SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-431

IN THE MATTER OF :

EDWARD J. GAFFNEY, JR. :

AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 10, 1994

Decided: April 5, 1994

Richard T. Sweeney appeared on behalf of the District X Ethics Committee.

Respondent appeared pro se.

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

This disciplinary matter was before the Board on a recommendation for public discipline filed by the District X Ethics Committee ("DEC"). The complaints, consolidated for hearing, charged respondent with multiple violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to keep client reasonably informed),

RPC 8.4(a) (attempt to violate the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 8.4(d) (conduct that is prejudicial to the administration of justice), RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority), RPC 8.2(a) (false statement regarding the qualifications of a judge) and RPC 1.16(d) (failure to return property and unearned fee upon termination of representation).

Respondent was admitted to the New Jersey bar in 1989. On June 24, 1993, the Court issued an order publicly reprimanding him for misconduct amounting to gross neglect, lack of diligence, failure to communicate, failure to expedite litigation and, finally, failure to cooperate with the District X Ethics Committee. The Court further ordered that respondent be examined by a psychiatrist approved by the Office of Attorney Ethics and that he continue to practice only under the supervision of a proctor. Recently, the Board recommended to the Court that respondent be suspended for six months for conduct similar to that for which he was previously reprimanded and also for misrepresenting to both his client and the court the status of an appeal from a municipal court DWI conviction. On March 10, 1994, upon a motion by the Office of Attorney Ethics, the Court entered an order immediately temporarily suspending respondent.

The complaint charged respondent with misconduct in five separate matters.

The Mulhern Matter (X-92-050E)

Respondent was retained by Christopher Dettman to represent him in a municipal court matter. That matter was scheduled to be heard by the Honorable John E. Mulhern, in Newton Municipal Court, on September 8, 1992. Respondent appeared in court on that date. According to respondent, while he was waiting for the list to be called, he was approached by a Newton police officer, who informed him that a warrant for his arrest had been issued by the Princeton Municipal Court for his failure to pay a traffic fine. Respondent asked that the officer, in lieu of arresting him then and there, allow him to leave the court to drive to his office and to his bank and then return within a short time with sufficient funds to cover the costs of the ticket. When the officer allegedly agreed, respondent proceeded to his office. After leaving his office, respondent noticed that same officer pursuing him with overhead lights in operation. Respondent drove a few yards until he reached his sister's place of business and pulled into the parking lot. At that point, the officer determined that respondent had been driving while his driving privileges were suspended. Respondent was, therefore, handcuffed and arrested by the officer as well as by six other members of the Newton Police force. Respondent's sister seemingly went to the Newton Police Station to pay respondent's bail, whereupon he was released from custody.

Upon learning of respondent's arrest that morning, the municipal prosecutor, Scott Smith, immediately spoke with Judge Mulhern, who apparently determined that respondent's client could

be prejudiced if respondent were forced to proceed on the matter, as scheduled. Judge Mulhern, therefore, requested that respondent meet with him and Smith in chambers. According to Smith, respondent entered Judge Mulhern's chambers in an obviously agitated manner, "slammed his file onto the conference table and slumped into a chair." See Affidavit of Scott Smith at 2, portion of C-2 in evidence. As Judge Mulhern began to advise respondent of his concerns in the Dettman matter, respondent "exploded" and accused the court, the municipal police department and Smith of engaging in a conspiracy against him. Respondent then allegedly remarked that he was "sick and tired of this shit" and expressed to Judge Mulhern his belief that the judge was in some manner prejudiced against him as a result of a proceeding involving a former client of respondent. Specifically, approximately one and one-half years earlier, respondent had represented a Patricia Moog in a civil rights action in which Judge Mulhern (then the municipal prosecutor) had been named a defendant. Due to the "accusatory" nature of respondent's remarks, Smith suggested to Judge Mulhern that the conversation continue on the record in open court. Id. at 3.

When Judge Mulhern called the Dettman matter, respondent immediately requested that it be transferred to another court (along with any other matter involving respondent), citing a "very long-standing problem" between respondent and the judge, stemming from the Moog matter. Exhibit P-3 at 2. Respondent maintained before the court that, when he served Judge Mulhern with the civil

rights complaint in that matter, approximately eighteen months earlier, the judge had become agitated and had begun to yell and scream at respondent. Judge Mulhern, in turn, denied that he had ever yelled at respondent or acted in the manner described by him. Respondent then engaged the court in the following colloquy:

MR. GAFFNEY: Excuse me, Your Honor.

THE COURT: Yes.

MR. GAFFNEY: I'd like to clarify for the record that you're now in fact lying because I know I did, and I'll submit to a lie detector test, if you'd like to too, because you yelled, and in fact you were approximately a few inches from my face, yelling at me. In fact your face was quite red.

THE COURT: I believe I told you --

MR. GAFFNEY: If you want to wear those black robes.

THE COURT: -- I believe I told you to check the record.

MR. GAFFNEY: -- and lie, I suggest that you -- that you swear yourself in first, because I'll swear myself in. In fact I think I'll do that right now.

THE COURT: Mr. Gaffney, sit down please. Mr. Gaffney --

MR. GAFFNEY: Well I'm giving this testimony. I swear upon this bible that the testimony given to the Court is the truth and nothing but the truth.

THE COURT: Thank you, Mr. Gaffney.

MR. GAFFNEY: I know that you're lying.

THE COURT: Your motion are -- motions are denied. I don't think this Court or you are in a position to try this case today.

MR. GAFFNEY: Excuse me, Your Honor, I just finished telling you that you're a liar, so you don't think that maybe that's a little bit of bias that -- that might be an appearance of impropriety that you might take it out on my client?

THE COURT: What you do --

MR. GAFFNEY: You don't think that's a problem?

THE COURT: What you're doing, Mr. Gaffney, is seeking further problems from this Court such as contempt, and I'm not going to gratify you with that.

MR. GAFFNEY: No, Your Honor, I am as an officer of the Court bringing to the Court's attention that you in fact with those black robes on just lied. You lied in this Court because you yelled at me when I served those papers. I am an officer of the Court and I am telling you and I'm clear on the record with everyone else here that you are a liar.

THE COURT: Mr. Gaffney, I never yelled at you.

MR. GAFFNEY: I'll submit to a lie detector test. I wonder if you will.
[Exhibit P-3 at 3-5.]

Respondent represented to the Board that, immediately before he engaged Judge Mulhern in this colloquy, he looked around the courtroom and noticed that other defendants were present.

Respondent admitted to the accuracy of the municipal court transcript and disclosed to the DEC that his statements to Judge Mulhern were not made spontaneously. Respondent testified that he had conferred with his client beforehand and had made a conscious decision to accuse the judge of being a liar, as part of his

defense strategy. 2T 74.[1] He had chosen to proceed in this manner to have a record of the problem between him and the judge, should Detman be convicted. Respondent had never considered an alternate approach to the problem, such as making a motion to stay the proceedings to allow him to appeal the judge's denial of his motion or making an independent application to the assignment judge for the transfer of the case, because he had felt that he needed to establish, on the record, the nature of the conversation between him and Judge Mulhern. It is unclear why respondent did not feel that he could accomplish that purpose by way of affidavit.

While respondent admitted that his conduct in calling the judge a liar "might have been improper with regard to being a member of the bar of the State of New Jersey," he contended that he always maintained a courteous manner toward the judge, never raising his voice and always saying "excuse me." 2T 40. He also contended that he had accomplished exactly what he had set out to do — create a record. Ibid.

* * *

On or about January 7, 1993, the DEC investigator wrote to respondent and requested his written reply to the Mulhern grievance within two weeks. Respondent neither forwarded his response nor filed an answer to the formal complaint until June 15, 1993 — the first day of the DEC hearing. While respondent admitted that he

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[1] 2T denotes the DEC hearing transcript of June 22, 1993. 1T denotes the DEC hearing transcript of June 15, 1993.

did not file a written response to the grievance or a timely answer, he explained that he had been injured in September 1992 and suffered from bilateral carpal tunnel syndrome; he, therefore, could not handwrite his response. He added that, as of October or November 1992, he had gone on "disability leave" because of his injury and had essentially closed his office; he, therefore, had no staff to type his response, had he prepared one. Respondent further contended that he had not attempted to prepare a response because he was too busy transferring files to other attorneys to handle and also had found it physically impossible to reply to all of the grievances then pending against him.

The Chircop Matter (X-92-055E)

Sometime during the Spring of 1992, respondent was retained by Margaret Chircop to represent her in a matrimonial matter. He agreed to accept a flat fee of $1200, one-half of which Chircop gave him at that meeting. There was no written fee agreement between them.

Chircop apparently had no further communication with respondent until approximately June 2, 1992, when respondent faxed a copy of the answer, counterclaim and certification of non-collusion for her review and signature. Chircop signed the documents and immediately returned them to respondent. Between that time and September or October 1992, Chircop attempted to telephone respondent on several occasions to learn the status of her matter. She apparently always reached respondent's answering

machine, but never received a return call. It should be noted, however, that, in her November 30, 1992 letter to Thomas Chesson (part of Exhibit C-2), Chircop indicated that she did, indeed, manage to speak with respondent sometime in October. At that time, he advised her that the answer and counterclaim had been filed and that, barring any significant dispute over property, he expected the divorce to be granted in November or December 1992.

Chircop eventually retained the services of another attorney to complete her divorce. It is not clear, however, what precipitated that action. The record seems to suggest that respondent's lack of response to Chircop's repeated telephone calls, coupled with her utter frustration at having to pursue respondent for any feedback, led her to seek other counsel. See 1T 20, 22, 26. See also Exhibit C-2 (letter of Martha Tessler dated January 20, 1993).

Although respondent admitted that he did not return any of the three telephone calls he received from Chircop between September and October 1992, he claimed that he had performed a substantial amount of work on her case. Specifically, respondent testified that, aside from spending approximately three hours with Chircop at their initial meeting and filing an answer and counterclaim, he had spoken with Chircop's husband's attorney on at least two occasions to attempt to work out a property settlement agreement and had spent substantial time reviewing the proposals for that agreement. That notwithstanding, respondent testified during the second day of the DEC hearing that, two days earlier, he had travelled all the

way to Clifton and had returned to Chircop, in cash, the $600 retainer she had paid him. There was no evidence offered to either support or contradict that assertion. Chircop was not present on that particular day of hearing.

The Little Matter (X-93-001E)

Respondent was retained by Lois Little, on September 1, 1992, to represent her husband, Wayne Little, in a criminal matter. Specifically, Little had been sentenced to a period of incarceration, part of which he had served in a county facility and the other part of which he was then serving at Avenel. Apparently, a dispute arose between Little and the officials at Avenel as to how much credit Little would be given for the time he had served in the county facility.

During their initial "meeting," which took the form of a telephone conference call among Little at Avenel and respondent and Mrs. Little at respondent's office, Little advised respondent that he needed the court to hear any petition in his behalf by the first week of November 1992. That was so because, by then, Little's original forty-month term would have already expired, if his time at Avenel were combined with his time at the county facility. During their conversation, respondent quoted the Littles a fee of between $800 and $1500. There was no written fee agreement. On or about September 21, 1992, Little forwarded respondent a check in the amount of $800 as a retainer.

Little next called respondent on September 27, 1992 to learn the status of his petition. Because he was not able to reach respondent, he asked respondent's secretary to have respondent call Mrs. Little to update her on his progress. Respondent apparently did not call Mrs. Little on that occasion or on any of the other ten occasions, between September 1992 and January 1993, that she had attempted to reach him. On those occasions, Mrs. Little either left messages with respondent's secretary or on an answering machine. She even visited respondent's office on several occasions, only to find it closed. In December 1992, Mrs. Little had a chance meeting with respondent at a store. At that time, they arranged to meet at respondent's office the following Sunday or Monday. When Mrs. Little arrived at respondent's office on the designated date, however, he was not there. In fairness to respondent, Mrs. Little did allude to a misunderstanding between them as to whether the meeting was to take place on Sunday or Monday. In any event, when Mrs. Little apprised her husband of her difficulty in reaching respondent, including his failure to keep their most recent appointment, Little, already frustrated at his many unsuccessful attempts to reach respondent, wrote to respondent on December 8, 1992, discharging him as his attorney. Little further requested the immediate return of the $800 fee paid to respondent in advance, as he had done virtually nothing to further Little's cause. Respondent apparently did not return any portion of that fee. Mrs. Little, therefore, filed suit against him in Special Civil Part for the return of the fee.

When respondent and Mrs. Little appeared in Special Civil Part on January 11, 1993, respondent persuaded her to allow him to continue to represent Little. She reluctantly agreed and the two entered into a Stipulation of Settlement. Exhibit P-2. The stipulation required respondent to perform specific tasks, which included, among other things, meeting with Little at Avenel and filing a motion for reconsideration by January 25, 1993. The stipulation further provided that, if respondent failed to abide by the terms of the agreement, judgment would be entered against him and in favor of Mrs. Little in the amount of $800, upon an ex parte application by way of affidavit.

Respondent's next contact with Mrs. Little was within a week of their appearance in Special Civil Part. Specifically, respondent called her from a courthouse to advise her that he intended to meet with her husband that same day. Unfortunately, he had not made arrangements with Avenel twenty-four hours in advance. Mrs. Little then arranged a conference call among herself, respondent and Avenel officials, during which respondent tried to persuade the officials to waive the advance notice requirement so that he could meet with Little. After the Avenel officials refused to do so, respondent made no further attempts to meet with his client. Nor did he file a motion for reconsideration in Little's behalf.

Ultimately, Little served his full term of forty months at Avenel, without any credit for the time he served in the county facility. In total, therefore, Little served a forty-seven month

term on a forty-month sentence. Because respondent did not fulfill his obligations under the stipulation, Mrs. Little had the settlement reduced to a judgment and had the sheriff levy upon respondent's personal bank account. The Littles received approximately $486.00 only, as a result of that action.

Respondent testified that he did not file the motion for reconsideration for two reasons. First, it had become clear to him, approximately one and one-half months into the representation, that the Avenel officials would not be releasing the time records needed to file the motion. It should be noted, however, that Little testified that he personally forwarded to respondent all the requested time records and further offered to produce an outgoing receipt for those documents. Regardless of whether respondent ever received those documents, he admittedly made no motion to compel Avenel to release the necessary records, in spite of the fact that he knew that any time his client served beyond October 30, 1992 would be in excess of his original forty-month sentence. Respondent alternatively maintained that he had not filed a motion for reconsideration because Mrs. Little had not provided her medical records to him to establish a case of family hardship. (Mrs. Little maintained throughout the hearing that she had provided respondent with all records he had requested). Respondent never produced the Little file in order to defeat that allegation, although he offered to do so at some unspecified point in the future. In any event, respondent claimed that he had discussed

both of these problems with Mrs. Little in October or November 1992, an assertion denied by Mrs. Little.

While respondent admitted that Mrs. Little properly had an $800 judgment entered against him, he made no attempt to repay the balance of that outstanding judgment until two days before the second DEC hearing, when, he maintained, he met with the Littles at his office and refunded them the balance of their retainer. Again, the Littles were not present during that hearing to either support or refute that allegation.

The Brantley Matter (X-93-010E)

Respondent was retained by George Brantley, on or about April 24, 1991, to represent him in a civil rights action against the U.S. Postal Service. At some point after he was retained, respondent filed a complaint in the U.S. District Court for the District of New Jersey. Thereafter, on or about January 8, 1992, both respondent and Brantley were notified by the Clerk of the Court that Brantley's action would be dismissed on January 27, 1992 for failure to serve the summons and complaint within 120 days of the filing of the complaint. The notice further advised that the proposed dismissal could be defeated only upon a showing that service was, in fact, timely made or upon a showing of good cause for failure to do so. Upon receipt of this notice, Brantley made several unsuccessful attempts to reach respondent. Apparently, he left several messages with respondent's secretary, but received no return calls. As the return date of the notice rapidly approached,

Brantley became nervous and enlisted the aid of Senator Feldman's office. Brantley was able to reach respondent only through the intervention of the Senator's office. Respondent assured the Senator's secretary that he would file an affidavit to explain his failed efforts at serving the summons and complaint. Respondent did, indeed, file such an affidavit. The case was not then dismissed.

Brantley admitted that respondent had made him aware of the problems he was experiencing in having process served. Apparently, the U.S. Marshal's Service no longer provided that service. Respondent, therefore, enlisted Brantley's help to locate some other government agency that would do so. Brantley's attempts were fruitless. Brantley, however, learned from the Philadelphia Postmaster's office that respondent needed only to file a "Rule 490" with the court (probably a motion for substituted service). Brantley testified that he relayed that suggestion to respondent.

On or about October 12, 1992, the Court Clerk forwarded to both respondent and Brantley another notice of dismissal for failure to serve process, returnable on October 26, 1992. Upon receipt of this second notice, Brantley again attempted to reach respondent by telephone on several occasions. However, Brantley only reached respondent's answering machine and was not able to leave any messages because he was calling from a rotary phone. When Brantley tried to call respondent on a later date, he reached a recording, advising that respondent's number was temporarily disconnected. (Brantley apparently also reached a recording about

respondent's temporary disability. Brantley letter of February 15, 1993 to Gail Hansen; Exhibit C-4).

On or about February 15, 1993. Brantley himself wrote to the Clerk of the Court to learn the status of his complaint. By letter dated March 2, 1993, the Clerk's Office notified Brantley that the matter had been dismissed on October 26, 1992, as respondent had not been in contact with that office. Brantley then wrote to respondent on March 8, 1993, advising of his discovery. Brantley requested that respondent "correct the situation" and report back to him within five working days. Respondent never replied to that letter or to the other two letters Brantley wrote. Brantley estimated that he lost approximately $160,000 in back pay plus pension benefits, as a result of the dismissal. Brantley added that he had made respondent aware of a plethora of financial difficulties that he had hoped to resolve upon successful completion of his case.

Respondent admitted the truth of virtually all of Brantley's allegations. He testified that he did not attempt to get an order allowing substituted service or for the special appointment of a private process server because he did not think that he needed an order to do so. He did not respond to Brantley's post-dismissal letters because he did not believe that there was anything he could do at that point to rectify the dismissal without a substantial time commitment. Respondent testified that he had not so apprised Brantley because he was ashamed at having betrayed his trust. Finally, respondent admitted that he neither answered the DEC

investigator's requests for information nor filed an answer to the formal complaint.

The Skyler Matter (X-92-054E)

There was no evidence presented at the DEC hearing relative to this matter, with the exception of the investigative report and the Skylers' grievance of December 4, 1992. Briefly, in that letter, the Skylers complained that they retained respondent in June 1991 to represent them in the defense of an action. They paid respondent a $300 or $450 retainer and expected that respondent would file an answer in their behalf. On several occasions since then, it came to their attention that an answer had not been filed. Indeed, despite respondent's alleged repeated assurances that he had filed an answer in the Skylers' behalf, he clearly did not do so. Ultimately, default was entered against them. It is not clear whether judgment was also entered against the Skylers or whether their new attorney was able to negotiate a settlement on the default alone. In any event, once the Skylers realized that default had been entered against them, they requested the return of both their file and the retainer. Respondent apparently refused to return any portion of the retainer, claiming that he had "spent time" on the case.

While respondent admitted at the DEC that default had been entered against the Skylers during his representation, he denied that he could "officially file an answer with the Court." 2T 79. Because that comment was not further pursued, it is not clear

whether there was some impediment to his filing an answer. In addition, respondent made no admissions as to whether he misled the Skylers to believe that he had, indeed, filed an answer in their behalf. Finally, respondent maintained that he did not return any portion of the Skylers' retainer because he had spent a substantial amount of time on the file in the form of court appearances, negotiations and telephone conferences. He promised that his file, which he would deliver on some unspecified future date, would reflect the substantial time he had spent in the Skylers' behalf.

* * *

Inasmuch as virtually no evidence was presented in the Skyler matter, the DEC dismissed that complaint. In the Chircop matter, the presenter informed the DEC, after he reviewed the file subsequently submitted by respondent and after the second hearing date, that respondent had circulated, filed and copied his client on all responsive pleadings. While the hearing panel report indicated that a copy of the presenter's July 16, 1993 letter was "attached," no such copy appeared in the Board's file. In any event, the DEC apparently reviewed the presenter's submissions from respondent's file and dismissed all charges relating to the Chircop matter.

In the Mulhern matter, the DEC found that respondent deliberately and unjustifiably tried to bait the court and found him guilty of violations of RPC 8.2(a), RPC 8.4(d) and RPC 3.2 (not charged in the complaint).

In the Little matter, the DEC found that respondent failed to take any steps to schedule a hearing for his client, failed to answer Little's calls and failed to keep Little informed on the status of his case. The DEC, therefore, found respondent guilty of violations of RPC 1.3 and RPC 1.4. The DEC further found respondent guilty of a violation of RPC 8.4(c) for what it considered to be respondent's intentional failure to comply with the terms of the Stipulation of Settlement. It considered this conduct to amount to a misrepresentation.

In the Brantley matter, the DEC found that respondent negligently handled his client's case, failed to keep his client informed, failed to return his client's calls and "violated Mr. Brantley's trust," all in violation of RPC 1.1, RPC 1.3, RPC 1.4 and RPC 8.4(a) and (c). Hearing Panel Report at 13. In the DEC's opinion, respondent's instances of neglect, when viewed together, amounted to a pattern of neglect, in violation of RPC 1.1(b).

Finally, because respondent neither cooperated with the DEC investigator's requests for information nor filed an answer to any of the formal complaints (with the exception of the Mulhern matter, when respondent submitted an answer on the date of the hearing), the DEC found respondent guilty of a violation of RPC 8.1(b). In making that determination, the DEC noted that respondent had appeared before it on two previous occasions and was, therefore, well aware of his obligations under RPC 8.1.

The DEC recommended the "immediate suspension of respondent" as the appropriate form of discipline for his misconduct.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct are fully supported by clear and convincing evidence. Respondent clearly acted in an inexcusable manner in the Mulhern matter. He baited the court by accusing the judge of lying in open court, used profanity and accused the judge of engaging in a conspiracy against him in chambers. And he did so intentionally, after consultation with his client. Respondent admittedly referred to his conduct as "defense strategy." Nevertheless, an attorney's obligation to represent a client zealously does not license the attorney to engage in conduct that is disruptive, disrespectful and, thus, prejudicial to the administration of justice. The DEC's findings of violations of RPC 8.4(d) and RPC 3.2 (obligation to treat with courtesy and consideration all persons involved in the legal process) are, therefore, justified.

The Board cannot agree, however, with the DEC's finding of a violation of RPC 8.2(a). That rule forbids an attorney from making a statement "that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicatory officer . . . ." The rule appears to require a showing that the lawyer knew the statement to be false when he made it or that he uttered it with reckless disregard as to its truth or falsity. There was no such showing here. In fact, the only evidence presented on that issue —— respondent's

testimony —— suggested a strong belief on respondent's part that his statement was, indeed, accurate. It does not appear, thus, that respondent's actions violated that rule. The findings of misconduct under RPC 8.4(d) and RPC 3.2 sufficiently and accurately characterize the nature of respondent's misconduct.

In the Little matter, respondent was clearly guilty of gross neglect, failure to keep his client informed and failure to act diligently, all in violation of RPC 1.1(a), RPC 1.4 and RPC 1.3. The Board is unable to concur, however, with the DEC's characterization of respondent's failure to abide by the terms of the Stipulation of Settlement as a misrepresentation. If evidence had been presented to suggest that respondent, when he entered into the Stipulation, never had any intention of abiding by its terms, then perhaps this would have been an appropriate finding. There was no such showing, however. In fact, the evidence suggests that respondent made at least one attempt, albeit unsuccessful, to comply with one of the terms.

Like the DEC, the Board found that respondent exhibited gross neglect and lack of diligence in the Brantley matter. He also failed to reply to any of Mr. Brantley's post-dismissal requests for information, in violation of RPC 1.4(a).

The DEC's finding of a wilful failure to cooperate with the disciplinary authorities in all of the matters charged is both warranted and supported by the evidence. If respondent were truly physically disabled by his carpal tunnel syndrome from handwriting responses, he certainly could have telephoned the DEC investigator

to explain his dilemma and to offer to dictate a response or to meet with him. Instead, respondent chose to allow other matters to take precedence and to ignore the DEC's repeated requests. Had he taken his obligation to cooperate seriously, the entire Chircop matter could have been resolved by way of post-investigation dismissal. In addition, the whole process might have been streamlined by way of factual stipulations. Inasmuch as this is respondent's third encounter with the ethics system, his obligation to cooperate with the system should be crystal clear by now.

Lastly, the Board agrees with the DEC's conclusion that the Chircop and Skyler matters should be dismissed.

There remains, thus, the issue of appropriate discipline for respondent's grievous acts of gross neglect, failure to keep his clients advised, lack of diligence, open-court attack upon the integrity of a judge in the name of "defense strategy" and pattern of ignoring the legitimate inquiries of the disciplinary system.

In the past, misconduct similar to that displayed by respondent toward Judge Mulhern has resulted in discipline ranging from a private reprimand to a term of suspension. See, e.g., In re Mezzaca, 67 N.J. 387 (1975) (attorney publicly reprimanded for referring to a departmental review committee as a "Kangaroo court" and for making other discourteous comments); In re Stanley, 102 N.J. 244 (1986) (attorney publicly reprimanded for engaging in shouting and other discourteous behavior toward the court); In re McAlevy, 94 N.J. 201 (1983) (attorney suspended for three months for discourteous conduct toward a judge and an adversary, after

imposition of public reprimand for physically attacking opposing counsel); In re Vincenti, 92 N.J. 591 (1983) (attorney suspended for one year for several instances of verbal attacks upon judges, lawyers, witnesses and bystanders, with the intent to intimidate) and In re Grenell, 127 N.J. 116 (1992) (attorney suspended for two years for, inter alia, outrageous conduct before several tribunals, including the disciplinary authorities).

Respondent showed no remorse for his conduct toward Judge Mulhern. In fact, at the Board hearing, respondent admitted that, while he should have used different language to challenge, in open court, the veracity of the judge's statements, he was not sorry for his conduct.

The Board recognizes that the purpose of discipline is not the punishment of the offender, but "the protection of the public against an attorney who cannot or will not measure up to the high standard of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors as well as aggravating factors are, therefore, relevant and may be considered.

Here, there are no mitigating factors. In contrast, and in aggravation, this is respondent's third appearance before the Board for such misconduct. In the first instance, the Board recommended,

and the Court imposed, a public reprimand. In re Gaffney, 133 N.J. 65 (1993). In the second, the Board recommended a six-month suspension. Now comes respondent for the third time, offering no substantially changed circumstances that would serve to mitigate his conduct. Also, it cannot be forgotten that this is respondent's second instance of conduct prejudicial to the administration of justice, the first having been a year earlier when he lied to Judge Mulhern about the filing of an appeal from a DWI conviction.

Respondent's actions have resulted in serious consequences for his clients. At present, he is clearly a danger to all who unwittingly cross his path. Given his long history of misconduct during his relatively short professional career, as well as his reckless disregard for the ethics system, a five-member majority of the Board is of the opinion that respondent should be suspended for a term of two years, to run consecutively to the six-month term previously recommended, should the Court choose to adopt that prior recommendation. The Board further recommends that, prior to reinstatement, respondent retake the ICLE Skills and Methods core courses. The Board also recommends that, upon restoration to the practice of law, respondent be supervised by a proctor for a period of two years and that he furnish a psychiatric and medical report attesting to his mental and physical fitness to practice law.

Three members voted for disbarment, based on respondent's abandonment of his clients and on the lack of any realistic

prospects for future rehabilitation. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 4/5/94

RAYMOND R. TROMBADORE, ESQ.
Chair
Disciplinary Review Board