SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-294

IN THE MATTER OF

STEPHEN M. HILTEBRAND

AN ATTORNEY AT LAW

Decision

Argued: November 15, 2001

Decided: March 8, 2002

Alan J. Cohen appeared on behalf of the District I Ethics Committee.

Respondent appeared pro se.

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 I Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.4(b) (failure to explain status of matter to extent reasonably necessary to permit client to make informed decision about the

representation); RPC 1.5(b) (failure to provide a written fee agreement), RPC 3.2 (failure to expedite litigation), RPC 3.4(c) (disobeying an obligation under the rules of a tribunal), RPC 3.4(d) (failure to make reasonably diligent efforts to comply with legally proper discovery requests by opposing party) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count one); RPC 1.16(a)(2) (physical or mental condition materially impairing the lawyer's ability to represent client) (count two); and RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) and RPC 8.4(c) (count three).

Respondent was admitted to the New Jersey bar in 1978. He maintains a law practice in Voorhees, New Jersey. In 1984 he received a private reprimand for improperly acknowledging the signature of a client. In the Matter of Stephen M. Hiltebrand, DRB Docket No. 83-317 (December 26, 1984).

At the DEC hearing, respondent agreed to stipulate the charges contained in the complaint (Exhibit J-1). He testified only about mitigating circumstances.

The stipulation merely states that respondent stipulated the case-in-chief in counts one, two and three of the complaint. The stipulation was signed only by the presenter, who recommended the imposition of a reprimand.

In March 1995, respondent was retained to represent Joseph Folcher and Nicholas Perazza in a lawsuit filed against them by Data Systems Analysts, Inc. ("Data Systems"). The suit claimed that Folcher and Perazza, previous employees of Data Systems, had stolen trade secrets and proprietary business software information and had set up a

competitor business with those assets. The complaint sought compensatory and punitive damages.

Respondent did not provide his clients with a written fee agreement. However, he had previously represented Perazza in several personal matters. According to respondent, Folcher and Perazza initially paid him $1,500 and later gave him an additional $3,000 fee.

As noted by the DEC, over the next three years respondent represented Folcher and Perazza with a diminishing amount of attention to the file. On March 17, 1995 he requested a thirty-day extension to file an answer, which was granted. The answer was filed on July 25, 1995, three months past the extended deadline. Thereafter, respondent failed to oppose Data Systems' February 7, 1996 motion for the production of documents. He was, therefore, ordered to produce outstanding discovery by March 24, 1996. Although he received the order on March 6, 1996, he did not tell his clients about it or comply with its directives. Data Systems then filed a motion to strike Folcher's and Perazza's answer. Respondent filed late opposition papers, the day before the return date of the motion, and admitted that he "allowed the motion to lay around." On March 13, 1996, the court entered an order striking the answer.

Thereafter, respondent did not comply with discovery requests and did not produce his clients for depositions. He also failed to attend depositions of three fact witnesses, telling his clients that he could not ask any questions at the deposition conducted by Data Systems.

Respondent also failed to comply with a subpoena duces tecum and three subsequent requests to comply with the subpoena. Again, respondent did not inform his clients about them. Ultimately, Data Systems filed a motion to compel respondent to comply with the subpoena. The motion was granted on October 10, 1999. When respondent did not comply with that order, Data Systems filed a motion in aid of litigant's rights, which respondent did not oppose. The motion was granted on January 9, 1998. Respondent did not inform his clients about the order or comply with it. Data Systems, thus, moved to have Folcher's and Perazza's answer stricken. The motion was granted on February 6, 1998. Once again, respondent did not advise his clients about this development.

On June 18, 1998, respondent learned that a default order had been entered against his clients on April 13, 1998 and that a proof hearing was scheduled for August 1998. Respondent met with his clients and informed them that the problems in the case were caused by a former associate's inaction. That claim was untrue.

Thereafter, respondent misrepresented the status of the case to his clients and informed them that he would file a summary judgment motion. Respondent also told his clients that the case had been closed and that he would have the matter reinstated. During a meeting with his clients, respondent had them sign their names to blank signature pages to be attached to affidavits to be prepared and submitted in support of his motion to reinstate the matter. As seen below, the signatures were used to prepare improper affidavits, of which his clients were unaware.

Respondent also failed to disclose to his clients that a default had been entered against them and that a proof hearing had been scheduled. Two days before the proof hearing, he filed a motion to vacate the order striking his clients' answer. On the eve of the scheduled proof hearing, respondent asked Data Systems for an adjournment to allow him to file a verified complaint and order to show cause to prevent Data Systems from proceeding. Data Systems denied the request. Thereafter, respondent took no further action in the case.

On the day of the proof hearing, respondent appeared in court to request that Data Systems refrain from executing on any judgment, until his motion to vacate the order striking the answer was heard. Respondent did not appear in opposition to the proof hearing, however. Accordingly, the matter proceeded unopposed. A judgment for $792,878.80 (with prejudgment interest of $169,359.96) was entered against respondent's clients on August 13, 1998. Respondent also failed to disclose this important development to his clients. On September 11, 1998, respondent's motion to vacate the order striking his answer was heard and denied. Respondent filed an appeal on October 23, 1998.

On November 10, 1998, before the appeal was heard, respondent was served with Data Systems' writ of execution, but did not inform his clients of its existence. On November 24, 1998 the Appellate Division notified respondent that he had not filed the case information statement with his appeal and had ten days to submit it. Respondent did not do so until thirteen days after the deadline.

On December 1, 1998, respondent moved to vacate the judgment against his clients, using the improperly prepared affidavits, containing the presigned pages. The affidavits were prepared and submitted without his clients' knowledge.

Thereafter, respondent wrote to the Data Systems on December 2, 1998, assuring it that his clients would not dissipate any assets, other than their weekly paychecks for daily living. That assurance was made without his clients' knowledge. As of that date, respondent had not advised his clients about the judgment or its pending execution.

Respondent's appeal was ultimately dismissed for lack of prosecution in August 1999, as he had failed to supply a transcript and brief to the court. By March 11, 1999, Folcher and Perazza had terminated respondent's representation and retained new counsel.

The complaint charged that, for more than five years, respondent (1) failed to diligently defend his clients and grossly neglected their case by failing to oppose motions, failing to comply with court orders and failing to file and perfect two appeals; (2) ignored correspondence from adversaries; (3) failed to communicate with his clients about the status of the case; (4) missed discovery deadlines; (5) failed to appear at deposition hearings; (6) ignored court orders; (7) failed to advise his clients of numerous important developments in their case; (8) misrepresented the status of the case to his clients in order to conceal his misconduct; and (9) misrepresented facts to his adversaries and the court.

When respondent replied to the ethics grievance, he admitted that his clients' case suffered because of his alleged personal problems.

Finally, the complaint stated that, in response to the grievance, respondent claimed that he had notified his clients of the judgment, but not of its amount. That statement was untrue. Respondent had not informed his clients about the judgment. Moreover, in a supplemental response to the grievance, respondent claimed that he had not appeared at the depositions of three fact witnesses because his clients had agreed that he should not appear, in order to save legal fees. That statement was also untrue.

Respondent admitted the following violations: RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 3.2 (failure to expedite litigation); RPC 1.5(b) (failure to provide clients with a written retainer agreement), RPC 1.4(a) (failure to keep clients informed about the status of their matter), RPC 1.4(b) (failure to explain the status of the matter to the extent reasonably necessary for the clients to make informed decisions about the representations), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 3.4(d) (failure to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party in pretrial proceedings), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC1.16(a)(2) (failure to withdraw from the case when his mental condition impaired his ability to represent his clients) and RPC 8.1(a) and RPC 8.4(c) (misrepresentations in his reply to the grievance).

In mitigation, respondent claimed that he was suffering from a series of personal crises, during the time he was representing Folcher and Perazza. According to respondent, in 1995 and 1996 his father was admitted to the hospital for follow-up care to bypass surgery. During that period, he was told that his father had inoperable lung

cancer. Respondent located a physician, who successfully operated on his father. Thereafter, his father suffered complications and became extremely depressed. Respondent's father was hospitalized again in October 1998, where he remained until his death in March 1999.

In addition, respondent's son-in-law became ill and was diagnosed with a rare form of incurable cancer. Respondent's son-in-law died, leaving respondent's daughter a widow at the age of twenty-six, with a baby to raise. She was unable to cope with the situation, leaving respondent and his wife in charge of the baby. His daughter remained in her own home.

Respondent admitted that, during the course of the case, he was not "thinking straight" and did not inform his clients about its developments. Respondent stated that, at one point, he panicked over the case and knew that he was "up against the wall." Eventually, respondent received a call from his clients' new attorney and he willingly turned over the file. Respondent stated that he will never again take on a "big case" of this nature.

According to respondent, he normally concentrates in the areas of family law, criminal law, personal injury litigation, general civil litigation and municipal court matters. This case was a deviation from his usual practice. Respondent admitted that, at some point, he became uncomfortable with the case and was not paying enough attention to it.

Respondent also testified that, as of the date of the DEC hearing, his mother was seriously ill. In response to the DEC's concerns that he might go through a similar

emotional experience with his mother's illness, respondent stated that he had "back-up," if he needed help with his cases. He also agreed to have his attorney act as his proctor.

* * *

The DEC found clear and convincing evidence of all of the violations set forth in the complaint: RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b), RPC 3.2, RPC 3.4(c), RPC 3.4(d), RPC 8.4(c), RPC 1.16(a)(2), RPC 8.1(a) and RPC 8.1(b). The DEC determined that respondent's conduct was extremely serious, even though it was confined to one client matter. It stated that there was a "cascade of infractions," including conscious misrepresentations, not just innocent omissions. After weighing respondent's misconduct against his family crises, the DEC recommended a reprimand. Because of the potential crisis looming in respondent's future, due to his mother's health, the DEC also recommended a proctor for a six-month period.

* * *

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

By way of stipulation, respondent admitted the allegations of the complaint. The only issue for resolution is the quantum of discipline.

The presenter and the DEC recommend the imposition of a reprimand, relying on the following cases: In re Devlin, 144 N.J. 476 (1996) (reprimand for gross neglect, lack of diligence, failure to provide written fee agreement, failure to expedite litigation, failure to cooperate with disciplinary authorities and conduct involving dishonesty, fraud, deceit or misrepresentation); In re Sternstein, 143 N.J. 128 (1996) (reprimand for lack of diligence, failure to communicate with client, failure to expedite litigation and failure to cooperate with disciplinary authorities); In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate with client); In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, lack of diligence, failure to communicate with client and failure to return file to client); In re Weber, 138 N.J. 35 (1994) (reprimand for failure to explain a matter to the extent reasonably necessary to permit client to make informed decision about the representation and conduct involving dishonesty, fraud, deceit and misrepresentation); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect, lack of diligence and failure to communicate with client) and In re Paul, 137 N.J. 103 (1994) (reprimand for gross neglect, lack of diligence and conduct involving fraud, deceit or misrepresentation).

The DEC distinguished this case from In re Trueger, 140 N.J. 103 (1995), where a one-year suspension was imposed. In Trueger, there were three separate client matters involved, no mitigating factors were present and the attorney cooperated with the DEC investigation only after the Office of Attorney Ethics ("OAE") moved for his temporary suspension. In addition, Trueger had twice before been the subject of discipline for virtually identical misconduct.

We have carefully considered the following aggravating and mitigating factors: Respondent was privately reprimanded in 1994. He undertook to represent clients in a matter for which he clearly lacked expertise, became overwhelmed and did not give the matter the proper attention it deserved. During the relevant period, he experienced serious personal problems, including the illness and eventual death of his father, the death of his son-in-law and his daughter's inability to cope with her own grief.

In determining whether to impose a reprimand or to suspend respondent for his multiple violations, we relied on In re Riva, 157 N.J. 34 (1994). There, the attorney was hired to represent an employer, husband and wife, in connection with an employment dispute with an employee. The attorney failed to take appropriate action in the matter, believing that the case would just "go away." Eventually, a default judgment of $1.7 million was entered against his clients. The attorney did not inform his clients. Thereafter the clients' business assets – trucks, tools and bank accounts – were seized. The client's personal assets were jeopardized too. The attorney assured his clients that he would have their assets returned. He, however, was able to obtain the release of only some of the company's assets. From September through December 1993, the attorney misrepresented to his clients that he was working on their case. The Court determined that Riva's conduct was an isolated instance of aberrant behavior, unlikely to be repeated. The Court found that Riva had engaged in gross neglect, lack of diligence and misrepresentations about his efforts to vacate the default judgment. The Court also considered that only one client matter was involved. The Court concluded that a reprimand was sufficient discipline for Riva's ethics transgressions.

Here, as in Riva, respondent's conduct involved only one client matter. Like Riva, respondent misled his clients that he was working on their case. While he did some work in their matter, he admitted that he did not give it the attention it deserved. He exhibited gross neglect and lack of diligence, in addition to other improper conduct. Furthermore, he neglected to inform his clients about critical developments, such as the entry of a substantial judgment against them. Respondent also inappropriately submitted to the court affidavits that contained signature pages, previously obtained from his clients. And he did so without his clients' knowledge of the purpose of the affidavits.

Based on the above compelling mitigating factors — which were absent in Riva — respondent's contrition and the fact that only one client matter was involved, we unanimously determined that here, too, a reprimand adequately addresses the extent of respondent's ethics offenses. One member did not participate.

We also determined to require respondent to practice law under the supervision of a proctor approved by the Office of Attorney Ethics, for a one-year period.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

## *SUPREME COURT OF NEW JERSEY*
## *DISCIPLINARY REVIEW BOARD*
## *VOTING RECORD*

In the Matter of Stephen M. Hiltebrand
Docket No. DRB 01-294

Argued: November 15, 2001

Decided: March 8, 2002

Disposition: Reprimand

| *Members* | *Disbar* | *Suspension* | *Reprimand* | *Admonition* | *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:*** | | | 8 | | | | 1 |

Robyn M. Hill 3/21/02
Robyn M. Hill
Chief Counsel