SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-387
District Docket No. IIA-11-0005E
(formerly IIA-08-0026E) and IIA-10-0004E

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| IN THE MATTER OF | : |
| CLIFFORD B. SINGER | : |
| AN ATTORNEY AT LAW | : |

Decision

Argued: February 16, 2012

Decided: May 1, 2012

Kevin C. Corriston appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky 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 on a recommendation for discipline (reprimand) filed by the District IIA Ethics Committee (DEC), arising out of two matters. The Giger complaint charged respondent with violating RPC 1.1(a) (gross

neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b).[1] The Winters complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), and RPC 8.4 (conduct involving dishonesty, fraud, deceit or misrepresentation).[2]

We agree with the DEC that a reprimand is the appropriate discipline for respondent's conduct in this matter. However, at our April 2010 session, we determined to reprimand respondent for misrepresentation, failure to safeguard client funds, and recordkeeping violations in another matter. In the Matter of Clifford B. Singer, DRB 10-033 (July 1, 2010). That matter is pending with the Court. For reasons more fully discussed below, we determine to amend our decision in that earlier case and to impose a censure for the sum of respondent's violations in both cases.

Respondent was admitted to the New Jersey bar in 1984. He was admitted to the Georgia and District of Columbia bars in 1981 and 1982, respectively.

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[1] The complaint did not cite the applicable subsections of RPC 1.1 and RPC 1.4. The language of the complaint, however, made it clear which sections were at issue.

[2] The language of the complaint, charging the violation of RPC 1.4(a), bears no resemblance to the language of the rule. Rather, the language is a mix of RPC 1.4(b) and RPC 8.4(c).

In September 2009, respondent was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a personal injury matter. In re Singer, 200 N.J. 263 (2009). The Court ordered that, within sixty days of the order, respondent submit proof of his fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics (OAE), submit to the OAE periodic reports of his compliance with his treatment plan until discharged, and practice under the supervision of a proctor for two years. In September 2010, the OAE filed a petition to compel respondent's compliance with the order. That motion is still pending with the Court.

Respondent was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection during several periods of time relevant to these matters. Because the complaint did not charge respondent with practicing while ineligible we did not reach this issue.

## I. The Giger Matter (District Docket No. IIA-11-0005 (formerly IIA-08-0026E[3])

In September 1999, Svea Giger retained respondent to represent her in a personal injury matter arising from an August 1999 automobile accident.[4] Respondent's recollection at the DEC hearing was that he had filed a complaint on Giger's behalf, but had failed to serve it on the defendants.[5] He never told Giger that he had not served the complaint. Rather, he assured Giger, in telephone calls after December 2004, that he was pursuing a settlement on her behalf.

Respondent explained that, because the severity of Giger's injury and the required treatments were unclear, he held off filing the complaint until the issues became clear.

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[3] The grievant did not testify before the DEC. The facts are drawn from the allegations that respondent admitted and from his testimony. They are, thus, somewhat sparse.

[4] The hearing panel report states that respondent "was retained by Ms. Nilsen ("Grievant")." The record has no other reference to an individual named Nilsen. Presumably, Nilsen and Giger are the same person.

[5] In respondent's answer, he admitted that he had not filed a complaint. He testified, however, that his answer was in error.

## I. The Winters Matter (District Docket No. IIA-10-0004E)

In October 2001, Linda Winters retained respondent in connection with a workers' compensation claim that arose in August 2001.

From December 2002 to December 2004, respondent wrote letters pursuing Winters' claim. In addition, at some point after October 7, 2003, the date Winters was cleared to return to work, respondent prepared an employee's claim petition on her behalf. He never filed or served the claim petition, however.

During the course of the representation, Winters made repeated visits and numerous calls to respondent's office. When she called, he was unavailable approximately half of the time and did not return her calls. On those occasions when she was able to speak with him, he advised her that her case was progressing. He led her to believe that he had filed a claim on her behalf.

Winters' husband, Melvin Winters, spoke at least five or six times with respondent. Respondent assured him, too, that "[e]verything was filed" and that the case "was going all right."

Ultimately, in September or October 2009, respondent's telephone message box became full. Winters then went to his

office, only to learn that he had closed the office. After she was unable to contact respondent, she contacted the court and learned that he had not filed a petition on her behalf. The statute of limitations had expired.

For his part, respondent explained that, because Winters' injuries "were ebbing and flowing," he had postponed preparing and filing her petition. On this issue, the following exchange took place between respondent and the presenter:

> Q. You prepared the Complaint -- the petition which we've seen, correct?
>
> A. Yes, I did.
>
> Q. And you've explained that the reason you didn't file it was because her treatment was continuing or there were issues with regard to her treatment and her diagnosis. Are you telling us that you neglected to file the claim within the statute because it just -- it got past you on a calendar basis or are you telling us that you neglected to file it because psychologically you were overwhelmed and just couldn't deal with it?
>
> A. I think it was really the latter. I think it was really the latter.
>
> Q. Okay. So at some point in time you certainly knew that you had blown the statute so to speak with regard to Miss Winters' case so to speak.
>
> A. That's correct.

Q. And at that point in time you felt in your mind that you'd be able to somehow compensate her in that regard, correct?

A. Yes, sir, I thought I would.

[T42-19 to T43-17.][6]

A similar exchange took place between respondent and his counsel:

Q. Cliff, I wanted to talk about this -- you talked about this paralysis of getting stuff done and we heard testimony from the Winters about assurances or things you said to them and I believe there is [sic] allegations as well in the Giger case. Can you tell the panel about that issue in terms of assuring people that, you know, you're working on it, you'll get it resolved, you will do what needs to be done and how that comes about for you and did come about in these cases?

A. Many of the assurances would have -- the earlier assurances in each of these cases would have been valid assurances in that there was nothing that had passed that could not be completed, fixed, resolved. Once there came a point at which I became convinced that I had made through an action a mistake that was irretrievable in the matter of the case, I had resolved in my own mind that I would find a way to resolve the matter and compensate the client and honestly believe that that is how I would resolve it. That became more an illusion as

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[6] T refers to the transcript of the DEC hearing.

> my practice went from being somewhat profitable to not at all.
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> [T39-22-T40-21.]

Respondent admitted much of his misconduct in these matters. He explained that he suffers from depression, for which he first sought treatment in 1993. He takes medication, participates in group sessions with the Lawyer's Assistance Program and, as of the date of the DEC hearing, was seeking private counseling. He also has limited his practice. He does not represent clients in personal injury cases.

In addition to respondent's psychological difficulties, in 1994, he was involved in a motor vehicle accident that resulted in serious injuries and led to recurring physical difficulties. Moreover, his wife and children also have medical issues. His oldest son has cerebral palsy and his younger son has Asperger's syndrome.

The record contains a psychiatric report on respondent, prepared by Robert T. Latimer, M.D., P.A., dated October 27, 2008. Dr. Latimer confirmed that respondent suffers from Major Depressive Disorder. He attributed respondent's derelictions in handling his clients' matters to his psychological condition:

> [Respondent] violated the Canon of ethics by virtue of his pathological procrastination

> and his inability to communicate the situation to his client. However, in the opinion of this Examiner, the patient did not have a conscious desire to lie or misrepresent but rather a desire to rid himself of unbearable anxiety. It was not his conscious object to deceive or to harm the client. It is my opinion that at the time that he lied to his client, he was not aware of the circumstances and the consequences of such acts inasmuch as they would be hurtful to his client and demeaning to his profession. It is my opinion that he was no [sic] aware that his conduct would result in harm to anyone.
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> [Ex.R-2 at 5.]

Dr. Latimer's report is the same one that was submitted during respondent's first disciplinary proceeding, which addressed misconduct from late 2002 or 2003 through 2006. In the Matter of Clifford B. Singer, DRB 09-021 (July 8, 2009) (slip op. at 2 to 3). We again considered that opinion, one year later, in respondent's second appearance before us. In the Matter of Clifford Singer, DRB 10-033 (July 1, 2010). The period at issue in DRB 10-033 was roughly from 1998 to 2006. In the matter now before us, Giger and Winters retained respondent in 1999 and 2001, respectively. In neither case does it appear that respondent's services were formally terminated. It is likely that the representation ended when the clients filed their grievances, October 2008 and December 2009, respectively.

Thus, Dr. Latimer's analysis would apply in this disciplinary case as well.[7]

In his brief to us, respondent's counsel noted that respondent acknowledged his wrongdoing and the seriousness of the infractions, is remorseful, and cooperated with the DEC. Counsel noted the mitigating factors, including respondent's injuries arising from the 1994 car accident, his wife's medical issues and those of his sons, the resulting financial strain, his psychological issues, for which he takes medication and attends LAP meetings, and the fact that he suffers from diabetes. Counsel also noted that respondent did not profit from his actions. Counsel reiterated that respondent has limited his practice and that, to generate income, he works in a school, assisting children with special needs. Counsel requested that we impose a reprimand and continue respondent's proctorship for two years.

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[7] Due to financial constraints, respondent was unable to have Dr. Latimer appear before the DEC or, presumably, to prepare a more recent report.

The DEC concluded that, in both matters, respondent violated RPC 1.1, RPC 1.3, and RPC 1.4.[8] The DEC also concluded that respondent violated RPC 8.4(c) by misrepresenting the status of the matter to Winters.[9]

In mitigation, the DEC considered that respondent sought psychological counseling and noted Dr. Latimer's report. The DEC also considered respondent's family issues. The hearing panel report alluded to aggravating factors, but did not identify them.

The DEC recommended that respondent receive a reprimand. The DEC also recommended that he practice under the supervision of a proctor for at least two years, provide proof of his fitness to practice law, submit periodic reports to the OAE of his compliance with his treatment plan, until discharged,

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[8] The hearing panel report refers to violations of RPC 1.1 and RPC 1.3 in connection with "the claims of Complainant Kulesza." It is unclear to whom the panel is referring. In addition, there is some confusion in the panel report as to the subsections of the rules found to have been violated. The only rules properly charged, and found to have been violated, were RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c).

[9] The hearing panel report states: "Respondent never notified Grievant that he failed to file a worker's [sic] compensation petition and therefore at some point, representations by Respondent to Grievant became knowing representing."

complete CLE classes on law practice management and ethics, and be subject to "[s]uch other conditions as may be deemed appropriate in light of the circumstances presented."

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence. The record supports a finding that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Giger and Winters and RPC 8.4(c) in Winters.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (admonition for attorney who, after receiving $10,000 for his services, was unable to demonstrate what work he had done on his client's behalf, failed to communicate with his client, and failed to reply to the disciplinary investigator's requests for information about the grievance); In the Matter of Ronald M. Thompson, DRB 10-148 (June 23, 2010) (attorney's inaction led to the dismissal of his

minor client's complaint and the denial of his motion to restore; when the client turned eighteen, the attorney did not file a new lawsuit and the statute of limitations expired two years later; he also failed to keep the client's parents informed of the status of the matter, including that the case had been dismissed and that another lawsuit could be filed upon the child's eighteenth birthday; mitigation included the twelve-year passage of time since the attorney's previous admonition and the absence of other aggravating factors); In the Matter of Daniel G. Larkins, DRB 09-155 (October 8, 2009) (attorney's gross neglect and lack of diligence resulted in the dismissal of his client's personal injury complaint and his failure to seek its reinstatement; the attorney also lost touch with his client and failed to turn over the file to his client because it was "lost for a time"; mitigating factors included personal problems at the time of the representation and the attorney's lack of disciplinary history since his 1983 admission to the bar); In the Matter of Peggy O'Dowd, DRB 09-027 (June 3, 2009) (attorney did not adequately communicate with the client in three client matters; in one matter, she did not complete the administration of the estate; in a real estate matter, she failed to timely pay the condominium management company, to timely file certain

documents, and to provide copies of such documents to her client; in mitigation, we considered her personal circumstances at the time of the misconduct, the fact that she ultimately completed the work for which she had been retained, the lack of permanent harm to her clients, and her recognition that she had to close her law practice and seek help from another law firm); In re Carmen, 201 N.J. 141 (2010) (reprimand for attorney who, for a period of two years, failed to communicate with the clients in a breach-of-contract action and failed to diligently pursue it; aggravating factors were the attorney's failure to withdraw from the representation when his physical condition materially impaired his ability to properly represent the clients and a prior private reprimand for conflict of interest); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney found guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Oxfeld, 184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with the client in a

pension plan matter; two prior admonitions); and In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension).

Considering that two client matters are at issue here, that respondent's gross neglect, lack of diligence and failure to communicate resulted in the clients' claims being time-barred, and that the misconduct continued for a substantial length of time, a reprimand is the more appropriate level of discipline for respondent's infractions.

There is, however, another rule violation to consider. Respondent led Winters to believe that her case was proceeding apace, when he knew that it was not. When an attorney falsely represents to a client that the case is proceeding smoothly, public confidence in the bar is undermined. In re Cohen, 120 N.J. 304, 306 (1990). Clients must not suffer the consequences of being told their case [is] under control when it [is] not." In re Goldstein, 97 N.J. 545, 549 (1984). Such misrepresentation by an attorney is intolerable. "Truthfulness and professionalism are paramount in an attorney's relationship with the client." In re Kasdan, 115 N.J. 472, 488 (1989).

Respondent testified that, once a case was "irretrievable" he "resolved in his own mind that [he] would find a way to resolve the matter and compensate the client." The analysis to be applied here is the same as that applied in respondent's last two appearances before us. In our decision in DRB 10-033 we stated:

> Indeed, our analysis of respondent's actions in the L'Ecuyer matter is identical to our analysis of respondent's actions in the matter that resulted in his earlier reprimand. Specifically, in that matter, we wrote:
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> > The only questionable charge is the alleged violation of RPC 8.4(c). Respondent was charged with misrepresenting the status of the personal injury case to Ash and her parents by telling them that he was working on it. Respondent testified that, during the time that he represented Ash, he was thinking about the matter; therefore, in his mind, he was pursuing the case.
> >
> > Recently, we considered a similar matter, In the Matter of David G. Uffelman, DRB 08-355, where the attorney advised his client that he was working on a motion in a litigated matter and never filed the motion. Uffelman suffered from extreme depression. We concluded that, at the time that Uffelman said he would file the motion, he was intending to do so. In our view, if an attorney makes a statement believing it to

> be true at the time that the attorney makes it, that statement does not amount to a misrepresentation. In Uffelman, we did not find a violation of RPC 8.4(c).
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> The difference between Uffelman and this case is the length of time that respondent represented that work was being done. In Uffelman, for two months the attorney told the client that he was working on a motion. Here, respondent stated that he was working on the case, periodically, for at least four years. At some point, he knew that he was no longer pursuing the case, regardless of how much he thought about it. Indeed, respondent's testimony that he had thought of saving his own money to pay Ash shows that he knew that he would not be reinstating the complaint. In light of respondent's recognition of his own dereliction, his telling his client and her family that he was working on the case was a misrepresentation and, therefore, a violation of RPC 8.4(c).
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> In re Singer, DRB 09-021 (July 8, 2009) (slip op. at 8-9).

In the matter before us, respondent was "working on settling" the case from its dismissal, in 2002, presumably until L'Ecuyer filed the grievance against him, in 2006. At some point, he had to come to the realization that he was no longer going to restore the case. Moreover, his argument that he was planning to make L'Ecuyer whole

> also loses steam when it is considered that so many years had passed. Indeed, his recognition that he might be responsible for making L'Ecuyer whole evidences that he considered the matter finished and beyond restoration. We find, thus, that he violated RPC 8.4(c) by misrepresenting to L'Ecuyer that he was "working on settling," when he had to know that he was not. Thinking about how to pay off one's client for one's dereliction cannot be described as working on settling the case.
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> [In the Matter of Clifford B. Singer, DRB 10-033 (July 1, 2010)(slip op. at 12-13)]

Here, too, after the passage of so many years, respondent could not have reasonably believed that he was "working on" Winters' case. Winters retained respondent in 2001. From 2004 until 2009, he took no action on her behalf. After five years, respondent had to know that he was no longer pursuing her claim. Similarly, respondent allowed Giger to believe that her case was proceeding apace, when he knew it was not. Although respondent was not charged with violating RPC 8.4(c) in the Winters matter, we consider his conduct there to be an aggravating factor.

"[I]ntentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, supra, 115 N.J. at 488. See, e.g., In re Weiworka, 179 N.J. 225 (2004) (reprimand for attorney who took no action on the client's behalf, did not inform the client about the status of the matter and the

expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (reprimand for attorney who grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case); In re Till, 167 N.J. 276 (2001) (reprimand for attorney who engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case); and In re Riva, 157 N.J. 34 (1999) (reprimand for attorney who grossly neglected a matter, thereby causing a default judgment to be entered against the clients, failed to take steps to have the default vacated, and misrepresented the status of the case to the clients).

Although two client matters are at issue here, and even considering respondent's misrepresentations to his clients, we believe that for the sum of respondent's misconduct a reprimand is still the appropriate measure of discipline. This is so because of the numerous mitigating factors cited by respondent's counsel, including respondent's serious psychological difficulties, his and his family's medical issues, and his voluntary restrictions on his practice.

As previously indicated, our decision in an earlier matter involving this respondent (where we also imposed a reprimand, DRB 10-033) is currently pending with the Court. Had we heard that matter and this matter together, a censure would have been imposed for the totality of respondent's infractions. Respondent's representation in the two matters at issue here took place from 1999-2009. The misconduct in respondent's earlier matter (misrepresentation to a client in a personal injury case) took place in roughly 1998 through 2006.[10] The same mitigating factors were at play there.

By way of this decision, we ask that the Court consider our decision in DRB 10-033 amended to combine the misconduct at issue in that matter with the misconduct in this matter, for the purpose of imposing a single form of discipline, a censure. See, e.g., In re Squitieri, 204 N.J. 219 (2010) (censure for attorney found guilty of gross neglect, lack of diligence, and failure to communicate with clients in four personal injury

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[10] In that matter, respondent was also guilty of recordkeeping violations that led to a single instance of negligent misappropriation, when he failed to record a check in a real estate transaction and, as a result over disbursed funds to his client. That violation does not mandate an increase in the discipline for the other violations at issue here.

matters, as well as failure to promptly remit a portion of a fee to another attorney for a period of six years; no disciplinary history).

In addition, respondent should be required to practice under the supervision of a proctor for an indefinite period.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Vice- Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Clifford B. Singer
Docket No. DRB 11-387

Argued: February 16, 2012

Decided: May 1, 2012

Disposition: Censure

| ***Members*** | Disbar | Suspension | Censure | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Pashman | | | | | | X |
| Frost | | | X | | | |
| Baugh | | | X | | | |
| Clark | | | X | | | |
| Doremus | | | X | | | |
| Gallipoli | | | X | | | |
| Wissinger | | | X | | | |
| Yamner | | | X | | | |
| Zmirich | | | X | | | |
| Total: | | | 8 | | | 1 |

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel