

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-084
District Docket No. VA-2009-0025E

IN THE MATTER OF
HERBERT JONI TAN
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: June 16, 2011

Decided: September 7, 2011

Susan S. Singer appeared on behalf of the District VA Ethics Committee.

Respondent appeared pro se.

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

This matter came before us on a recommendation for a three-month suspension filed by the District VA Ethics Committee (DEC). A six-count complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to comply with reasonable requests for

information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation . . . such as surrendering papers or property to which the client is entitled), RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons expressed below, we determine that a censure is the appropriate discipline in this matter.

Respondent was admitted to the New Jersey bar in 1998. He maintains a law office in Newark, New Jersey.

On October 17, 2006, respondent received a reprimand for violating RPC 8.1(a) (knowingly making a false statement of fact in connection with a bar admission application) and RPC 8.4(c) for falsely stating, on his bar application, that he had earned a bachelor's degree, when he was one course shy of that degree. In determining that a reprimand was sufficient discipline, we considered that respondent and his fiancée were facing health problems at the time, that he twice attempted to rectify the problem -- although he failed to follow through for fear of discovery -- that his misrepresentations were the result of poor

judgment and inexperience, and that the offense had occurred more than eight years earlier. In re Tan, 188 N.J. 389 (2006).

Respondent received another reprimand, in 2010, for misconduct in two client matters. Specifically, he failed to fully cooperate with ethics authorities in both matters and, in one of the matters, lacked diligence and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation. In re Tan, 202 N.J. 3 (2010).

Because respondent proceeded pro se in this matter, the hearing panel relied on his opening statement, but gave him the opportunity to make an additional statement for his case-in-chief. Respondent did not avail himself of that opportunity, but was questioned under oath, and filed a post-hearing submission.

Grievant Shirley Howard, who was almost seventy-four at the time of the DEC hearing, had only a ninth grade education. She had retained respondent in 2004, in connection with a personal injury matter (motor vehicle accident) that was settled in October 2006. Howard's grievance against respondent arises from his handling of her July 2005 slip-and-fall accident at the Crowne Plaza Hotel, where she worked as a maid. Howard received treatment for her injuries, but asserted that she was unable to return to work because of the pain that she continued to

experience, while attempting to perform her duties. She, therefore, met with respondent, in February 2006, to discuss a workers' compensation claim against her employer. Her daughter, Cynthia Howard, was present at that meeting and was involved in most of the communications in her mother's behalf.

Howard had a very close relationship with Cynthia, who helped her with day-to-day chores. They spoke daily, sometimes three or four times a day. Among other things, Cynthia accompanied her mother to doctor visits and shopping trips, helped her clean her residence, and wrote checks to pay her mother's bills.

Howard testified that her son and Cynthia had convinced her to file the grievance against respondent. In fact, it was Cynthia who prepared the grievance and signed Howard's name to it. It was not until the November 15, 2010 DEC hearing that Cynthia learned that her mother would not receive any compensation from having filed the grievance.

Of significance was Cynthia's testimony that she had been unaware that her mother had previously received a settlement check from a prior motor vehicle accident case, also handled by respondent. Cynthia stated that her mother "was sneaky about it sometimes because she knew [Cynthia] was going to ask her for some of it."

According to Cynthia, during their February 28, 2006 meeting with respondent, Howard signed a paper, which Cynthia believed, stated that respondent was going to handle Howard's workers' compensation case. In fact, the document was a workers' compensation petition containing Howard's signature and respondent's acknowledgment of Howard's signature. Howard did not execute a retainer agreement in connection with a workers' compensation claim, as she had done with the motor vehicle case.

Respondent maintained that he never agreed to pursue a workers' compensation claim on Howard's behalf because it was not his area of expertise. He never practiced before the workers' compensation court and referred workers' compensation matters to other attorneys. He claimed that he had so informed Howard and that he had referred her case to attorney Gary Abasolo. Respondent also claimed that Howard's injuries from the slip-and-fall at the hotel were too similar to those sustained in her car accident and, therefore, it would have been unethical to pursue a workers' compensation claim that, in essence, would have amounted to "double dipping." According to respondent, Cynthia "bullied" his office into assisting her to "put a workers' compensation claim together," which he then filed on Howard's behalf.

Cynthia, in turn, testified that respondent never informed her and her mother that he did not handle workers' compensation cases or that he did not want to handle Howard's case and mentioned nothing to them about the similarity of Howard's injuries in both of her accidents.

Respondent maintained that both he and his assistant, Donna Leszewski, had directly informed the Howards that he would withdraw Howard's case without prejudice and send her file to another attorney. He did not specify when these conversations took place but presumably, as seen below, they took place after a workers' compensation hearing was scheduled on her claim. Howard disputed respondent's contention that he had told her that he would withdraw her workers' compensation claim.

Presumably sometime prior to August 2, 2006, respondent received a notice of a hearing in Howard's workers' compensation case. The record does not reveal the date of the notice. He did not appear at the hearing and claimed that he had already transferred the file to another attorney. He stated that, when he received the notice of hearing, he had no idea what it was for and, at that point, he

certainly didn't want to step into a court that, number one, I had no idea on how to handle it so our office notified Miss Howard that we were not going to handle the case for her and we told her that we were going to withdraw the claim without prejudice meaning

that she could certainly, you know file it on her own.

[T15-6 to 13.]¹

By letter dated August 2, 2006, to the workers' compensation judge, respondent asked to withdraw Howard's case without prejudice "on the basis that we will be filing an LAD claim [New Jersey Law Against Discrimination] on her behalf." No one was copied on that letter. Howard stated that she never told respondent that she wanted to sue the hotel for discrimination. Notwithstanding respondent's alleged reason to the judge for withdrawing the case, at the DEC hearing, he admitted that he knew that an LAD claim did not preclude the filing of other claims.

On August 3, 2006, Howard's case was dismissed. The reason stated for the dismissal was "petitioner attorney withdrew claim petition by way of letter dated 8/2/2006." Respondent did not file a substitution of attorney form or file a motion to be relieved as counsel. Also, he did not inform the Howards that the case had been dismissed.

In September 2006, at her mother's request, Cynthia telephoned respondent to inquire about the status of her workers' compensation case. Respondent told Cynthia that he had

¹ T refers to the transcript of the November 15, 2010 DEC hearing.

turned the case over to Gary Abasolo. Afterwards, Cynthia telephoned Abasolo on two occasions. Each time, he denied knowledge of the case and told her that he would call respondent about it. Cynthia further claimed that, between September 2006 and January 2009, she had spoken to Abasolo "plenty" of times. Howard, too, recalled having had a telephone conversation with Abasolo. He had telephoned her and informed her that respondent was giving him her case and that he would contact her, but he never did. The record does not reveal when this conversation took place.

Abasolo testified that respondent referred cases to him and that respondent had contacted him about Howard's matter. He denied that respondent's office had sent him any documents pertaining to Howard's workers' compensation claim, however, and could not locate any of Howard's documents with the miscellaneous documents he maintained.

According to Abasolo, it was either late 2007 or early 2008 that he had an initial telephone consultation with Howard. Thereafter, he concluded that he would not be able to represent her. Although he could not recall why he had declined the case, he speculated that he may have had reservations about whether she had been injured, whether it was a compensable workers' compensation injury, or whether there had even been an accident. At the time, he was not aware of Howard's prior motor vehicle accident.

Abasolo recalled that, approximately seven to nine months after their initial conversation, Howard or, possibly, Cynthia had called him as if he were representing her. He told her that he was not her attorney, that she was under the "mistaken belief" that he was her attorney, and that he had never agreed to represent her. Because Abasolo did not have Howard's contact information, he never notified her, in writing, that he was declining the representation.

Even though Howard alleged that she continued to experience pain from her accident, she did not try to pursue her claim with the help of another attorney because, Cynthia claimed, they assumed that they were barred by the passage of time.

Cynthia stated that, in 2009, she requested a copy of her mother's file from respondent. He informed her that the file might be in storage, but never forwarded a copy to her. Subsequently, Cynthia contacted Crowne Plaza's workers' compensation insurer for information and learned that her mother's case had been dismissed without prejudice and that there had been no further action on it.

After the filing of the grievance, respondent allegedly did not provide the supplemental information that the DEC had requested in an October 2009 letter. The DEC, therefore, subpoenaed the workers' compensation court's file in the matter.

Following the DEC's review of the court's file, it determined that respondent's reply to the grievance contained "knowingly false statements of facts material to the investigation of the [workers' compensation] matter." Specifically, the complaint charged that respondent's statements that he had not been retained by Howard for a workers' compensation matter, that he had never filed any paperwork with the workers' compensation court, and that he had referred the case to Abasolo were false statements of material fact in connection with a disciplinary matter (RPC 8.1(a)).

In his defense, respondent explained that, in preparing his reply to the grievance, he had searched his computer files for Howard's matter, but had not contacted Abasolo, the hotel's attorneys (Stevens & Schwab), or the court about it. His files contained information relating only to Howard's motor vehicle accident. Also, he could not find a retainer agreement for Howard's workers' compensation claim. Thus, he claimed, when he replied to the DEC, he believed that he never represented her on it, he simply had not recalled filing the petition on Howard's behalf.

According to respondent, he believed that, when he drafted his reply to the grievance, his statements were true. His reply stated, in relevant part:

1. On or around 2005, I was retained by Ms. Howard to handle a personal injury matter on

her behalf. On or around October 2006, the matter was settled. . . .

2. I was not retained by Ms. Howard to handle any workers' compensation based on the fact that I do not handle workers' compensation claims. To this day, I have never been to workers' compensation Court. It has been my practice to refer WC claims out to Mr. Gary Abasolo in Jersey City. I referred Ms. Howard to Mr. Abasolo to handle this case.
3. At no time did I ever file any paperwork with Workers' Compensation Court nor did I appear before the Court regarding such.

[Ex.2.]

Respondent explained that, later, after he conferred with his assistant, Donna, he recalled that Howard's workers' compensation file had been mailed to Abasolo, but he had not kept a copy of it.

At the DEC hearing, respondent conceded that he had filed Howard's petition with the workers' compensation court, but could not recall whether he had served it on Crowne Plaza. Although respondent conceded that Stevens & Schwab had sent him correspondence and discovery requests in connection with Howard's claim, he maintained that he did not recall receiving those documents.

As to respondent's August 2, 2006 letter, requesting the withdrawal of Howard's claim, respondent contended, and Donna

confirmed, that he had not signed the letter, but had authorized Donna to type it and sign it on his behalf. He maintained that he did not recall the existence of the letter until after the formal ethics complaint had been filed when, during the course of the ethics proceedings, he had an opportunity to review it.

As to the portion of his letter to the workers' compensation court, claiming that he would be filing an LAD claim on Howard's behalf, respondent asserted that the basis for it was the hotel's failure to make reasonable accommodations for Howard. He asserted that he had not filed a discrimination suit because, when he had broached the subject with the Howards, they had felt that his retainer was too high.

With respect to referring the case to Abasolo, after the matter had already been dismissed, respondent explained that the dismissal was without prejudice and that Abasolo could have made a motion to restore the case.

Donna, respondent's assistant, testified that she frequently communicated with Cynthia, who called on her mother's behalf every other week to every other day, sometimes several times a day. According to Donna, Howard "wasn't happy" when respondent declined to represent her in the workers' compensation matter.

According to Donna, respondent's office had not opened an independent file for Howard's workers' compensation case. At some unspecified point, Donna sent whatever documentation they had on Howard's workers' compensation case to Abasolo. Donna testified that it was only during the DEC investigation that she learned that respondent had filed a petition on Howard's behalf.

Donna claimed that Cynthia repeatedly made threats to respondent's office, including threatening to report him to the Office of Attorney Ethics and to sue him for negligence for the amount she believed her mother was entitled to receive. Cynthia called constantly to yell, complain, and make threats. When the threats became serious, Donna turned them over to respondent to handle.

Donna recalled that, at some point, respondent called Cynthia and told her that he had never agreed to pursue Howard's workers' compensation matter and that attempting to pursue a claim for the same injuries claimed in the motor vehicle accident suit was a crime. Donna further recalled that Howard was "very upset" that the case had been referred to Abasolo, because he was not returning her calls or communicating with her. According to Donna, Cynthia threatened that, if Abasolo did not make himself available, respondent would have to step in on the workers' compensation case.

Respondent's post-hearing submission reiterated some of his testimony and arguments before the DEC, including his belief that the Howards' delay in filing a grievance was based on their inability to find another attorney to handle the case and their belief that they would have a malpractice case against him.

In his submission, respondent told the DEC that he handles between seventy-five and one hundred cases at any given time and that "to remember each case with exact specificity can be a daunting task." He again denied any intent to deceive the investigator, reiterating that, when he had filed his reply to the grievance, he was being truthful, a belief "buttressed by the fact that [he] never appeared in workers' compensation court."

Among other things, the presenter argued, in her brief, that an attorney-client relationship in this case should be inferred from the conduct of the parties. In her view, the fact that respondent signed and filed the workers' compensation petition created such a relationship, notwithstanding the absence of a retainer agreement. She charged that, given their relationship, respondent's dismissal of Howard's case, without her knowledge or consent, without any procedural or substantive justification for doing so, and without any explanation of the consequences of the dismissal, constituted gross neglect. She

noted that N.J.S.A. 34:15-54 establishes a one-year deadline to file a motion to reinstate a petition for good cause and that no such motion was made within that time.

The presenter noted that respondent's abandonment of Howard's case without protecting her interests was an aggravating factor. She highlighted that, after causing the case's dismissal, respondent had relinquished any responsibility for it, carelessly assuming that Abasolo was handling it, when he had not even sent the entire file to Abasolo.

The presenter contended that actively causing an unconsented dismissal of a case and abandoning the case, without obtaining a substitution, without turning over the file to the Howards, and without advising them of the consequences of the dismissal, established violations of RPC 1.1(a) as well as RPC 1.3.

The presenter argued that respondent's testimony lacked credibility as it related to his reasons for requesting the dismissal, that is, his lack of experience in workers' compensation matters; the existence of a potential discrimination claim (which respondent admitted did not preclude other causes of action); the referral to Abasolo, who could move to reinstate the case; and his belief that Howard was seeking duplicative damages for a single injury. The presenter remarked

that, if respondent's own ethics concerns were genuine, he should have moved to be relieved as counsel, using available techniques designed to prevent the disclosure of prejudicial information to his adversary.

The presenter pointed out that respondent had only admitted his role in the workers' compensation case after he had learned, during pre-hearing proceedings, that the DEC had located the petition that he had signed and his letter requesting the dismissal of Howard's case.

Without much explanation for its findings, the DEC unanimously determined that (1) respondent engaged in gross neglect and lack of diligence, when he requested the dismissal of Howard's case for "no sound reason" and when he failed to ensure that another attorney was handling the case (RPC 1.1(a) and RPC 1.3); (2) that, by not consulting with Howard before withdrawing her petition, he did not abide by her decisions concerning the scope and objectives of the representation (RPC 1.2(a)); (3) that he failed to keep Howard reasonably informed about the status of her workers' compensation case and failed to explain the matter to the extent reasonably necessary for her to make decisions about the representation (RPC 1.4(b) and (c)); and (4) that he failed to surrender Howard's file in a timely manner, thereby violating RPC 1.16(d).

The DEC found no violation of RPC 8.4(c), reasoning that, even though respondent had denied working on Howard's workers' compensation petition, at the ethics hearing he had admitted that he had filed a petition and had withdrawn it. Similarly, the DEC found no violation of RPC 8.1(a), believing respondent's testimony that he had not recalled the workers' compensation case until after he had submitted his reply to the grievance.²

Based on the found rule violations, respondent's ethics history, and the prejudice to Howard, the DEC concluded that a three-month suspension was appropriate.

At oral argument before us, the presenter suggested that, based on the large volume of cases that respondent handles, he would benefit from practicing under the supervision of a proctor.

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

Notwithstanding respondent's claim that he did not represent Howard in the workers' compensation action and never entered into a retainer agreement with her, we find that an attorney-client relationship existed between them. After respondent prepared Howard's workers' compensation petition and

² The hearing panel's dismissal of these two charges was not unanimous. The vote was two to one.

witnessed her signature on it, she held a reasonable belief that respondent was representing her in the matter. Moreover, the fact that the workers' compensation court sent respondent a notice of a hearing established that the court recognized him as Howard's attorney of record.

We have found attorney-client relationships in the absence of formal documentation thereof, most often in conflict of interest situations. See, e.g., In the Matter of Joseph C. Lane, DRB 10-451 (May 16, 2011) (in a motion for discipline by consent, we remanded the matter where the stipulation did not recognize one of the parties to a transaction as the attorney's client and therefore did not consider the conflict of interest created by representing both parties to the transaction) and In re Gold, 149 N.J. 23 (1997) (in the absence of a formal attorney-client relationship, conflict of interest rules apply when it was reasonable for the putative clients "to assume that [the attorney] was representing their interests;" the wife of the putative clients was the attorney's secretary).

We, thus, find that an attorney-client relationship also existed here and that respondent did not properly terminate the representation. In addition, his handling of Howard's matter was fraught with problems.

Once respondent filed Howard's worker's compensation petition, in February 2006, he took no further action in the matter. After he received discovery requests, in May and June 2006, seeking information about Howard's earlier accident, and after he received the notice of a court hearing (the date of which was not made clear), he requested the withdrawal of Howard's petition, without prejudice, on August 2, 2006. The request was granted the next day. Unquestionably, he took no action to protect Howard's interests. Neither he nor any other attorney filed a motion to reinstate Howard's petition within the one-year deadline. We find, thus, that respondent was guilty of gross neglect and lack of diligence.

Respondent claimed that he told the Howards that he would withdraw the case. The Howards, however, testified to the contrary. Cynthia's testimony that she only learned about the case's dismissal three years later, when she called Crowne Plaza's insurer, substantiates her version. Moreover, the DEC believed Cynthia's testimony that respondent did not consult with them, prior to withdrawing the case or inform them about the withdrawal. We defer to the DEC's findings in this regard.³

³ In Dolson v. Anastasia, the Supreme Court observed that a court will defer to a tribunal's findings with respect to those intangible aspects of the case not transmitted by the written
(Footnote cont'd on next page)

Although the DEC did not specifically state that the Howards' version of events was more credible than respondent's, it was implicit in their finding.

We further find that respondent failed to communicate with Howard, failed to keep her apprised of the status of her matter, failed to explain the consequences of a withdrawal or dismissal to allow her to make an informed decision about the representation, and failed to abide by Howard's decision concerning the scope and objectives of the representation, violations of RPC 1.4(b), RPC 1.4(c), and RPC 1.2(a), respectively.

The DEC also found that respondent violated RPC 1.16(d) for failing to turn over Howard's file. There is no clear and convincing evidence to support this finding. Respondent testified that he did not have any documents relating to Howard's workers' compensation claim. He asserted that his office had forwarded whatever documentation it had to Abasolo

(Footnote cont'd)

record, such as witness credibility. Because the hearing panel observed the witnesses and heard them testify, it had a "better perspective . . . in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988).

and did not retain any copies. Thus, respondent could not turn over what he did not have.

However, respondent's withdrawal of the case was irresponsible. When he did so, he failed to protect his client's interests. That he had no experience in workers' compensation cases, never appeared in a workers' compensation court, or that he thought that pursuing Howard's claim was unethical did not excuse his unilateral decision to withdraw the petition. He was required to ensure that Howard's interests were properly protected. He had the option of securing substitute counsel and filing a substitution of attorney form, or filing a motion to be relieved as counsel. Although the complaint did not charge respondent with violating RPC 1.16(d), we find that his conduct in this regard constitutes an aggravating factor.

As indicated previously, the DEC did not unanimously determine to dismiss RPC 8.4(c) and RPC 8.1(a). As to the former charge, the complaint alleged (1) that respondent's representations to Howard that Abasolo had been "given" her case were knowingly false and were material to the representation that respondent had undertaken on Howard's behalf, in connection with the workers' compensation claim and (2) that respondent knowingly concealed from Howard the fact that her workers'

compensation case had been dismissed without prejudice, as well as his own role in causing the dismissal.

Regarding respondent's representations, Cynthia testified that, at least as early as September 2006 (one month after the case was dismissed), respondent had told her that he had transferred the case to Abasolo and that, between September 2006 and January 2009, she had spoken to Abasolo "plenty of times," but that, in two telephone conversations, Abasolo had denied knowledge of the transfer. Abasolo, in turn, testified that he did not have an initial telephone conversation with Howard until late 2007 or early 2008. The proofs, thus, do not clearly and convincingly establish when respondent attempted to transfer the case to Abasolo.

However, the record shows that respondent did not inform Howard that her case had been dismissed. As noted above, approximately three years after Howard's case was dismissed, Cynthia had to call Crowne Point's insurer to learn the status of her mother's case. Respondent's failure to inform Howard about the case's dismissal was a misrepresentation by silence. Crispen V. Volkswagenwerk, A.G., 96 N.J. 347 (1984).

Finally, like the DEC, we dismiss the charged violation of RPC 8.1(a) for lack of clear and convincing evidence that respondent knowingly made false statements to the DEC, during

its investigation. Respondent's lack of documentation in the matter and the fact that he does not handle workers' compensation cases support the conclusion that his statements to the DEC investigator were not knowingly false.

In the aggregate, respondent's conduct constituted violations of RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 8.4(c), aggravated by his failure to protect Howard's interests (RPC 1.16(d)).

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 re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed when attorney's inaction in a personal injury suit caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the

client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In re Shapiro, 201 N.J. 201 (2010) (reprimand for attorney's misconduct in two client matters; in one matter, he engaged in gross neglect and lacked diligence by failing to probate the decedent's will, to settle the estate, and to re-file pleadings that had been rejected by the court; in the second matter, he failed to set forth in writing the basis or rate of his fee and lacked diligence by failing to forward his client's discovery responses to defense counsel and by failing to oppose the defendant's motions to dismiss the complaint, which were granted; in both matters, he failed to communicate with his clients); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney 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 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); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Here, respondent was also guilty of misrepresentation to a client, which, in and of itself, requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not

inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

We find that the aggravating factors present here warrant the imposition of discipline greater than a reprimand. Respondent failed to protect his client's interests, when he terminated the representation, and his ethics history includes two prior reprimands, one of which involved similar violations. In assessing the proper degree of discipline in this case, we have also considered, in mitigation, that respondent believed that Howard was seeking money for injuries that might not have warranted compensation over and above what she had already obtained from a prior settlement; that respondent was "bullied"

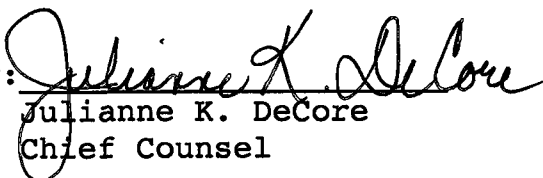
into taking the workers' compensation case; that Cynthia was persistent in attempting to reap some financial benefit, even from the grievance process; that respondent had no experience in workers' compensation cases and never handled them, but routinely transferred them to other attorneys; that he had an extremely heavy caseload; and that only one client matter was involved.

In view of the foregoing, we believe that the three-month suspension recommended by the DEC is too severe and find, instead, that a censure is sufficient discipline in this matter. We also require respondent to practice law under the supervision of an OAE-approved proctor for a two-year period.

Vice-Chair Frost and Member Clark did not participate.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

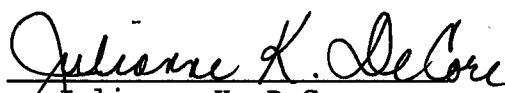
In the Matter of Herbert Tan
Docket No. DRB 11-084

Argued: June 16, 2011

Decided: September 7, 2011

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost						X
Baugh			X			
Clark						X
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7			2


Julianne K. DeCore
Chief Counsel