ethics complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with clients), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.5(b) (failure to communicate, in writing, the basis or rate of the fee, when the lawyer has not regularly represented the client), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known by the attorney to have arisen in a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

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The Conhaus Matter (District Docket No. IIB-01-023E)

On March 10, 2000, George Conhaus retained respondent to file a post-sentence application to have his son, Michael Conhaus, serve part of his custodial sentence in a drug treatment program. Michael had been convicted of first-degree armed robbery and sentenced to a ten-year term, with a minimum of three years and four months in state prison. A public defender had represented Michael for the plea and sentence.

Conhaus paid the following fees to respondent, in cash: (1) $2,000 on March 10, 2000; (2) $2,000 on March 31, 2000; and (3) $2,000 on July 7, 2000. Respondent did not give Conhaus a written retainer agreement or any other writing explaining the fee

arrangement. He did not keep any time records of his work on the Conhaus matter.

Respondent never made the application for which he had been retained. In fact, he only wrote two letters, neither of which pertained to the application: a May 19, 2000 letter to the Newark police department requesting information about an outstanding bench warrant against Michael and a July 12, 2001 letter forwarding his file to Conhaus, after Conhaus terminated his services.

By letter dated April 12, 2001, Conhaus discharged respondent because of his "repeated cancelled appointments and...inability to make any effort or to keep any promises made." The letter stated that Conhaus would be picking up Michael's file on April 16, 2001 and that he expected a refund of at least $4,000, in addition to an itemized invoice describing the services covered by the initial $2,000 fee. Between April 16 and May 3, 2001, Conhaus went to respondent's office on five occasions to retrieve the file and was told that it was not yet available. On July 12, 2001, respondent finally forwarded Michael's file to Conhaus.

Conhaus testified that, at their initial March 13, 2000 meeting, he told respondent that he wanted Michael transferred to a drug rehabilitation program. According to Conhaus, respondent replied that the judge was "a personal friend of mine...a very reasonable man and I'm sure we could do something"; respondent told Conhaus to call him in "a couple of days." It was Conhaus' understanding that, within a short period, respondent was going to file some "papers" to modify Michael's sentence.

According to Conhaus, he called respondent on March 20, 23, 27 and 31, 2000,

but respondent never returned his calls. Conhaus kept a contemporaneous record of the calls in a daily planner. On March 31, 2000, someone from respondent's office called Conhaus to tell him that respondent required an additional $2,000 and to meet respondent at Roadmasters, an auto body shop, whose owner was a friend of both Conhaus and respondent. Conhaus stated that the March 31st meeting lasted only thirty seconds and that, when he asked respondent about the case, respondent replied, "give me a couple more days."

Conhaus testified that he telephoned respondent eighteen times between March 31 and July 5, 2000 and never received a return call. Eventually, respondent met with Conhaus, on July 5, 2000. At that meeting, according to Conhaus, respondent

> pulled out a law book and showed me in a law book that it don't matter what time frame it is, that he still can help, that he still can go in front of the judge. I forget what the law – what the law read, you know. It was long. He read it to me. And that he needed more money. So I says fine, that my son was still in Bergen County. 'Don't worry about it.' He's – I don't understand the saying, but he says, 'They got a body. All they got is a body. I have the paperwork.' So he said he needed more money, but I didn't have $2,000 on me. I said, 'I'll drop it off Friday.'

On August 16, 2000, Conhaus wrote a letter to respondent terminating his services, but never sent that letter because respondent promised him that "any day now, any day he'd be doing something for you, [sic] and so I held off on the letter." Conhaus testified that he left the letter with the owner of Roadmasters, who apparently gave it to respondent. In the letter, Conhaus complained that respondent (1) had failed "to have the sentence imposed by the Judge overturned within 45 days because the judge was a

'personal' friend of yours and considered to be a very reasonable man"; (2) had stated that Michael would not be moved from the county jail to state prison, but would go directly to a drug rehabilitation program and that the "paper work" had been completed; (3) had stated that the $40,000 fee for the rehabilitation program had already been approved and that Michael would be moved from state prison; and (4) had not kept his promise to visit Michael in the county jail.

Conhaus testified that, between July 5, 2000 and April 12, 2001, he telephoned respondent on twelve occasions, without receiving a return call, and that ten scheduled meetings were called off either the day of or the day before the meeting. According to Conhaus, he stopped calling respondent for some time because "at one point of this time, after I paid him money, he said you've got to give – [Michael's] got to spend a year in the system before anything happens, so that's why there was such a lapse in phone calls, because I gave him the year, you know, before we started up again." According to Conhaus' records, he did not call respondent between October 5, 2000 and February 14, 2001, except for one call at the end of January 2001.

Conhaus testified that respondent never provided any explanation for his fees. He also complained that, when respondent forwarded him the file, he did not return several documents that Conhaus had given him.[1]

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[1] The complaint did not charge that respondent's failure to return Conhaus' documents violated RPC 1.16(d).

Respondent denied having made any promises to Conhaus, at their initial meeting, concerning what could be done for Michael. He contended that he could not have done so because he only had the "green sheets" and did not know the final plea. Respondent stated that, sometime between March and July 2000, he spoke with the prosecutor, reviewed the court file and concluded that the application for modification of the sentence was "not the appropriate course" because "the public defender probably got him...as good a deal as he could get for the plea purposes."

Respondent testified that, at their July 2000 meeting, he explained to Conhaus that a motion to transfer a prisoner to a drug treatment program could be made at any time, unlike a motion for reconsideration of a sentence.[2] He stated that he also told Conhaus that they should wait to file the motion so that Michael would not have to return to prison after he completed the drug rehabilitation program.

According to respondent, he requested an additional $2,000 from Conhaus in July because

> the plan was that this motion would be filed at a future date, and that was the anticipated service that was going to be rendered...and basically my position at this point in time was this would be the final amount of the fee, and I would have to wait, and we would make that motion on his son's behalf.

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[2] R. 3:21-10 (a) states that, except as provided in paragraph (b), "a motion to reduce or change a sentence shall be filed not later than 60 days after the date of the judgment of conviction." Paragraph (b) states that "a motion may be filed and an order may be entered at any time (1) changing a custodial sentence to permit entry of the defendant into a custodial or non-custodial treatment or rehabilitation program for drug or alcohol abuse."

Respondent estimated that he spent a total of ten to twelve hours reviewing the Conhaus file, speaking with the prosecutor and "checking some of the case law to see if there was a way around, if we could circumvent the Graves Act somehow." Respondent acknowledged that, because his services were terminated before he filed the motion, he had not earned his $6,000 fee and Conhaus was entitled to a refund. He contended, however, that he had been reluctant to refund any monies after the grievance had been filed for fear that he would be accused of trying to influence Conhaus.

Respondent did not dispute Conhaus' testimony regarding the unreturned telephone calls or the cancelled meetings. As to the telephone calls, respondent stated that he had instructed his employees to inform Conhaus that there was nothing new to report. As to the cancelled meetings, respondent stated as follows:

> I have no doubt that there was [sic] some meetings scheduled, and that there may have been meetings in which I was unable to make for whatever reasons developed on that particular day. There was also a problem where I ran into times where without consulting me in advance they would tell a client it's okay to come in, and then when I would see it, I would realize I had some other commitment that was not in my diary, some personal commitment that I have to do, so I live in Sussex County, so if I have anything to do at home, I've got an hour with no traffic, an hour and 20 minutes ride, so some of those 3:30 meetings that he mentioned I think fell into that range.

The complaint also alleged that respondent had failed to resolve a bench warrant that had been issued against Michael in 1998. In early 1998, respondent had represented Michael in Newark municipal court on a drug offense. Michael had received a probationary sentence and community service. On June 26, 1998, the Newark municipal

court issued a bench warrant because Michael had failed to appear on a charge of a violation of probation. It is undisputed that respondent had not been retained to represent Michael on that charge and did not even know about the warrant until sometime after March 2000, when Conhaus told him about it.

On May 19, 2000, respondent asked the Newark police department about the warrant. By letter dated May 20, 2000, the municipal court administrator explained the reason for the warrant. Respondent did not tell Conhaus about the May letters until July 12, 2001, when he returned some of Conhaus' documents. At that time, respondent stated that Conhaus should contact him if he wanted respondent to "look into this issue further."

The complaint alleged that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b), RPC 3.2 and RPC 8.4(c) (misrepresentation).

The Barr Matter (District Docket No. IIB-01-024E)

In June 1996, Kathleen Barr retained respondent to represent her in connection with an employment dispute with her employer, the Bergen County Board of Social Services (the "County"). In January 1996, the County had issued a preliminary notice of disciplinary action against Barr, alleging that she had engaged in "conduct unbecoming an employee in the public Service" and "ineffectiveness." The notice further stated that Barr could be suspended for five days and demoted two levels. Initially, Barr had been represented by another attorney, but was dissatisfied with his representation.

Respondent did not give Barr a written retainer agreement or any other writing explaining the fee arrangement, even though he had not represented her before. She paid him $2,500 at their first meeting, $2,500 on September 28, 1997 and $1,000 in December 1999.

By letter dated July 31, 1996, respondent requested that the County dismiss the notice of disciplinary action and reinstate Barr to her former position, with full back pay. Following additional correspondence, on September 25, 1996, the County advised respondent that "no discipline of any type has been recorded [against Barr]...either before this reply or intended thereafter." On October 1, 1996, respondent forwarded the County's letter to Barr and requested that she meet with him to discuss "this correspondence and the next steps to be taken with regard to your matter."

On November 4, 1996, Barr wrote to respondent expressing her concern about the time for filing a complaint against the County because she had been told that it had to be filed within ninety days from the date of the County's withdrawal of the charges against her. She also expressed her concern about respondent's failure to contact her doctors, after having assured her that he would. Respondent did not reply to Barr's letter.

Respondent reviewed Barr's personnel file on February 24, 1997. He did not file a complaint until October 29, 1998.[3] In the meantime, Barr had sent four letters to

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[3] The complaint was filed against the County of Bergen, the Bergen County Board of Social Services, the Bergen County Department of Human Services and Gina Plotino, Barr's supervisor. One of the counts alleged that Barr's personnel file contained false accusations

respondent, complaining about (1) his failure to file the complaint, (2) his failure to return her telephone calls and (3) his cancellation of appointments with her.

Anthony Sica, the attorney for the County, removed the case to federal court. During the initial status conference, the magistrate raised several concerns about the federal claims and ordered respondent to appear, with Barr, for a conference on June 2, 1999. Respondent attended the conference without Barr. He agreed to file a stipulation of dismissal of the federal claims and a consent judgment remanding the remaining counts to state court. Because respondent failed to prepare the pleadings, despite a reminder from Sica, Sica prepared them and sent them to respondent for his signature. Respondent failed to sign the pleadings.

On August 4, 1999, Sica served, but did not file, a motion papers for dismissal of the complaint and sanctions against respondent for his failure to withdraw the federal claims. On August 16, 1999, respondent forwarded the signed pleadings to Sica. He claimed that his failure to comply with the magistrate's directive was "an oversight."

After the case was remanded to state court, Sica served interrogatories on respondent and a notice for Barr's deposition, scheduled for December 7, 1999. Respondent forwarded the discovery requests to Barr, who apparently completed them sometime before November 10, 1999. On November 10, 1999, respondent requested an additional $1,000 from Barr, based on his expectation that the case would "continue at an

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arising from the January 1996 incident.

accelerated pace and [would] require constant monitoring and attention." On December 3, 1999, Sica adjourned Barr's deposition because he had not yet received the answers to interrogatories.

Respondent never served any discovery requests on the defendants.

On February 1, 2000, Sica filed a motion to dismiss Barr's complaint. Sica argued that Barr's causes of action accrued no later than July 1996, when the County withdrew the charges against her, and that, therefore, her intentional tort claims were barred by the two-year statute of limitations, and her defamation claim was barred by the one-year statute of limitations. Sica also argued that the complaint should be dismissed because Barr had failed to file a notice of claim with the County within ninety days of the claim, as required by the Tort Claims Act. The return date of the motion was adjourned twice, at respondent's request. In the meantime, by letter dated March 8, 2000, respondent advised Barr that her case was scheduled for "a Trial/Calendar Call" on June 5, 2000. In the letter, respondent did not mention the pending motion to dismiss the complaint.

On March 15, 2000, Sica objected to respondent's third adjournment request. In his letter, Sica also stated that (1) that respondent had not contacted him before the prior adjournment requests, although he had represented in his letters to the court that Sica was not objecting to the adjournments; (2) respondent had not filed an opposition to the motion; and (3) Barr had not complied with defendants' discovery requests, which had been served in September 1999, and had not appeared for her deposition, "despite

repeated requests."[4] Thereafter, respondent apparently filed a brief in opposition to the motion, but did not include a certification from Barr.

On March 29, 2000, the court dismissed the complaint for the reasons urged by the defendants. Respondent appealed this decision. However, on November 15, 2000, the appeal was dismissed for failure to prosecute because respondent's brief did not conform to the Appellate Division's requirements and respondent did not file a revised brief within the time allowed by the Appellate Division. On March 22, 2001, respondent filed a motion for reinstatement of the appeal, which was granted. On December 20, 2001, the Appellate Division affirmed the trial court's dismissal of the complaint.

Respondent admitted that he did not inform Barr that he had consented to the dismissal of her federal claims. He also admitted that he did not tell her about the motion to dismiss, the dismissal of her complaint or the appeal. In January 2000, Barr had moved to Ireland to care for her parents. She took early retirement from her position with the County in March 2000. However, she continued to attempt to communicate with respondent. She also gave her friend, Elma O'Callaghan, a power-of-attorney.

It is undisputed that, during respondent's representation of Barr, he sent only five letters to her: two in late 1999 concerning her deposition, one in December 1999 informing her of a March 2000 trial date, one in January 2000 informing her of a March settlement conference and the March 8, 2000 letter informing her of a June 5, 2000 trial

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[4] The complaint did not contain any charges concerning respondent's possible

date.

On July 20, 2001, Barr filed a grievance against respondent. Three days before, when she had called the court, she had learned that her complaint had been dismissed. Barr also complained that respondent had not communicated with her, despite the fact that she had "repeatedly called him over the past eighteen months, sometimes calling him several times a day and several times a week."

In respondent's November 16, 2001 reply to the grievance, he stated that there was an "appeal pending in this matter that I pursued in a timely fashion on Ms. Barr's behalf." He also enclosed a copy of a November 16, 2001 letter to Barr in which he (1) apologized for not having told her about the dismissal of her complaint, but claimed that he had believed that his "staff" had told her; (2) stated that he had filed a "timely appeal" of the dismissal, but did not inform her of its subsequent dismissal and reinstatement; (3) "reminded" her that he had always told her that the "biggest issue [was] to prove damages...This still represents a significant question"; and (4) requested that she advise him if she wished to retain new counsel to pursue the appeal; respondent cautioned her that the "amount you have paid me is far below the cost of what most other counsel would with my level of experience would [sic] require for this matter. The appeal was filed without any additional fee requested in an effort to assist you in this matter and to ensure your interests were protected."

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misrepresentations to the court.

The DEC investigator interviewed respondent on January 15, 2002. By that time, the Appellate Division had affirmed the trial court's dismissal of the complaint. Respondent did not advise the investigator of the dismissal. Nor did he inform Barr of the Appellate Division's decision. Apparently, the investigator learned about the dismissal by contacting the Appellate Division.

Barr testified that she had dismissed her prior attorney, obtained through her union, because he had encouraged her to accept a "wired deal," which was explained as a "little birdie would get in the right ear; and I would be permanent in my position, if I didn't go any further with the County." She stated that she refused the "deal" because she wanted her name cleared – she had recently been named employee of the year, had received "impeccable" evaluations during her ten years with the County and had been awarded three promotions.

Barr testified that, by the time she met with respondent, she was confident that the disciplinary action against her would be dismissed. According to Barr, she told respondent that she wanted her name cleared, wanted any documents related to the disciplinary action removed from her personnel file and wanted to know why she had been treated so badly by the County. She stated that she and respondent also discussed a suit against the County, during that first meeting, and that, although respondent did not "go into a lot of detail," he led her "to believe it was a straightforward case...a walk in the park." With respect to damages, Barr stated that she had told respondent that she had consulted with a doctor because of the stress of the disciplinary action and that he had

diagnosed "mitral valve prolapse, which is a sign of heart attack," caused by the stress. She stated that she had also been diagnosed with "major depression." As to respondent's fee, Barr's understanding was that respondent was to be paid on a contingency basis, but wanted a $1,500 retainer.

Barr testified that, after sending the November 1996 letter expressing concern about the time constraints for filing the suit, she telephoned respondent "a couple times a week," but he never returned her calls. She further stated that, throughout respondent's representation, he did not return her telephone calls and cancelled scheduled meetings at the last minute, after she had already taken time off from work. Barr testified that, when she moved to Ireland, she told respondent that she still intended to "give this case my utmost attention, and that I wanted to make sure that my file was cleared; and I wanted to see this case through, and that there was nothing that was going to stop me ever in this life."

According to Barr, respondent did not even resolve the administrative action to her satisfaction because she never had an administrative hearing and because the documents concerning the disciplinary action remained in her personnel file.

O'Callaghan testified that she was present during Barr's initial meeting with respondent and that they had not discussed the filing of a lawsuit. According to O'Callaghan, it was not until "late 1996" that respondent and Barr discussed a lawsuit against the County. She stated that both she and Barr questioned respondent "many times" about their fear that "the statutes were going to run out" and that respondent had

replied, "don't worry about it. It's taken care of."

O'Callaghan recalled that, on many occasions, she accompanied Barr for scheduled meetings and that respondent would not be there. At times, they would wait "a couple hours" for respondent, after having taken time off from work, but respondent would not appear. She recalled, however, attending approximately fifteen meetings with Barr and respondent.

Respondent, in turn, testified that he had advised Barr that the lawsuit could not be filed until the administrative action was concluded and that he did not "focus" on the lawsuit until February 1997, after reviewing Barr's personnel file. He did not explain why he had waited eight months to review the file. Respondent admitted that he "was not diligent in terms of filing the suit [after reviewing Barr's file]."

Respondent recalled having informed Barr of the federal suit and, later, of its remand to state court. He admitted that he did not discuss with Barr his consent to dismiss Barr's federal claims. He contended that he did not tell Barr about the motion to dismiss and the appeal because she was in Ireland taking care of her ill mother. He also contended that he did not tell Barr that the appeal had been dismissed because he believed his services had been terminated when she filed her grievance.

As to why he never served discovery requests on defendants, respondent stated as follows:

> I believe we got to the motion of [sic] the summary judgment. The deposition of my client hadn't been taken yet. So we had – she had given me a list at my request that she wanted to depose, it was a rather lengthy

list, and if we went forward and got by the motion, we would have to set up a deposition schedule.

Respondent stated that he did not inform the DEC investigator, during their January 15, 2002 meeting, that the appeal had been dismissed because

> it was a fairly short meeting, because that was the first time [the investigator] indicated to me that [he was] pursuing a suspension and I should get counsel.
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> I mean I've done criminal law so long that maybe my own instincts kicked in and said, 'Okay. If I'm the focus of something now that's that significant, let me keep quiet and let counsel deal with you.'

As to his fee, respondent stated that he charged a $1,500 flat fee for the administrative case. With respect to the lawsuit, he stated that it was a "hybrid agreement," in that Barr "provided some funds for the lawsuit, which she would get reimbursed for if we succeeded, and the balance of it was going to be contingency."

The complaint charged that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b), RPC 3.2, RPC 8.1(b) (inadvertently cited as RPC 8.4(c)) and RPC 8.4(c).

The complaint also charged that respondent's neglect of these matters, combined with his neglect of the matters for which he was admonished in 1999, violated RPC 1.1(b).

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In mitigation, six attorneys who have known respondent for many years testified about his reputation for honesty and professionalism.

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In the Conhaus matter, the DEC found respondent guilty of all of the charges in the complaint, except the charge that respondent was negligent in failing to resolve the June 1998 bench warrant. The DEC found that the warrant had been issued "quite some time" after respondent had ceased his representation of Michael.

With respect to the remaining charges, the DEC found Conhaus to be an "extremely credible" witness. On the other hand, the DEC labeled respondent's testimony that the fee payments were for a motion to be made in the future as "fanciful" and "not at all credible." The DEC also rejected respondent's contention that he had spent hours researching the legal issues. The DEC remarked that the matter was "a simple criminal matter" and that respondent was a very experienced attorney. The DEC noted that respondent had been an attorney for almost thirty years, an assistant prosecutor in Bergen County for nine years, the Bergen County prosecutor for six years and the executive director of the Bergen County Utilities Authority for six years.

The DEC found that, "other than reviewing the prosecutor's file, and perhaps speaking to the prosecutor, respondent did absolutely nothing in this matter" and that respondent spent "a maximum of a few hours" on the Conhaus matter.

With respect to the Barr matter, the DEC found respondent guilty of all of the

charges in the complaint. It was "clear" to the DEC that respondent did not advise Barr of the dismissal and appeal because he wanted "to protect himself from a claim of malpractice."

The DEC rejected as incredible respondent's explanation of why he did not tell the DEC investigator, in January 2002, that the Appellate Division had affirmed the trial court's dismissal of the complaint. It was "inconceivable" to the DEC that an attorney of respondent's "stature" and experience would have been intimidated by the investigator's statements concerning a possible suspension. It was "equally implausible" to the DEC that respondent would have believed that he was not required to disclose the dismissal to the investigator. The DEC found that respondent was charged with knowledge of the disciplinary rules requiring complete disclosure.

Finally, the DEC found that respondent's neglect of these two matters, along with the prior matters for which he received an admonition, constituted a pattern of neglect.

The DEC noted that respondent's misconduct was a "repetition of the same conduct" for which he received an admonition in 1999, that the misconduct caused "serious harm" to two clients and that respondent obtained both clients' monies "without performing the work for which he was hired." The DEC also expressed its concern for the absence of a plausible explanation for respondent's transgressions, his "almost total lack of remorse," his "patronizing" attitude toward Barr, by suggesting that her mother's illness caused the lack of communication, and his "reprehensible tactic of raising the underlying 'wrongs' committed by Barr and Michael Conhaus."

The DEC recommended that respondent be suspended for three months.

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Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

In the Conhaus matter, respondent admitted that he failed to provide Conhaus with any writing setting forth the basis or rate of his fee, in violation of RPC 1.5(b). In addition, there is clear and convincing evidence that respondent failed to return Conhaus' numerous telephone calls and failed to keep scheduled appointments with him, in violation of RPC 1.4(a).[5]

Furthermore, there is clear and convincing evidence that respondent did not explain to Conhaus, until sometime after he was paid additional fees, his plan to delay the motion until Michael had served at least sixteen months in prison. On July 5, 2000, respondent explained to Conhaus that the motion to transfer Michael to a drug rehabilitation program could be made at any time. Apparently, this explanation was in

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[5] Neither the complaint nor the DEC addressed the issue of whether respondent violated RPC 1.8(f) (accepting compensation for representing a client from one other than the client). However, the record is clear that respondent was representing Michael and that Conhaus was paying his attorney's fees. It is also clear that respondent was to communicate with Conhaus, although Conhaus complained that respondent had never visited Michael in jail, after having promised to do so.

response to Conhaus' concern that the motion had to be made within a short period of time. However, there is clear and convincing evidence that respondent led Conhaus to believe that he would file the motion immediately. At their July 2000 meeting, respondent told Conhaus that he "needed more money," which would not have been necessary if he were not going to work on the case for a year. Furthermore, Conhaus' contemporaneous correspondence and actions contradict respondent's testimony. In his August 16, 2000 letter, Conhaus complained that respondent had not taken any action and that he had promised that Michael would be moved from the county jail to the drug rehabilitation program, rather than to state prison. Finally, Conhaus' records show that he telephoned respondent repeatedly until October 2000. If Conhaus had understood, in July 2000, that respondent would not be filing a motion until July 2001, he would not have been calling respondent to find out about the status of the case. Therefore, there is clear and convincing evidence that respondent violated RPC 1.4(b).

There is also clear and convincing evidence that respondent violated RPC 8.4(c) (misrepresentation) by leading Conhaus to believe that he was working on the motion, when he was not. Respondent did almost no work on the Conhaus matter. As found by the DEC, he wrote only one letter before his services were terminated and that letter did not pertain to the motion for which he had been retained. Respondent testified that he also reviewed the court's file on Michael's conviction, spoke with the assistant prosecutor and did some legal research, although he did not produce any evidence of his work. However, it is clear that all of the work had been completed before the July 5,

2000 meeting. If it was respondent's intention to file the motion sometime around July 2001, there was no reason to ask Conhaus for an additional $2,000. The DEC properly rejected as "fanciful" and "not at all credible" respondent's assertion that the additional fee was for the motion to be made in the future. Therefore, we found that respondent also violated RPC 8.4(c).[6]

There is a question of whether respondent exhibited gross neglect and lack of diligence by not filing the motion to transfer Michael to a drug rehabilitation program between March 2000 and April 2001. Respondent explained that he did not file a motion for reconsideration or an appeal of Michael's sentence because he did not believe that he could obtain a better plea agreement or sentence for Michael and because such a motion could expose Michael to a longer prison term. Respondent also explained that he delayed the filing of the motion to transfer Michael to a drug rehabilitation program so that Michael would not have to return to prison after completing the program. There was no evidence contradicting respondent's testimony. Therefore, we dismissed the charges that respondent violated RPC 1.1(a) and RPC 1.3 by not filing a motion for reconsideration before his services were terminated.

The DEC properly dismissed the claim that respondent was guilty of gross neglect for failing to deal with the June 1998 arrest warrant. There is no evidence that respondent represented Michael in June 1998. Furthermore, although Conhaus spoke

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[6] The complaint did not charge respondent with a violation of RPC 1.5(a).

with respondent about the outstanding warrant sometime after March 2000, there is no evidence that respondent had agreed to represent Michael with regard to the warrant problem.

We also dismissed the charge that respondent violated RPC 3.2, which requires that an attorney make reasonable efforts to expedite litigation. Here, there was no litigation to expedite.

In the Barr matter, respondent stipulated – and there is clear and convincing evidence – that he violated RPC 1.1(a), RPC 1.3 RPC 1.4(a), RPC 1.4(b) RPC 1.5(b) and RPC 3.2.

There is a dispute as to when respondent agreed to file the complaint on Barr's behalf. Barr contended that they discussed the possibility of a lawsuit at their initial June 1996 meeting. Her friend, O'Callaghan, believed that it was not until the end of 1996 that a lawsuit had been discussed. Respondent, in turn, testified that it was not until after he reviewed Barr's personnel file in February 1997 that he "focused" on the lawsuit. However, the contemporaneous correspondence between respondent and Barr indicates that they were having such discussions in October 1996. In an October 1, 1996 letter to Barr, which forwarded the County's letter advising that Barr would not be disciplined, respondent told her that they should meet to discuss the "next steps to be taken with regard to your matter." In Barr's November 4, 1996 letter to respondent, she expressed concern about (1) the time limitations for filing the suit and (2) respondent's failure to contact her doctors. In any event, there is clear and convincing evidence that respondent

exhibited gross neglect and lack of diligence in not filing the lawsuit until October 1998. Furthermore, once the lawsuit was filed, he did not make reasonable efforts to expedite it.

Respondent denied, however, that he violated RPC 8.4(c). The complaint charged that respondent's failure to tell Barr about the motion to dismiss, the dismissal and the appeal and his failure to obtain her certification in opposition to the motion were motivated by his concern about a malpractice suit. For his part, respondent contended that he did not want to bother Barr because she was in Ireland caring for her mother. The DEC properly rejected respondent's explanation, in light of Barr's continuing attempts to contact him. We agree. Respondent had an affirmative obligation to advise Barr about the dismissal of her lawsuit. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). Therefore, we found that respondent violated RPC 8.4(c) in the Barr matter.

Respondent also denied that he violated RPC 8.1(b), when he failed to tell the investigator, at their January 15, 2002 meeting, that the Appellate Division had affirmed the trial court's dismissal of the complaint. The DEC rejected respondent's explanation that he had decided to retain counsel after the investigator told him, for the first time, that he would seek to have him suspended, rather than reprimanded. Respondent did not claim that he had forgotten about the decision of the Appellate Division. Rather, he contended that he wanted to consult an attorney. Apparently, the investigator learned of the decision on January 25, 2002, by calling the Appellate Division. Although whether respondent violated RPC 8.1(b) is a close question, we dismissed that charge for lack of

clear and convincing evidence.

We also dismissed the charge that respondent was guilty of a pattern of neglect. In the prior matter for which respondent was admonished, he was found guilty of gross neglect and lack of diligence in one case and of lack of diligence in another. Here, respondent exhibited gross neglect and lack of diligence in the Barr matter only. Generally, we require three instances of gross neglect to find a pattern of neglect.

In summary, respondent was guilty of gross neglect (one count); lack of diligence (one count); failure to communicate with a client (two counts); failure to keep the client reasonably informed about the status of a matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (two counts); failure to communicate, in writing, the basis or rate of the fee, when the lawyer has not regularly represented the client (two counts); failure to expedite litigation (one count); and misrepresentation (two counts).

Discipline for similar misconduct has generally resulted in a reprimand or a three-month suspension. See In re Onorevole, 170 N.J. 64 (2001) (reprimand where the attorney grossly neglected a matter, failed to act with diligence, failed to communicate with his client and made misrepresentations to the client about the status of the matter); In re Cervantes, 118 N.J. 557 (1990) (reprimand where the attorney failed to pursue two workers' compensation matters, exhibited lack of diligence and failed to keep the clients reasonably informed of the status of the matters; in one of the matters, the attorney misrepresented the status of the case); In re Bernstein, 144 N.J. 369 (1996) (three-month

suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentations and failure to cooperate with disciplinary authorities; prior private reprimand for similar misconduct); In re Ortopan, 143 N.J. 586 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentations and failure to cooperate with disciplinary authorities).

In aggravation, we considered the following: (1) respondent's conduct resulted in harm to Barr, in that it caused her to lose her cause of action against the County; (2) respondent took both clients' monies and did not perform the work for which he was retained; (3) as of the date of the DEC hearing, June 2002, respondent had not refunded any of the unearned fees in these matters;[7] (4) as noted by the DEC, respondent showed an "almost total lack of remorse"; and (5) his actions in Conhaus and Barr occurred after he had already been admonished for similar conduct.

In mitigation, respondent offered the testimony of other attorneys, who attested to his honesty and professionalism. Respondent advanced no reasonable explanation for his shabby treatment of his clients.

In light of the foregoing, a five-member majority voted to suspend respondent for six months, while two members voted to suspend him for three months. Two members did not participate. We also determined to require respondent to return $500 to Conhaus, as he agreed to do, within ninety days of the Court's order.

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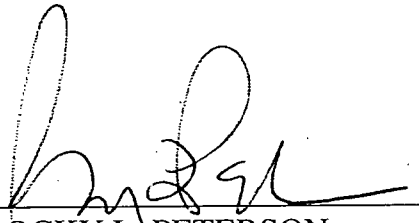
[7] Respondent returned $5,500 of his $6,000 fee to Conhaus in November 2002 and

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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indicated his willingness to return the remaining $500.

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Larry J. McClure
Docket No. DRB 02-337

Argued: November 21, 2002

Decided: February 24, 2003

Disposition: Six-month suspension

Members	*Disbar*	*Six-month Suspension*	*Reprimand*	*Three-month Suspension*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson				X			
Maudsley							X
Boylan				X			
Brody		X					
Lolla		X					
O'Shaughnessy							X
Pashman		X					
Schwartz		X					
Wissinger		X					
Total:		5		2			2

Robyn M. Hill 2/26/03
Robyn M. Hill
Chief Counsel