SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-017
District Docket No. XB-09-033E

IN THE MATTER OF	
ROBERT D. KOBIN	
AN ATTORNEY AT LAW	

Decision

Argued: April 19, 2012

Decided: June 27, 2012

Anita Hotchkiss appeared on behalf of the District XB 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 on a recommendation for discipline filed by the District XB Ethics Committee (DEC). The amended complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4(b) and (c) (failure to comply with a client's reasonable requests for information and failure to explain a matter to the extent necessary for the client to make

informed decisions about the representation), RPC 1.5(b) and (c) and R. 1:21-7 (failure to set out the basis or rate of the fee in writing and contingent fees), RPC 1.16(b) and (d) (improper withdrawal from representation and failure to protect a client's interests on termination of the representation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). The complaint was amended at the conclusion of the DEC hearing to include a charge that respondent violated RPC 5.1(a), (b) and (c) (failure to supervise a subordinate attorney).

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1986. He is a partner at Nussbaum, Stein, Goldstein, Bronstein & Kron (Nusbaum, Stein or the firm). He has no history of discipline.

The facts are as follows:

In March 2003, Hans von Ancken's hand was crushed, when his car jack slipped, while he was attempting to change a tire on his BMW. He spent two days in the hospital after surgery and underwent approximately one year of physical therapy. In April 2003, von Ancken contacted an attorney, who referred him to Nussbaum, Stein. On April 28, 2003, von Ancken met with respondent. During that meeting, respondent advised von Ancken that the case would be investigated by a technical expert and

that, if the expert's opinion was not positive, respondent would not proceed with the case. Von Ancken and respondent discussed the requirement that they prove liability and that a contingent fee would probably be appropriate, if the case went forward.[1] They did not execute a retainer agreement at that time.

Respondent explained to the DEC that, because he was only investigating the case, for which he did not charge his clients, he did not see the necessity of explaining the hourly fee agreement at that time. He added that he would have explained it, if he decided to pursue the case and enter into a retainer agreement. Respondent explained to Von Ancken that most product liability cases proceed on a contingent fee basis.

Respondent assigned von Ancken's matter to Susan Reed, an associate at Nussbaum, Stein, and the only other attorney in the products liability department.[2] By letter dated April 29, 2003, Reed thanked von Ancken for leaving his BMW owner's manual with the firm, so that it could be photographed. Thereafter, on May 3, 2003, respondent's investigator, Russell C. Vanderbush, met

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[1] von Ancken testified that he would not pay "a time basis," presumably meaning an hourly fee.

[2] Reed did not testify at the hearing.

with von Ancken at the scene of his injury and took photographs. Reed also communicated with an expert, Donald R. Phillips, in April and May 2003. In addition, on May 7, 2003, Reed sent several letters to medical providers, seeking von Ancken's records.

In or about May 2003, respondent determined not to pursue von Ancken's case, based on an unfavorable report from Phillips. Respondent advised Reed that the firm was not pursuing the case. He did not specifically instruct Reed to send a letter to von Ancken, informing him of the firm's decision to decline the representation. He testified that he assumed that Reed, who had been with the firm for four months and whom he considered an experienced attorney, would send Von Ancken a letter, advising him of the firm's decision[3]. He admitted that the file had not been closed properly. He contended, however, that he had spoken with von Ancken, after the investigator had advised him that

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[3] Reed, who was admitted to the New Jersey bar in 1987, had previously been employed by an unspecified prosecutor's office along with respondent, and then by a civil litigation firm before joining Nussbaum, Stein in 2002.

"there [was] not a case." von Ancken did not recall that conversation.[4]

Despite respondent's conclusion that von Ancken's case was not viable, Reed filed a lawsuit on his behalf, on March 15, 2005, against BMW and Shinn Fu Company (Shinn-Fu). A notice from the court went to Reed, the attorney of record. A memo from Reed to respondent, dated September 30, 2009, records her recollection that the complaint had been filed "for the sole purpose of protecting the statute of limitations to pursue some additional investigation regarding the theory of liability regarding the jack in this matter." Respondent did not know that Reed would be filing the complaint and did not direct her to do so. Respondent conceded that, "once someone decided to file a Complaint, they should have gotten a Retainer Agreement."

From March through May 2005, Reed sent a number of letters to von Ancken, in furtherance of his case, and a letter to his employer. On April 1, 2005, von Ancken prepared answers to interrogatories, at Reed's direction.

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[4] The DEC did not credit respondent's testimony on this score "because of what happened next."

In May 2005, respondent found out that the complaint had been filed and that Reed had identified the wrong jack manufacturer in the complaint, as a defendant. On May 17, 2005, Reed filed a stipulation of dismissal with prejudice as to defendant Shinn Fu, leaving BMW as the only defendant.[5] Respondent and Reed discussed amending the complaint, but decided not to do so because, in respondent's view, there had been no basis to file the complaint in the first place.[6]

Respondent testified that he was not a "happy camper," when he learned that Reed had filed the complaint and had named the wrong jack manufacturer. Respondent, however, still did not take charge of the matter. Rather, he told Reed to contact von Ancken and "straighten this out," but did not instruct her specifically how to proceed. Moreover, he did not follow up with Reed to ensure that the matter had been satisfactorily addressed. Respondent acknowledged that the matter was not handled correctly.

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[5] BMW manufactured the jack that allegedly injured von Ancken.

[6] Although this was not noted by the DEC, respondent also testified that there was no reason to amend the complaint because BMW, the manufacturer of the jack, was already named in the complaint.

The court dismissed the complaint without prejudice, in November 2005, for lack of prosecution. von Ancken was not timely told that the complaint had been dismissed.

During the representation, von Ancken called Nussbaum, Stein, attempting to obtain information about his case. He spoke with Reed in June 2005, at which time she told him that the case was proceeding apace and that he had to be patient. Thereafter, until 2009, von Ancken called her "more or less biannually," inquiring about his case. His calls were not returned.

In January 2009, von Ancken wrote to Reed, asking about the case and referring to his unanswered calls. Reed forwarded the letter to respondent, who did not reply to von Ancken.

In early March 2009, von Ancken sent a letter to Alan Goldstein, Esq., whom von Ancken believed to be the head of the firm, asking about his case and mentioning his numerous unreturned telephone calls. Respondent replied to the letter by contacting von Ancken by telephone, on March 12, 2009. Respondent advised von Ancken, during their conversation that his case had been dismissed without prejudice.

In April 2009, von Ancken sent a follow-up letter to respondent.[7] von Ancken requested more information about the dismissal of his case, asked why he had not been advised of the dismissal, and requested copies of "documents pertaining to the sequence of events or status." Respondent did not provide the requested information.

On May 7, 2009, von Ancken sent another letter to respondent, and also contacted him by telephone, on that date, reiterating his request for more information. After not receiving a reply from respondent, von Ancken sent him an email and a letter, on June 1, 2009, again making a request for more information. von Ancken also asked for his documents, photographs, and the car jack. When he did not receive the file, he sent another letter to respondent, on December 8, 2010, requesting, yet another time, that his file be returned to him.

Respondent, in turn, testified that he told von Ancken to pick up the file and the jack, due to concerns that it could be

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[7] The letter was mis-addressed to Larry I. Kron, another member of the firm. Respondent acknowledged receiving the letter.

lost in the mail. Respondent ultimately mailed the file and the jack to von Ancken, on December 20, 2010.

At the DEC hearing, the presenter testified about her attempts to have respondent reply to von Ancken's grievance. Specifically, by letter dated July 16, 2009, she asked that respondent reply to the allegations by July 26, 2009.[8] Respondent did not reply. By letter dated August 5, 2009, respondent requested an extension to August 21, 2009, citing his trial commitments. Although the presenter granted respondent's request, no reply was forthcoming.

By letter dated August 28, 2009, the presenter reminded respondent of his obligation to cooperate with the investigation and gave him until September 7, 2009 to reply. By letter dated September 3, 2009, respondent told the presenter that he was busy and that he would try to file a reply by September 8, 2009. When no reply was received, the presenter called respondent on September 11, 2009, leaving a message for him to call her. Respondent replied by letter, on that date, advising the presenter that he had been preparing for a trial but that he

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[8] The DEC sent a copy of the grievance to respondent on June 22, 2009.

would try to provide a "preliminary response" by the middle of the following week. He explained that he had to talk to Reed, before finalizing his reply. Again, no reply was forthcoming.

On September 22, 2009, respondent sent a letter to the presenter, stating that he was writing as a "courtesy" to her and that he still had not spoken to Reed. The presenter sent a letter to respondent on September 25, 2009, which must have crossed in the mail with respondent's letter, in which she reminded him of the seriousness of the matter and of his potential violation of RPC 8.1(b).

Respondent replied to the grievance on September 30, 2009. In his reply, he stated: "While I take the accusation very seriously, I do have clients who have retained me whose interests come before an individual I never agreed to represent and with whom I have not entered into a Retainer Agreement." Respondent also stated that he did not view the time he took to submit a reply to the grievance as "inordinate."

At the conclusion of the ethics hearing, the presenter moved to amend the complaint to charge respondent with violating RPC 5.1 (failure to supervise a subordinate attorney). Respondent objected, stating:

> . . . to be quite honest with you I spoke to [the presenter] about this from the very beginning of this case and she structured -- I told her that this was a lack of supervision case and she structured it as a direct attack on me and possibly knocked me out of the diversionary program because of that when I was quite willing to sit down and work this out along the exact thing that she wants to do now which is amend the Complaint to supervision so I strongly object.
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> [T260-24 to T261-9.][9]

The DEC requested that the parties file briefs addressing the issue. Thereafter, the DEC ordered that the briefs address (1) the charged violations in the complaint; (2) the presenter's motion to amend the complaint; (3) whether a retainer agreement is required to investigate a claim; and (4) an attorney's duties under RPC 5.1. The presenter filed her brief. Notwithstanding respondent's receipt of an extension of time to file his brief, he failed to do so.

Attached to the presenter's brief to the hearing panel is her affidavit in support of her motion to amend the pleadings. In the affidavit, the presenter recounted discussions with

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

respondent and related her impressions about respondent's role in handling von Ancken's matter. Specifically, she stated:

> 20. At no time did Kobin ever tell me, or give me the impression, that he had totally turned the case over to Ms. Reed to handle, that she, rather than he, was making decisions on what would and would not be done on the case, and that she was responsible for terminating the relationship, closing the file and for all communications with Von Ancken.
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> 21. Nothing in Kobin's Response to the Grievance indicates, or even suggests, that Kobin turned the case totally over to Susan Reed, or that he was not directing what occurred, or did not occur, in the matter.
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> [PBA¶20-PBA¶21.][10]

The presenter went on to point out that, in respondent's answer, he had indicated that he had obtained von Ancken's medical records by way of the May 2003 letters mentioned previously and had obtained von Ancken's motor vehicle manual. In the presenter's view, "[t]hese statements clearly indicate that, although Reed sent the referenced letters, it was Respondent who was responsible for the case." To the presenter's knowledge, the first time that respondent took the

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[10] PBA refers to the presenter's brief and affidavit.

position that he had completely turned the von Ancken matter over to Reed was during the ethics hearing.

The DEC found that respondent was guilty of violating each of the charged RPCs.

As stated previously, at the conclusion of the hearing, the presenter moved to amend the complaint to include a charge that respondent had violated RPC 5.1, based on his failure to supervise Reed. The DEC pointed to R. 4:9-2, Amendments to Conform to the Evidence, which provides as follows:

> When issues not raised by the pleadings and pretrial order are tried by consent or without the objection of the parties, they shall be treated in all respects as if they had been raised in the pleadings and pretrial order. Such amendment of the pleadings and pretrial order as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend shall not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issue made by the pleadings and pretrial order, the court may allow the pleadings and pretrial order to be amended and shall do so freely when the presentation of the merits of the action will be thereby subserved and the objecting party fails to satisfy the court that the admission of such evidence would be prejudicial in maintaining the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

The DEC granted the presenter's motion to amend the complaint. Setting aside respondent's failure to submit a post-hearing brief objecting to the motion, the DEC concluded that the evidence adduced at the hearing, to which neither party had objected, demonstrated that Reed was "primarily responsible" for von Ancken's matter and that respondent was Reed's supervisor. Accordingly, the DEC allowed the amendment of the complaint.

The DEC pointed out that the correspondence regarding von Ancken's matter was to or from Reed, that Reed had filed the lawsuit, and that she had received court notices. Critical to the DEC's analysis was von Ancken's testimony that he had called Reed, not respondent, to learn the status of his case, and that von Ancken's letters to the firm had initially been to Reed or Goldstein.[11] The DEC concluded that

> [this] information was available to all parties and, thus, Reed's responsibility for Grievant's matter should not be a surprise to anyone, including Grievant or Respondent. It is equally clear, however, that Respondent was the partner in charge of Grievant's case since he first met with Grievant and was responsible for responding

[11] von Ancken testified that, had respondent not stated that he was handling the case, during their March 2009 conversation, he would have named Reed in his grievance as well.

> to Grievant's letters in 2009. It is just as clear that Respondent was responsible for supervising Reed, which he admitted during the hearing. (Tr. at 113-116);(Answer at pg. 4 ¶3.)
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> [HPR at 12-13.][12]

In the DEC's view, there were two periods of time critical to determining respondent's responsibility for supervising Reed: (1) May 2003, when he directed her to close the file and (2) May 2005, when he learned that she had filed the complaint. The DEC found clear and convincing evidence that respondent violated RPC 5.1 at both junctures. In May 2003, respondent relied on Reed to close out the file and to send a letter to von Ancken, advising him that respondent was not proceeding with his case. The DEC pointed out that respondent was the partner in charge and that he should have ensured that those steps were taken. He failed to do so.

In May 2005, respondent was not a "happy camper," after learning that Reed had not closed the file but, instead, had filed a complaint. In addition, she filed the complaint against the wrong jack manufacturer. Respondent acknowledged that von Ancken should have been advised, at that point, that respondent

[12] HPR refers to the hearing panel report.

was not proceeding in his behalf or that he should retain new counsel. Respondent further acknowledged that "you would have to keep the case alive," in the event that von Ancken wanted to retain new counsel. However, rather than properly supervise Reed, respondent told her to contact von Ancken and to "deal with this." He did not advise her how to move forward, despite learning of her "critical failures." Moreover, he did not follow up to ensure that the situation had been handled properly.

As to RPC 1.3, the DEC disagreed with the presenter's contention that respondent violated that rule "because he was primarily responsible for the day to day handling" of von Ancken's matter; the responsibility was Reed's, not respondent's. However, the DEC found, he violated RPC 1.3 by failing to ensure that the proper steps were taken, in May 2003 and May 2005.

With regard to RPC 1.4(b) and RPC 1.4(c), the DEC found that respondent violated those rules by (1) failing to advise von Ancken, in May 2003, that he would not proceed with the suit, (2) by failing to advise von Ancken of his options, in May 2005, and (3) by failing to inform him that the matter would be dismissed and that the statute of limitations would expire.

Moreover, von Ancken believed at that time that the case was proceeding apace.

In addition, the DEC found that respondent violated RPC 1.4 (b) and (c) when he failed timely to reply to von Ancken's letters in 2009, to return his file, and to provide a written explanation of what had occurred, when von Ancken requested it.

As to RPC 1.5(b) and (c), again the DEC saw two distinct times relevant to respondent's behavior: May 2003, when he agreed to investigate the claim, and March 15, 2005, when Reed filed the complaint. As to May 2003, the DEC did not find that respondent violated either section of RPC 1.5. Respondent had agreed to represent von Ancken only to determine if he had a viable claim. von Ancken understood that that was all respondent was doing at that time.[13] Moreover, respondent did not charge von Ancken for his work in investigating the claim.

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[13] The hearing panel noted the presenter's argument that, pursuant to RPC 1.2(c), a limitation on the scope of the representation is permitted but the agreement should be in writing. It concluded that, in fact, the rule does not require a writing, only that the limitation be reasonable and that the client give informed consent, both of which conditions were met in this case.

The DEC's conclusion was different as to March 15, 2005. Respondent conceded that Nussbaum Stein was representing von Ancken, once the complaint was filed, and, at that point, the firm should have obtained a retainer agreement. The DEC concluded that respondent violated RPC 1.5(b) and (c).[14]

The DEC also concluded that respondent violated RPC 1.16(b) and (d). Respondent acknowledged that, in May 2005, von Ancken should have been told that the firm would no longer handle his case and that he needed to obtain new counsel, if he wanted to proceed with his claim. In addition, the statute of limitations was not explained to him. The court dismissed the case for failure to prosecute. Moreover, respondent did not tell von Ancken about the dismissal and did not timely comply with his requests to supply a written explanation of the events surrounding his case and to return his file.

Finally, the DEC found that respondent violated RPC 8.1(b). Besides respondent's failure to provide a post-hearing brief, he

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[14] The hearing panel report states: "In addition, since Respondent clearly failed to comply with R.1:21-7(b) [contingent fees] at the time the complaint was dismissed for lack of prosecution in November 2005, Respondent also violated R. 1:23-7(b)." R. 1:23, however, governs the Board of Bar Examiners and there is no section 7.

failed to meet his own deadlines, in replying to the grievance, and did not reply until three months after it was originally due. In the DEC's words:

> Respondent attempted to justify his delay in responding to the Grievance by stating, in part, that he has "clients who have retained me whose interests come before an individual I never agreed to represent and with whom I have not entered into a Retainer Agreement" (Exh. P-19). Responding to a Grievance, however, is an ethical obligation to the Disciplinary Review Board and other disciplinary authorities of the State that is wholly separate and apart from obligations to a client or event [sic] the Grievant.
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> [HPR at 19.]

The DEC concluded that a suspension was not warranted because respondent has no history of discipline and was "only the supervising attorney." His misconduct, however, warranted a sanction greater than an admonition, because von Ancken was prejudiced. Specifically, he lost his ability to prosecute his claim, because the statute of limitations ran. Thus, the DEC deemed a reprimand to be appropriate.

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 fully supported by clear and convincing evidence.

Before we reach our analysis of the RPCs, we first address the presenter's affidavit, attached to her brief submitted to the DEC. In that affidavit, the presenter essentially testified about events and discussions that occurred during her investigation in this matter. The affidavit should not have been made a part of the record. Respondent had no opportunity to cross-examine the presenter about the information in her affidavit, some of which is important to the issue of whether the attorney responsible for von Ancken's case was respondent or Reed. Although the affidavit is attached to the presenter's brief and is a part of the record, we have not considered her statements because to do so would violate respondent's due process rights.

As to the allegations against respondent, the DEC correctly determined that respondent's conduct must be viewed at two distinct times, although, in our view, not the same periods identified by the DEC (May 2003 and March/May 2005). The first relevant period is from March 2003, when respondent was approached by von Ancken and he undertook the investigation of the claim, until he told Reed to close the file. The second relevant period is from May 2005, when respondent learned that

Reed had filed the complaint, until the representation was terminated.

With regard to RPC 1.5(b) and (c), we find that respondent did not violate those rules at either time. In March 2003, he was only investigating the claim, a service for which he did not charge von Ancken a fee. Moreover, not only did von Ancken testify that respondent had explained the contingent fee agreement to him, but von Ancken must have been aware of the possibility of paying respondent on an hourly basis, because he testified that he would not do so.

Also, in May 2005, when respondent learned that Reed had filed the complaint, respondent had no intention of proceeding with the litigation or with the representation. It made no sense for him to enter into a retainer agreement. There is no indication that the firm was either charging von Ancken for the work that had been completed on his behalf or had plans to charge him. Respondent correctly acknowledged that the firm should have had a retainer agreement with von Ancken when the complaint was filed, but it was Reed's responsibility, not respondent's, to ensure that an agreement was in place. Thus, the charged violation of RPC 1.5(b) and (c) is dismissed.

Before beginning an analysis of the remaining RPCs - those that respondent did violate – we note, at the outset, that Reed's failure to testify during the DEC hearing rendered it difficult to determine what actually occurred in this case. It simply makes no sense that, when respondent told her to close the von Ancken file, she instead, on her own accord, filed a complaint two years later. Respondent claimed to have been unaware that the complaint had been filed. Yet, he and Reed were the only attorneys in the products liability department. Several documents in evidence indicate that the complaint was to be amended, one of which, dated May 6, 2005, says "RDK [respondent] to amend comp."[15] This simply does not "add up."

Respondent asserted that Reed was not at the ethics hearing because she was on vacation. The presenter never called her as a witness.[16] In the absence of Reed's testimony to the contrary, we have only respondent's representation that he assigned the case to her and that, as far as he knew, she was handling it

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[15] We recall that respondent testified that he learned that the complaint had been filed in May 2005.

[16] The presenter did not explain why Reed was not called as a witness, but stated that Reed was in an "awkward position," as respondent's associate.

competently. That being said, we still find him guilty of misconduct.

As to RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate), again, respondent's conduct at two different times should be examined. Regarding his conduct in March 2003, we do not find him guilty of violating either rule. He assigned the case to Reed. Although she had been with the firm for only four months, she was not inexperienced. Reed had been a prosecutor and an associate at a civil litigation firm. Respondent could reasonably expect that, when he told his associate to close out a file, she would do so. He could not have anticipated that not only would she not notify the client of his decision not to pursue his case and to close out the file, but that she would file a complaint in the matter. Thus, in 2003, when respondent decided not to pursue von Ancken's case, he did not violate RPC 1.3 or RPC 1.4.

The conclusion is different as to his conduct in May 2005. Once respondent learned that Reed had ignored his instructions, had not closed out the file, and had gone so far as to file a complaint and to file it against the wrong defendant, respondent was obligated to step in and to step up. In the face of serious errors by Reed, the onus was on respondent to see to it that the

file was appropriately handled going forward. He violated RPC 1.3, when he did not.

Similarly, there is no doubt that respondent's communication with von Ancken was lacking, at best. Von Ancken made numerous attempts to get information about his matter over a period of years, to no avail. He was not provided with information to enable him to make informed decisions about how to proceed with his case. Respondent, thus, violated RPC 1.4(b) and (c).

The analytical framework is the same for RPC 1.16(b) and (d). As to the March 2003 period, respondent had no reason to believe that the file had not been properly closed and that von Ancken's property had not been returned to him. He should have been able to rely on his associate at that time. Therefore, he did not violate RPC 1.16 in 2003.

Again, we reach a different conclusion as to May 2005. Von Ancken's property should have been returned to him, following his first request for it. Moreover, the history and posture of the case should have been clearly explained to von Ancken, respondent should have complied with his request that the information be supplied in writing, and von Ancken's interests should have been protected so that he could move forward with

his claim, if he so desired. When these things were not done, respondent violated RPC 1.16(b) and (d).

With regard to the presenter's motion to amend the complaint to charge respondent with violating RPC 5.1, we determine to allow the amendment and find that respondent violated that rule, in May 2005. Respondent's supervision of Reed was fully litigated before the DEC. Further, the DEC directed respondent to file a brief addressing the amendment and he failed to do so.

As to that rule violation, respondent knew that, for whatever reason, Reed had not competently handled von Ancken's case and had not communicated with him. Rather than simply telling her to "straighten this out," he should have, as her supervisor, guided her on the appropriate steps to be taken and most certainly should have seen to it that his instructions had been followed. Respondent knew that Reed had not handled the matter properly. Yet, he allowed her to proceed on her own, while the damage was compounded by the passage of time. Although the violation of RPC 5.1 could be debated with regard to the period from 2003 to 2005, after respondent learned of Reed's actions, in 2005, there can be no debate.

In sum, we find that, as to the May 2005 period, respondent is guilty of lack of diligence, failure to communicate with the client, failure to protect a client's interests on termination of the representation, and failure to supervise a subordinate attorney.

Cases involving a failure to supervise junior attorneys, coupled with a combination of other rule violations, such as gross neglect, lack of diligence, and failure to communicate with clients, ordinarily result in a reprimand. See, e.g., In re DeZao, 170 N.J. 199 (2001) (attorney guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to explain a matter to the extent necessary to permit the client to make an informed decision about the representation, and failure to supervise an attorney); In re Rovner, 164 N.J. 616 (2000) (attorney guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to supervise attorneys); In re Daniel, 146 N.J. 490 (1996) (attorney guilty of lack of diligence, failure to communicate with the client and failure to supervise an attorney employee); In re Fusco, 142 N.J. 636 (1995) (attorney guilty of improperly delegating recordkeeping responsibilities for his firm's trust account to an associate over whom he had

direct supervisory authority; the attorney's failure to supervise the junior attorney resulted in the junior attorney's knowing misappropriation of $262,000 from the firm's trust and business accounts); and In re Libretti, 134 N.J. 123 (1993) (attorney guilty of gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with the client, failure to withdraw from the representation, and failure to exercise properly the responsibilities of a supervisory attorney). Respondent' misconduct in connection with his handling of the von Ancken case fits squarely into the reprimand cases. But see In re Weiner, 183 N.J. 262 (2005) (six-month suspension on a certified record for gross neglect in a litigation matter arising out of an estate, failing to supervise subordinate lawyers and misleading the clients for over a year that their matter was proceeding apace; prior private reprimand and reprimand).

There remains, however, respondent's failure to cooperate with the DEC (RPC 8.1(b)). Respondent exhibited a truly troubling attitude. His lack of respect for the DEC investigator/presenter was clearly demonstrated in his delay in replying to von Ancken's grievance and in comments found in his

letters, issued during the investigation. His assertion, in one letter, that he was writing to the investigator merely as a "courtesy" to her defies credulity. His position that the interests of clients who had retained him came before von Ancken's grievance is indicative of a serious lack of understanding of his professional responsibilities. This is further evidenced by his stated belief that the two and a half months it took him to reply to the grievance was not "inordinate."

In most instances, we would have considered an attorney's previously unblemished career of over twenty-five years as a mitigating factor and lowered the reprimand to an admonition. Here, however, respondent's disrespectful arrogance "cancels out" any such mitigation. Therefore, a reprimand remains the appropriate discipline in this case.

Member Baugh 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert Douglas Kobin
Docket No. DRB 12-017

Argued: April 19, 2012

Decided: June 27, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	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