SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-157
District Docket No. XIV-2007-0658E (Anthony); XIV-2007-0684E (Wright); XIV-2007-0685E (Moore); XIV-2007-0706E (Rawls); XIV-2007-0707E (El-Amenu); XIV-2007-0708E (Nieves); XIV-2008-0039E (Alexander); and XIV-2008-0296E (Garrett-White)

IN THE MATTER OF	:
RAYMOND T. ROCHE	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 17, 2012

Decided: August 9, 2012

Melissa Ann Czartoryski appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

These eight matters were before us on a recommendation by Special Ethics Master Bernard Kuttner that respondent be suspended for six months. Respondent was charged with having

grossly neglected numerous cases and having failed to cooperate with ethics authorities in the investigation of the matters. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1978. He has no prior discipline.

This matter was originally scheduled for our September 15, 2011 session. In preparation for oral argument before us, the Office of Attorney Ethics (OAE) sent us an August 17, 2011 letter stating that it would rely on its December 17, 2010 summation to the special master.

Prior to the September 15, 2011 oral argument, respondent contacted the Office of Board Counsel (OBC), claiming to have been "mugged" and hit on the head with a baseball bat, an incident that had left him cognitively impaired. The oral argument date was then adjourned.

On October 4, 2011, respondent sent the OBC a letter with a doctor's note about the mugging, explaining respondent's condition as of October 3, 2011. In early 2012, respondent was finally well enough to enable the oral argument to be scheduled for our May 17, 2012 session.

On April 26, 2012 the OAE sent us a letter, reiterating its earlier intention to rely on its December 17, 2010 summation to the special master.

On April 30, 2012, respondent sent us a letter-brief, along with medical records relating to the mugging.

Thereafter, on May 7, 2012, respondent sent us another letter, along with documents that he had not appended to his earlier letter-brief. In its May 14, 2012 reply letter to us, the OAE objected to our consideration of any of respondent's exhibits that had not been introduced into evidence at the hearing before the special master.

We determine to limit our review to those exhibits that were made a part of the record developed below.

I. The Anthony Matter — Docket No. XIV-2007-0658E

Count one of the complaint charged respondent with gross neglect and a pattern of neglect (RPC 1.1(a) and (b)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), and failure to cooperate with the ethics investigation (RPC 8.1 (b)).

Brandon Anthony testified at the ethics hearing that, on March 31, 2005, he retained respondent to represent him in a

personal injury case. He had been "pistol whipped," during a robbery in a McDonald's restaurant parking lot on the Garden State Parkway. He wished to sue McDonalds for failure to provide adequate security. On March 27, 2007, just prior to the expiration of the statute of limitations, respondent filed suit on Anthony's behalf.

According to Anthony, over the course of two or three years, he called respondent's office forty or fifty times and always spoke to a paralegal about his case. He recalled having been sent to a "therapist doctor" for treatment of injuries to his back and shoulder, but claimed that he never met with respondent or any other attorney about his case.

On August 10, 2007, Anthony filed a grievance against respondent, claiming that he was never informed that his complaint had been filed and later dismissed, on October 12, 2007, for lack of prosecution.

After the grievance was filed, respondent met with Anthony. After a second meeting, toward the end of 2008, respondent still had not given Anthony a report on the status of the case. Anthony also complained of a lingering fear of McDonalds restaurants and of back pain.

When pressed, Anthony admitted that he had spoken to respondent's paralegal about the case numerous times, but insisted that she had never given him specific information about its status.

For his part, respondent denied that he had neglected the case. Rather, he claimed, it had gone missing in the office for some time. Once it was located, on February 6, 2009, he successfully had the complaint restored. On May 28, 2009, he sought the entry of default against McDonalds for failure to answer the complaint.

Respondent conceded that the complaint was again dismissed, in November 2009, but explained that the insurance adjuster for McDonalds had told him "to forget about" reinstating it, because McDonalds intended to settle the claim.

Respondent explained why he would not immediately file complaints in personal injury cases, of which he had handled between 50,000 and 75,000, over the years. Instead, he would wait for the two-year statute of limitations period to approach:

> Yeah, one thing I wanted to explain about settling a case. Settling a case, a personal injury case, is much more complex than a lot of attorneys think. A lot of personal injury attorneys, in my opinion, it's an art, it's not a science. As you can see with Brandon Anthony, you may get involved with five or

more people, it happens, and you're jumping from one to another and you have to start all over again. Some deny it, some put money on it, it can be very frustrating, but you have to be relentless. Now, the point I'm getting to is this.

Most attorneys -- some attorneys think okay, it's two years, it hasn't settled, let's file a complaint, let's serve it, let's get going. I have found that strategy to be counterproductive because what happens in the real world that I know is that they have a special department which are adjusters, litigation adjusters, in other words, they have the regular adjusters, and then they have a department where they have adjusters confined just to settling cases where complaints have been filed, but it hasn't been sent out to an attorney yet. The advantage to that is (a) they usually give you more money, they usually have more authority than the adjusters in prelitigation. That's been my experience over many years, they usually have more authority. For some reason there's more pressure on them to settle cases which works in your favor, and it saves everybody a lot of time and effort. Now, if you come to a point where there's no way to settle a case, obviously go forward. It was clear to me that was not the case with Brandon Anthony, I had too many people telling me they were going to put money on it, except one who denied it on the security issue. So it can be very -- I'm going to explain how it can be very, very counterproductive just to have blinders on, like a horse in a race, and just bring in the Calvary [sic], and let's just litigate for two or three years. What happens is this, you end up having to answer interrogatories and, listen, there are many cases where nothing has to be done, and I've had seven figures cases where I've done it

on a number of them, depositions, arbitration, and the irony is whereas the adjuster's job is to settle a case in prelitigation, whereas the litigation adjuster has a special duty to settle cases because they don't want an overflow going out to the attorneys to handle a case, the attorney's incentive, the defense attorney is just the opposite, and I'm talking about the real world now, and there may be exceptions, and I'm not naming any names, but I've done defense work, I know the pressures, I just talked to a guy the other day, he's got to do -- a defense attorney, he's been out ten years, he's got to do 2500 billable hours per year, that's a lot, that's pretty hard, I used to work God, 18 hours a day there and weekends, they have a -- if you don't do 2500 hours and make the partner a lot of money, you're not looked upon favorably because there's a huge incentive for the attorneys to settle the case, I know that I've come up against that many, many times over 20, 30 years, they want to bill for the interrogatories, they want to bill for the deposition, they want to bill for the arbitration, they want to bill for the meetings, there's the defense attorneys I know who will be candid will tell you that not only do they want to, they have to, the boss tells them they have to, that's the reality, there's always the theory vs. reality, I know both, and I don't want to sound like a know-it-all, but I do know this, and I say his humbly, but I want this on the record, he told me recently whenever a case -- he said, "Look, the carrier, our firm is not going to settle

this at the earliest until after arbitration and maybe for trial."

[6T86-5 to 6T87-1.][1]

Respondent presented no evidence of status letters to Anthony about important aspects of the case, but argued that Anthony's account of events was not credible. He claimed that Anthony had not called the office forty or fifty times, but only twice. He pointed out, also, that Anthony was a convicted felon who had been caught with a firearm and that the police responding to the incident had referred to him as a gang member. Respondent maintained that Anthony's testimony was entirely not credible.

As to the charge that respondent failed to cooperate with the investigation of the grievance, the record shows that, on four occasions between November 2007 and August 2008, the OAE sent respondent letters, as well as the Anthony grievance, requesting his written reply and client file in the matter. Respondent did not comply with the OAE's requests.

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[1] "6T" refers to the transcript of the June 28, 2010 hearing before the special master.

Respondent did not deny that the OAE sought information about the case and that he failed to furnish it immediately. He recalled having met with the OAE investigator, Wanda Riddle, on March 19, 2008, about all of the within matters. He added that he was without his file in the Anthony matter, however, because he could not locate it. Similarly, he claimed that he did not reply to the OAE's March 31, 2008 letter because he could not locate the file. He then provided an explanation for his failure to reply to the OAE's inquiries in all of the matters that alleged failure to cooperate with ethics authorities:

> I had met with Wanda Riddle, March 19, 2008, and we had a very cordial meeting, and I'm not going to get into that, I'm going to stick with Brandon Anthony, but subsequent — I brought down many files with me, close to 11, and I did -- I cannot find the Brandon Anthony file. On March 19, 2008, I received a subsequent letter from Ms. Riddle, dated March 31, 2008, and the letter essentially says, When [sic] we met on March 19, 2008, you advised you were unable to locate the Brandon Anthony file. Essentially, she's looking for the file, and my response to the grievance, because I couldn't give a response to the grievance until I found the file, and then, there's a letter dated July 9, 2008. By the way, let me just point out that, March 31, 2008, this date was a week or two prior to my mother fracturing her hip, in early May, it was early to mid-May. Then I received a letter, dated July 9, 2008, where Ms. Riddle is reminding me to submit the Brandon Anthony file and to

answer the grievance. And the problem with that letter is, July 9, 2008 is the day my mother died, there was no way I could respond to that, and I was working on a couple of the files for Ms. Riddle, including the Brandon Anthony, after March 31, but then, when my mother broke her hip, I had to go up to Massachusetts. Prior to that, I had accomplished quite a bit, regarding a number of the other matters, in terms of providing Ms. Riddle what she wanted, and that's -- in part, why three of the other matters were dismissed. I've already gone over my mother's situation, and this letter, without Ms. Riddle knowing my personal circumstances, asked for the Brandon Anthony file, and there was no way. Well, number one, I was in Massachusetts, but there was no way that I could handle this request, mentally or physically, at the time, and I'm not saying that I didn't go into the office, not at all, eventually I came back from Massachusetts, but I had a lot of things on my plate, to say the least, I was so far behind, and . . . I do have a busy practice, and I have a lot of clients, and they -- I have employees to meet with the clients, but it just so happens that people like to meet me, and I try to instill in my employees that sense and confidence and knowledge, where they don't -- every single one doesn't need to meet me, they don't need to, when it's not complicated, and some of them have picked up those traits, some haven't. There may be more on Brandon Anthony, but I think that is the bulk of it, and I've tried, to the best of my recollection, by looking at documents and my notes, to give the best chronology and explanation as to what happened to Brandon, and my interaction with the OAE, and

> sometimes lack of interaction, because of extenuating personal circumstances . . . .
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> [6T62-3 to 6T64-6.]

This same factual scenario would serve as respondent's explanation for his failure to cooperate with the OAE in its investigation of all of the other matters discussed below. The ethics investigators sought information from him during the period of roughly May through August 2008.

After the Anthony grievance was filed, respondent finally located the misplaced file, took significant action to move forward his client's claim, and obtained a favorable settlement of $10,000 for him.

II. The Wright Matter – Docket No. XIV-2007-0684E

In this matter, respondent was charged with the failure to cooperate with the ethics investigation, a violation of RPC 8.1(b).

In May 2007, Errick Wright filed an ethics grievance alleging that respondent had failed to adequately inform him of the status of his personal injury case. Wright did not testify at the ethics hearing.

On November 12, 2007, district ethics authorities sent respondent a letter, enclosing the grievance and requesting his written reply. The matter was then turned over to the OAE. On July 16, 2008, the OAE sent respondent a letter, requesting a reply to the grievance and the client file.

On August 4, 2008, the OAE again wrote to respondent, reiterating its previous demands and giving him a deadline of September 1, 2008 to comply with those demands or face a complaint charging him with a violation of RPC 8.1(b).

Respondent did not contest that the information sought by the OAE was not forthcoming. He relied, however, on the explanation quoted above, that is, he had been largely unable to comply with the OAE's requests for information, during the period from May through August 2008, due to his mother's illness and subsequent death.

III. The Moore Matter – Docket No. XIV-2007-0685E

Count three charged respondent with gross neglect and a pattern of neglect (RPC 1.1(a) and (b)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), failure to supervise a subordinate attorney (RPC 5.1(b)), and failure to cooperate with an ethics investigation (RPC 8.1 (b)).

The grievant, Carrie Moore, passed away before the ethics hearing. The OAE investigator, Wanda Riddle, testified about the case.

Riddle's investigation revealed that, on August 14, 2003, Moore was involved in an accident. On July 25, 2005, respondent filed a personal injury complaint, which was administratively dismissed for lack of prosecution, on February 10, 2006.

On October 17, 2007, a District VB Ethics Committee investigator wrote to respondent requesting a reply to Moore's grievance, but received no reply.

On June 30, 2008, after the OAE took over the file from the district ethics committee, Riddle wrote to respondent, again requesting a reply to the grievance and his file. Respondent did not reply.

On August 4, 2008, the OAE sent respondent another letter, requesting information about the matter. Respondent never replied to that request for information, which specifically warned him that he faced a complaint for failure to cooperate with ethics authorities, if he did not reply. According to Riddle, respondent did not reply to any of her requests for information.

Respondent did not testify about the Moore matter or otherwise refute the allegations contained in the complaint.

IV. The Rawls Matter — Docket No. XIV-2007-0706E

Count four charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), and RPC 8.1(b) (failure to cooperate with an ethics investigation).

Brenda Rawls testified that she retained respondent, on March 31, 2003, to represent her for injuries sustained in an automobile accident. Respondent filed a complaint and, in January 2006, settled the case for $1,000. Rawls testified that, although she was unhappy with the amount of the settlement, she willingly signed the settlement documents.

On cross-examination, Rawls conceded that she had refused medical treatment at the accident scene and that, only after retaining respondent, had she sought treatment for soft-tissue injuries.

Respondent testified that the accident took place on April 24, 2003, that he was retained the next day, and that it was a "verbal threshold" case, difficult to win, under Rawls' circumstances. He conceded waiting until about April 24, 2005 to

file a complaint, a strategy that he had found to be successful in other such cases, because they were generally placed with senior adjusters, as they aged.

In November 2005, the complaint was administratively dismissed for lack of prosecution. After the dismissal, respondent negotiated a settlement:

> But I did then speak with Brenda Rawls, I explained the verbal to her, I told her I may have to close her file, she'll call back in September, I left another message with the adjuster, the adjuster [sic], I spoke with Brenda Rawls again on 10/12, I told her to call in two weeks, note, call Sean back.
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> Left message with Sean Grimes, sent telephone call to Sean. Now, once again, it changed adjusters, it went to a Carol Rickelman . . . she would get back and attempt to settle the case. She seems interested in trying to settle this case. Telephone call to Carol Rickelman, will be back on 7/10. I left a message and called her four more times, on 7/18 a conversation with Carol, here's where it gets sticky, she offered $5,000, which would have been a home run on this case, but then she realized it was a verbal, she said, "Wait a minute, I missed this, what is the tort." I said I sent it to her, she says, "It looks like the verbal." I said it [sic], she says, "Listen I can't pay on the verbal." I said, "You just offered $5,000." She said, "Look, the most I can offer is $1,000 on the verbal, that's it." She says that the client does not meet the verbal. A letter to Brenda Rawls, June 4, '07, "As I previously informed you, your automobile policy has a verbal threshold, and I will probably have

> to close your file for that reason. Here I decided to place this case into litigation to try to get you some money, although this may be difficult. In the next few weeks I will try myself to attempt to settle your case," and it goes on. July 18, '07, here's the letter from State Farm confirming that this is a $1,000 offer, and interestingly, it says in the letter if litigation is involved, please provide a filed Stipulation of Dismissal, they're not concerned with Rule 1:37-1, they wanted a stipulation of dismissal so they could file it and end it. Their offer was based upon the verbal threshold, not the status of the case, it was never mentioned.
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> [6T109-11 to 6T110-23.]

Respondent further testified that, after Rawls filed her grievance, he cooperated with the district ethics committee authorities, writing four explanatory letters to the investigator assigned to the matter. Expecting a dismissal of the grievance, he was surprised to later find that the grievance had been forwarded to the OAE. By the time the OAE became involved, he had already settled the case.

V. The El-Amenu Matter — Docket No. XIV-2007-0708E

Count five of the complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and a pattern of neglect), RPC 1.3 (lack of diligence), and RPC 5.1(b) (failure

to supervise subordinate attorney). The OAE withdrew the RPC 5.1(b) charge at the inception of the ethics hearing.

Respondent testified briefly about the case. He recalled that he had filed a personal injury complaint for Mehregina El-Amenu and that the complaint had been dismissed, on July 22, 2005, for lack of prosecution. He had not moved to reinstate the complaint. He claimed, however, that he had been close to a settlement, when El-Amenu had terminated the representation and retained a new attorney, William Marth, in November 2006. El-Amenu did not testify.

Respondent discredited Marth's subsequent settlement, stating, "if I had maintained control of that file, that file would have settled within three months, not a year and-a-half that it took Mr. Marth to do, and I speak from experience on that."

According to Marth, who testified at the ethics hearing, respondent filed the complaint in January 2005, but attempted to serve only two of about twelve defendants. Marth recalled sending respondent two letters requesting the file and making several telephone calls, before respondent finally turned it over to him, in February 2007, along with a substitution of attorney form.

On cross-examination, Marth was asked to go through the file that respondent turned over to him, in order to establish that respondent had performed considerable legal services. Marth countered that he learned little from respondent's file. Rather, he learned everything that he needed to know to settle the case by conducting discovery, which respondent had not done, and which revealed a previously undisclosed insurance carrier from which to collect.

Marth ultimately settled the case in his client's favor for $52,500.

VI. The Nieves Matter – Docket No. XIV-2007-0708E

Count six of the complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and a pattern of neglect) and RPC 1.3 (lack of diligence).

Respondent was the sole witness to testify about the Nieves matter. He was retained, on February 11, 2004, to represent Frances Nieves for injuries sustained in a December 31, 2003 slip-and-fall accident on Newark Housing Authority property.

Although respondent was required to file a tort claims notice within ninety days of the accident, none was filed. According to respondent, his paralegal, who handled that

function in the office, had failed to do so. As soon as she "sheepishly" brought that mistake to his attention, he filed a motion seeking to file a late notice of claim, which motion was denied. Thereafter, he took an appeal to the Appellate Division, which was also unsuccessful.

Respondent was dismayed that he could be found liable for an ethics infraction in this instance:

> This was an experienced paralegal who failed to file the Title 59 motion, this was a paralegal who would file thousands, I'm not saying hundreds, thousands of Title 59 motions, I mean notices, she misses one. I do not for the life of me understand how under those circumstances or under those facts that can be an ethical violation on my part.
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> [8T24-14 to 20.][2]

VII. The Alexander Matter – Docket No. XIV-2008-0039E

Count seven charged respondent with a violation of RPC 8.1(b) (failure to cooperate with an ethics investigation).

On March 5, 2007, Rosemary Alexander filed a grievance against respondent, complaining about his handling of her legal

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[2] "8T refers to the transcript of the September 10, 2010 hearing before the special master.

matter. On May 29, 2007, the ethics investigator wrote to respondent, enclosing the grievance and requesting a reply to it. Additional letters were sent on January 30, July 2, and August 4, 2008. Respondent failed to reply to any of those inquiries.

Respondent did not contest his failure to reply to the grievance. Rather, he explained that problems in the case first arose, when he failed to timely send the client's file to subsequent counsel. Thereafter, he was absent from the office for periods of two weeks at a time, attending to his mother, in Massachusetts. During this time, the OAE sought information from him. Respondent attempted to minimize the impropriety of his actions, stating:

> I'd like to say that I strongly argue that this case should be dismissed, because there was no contumacious or disrespectful attitude that I had toward the OAE, in ignoring them on purpose, for the reasons I've already set forth, and I think all of that is set forth in previous counts, and I'm not going to repeat myself -- oh, and by the way, I am sorry, I did speak with -- I did speak with Ms. Riddle on March 18, 2000 -- March 19, 2008, and claim the file was

sent. I think that also constitutes cooperation.

[9T79-16 to 25.][3]

VIII. The Garrett-White Matter – Docket No. XIV-2008-0296E

The complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and a pattern of neglect), RPC 1.3 (lack of diligence), RPC 5.1(b) (failure to supervise subordinate attorney), and RPC 8.1(b) (failure to cooperate with an ethics investigation). The OAE withdrew the RPC 5.1(b) charge at the inception of the ethics hearing.

Respondent, the sole witness in this matter, testified that he was retained to represent Anne Garrett-White for injuries that she had sustained on May 6, 2005. On March 31, 2008, Garrett-White terminated the representation and requested that he forward her file to subsequent counsel. She believed that he had failed to file a complaint within the statute of limitations. In fact, he had filed a complaint in a timely manner.

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[3] "9T" refers to the transcript of the February 7, 2011 hearing before the special master.

Respondent conceded, however, that the complaint was administratively dismissed for lack of prosecution, on November 23, 2007, and that he did not reinstate it, before sending the file to new counsel, in August 2008.

With regard to the dismissal, respondent testified as follows:

> It is something routinely done, and Ms. Riddle has gone through serially each case, making it sound like something really bad happened, okay, when it was simply an administrative dismissal without prejudice, and an experienced attorney knows that you make a motion, you get it restored, and then you go forward with litigation or in some cases you settle it at that point.
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> [8T83-9 to 16.]

Respondent also offered mitigation for his actions in all of these matters, stating that he suffered from depression since about 2001, for which he was prescribed Tranxene. Respondent went into great detail about those life experiences that he felt were at the heart of his mental illness. In 2004, respondent saw a psychiatrist, Dr. Robinson, who thought that alcohol abuse, which respondent readily acknowledged, had become a part of respondent's life. In 2007, his physician prescribed chlorodiazepate for

depression, which respondent combined with alcohol abuse, resulting in a diminished desire and ability to work.

Respondent's problems peaked, in 2008, with his mother's illness and death, which coincided with the OAE investigation into these matters. Respondent spiraled further downward, even contemplating suicide.

Finally, in September 2009, respondent's family physician placed him on a new drug, Cymbalta, which has worked "miracles." According to respondent, over the course of just a few weeks, his despair began to subside. As he improved, he put his personal and business life back together:

> I feel great, and I thank God, and I mean that. It was a very trying time, to say the least. I don't think many people would have survived it, that's how bad it was, and I take my Cymbalta once a day, religiously, I would never miss that medicine, because I never want to feel like that again, it's horrible. I used to tell my wife, "I'd rather have my leg broken, because that pain is physical. I don't care about that, I'd go in and have it operated on." I've had injuries playing sports, nothing compared to the pain I was going through, and the literature tells you that, when you have major depression, it ends up locating a portion of the body, in my case, it was the upper quadrant of the chest area, the pain settles in a given area. I've learned a lot about this from doctors, including Dr. Cook, who indicated to me that that is very normal, if you want to call it normal, for

> someone with major depression, that this unbelievable pain settles in an area of the body, it's not a physical pain, it's very hard to describe it, but it's like you're being tortured, that's the best analogy I can give you, being tortured, and you'll do anything to get rid of that pain.
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> [5T50-23 to 5T51-21.][4]

Respondent presented additional evidence of his struggle with depression. His psychologist, Gerald Cooke, Ph.D., examined him, issued a detailed report, and testified about his findings.

According to Dr. Cooke, respondent suffered from a narcissistic personality disorder, major depression with anxiety (in remission), and alcohol abuse/dependence (in remission). From about 2001 through July 2009, respondent was in a state of major depression, with alcohol abuse and thoughts of suicide.

On cross-examination, Dr. Cooke was asked if respondent was incapable of dealing with clients and the OAE. The following exchange took place between the presenter and Dr. Cooke:

> Q. In this sentence you say, "He says because he had so little energy," and said, "he also needed to make money. So he says

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[4] "5T" refers to the June 24, 2010 hearing before the special master.

> part of the reason he did not respond is that he was investing what energy and time he had into his law practice."
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> A. Yes.
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> Q. Doesn't that indicate that, at least in part, it was a conscious choice he made not to respond to the Ethics Authorities?
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> A. I guess I would have to leave that to the trier of fact. I can only tell you what he told me. I think what he was seeing there is, I guess, he did make some decisions about where to invest his energy, but I can tell you from the records and my evaluation he had so little energy and utilized what he had so inefficiently due to the interference of fatigue, depression, anxiety, and so on; that, you know, he could only be spread so thin. But, otherwise, I'll have to let that speak for itself. That's what he told me.
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> [7T75-11 to 7T76-5.][5]

Finally, respondent presented several character witnesses from his local community: Stanley Marcus; Kim B. Davis; John Smith; Mayor Robert Bowser; Freeholder Carol Clark; and Sheldon Bross. All of them testified about respondent's good character, considerable involvement in the community, and his trustworthiness and expertise as an attorney.

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[5] "7T" refers to the transcript of the August 9, 2010 hearing before the special master.

In the Anthony matter (count one), the special master found a sole violation of RPC 8.1(b) for respondent's failure to comply with the OAE's requests for information about the case. The special master dismissed the remaining charges (RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b)) for lack of clear and convincing evidence.

In the Wright matter (count two), the special master dismissed the only charge, failure to cooperate with the ethics committee investigation (RPC 8.1(b)), on the basis that there was some evidence that respondent had cooperated with the district ethics investigator, prior to the matter being turned over to the OAE.

In the Moore matter (count three), the special master found that respondent failed to cooperate with the OAE investigation (RPC 8.1(b)). He dismissed the remaining charges (RPC 1.1(a) and (b) and RPC 5.1(b)).

In the Rawls matter (count four), the special master found a pattern of neglect (RPC 1.1(b)) "in the failing to serve the summons, failing to restore the case" and "serving a Summons on a case which was dismissed." The special master dismissed the remaining charges (RPC 1.1(a), RPC 1.3, and RPC 8.1(b)) for lack of clear and convincing evidence.

In the El-Amenu matter (count five), the special master found a pattern of neglect (RPC 1.1(b)), in that respondent "waited two years before filing the personal injury suit and thereafter the complaint was dismissed." The remaining charges were dismissed without further explanation.

In the Nieves matter (count six), the special master found that the paralegal's failure to file the tort notice was simple negligence and did not constitute an ethics infraction by respondent. Respondent's failure to monitor the case, however, amounted to a lack of diligence (RPC 1.3). The remaining charges (RPC 1.1(a) and (b)) were dismissed for lack of clear and convincing evidence.

In the Alexander matter (count seven), the special master found a violation of RPC 8.1(b), the only charge in that count. Respondent failed to comply with the OAE's three separate requests for information, from January to September 2008.

The Garrett-White matter (count eight) yielded a sole finding of failure to cooperate with ethics authorities (RPC 8.1(b)). The special master dismissed the remaining charges, namely RPC 1.1(a) and (b) (gross neglect and a pattern of neglect), and RPC 1.3 (lack of diligence).

With regard to respondent's medical evidence and character witnesses, the special master concluded as follows:

> Simply stated, if Respondent was able to conduct a law practice he should have been able to communicate with the Ethics Office or give a reason why he could not comply. While I am sympathetic to his depression and the stated reasons causing it, I do not accept the testimony of the Psychologist on that issue. The cases are clear that while the depression may explain his violations, it does not excuse it. Even after he began his new medication, Cymbalta in August 2009 he did not cooperate as shown by the failure to meet deadlines in the proceeding herein.
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> Respondent offered the testimony of an Essex County Freeholder and East Orange Mayor and several very experienced attorneys. All testified about Respondent's fine reputation in the community. His reputation was not the core issue. Here he neglected his clients. While we denied a Motion to amend the Complaint to include even more grievants, I of course, became aware of those unsubstantiated charges. His pattern of neglect in this case was clear and convincingly proven by the testimony of Wanda Riddle, the Ethics Investigator, and the Exhibits. His failure to cooperate with the Ethics System cannot be justified nor excused by his medical condition.
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> [SMR8 to SMR9.][6]

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[6] "SMR" refers to the special master's report.

The special master recommended a six-month suspension.

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

With regard to the Anthony matter, respondent was retained, in March 2005, to file a complaint against McDonalds for failing to provide adequate security that would have prevented a "pistol-whipping." Two years later, in March 2007, respondent filed a complaint, which was dismissed, a few months later, for failure to prosecute. Respondent explained that, thereafter, the file was lost in the office, a circumstance that prevented him from negotiating a settlement. In February 2009, respondent located the file and had the complaint reinstated, only to allow its dismissal again, nine months later. Despite the second dismissal, respondent was able to negotiate a $10,000 settlement for his client.

Although the special master declined to find respondent's inaction to be gross neglect or lack of diligence, we do so. After all, respondent allowed the complaint to be dismissed not once, but twice, in a four-year period of time, all while his client expected him to vigorously defend his claim.

Respondent claimed that it was part of his litigation strategy to wait until the two-year statute of limitations would nearly lapse to file complaints and to routinely allow for the dismissal of complaints, all in hopes of dealing with more experienced insurance adjusters, instead of the court system. Respondent ignores the fact that his clients' claims suffer in such circumstances. Obviously, the clients in these matters did not believe they were being well served, for they filed grievances to address respondent's inaction. In the Anthony matter, respondent actually negotiated with McDonalds, after the second dismissal, with no pending complaint, and long after his client had been so dismayed by the delay that he filed a grievance against him.

To the extent that respondent set up a litigation system in his office that favored insurance adjusters over the court system, it put his clients' claims in harm's way. As it turned out, it also attracted the attention of ethics authorities.

We, thus, find that respondent's careless handling of Anthony's case amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

With regard to the allegation that respondent failed to communicate with the client (RPC 1.4(b)), Anthony claimed to

have called respondent's office forty or fifty times, but also acknowledged speaking to a paralegal about his case on those occasions. Respondent claimed that Anthony rarely called the office, but was nevertheless informed about the status of his case. Respondent also recalled speaking to Anthony on several occasions and explaining the case to him on those occasions. The special master must have found Anthony not as credible as respondent, for the RPC 1.4(b) charge was dismissed.

We give considerable deference to the fact-finder on issues of witness credibility. Here, because the special master had the opportunity to observe the demeanor of the witnesses, the special master was in a better position to assess their credibility. We, therefore, defer to the special master with respect to "those intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . .," Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

Regarding RPC 8.1(b), respondent did not contest his failure to reply to the OAE's several requests for information about the Anthony case, from November 2007 to August 2008. Rather, respondent offered his troubled state of depression, compounded by alcohol abuse and his mother's ill health and then death, for his inattention to those requests. Respondent and his

psychologist did not deny, however, that respondent was capable of practicing law, throughout those troubled times. Indeed, he continued to do so. Likewise, neither one of them denied that respondent could have alerted ethics authorities to his plight at any point in time, but did not do so. We, therefore, determine that respondent violated RPC 8.1(b).

In the Wright matter, respondent ignored the district ethic committee's November 12, 2007 request for information about Wright's grievance. He thereafter failed to reply to the July 16 and August 4, 2008 letters from the OAE, requesting his cooperation and the client file. Once again, respondent sought to excuse his conduct by pointing to his mother's plight and to his own depression. Nevertheless, he continued to practice law unabated, during this period of time. He could have requested more time to comply with the OAE's requests, but he did not do so. He, thus, violated RPC 8.1(b) here as well.

Regarding the Moore matter, OAE investigator Riddle testified that respondent filed a personal injury complaint, on July 25, 2005, which was dismissed for lack of prosecution on February 10, 2006. Little else is available about the facts of the matter, as Moore passed away before the ethics hearing and respondent did not testify about the underlying case. Given the

dearth of information about Moore's case, we, like the special master, determine to dismiss the RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b) charges.

With respect to RPC 8.1(b), however, the evidence from Riddle was clear that the district ethics committee and, later, the OAE sent respondent several requests for information, between October 2007 and August 2008, none of which elicited a written reply or the requested client file. Again, respondent explained the reasons for his lack of cooperation, but did not deny the conduct. Here, too, he was guilty of having violated RPC 8.1(b).

In the Rawls matter, respondent was retained, on April 25, 2003, to represent Rawls for a soft-tissue injury that she sustained in an auto accident. Respondent then waited until the two-year anniversary of the accident (April 24, 2005) to file a complaint. The complaint was dismissed, in November 2005, for lack of prosecution. In January 2006, respondent settled the matter, to Rawls' satisfaction, for $1,000.

As in earlier matters, respondent admitted waiting until the two-year statute of limitations was about to run, before filing the complaint. He was unconcerned that the complaint was dismissed and negotiated the settlement, in January 2006,

without reinstating it. Although that "strategy" worked out in this instance, respondent ignored the peril in which he placed his client – one in which no legal action was pending on a claim that was three years old. Even giving respondent credit for settling the case without a pending complaint, his conduct amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

With regard to the RPC 8.1(b) charge, respondent testified that he cooperated with the district ethics committee investigator initially assigned to his disciplinary matter and explained the case, in four separate letters, to the investigator. That testimony was not challenged. Respondent was thereafter surprised to find the OAE involved, by which time he had settled the Rawls case. There is no allegation that respondent subsequently failed to cooperate with the OAE. The special master recommended dismissal of the RPC 8.1(b) charge for lack of clear and convincing evidence that respondent failed to cooperate with the district ethics committee. We agree with that dismissal.

In the El-Amenu matter, the record shows that the client was injured in a January 2003 auto accident. Respondent filed a January 2005 complaint, naming about twelve defendants. The

complaint was dismissed, in July 2005, for lack of prosecution. Respondent took no action to reinstate the complaint for the next sixteen months, when the client terminated the representation and retained Marth, in November 2006. Marth immediately set about restoring the complaint and conducting discovery.

Respondent testified that Marth's legal approach was largely misguided, for respondent could have settled the matter with a few phone calls. Even accepting that as true, the fact remains that respondent did not do so.

Marth, on the other hand, testified that his restoration of the complaint and process of discovery revealed the existence of a previously unknown insurance carrier, from which the plaintiff could recover funds. Moreover, he learned that respondent had failed to serve the complaint on ten of the twelve defendants.

Contrary to respondent's testimony that Marth's work was unnecessary, Marth obtained a substantial settlement ($52,500) for El-Amenu, utilizing the court system over an eighteen-month period.

For respondent's failure to prevent the dismissal of the case, failure to serve defendants, and failure to restore the complaint, once it was dismissed, we determine that he was

guilty of gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3)

In the Nieves matter, respondent was retained, on February 11, 2004, about a December 31, 2003 slip-and-fall accident on Newark Housing Authority property. Respondent thereafter failed to file a tort claims notice within ninety days of the accident. In fact, it was only eighteen months later, in July 2005, that the notice was filed.

Respondent characterized the notice-filing as a paralegal function, which his paralegal simply missed. As a result, the complaint was dismissed as to the Newark Housing Authority. As soon as the mistake was brought to respondent's attention, he filed a motion requesting permission to file a late notice of claim, which was denied. He promptly made an unsuccessful appeal to the Appellate Division, all in hopes of reviving the complaint.

Respondent was dismayed by the ethics charges against him in this matter, believing that he should not be held accountable for a paralegal's mistake. Although the responsibility for the handling of the case ultimately rested with respondent, we considered that he took immediate, significant action to put the matter back on track, albeit unsuccessfully. Under the

circumstances, we determine to dismiss the RPC 1.1(a) and (b) and RPC 1.3 charges.

Parenthetically, to respondent's credit, he advised his client to file a malpractice action against him for his oversights. Nieves did so. That suit was pending at the time of the hearing below.

In the Alexander matter, respondent was charged with a sole violation of RPC 8.1(b) (failure to cooperate with an ethics investigation). Respondent conceded having failed to reply to a May 29, 2007 letter from the ethics investigator, enclosing the grievance and requesting a reply. Additional letters of January 30, July 2 and August 4, 2008 were also ignored.

Again, respondent sought to excuse his misconduct due to his depression and absence from the office for periods of two weeks at a time, attending to his mother in Massachusetts. Nothing, however, prevented him from contacting ethics authorities to request more time to comply with their requests. He did not do so. His inaction in this regard amounted to a violation of RPC 8.1(b).

Finally, in the Garrett-White matter, in May 2005, respondent was retained, to recover for personal injuries sustained by his client. Two years later, on May 4, 2007, he

filed a complaint, which was dismissed, on November 23, 2007, for lack of prosecution.

Thereafter, on March 31, 2008, Garrett-White terminated the representation. Because respondent allowed the complaint to be dismissed and then took no action to reinstate it, from November 2007 to March 2008, we determine that he was guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Several counts of the complaint also charged a pattern of neglect (RPC 1.1(b)). For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, respondent grossly neglected four matters (Anthony, Rawls, El-Amenu, and Garrett-White). Therefore, we find a violation of RPC 1.1(b).

In all, respondent was guilty of gross neglect and pattern of neglect in four matters, lack of diligence in four matters, and failure to cooperate with ethics authorities in four matters.

Attorneys who have been found guilty of lack of diligence, gross neglect, and a pattern of neglect have received reprimands. See, e.g., In re Tyler, 204 N.J. 629 (2011)

(attorney grossly neglected, lacked diligence, and engaged in a pattern of neglect in six bankruptcy matters; the attorney also failed to communicate with the clients and, in one matter, communicated with a represented former client); In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

In addition to the above improprieties, respondent failed to cooperate with the ethics investigations of four matters. Generally, failure to cooperate with an ethics investigation results in an admonition, if the attorney does not have a disciplinary history. See, e.g., In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not cooperate with the investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with the ethics investigator's request for information about the

grievance; the attorney also violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, the attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources, including the probation department, the ex-wife's former lawyer, and the attorney's mortgage company); In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance).

Here, the special master sought the imposition of a six-month suspension. Only where attorneys have neglected a larger number of client matters and have been found guilty of more serious charges than presented here (such as, for instance, misrepresentation, failure to turn over client files, failure to pay medical providers, and allowing the matters to proceed to default) or have prior final discipline, have suspensions been meted out. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-

month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations; no evidence of mental illness); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, failed to cooperate with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 for gross neglect in two matters, at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee, and another reprimand in 1996 for failure to communicate, failure to

supervise office staff and failure to release a file to a client); and In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged).

Notwithstanding the special master's call for a six-month suspension, the misconduct and aggravating circumstances presented here are not as serious as any of the above-cited suspension cases, which included misrepresentations, significant prior discipline, defaults, and the like. Rather, the reprimand cases above are more analogous. Tyler, Balint, and Bennett are in lock step, with one exception. As here, they include a pattern of neglect, lack of diligence, and gross neglect. The difference is an additional finding: failure to cooperate here and communication violations in the cited cases, offenses that would each, on its own, merit only an admonition.

We also considered mitigating factors. It is clear from the record that respondent suffered from depression and alcohol abuse for a period of years (roughly 2001 forward) leading up to the district ethics committee investigations, which were

ultimately turned over to the OAE. Sadly for respondent, his mother, who resided in Massachusetts, became ill in 2008 and later passed away, driving respondent to hit rock bottom right in the very thick of the OAE investigations into a considerable group of eight matters. While that does not excuse respondent's underlying misconduct or failure to cooperate with the OAE, it serves as mitigation. Moreover, he presented character witnesses who came forward and testified on his behalf. Finally respondent has an unblemished professional record of over thirty years.

One significant aggravating factor, however, propels the appropriate sanction upward from a reprimand. First, respondent wasted judicial resources. His was an inexcusable litigation "strategy" of waiting until days before his clients' statutes of limitations expired before filing complaints, then allowing them to be administratively dismissed, after which he would (in the best-case scenario) negotiate settlements with insurance carriers, on dismissed complaints. Respondent placed his clients' claims in peril by circumventing the litigation process and so upset the clients with his systemic delays that they felt compelled to file ethics grievances against him to prompt any action toward the resolution of their cases.

We, therefore, determine that a reprimand is insufficient to address respondent's total misconduct and vote for the imposition of a censure.

We also determine to require respondent, within ninety days of the date of this decision, to provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE. This requirement is based on respondent's claimed cognitive deficit, after the mugging episode.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond T. Roche
Docket No. DRB 11-157

Argued: May 17, 2012

Decided: August 9, 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