Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-411

IN THE MATTER OF

LEON KNIGHT,

AN ATTORNEY AT LAW

Decision

Argued: December 18, 1996

Decided: March 10, 1997

JoAnn G. Eyler appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance before the Board.

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

This matter was before the Board based on a recommendation for discipline filed by Special Master Brian J. Molloy in behalf of the District VI Ethics Committee (DEC), arising out of respondent's conduct in four matters. The specific allegations of the complaint are set forth in the recitation of the facts for each matter.

Respondent was admitted to the New Jersey bar in 1986. At the time relevant to the within matters, he maintained an office in Jersey City, Hudson County.

Respondent was temporarily suspended in New Jersey, by Order dated December 21, 1992, for failure to comply with a fee arbitration determination. In re Knight, 130 N.J. 430 (1992). Respondent paid the fee award on July 6, 1993. Thereafter, respondent was suspended for six months, by Order dated October 12,

1993, for gross neglect, conduct involving dishonesty, fraud, deceit or misrepresentation, failure to cooperate with the disciplinary authorities and violation of the recordkeeping requirements. Respondent's suspension was retroactive to July 6, 1993. In re Knight, 134 N.J. 121 (1993). He remains suspended to date.

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The Maria Oliveira/Fee Arbitration Committee Matter (District Docket No. XIV-95-184E)

In June 1989, Fernanda Oliveira (a/k/a Maria Sequeria) retained respondent in connection with an immigration matter. Oliveira sought resident legal status for herself and four other members of her family. Oliveira, who has returned to her native Portugal, did not testify before the DEC. Oliveira's sister, Grace Gray, who served as her translator in meetings with respondent, testified in her stead.

According to Gray, respondent requested and was paid a flat fee of $5,000. Oliveira understood that the $5,000 was a flat fee. Oliveira and respondent signed a written retainer agreement in Gray's presence. Gray testified that they never discussed whether the fee was refundable. Respondent confirmed in his testimony that the agreement was a flat $5,000 fee.

Oliveira later became dissatisfied with the lack of progress in the matter and discharged respondent. When she sought a refund of the fee, a dispute developed about the amount of the refund.

According to respondent, Oliveira insisted on the return of the $5,000. Oliveira then filed a request for fee arbitration.

The issue before the fee arbitration committee was whether Oliveira was entitled to a refund under the retainer agreement.

During the arbitration proceeding, Oliveira produced her copy of the retainer agreement, which stated that respondent would bill her at the rate of $75 per hour. The retainer also called for a $100 minimum fee. That agreement, Exhibit P-A1, has no handwritten deletions, unlike a separate version of a document presented by respondent containing different language and Oliveira's original signature. (Gray testified that she saw respondent and Oliveira execute two original agreements). The second agreement, Exhibit P-A2, differed from Oliveira's copy, in that it contained handwritten deletions of the paragraphs relating to the hourly rate, fees and costs. The ethics complaint alleged that respondent presented a fraudulent retainer agreement to the fee arbitration panel.[1]

According to Gray, when Oliveira signed the agreements, there were no deletions. Gray added that, during Oliveira's testimony before the fee arbitration committee, she, Oliveira, confirmed that the executed agreement had no deletions.

Contrarily, respondent claimed that he had made the deletions in front of Gray and Oliveira, before the latter signed the agreement. Respondent contended that, when he explained to Oliveira and Gray the flat fee arrangement, he crossed out

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[1] Both agreements contained a handwritten provision, on the signature page, that no refunds would be given after papers had been filed. Respondent stated that this was inserted as a "deterrent" and that it was not "etched in stone."

extraneous sections of the agreement about other charges. He testified that he usually made these deletions in flat fee cases.[2] Respondent thought that the deletions had also been made on Oliveira's copy of the agreement. He asserted that his failure to make the deletions on her copy was merely a mistake. Respondent also testified, somewhat contrarily, however, that the crossing out was probably for his own records; he added that he should have done so on Oliveira's agreement as well.

According to respondent, it was his position during the fee arbitration proceeding that he was entitled to retain a portion of the fee for the work he did. Richard P. Venino, Esq., who chaired the fee arbitration panel, testified that respondent's position was that the $5,000 was a flat fee, that he had worked for fifty hours on the file, that he had earned the fee and that the funds paid were non-refundable. In Venino's judgment, it appeared that Oliveira's fee agreement called for a $5,000 retainer, against which respondent would bill hourly. That, of course, is contrary to Gray and Oliveira's understanding. Venino noted that respondent had been unable to supply an adequate explanation for the differences in the two retainer agreements. Also, respondent's testimony and his written submission to the fee arbitration panel with regard to the existence of his time records differed.

Oliveira paid respondent a total of $5,050, which included a $50 consultation fee. The fee arbitration committee determined

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[2] In the Elsawi matter, below, the paragraphs about respondent's hourly rate are crossed out in the retainer agreement. In the Bowen matter, below, a flat fee case, the paragraphs are not crossed out.

that respondent should refund $4,000 to Oliveira. By letter dated May 19, 1992, Venino referred the matter to the district ethics committee.[3]

The special master pointed to respondent's attempt to discredit Gray's testimony when respondent suggested that Gray had been unaware of the scope of his representation of Oliveira because Gray had been in his office on only one occasion, that is, their initial meeting. As the special master remarked, however, respondent subsequently testified that Gray had been in his office more than once and then denied his original statement. Respondent's original statement appears on page 144 of the transcript of July 24, 1996. The special master called the inconsistencies in respondent's testimony "troublesome."

The complaint charged respondent with a violation of RPC 3.3(a)(1) (false statement of material fact to a tribunal) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), based on his submission of a fraudulent retainer agreement to the fee arbitration committee.

The special master deemed untrue respondent's testimony about when the deletions on the agreement were made and who was present when they were made. The special master found that Gray's testimony was "credible and entirely convincing." The special master determined that respondent had altered his copy of the agreement after it had been signed by Oliveira. The special master

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[3] Respondent's failure to refund the $4,000, allegedly because he was unable to do so, caused his above mentioned temporary suspension. As noted earlier, respondent paid the fee award in 1993.

found further that respondent altered the agreement to convince the fee arbitration committee that he was entitled to retain most, if not all, of the fee. The special master noted that "these deletions would have supported Respondent's position in the Fee Arbitration Committee that the $5,000.00 retainer was non-refundable." The special master added that the fee arbitration committee's opinion that respondent's testimony during that proceeding was not credible played no role in his findings. The special master went on to say that he was concerned only with the facts developed in that proceeding and not with the decision itself.

The special master found respondent guilty of the alleged violations of RPC 3.3(a)(1) and RPC 8.4(c).

The Elsawi Matter (District Docket No. XIV-95-185E)

In October 1988, Elizabeth Elsawi retained respondent in connection with a dispute with a car leasing company, AAA Service Leasing, Inc. ("AAA"). A written retainer was executed between respondent and Elsawi on October 18, 1988, providing for a retainer fee of $100.

By letter dated March 7, 1989, respondent contacted the manager of AAA to state that he represented Elsawi and Johnny Hayes, who, Elsawi contended, was the party responsible for the lease.[4] Respondent testified that he supplied Elsawi with the

[4] Johnny Hayes' name appears on the retainer agreement, although his signature does not. According to respondent, he included Hayes' name at Elsawi's suggestion that Hayes would help pay respondent's fee. Hayes' role is not

information he obtained from AAA and did not hear from her further until approximately February 1990, when she received the complaint filed by AAA.

According to Elsawi, when she received the complaint, she discussed it with respondent, who agreed to file an answer and appear in her behalf. Respondent, in turn, testified that, after he informed Elsawi what his representation would cost, he did not hear from her.

Respondent contended that, in 1991, he learned of the default (it is not clear how) and contacted Elsawi, who stated that she never had notice of the default. Respondent sent a letter dated March 4, 1991 to the court and to AAA's attorney, Roger J. Desiderio, Esq., advising of his representation of Elsawi. By letter dated March 15, 1991, respondent forwarded to Elsawi a March 8, 1991 letter from Desiderio to respondent, stating that a default had been entered against Elsawi on March 29, 1990. In his letter, respondent asked Elsawi for $350 in order to file a motion to set aside the default. Elsawi testified that she paid respondent the $350. Thereafter, in April 1991, respondent called Desiderio, asking for a copy of the complaint. On April 8, 1991, the complaint, the first amended complaint, the proof of service and the default were "faxed" to respondent.

A default had, in fact, been entered against Elsawi. However, in October 1991, prior to the entry of a default judgment, the complaint was dismissed after Desiderio failed to appear for a

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relevant to the allegations against respondent.

proof hearing. According to respondent, however, it was his motion that caused the default to be vacated. Neither the court file nor Desiderio's file contained respondent's purported motion.

In any event, after the initial default was set aside, a February 1992 motion by Desiderio to reinstate the complaint was granted. Respondent received a copy of the motion. A second default was entered against Elsawi. Thereafter, on May 12, 1992, a default judgment was entered, in the amount of $12,990. Respondent took no steps to file an answer in Elsawi's behalf, have the default set aside or oppose the entry of the default judgment. The only document from respondent in the court file was his March 4, 1991 letter of appearance.

Respondent contended that he took no action because he did not represent Elsawi in the litigation. Respondent explained that, despite his requests for payment and his verbal advice to Elsawi that he would not proceed further without payment, additional funds were not forthcoming. (Respondent explained that the above mentioned $100 payment was only for his original letter to AAA to look into the matter). Respondent maintained that his March 4, 1991 letter of appearance was to file the motion and that he filed the motion believing that Elsawi would make further payments. According to respondent, he no longer represented her after April 1991.

The record reveals that Elsawi did make a series of payments to respondent. However, as respondent had represented Elsawi in another matter, he contended that the fees received from Elsawi

were to pay off her debt for his representation in that other matter. (Noteworthy is a $10 payment to respondent on March 4, 1991, the receipt for which stated it is for AAA. March 4, 1991 is the day respondent entered his appearance in the matter).

Elsawi, in turn, testified that the payments to respondent, totaling $450, were for the AAA matter. She stated that, other than his March 15, 1991 letter, respondent never sent another letter asking her for additional funds and never told her that he was no longer representing her.

Once respondent determined that he would no longer represent Elsawi, he took no steps to withdraw from the matter. Respondent testified that, because there had been two or three judges involved in the case, he did not know who he should contact to withdraw. Respondent also claimed that Desiderio advised him that the court did not list him as attorney of record. According to respondent, he told Elsawi to notify the court that she no longer had an attorney.

Respondent contended that he verbally apprised Desiderio, in April 1991, that he no longer represented Elsawi. The record, however, reveals that Desiderio continued to send correspondence to respondent, who also received a copy of the pleadings. Respondent was unable to explain why Desiderio continued to send him correspondence about the case.

According to Elsawi, early in the representation she was able to communicate with respondent. At some point, however, she was no longer able to contact him. After she learned of the default

judgment (through a letter from AAA), on July 28, 1992 Elsawi sent a letter to respondent setting forth her understanding of the events in this matter and asking respondent to communicate with her. Respondent did not reply to the letter.

Respondent denied having received that letter, despite Elsawi's testimony that she placed it under his office door and also mailed it via certified mail. (Elsawi testified that she received a signed green card. The card is not a part of the record). Respondent asserted that he had returned Elsawi's calls. He added that she did not have her own telephone and it was difficult to reach her. Respondent assumed she would come to his office, as she had in the past.

Respondent made a number of statements in his reply to the grievance about when he learned of the default judgment, actions he took thereafter and information he received from the court about the status of Elsawi's case. Respondent's statements were not accurate. In addition, respondent stated that he stopped representing Elsawi because of his suspension. (Presumably, respondent meant his December 1992 suspension). His contentions, however, contradicted his testimony that he refused to take action in Elsawi's behalf when no payment was forthcoming. (The default judgment was entered prior to respondent's suspension, however). By way of explanation for these discrepancies, respondent testified that he wrote his reply to the grievance without the benefit of the file.

The complaint charged respondent with a violation of RPC

1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) RPC 8.1(b) [false statement to disciplinary authorities, mistakenly cited as 8.1(a)] and RPC 8.4(c).

As the special master pointed out, respondent's contention that he did not represent Elsawi in the litigation flies in the face of his letter to the judge advising of his representation of Elsawi, his statements to Elsawi that he represented her, his testimony that he filed a motion to set aside the default and his continued receipt of communication from Desiderio.

The special master found that respondent had represented Elsawi in connection with her dispute with AAA, including the litigation phase. The special master did not believe respondent's contentions about his failure to withdraw as counsel. The special master found that respondent had violated each of the charged rules.

The Judge Advocate General Matter (District Docket No. XIV-95-186E)

By letter dated December 31, 1991, Military Judge Lieutenant Commander Carol G. Ricciardello filed a grievance against respondent. The grievance stemmed from respondent's failure to appear in a timely fashion for a military trial held at the military base at Quantico, Virginia, and his alleged misrepresentations to Judge Ricciardello about his failure to

appear.[5] Two witnesses testified via telephone in this matter: Eugene Kelly, who was the assigned military defense counsel and essentially respondent's co-counsel, and Major Richard E. Grant, who was the prosecuting attorney.

Respondent was retained to represent Private First Class Ruben Colon as his civilian counsel. Respondent met with Kelly and Grant in Quantico in August 1991. Respondent and Kelly determined to seek an administrative remedy to the charges against Colon. According to Kelly, he told respondent that the administrative proceeding would not prevent Colon's military trial from going forward. After the defense requested an adjournment, the trial, which had been set for September 23, 1991, was postponed until October 15, 1991. According to Kelly and Grant, there was no uncertainty about the trial date. Both men also testified that the trial date would not have been confirmed to respondent in writing.

Respondent's testimony was at odds with Kelly and Grant's. According to respondent, he understood from Kelly that the administrative proceeding would take four-to-six weeks and that, if an administrative resolution was close to approval, it would pre-empt the trial. Respondent testified that Kelly was supposed to get back to him about the trial date.

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[5] Respondent questioned the authority of the New Jersey disciplinary system over acts that occurred outside of the jurisdiction of New Jersey and outside the realm of authority of a civilian body. In answer to respondent's objection, the Board notes that a New Jersey attorney is subject to the New Jersey disciplinary system, even if the acts in question occurred out of state. In addition, that jurisdiction extends over any acts committed or performed by a New Jersey attorney that are contrary to the standards of the profession, whether or not related to the practice of law and whether or not related to the attorney's personal affairs. It is the fact that respondent is a member of the New Jersey bar that subjects him to the jurisdiction of the system.

Respondent's and Kelly's versions of the course of the events of October 15 and 16, 1991, when respondent failed to appear timely, varied greatly.

According to Kelly, on September 23, 1991, after the motion for an adjournment was granted, he called respondent's office to notify him that the trial would begin on October 15, 1991 at 1:00 P.M. Kelly did not recall if he spoke to respondent or to his secretary about the trial date. Kelly assumed that, at some point between September 23 and October 15, 1991, he did speak directly to respondent.

Kelly contacted respondent's office on the morning of October 15, 1991 to inform him that the trial would begin at 1:00 P.M. and to confirm that respondent was en route. Kelly did not recall if he had spoken to respondent or to his secretary on the morning of October 15, 1991. Respondent's staff did not know of respondent's whereabouts. Kelly assumed that respondent was on his way to Quantico. When respondent failed to appear at 1:00 P.M., the case was rescheduled for 3:00 P.M. Still, respondent failed to appear. At or about 3:00 P.M., when respondent had not appeared, Kelly called respondent's office at the judge's request and asked that respondent be paged. Shortly thereafter, respondent called and informed Kelly that he had just arrived in Washington, D.C., approximately a forty-five minute drive from Quantico. After a conference with the judge, the case was rescheduled for the following morning, October 16, 1991, at 8:30. Later on the afternoon of October 15, 1991, Kelly spoke by telephone with

respondent and told him that he had to be in court the following morning by 8:00 for the 8:30 trial. Kelly did not recall respondent's explanation for his failure to appear for that afternoon's trial.

When the case was called for trial the following morning, respondent was not present. Some time between 8:30 A.M. and 9:00 A.M., Kelly received a message that respondent had called. When Kelly returned respondent's call, respondent informed him that he was still in his hotel in Washington, D.C. Respondent alluded to some difficulties with his travel plans and stated to Kelly that he would call back with an anticipated arrival time. Respondent did not call again, however. He later arrived at Quantico at approximately 11:45 A.M., more than three hours after the time of the trial.

Judge Ricciardello held respondent in contempt and referred the matter to the DEC.[6]

The record contains a statement prepared by Grant on October 24, 1991, approximately a week after the events in question. Grant witnessed Kelly's telephone conversations with respondent. Although there were some small discrepancies, Grant's statement and testimony supported Kelly's contentions that respondent was aware of the trial dates and the time he had to appear.

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The transcript of the proceedings before Judge Ricciardello on

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[6] Although Judge Ricciardello's letter to the DEC contained some minor discrepancies with Kelly's testimony, it clearly supported Kelly's contention that respondent knew when he was to appear at Quantico.

October 16, 1991 is in evidence as enclosure five to Exhibit P-C1. In response to questions from Judge Ricciardello about his failure to timely appear, respondent stated that, on the morning of October 15, 1991, he had contacted Kelly to ascertain if he had to appear "or if there had been some action taken on the petition," apparently referring to the above-mentioned administrative proceeding. According to respondent, Kelly replied that he would get back to respondent and did so at approximately 10:00 A.M., at which time he told respondent to appear for a 3:00 P.M. trial. Respondent traveled to Washington, D.C. by train from New York, arriving at approximately 3:15 P.M. Still according to respondent, he then called Kelly, who advised him that the judge had agreed to carry the matter to the following day. Respondent contended that Kelly had never advised him to be at Quantico by 8:00 A.M.; rather, Kelly had instructed respondent to call him at the office in the morning, between 8:30 and 9:00 A.M. Respondent continued that, on the morning of October 16, 1991, he had left a message for Kelly at approximately 8:50 A.M. Kelly had returned his call and had told respondent to get to Quantico "as soon as possible." Respondent claimed that, due to travel difficulties, he had been further delayed until after 11:00 A.M.

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Respondent's testimony before the DEC was somewhat at variance with his statements to Judge Ricciardello. He continued to say, however, that he did not know that the trial was listed for October 15, 1991 and that he had not been informed that he had to be at

Quantico at 8:00 A.M. on October 16, 1991, one-half hour before the trial. Rather, respondent stated that, despite his calls to Kelly about the trial date,[7] it was not until he called his own office at 11:00 A.M. or 12:00 P.M. on October 15, 1991 that he learned that Kelly had called him to advise that the trial was going forward that day. Respondent claimed surprise because he thought he and Kelly were still working toward the administrative resolution. Respondent stated that he went directly to the train station and arrived in Washington, D.C. at approximately 3:00 P.M. Respondent contended that he never spoke to Kelly on the morning of October 15, 1991. Respondent added that he called Kelly on his arrival, at which time Kelly advised him that it was too late in the day to begin the trial. Kelly then told him that he should get to Quantico "as soon as possible" in the morning. On the morning of October 16, 1991, respondent called Kelly at approximately 9:00 and left a message that he was on his way.

Respondent set forth a third version of these events in his March 20, 1995 reply to the grievance. Exhibit P-C2. Of note is respondent's statement that, on the morning of October 15, 1991, he contacted Kelly and informed him that he would be leaving Newark at approximately 8:30 A.M. This contradicted his statement that he was unaware of the October 15, 1991 trial date. Respondent testified that, when he prepared his reply to the grievance, he based it on his best recollection of the events without the benefit

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[7] Contrarily, respondent later testified that he waited for Kelly to contact him about the date.

of documents. Respondent stated that, after he received certain documents from the OAE, he was able to recollect what had occurred, explaining that the transcript of the October 16, 1991 trial had "jogged [his] memory."

The complaint charged respondent with a violation of RPC 3.3(a) and RPC 8.4(c), based on his misrepresentations to Judge Ricciardello.

The special master found that "[t]he testimony by Mr. Kelly and Major Grant [was] compelling, credible, and from witnesses with no motivation or purpose to alter the truth." The special master determined that respondent was aware that he had to be in Quantico by 3:00 P.M. on October 15, 1991 and by 8:30 A.M. on October 16, 1991 and failed to appear on both occasions. The special master further found that respondent's statements to Judge Ricciardello and to the ethics authorities that he had not known when he had to appear were false. Accordingly, the special master found respondent guilty of the charged violations of RPC 3.3(a) and RPC 8.4(c).

The Bowen Matter (District Docket No. XIV-95-187E)

In October 1991, Susan Bowen (a/k/a Susan Clark) retained respondent to represent her in a forthcoming foreclosure proceeding. Respondent and Bowen signed a retainer agreement on October 10, 1991 and Bowen paid the requested $750 flat fee.

At an undisclosed time, a foreclosure proceeding was instituted against Bowen. In June 1992, respondent filed an answer

in Bowen's behalf. In October 1992, the plaintiff filed a motion to strike Bowen's answer. It was respondent's recollection that he filed a reply to the motion in November 1992. The record reveals, however, that respondent neither opposed the motion nor advised Bowen that the motion had been filed. On December 4, 1992, an order was entered striking Bowen's answer. Respondent made no effort to reinstate the answer or to otherwise protect Bowen's interests. Respondent contended that he had no recollection of receiving any further documents after his response to the motion to strike the answer and thought that no order had been issued. Respondent claimed that he did not tell Bowen that the answer had been stricken because he did not know of that circumstance. Seemingly by way of explanation for his failure to pursue the matter further, respondent stated that, at that time, his disciplinary proceeding was underway.

Ultimately, in August 1993, a default judgment was entered against Bowen in the amount of $162,685.93 The record reveals that the plaintiff's April 1993 notice of motion for judgment had been sent to respondent. Bowen did not know about the default until she was so informed by letter from the plaintiff's attorneys. The judgment was still in place as of the date of the DEC hearing.

According to Bowen, the only communication she had with respondent was their initial meeting and two letters. Bowen testified that, after July 21, 1992 (the date of respondent's second letter to her), she was unable to contact respondent, despite numerous messages left with his secretary and on an

answering machine. (Bowen added that she never had difficulty receiving messages at the number she left for respondent). Despite respondent's lack of communication with Bowen, at the time she filed her grievance, May 1993, she still thought that respondent was representing her.

For his part, respondent testified that, in the Fall (presumably of 1991), he was responsive to Bowen's calls and forwarded her copies of documents he sent and received as well. Thereafter, seemingly as an excuse for the lack of communication, respondent pointed out that his disciplinary proceeding was in progress.

As noted above, respondent was temporarily suspended in New Jersey on December 21, 1992. According to respondent, when he learned of his impending suspension, he sent letters to his clients, including Bowen, stating that he had a pending matter and asking that they come to his office to discuss their case. Bowen did not reply to his letter or calls. He then sent a second letter to Bowen notifying of his suspension. Again, Bowen did not reply. Thereafter, respondent was contacted by the fee arbitration committee and the DEC.[8] Respondent stated that his letters to Bowen were in the original file when it was supplied to the DEC investigator. He was unable to explain why neither letter was in the copy of the file.

Respondent's file indeed contained a letter dated February 3,

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[8] Respondent refunded Bowen's $750 in April 1996.

1993 to Bowen, advising her of his suspension and stating where he could be reached. That letter indicates that it was sent via certified mail. Respondent testified that that was the second letter to which he had referred.

Bowen denied any knowledge that respondent had been suspended. She was not asked specifically about the February 1993 letter.[9] (Bowen stated, however, that she never received a December 1992 letter from respondent).

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.16(d) and R.1:20-11(d) (notification to clients after temporary suspension). The special master determined that respondent violated each of the cited RPCs. The OAE withdrew the allegation of violation of R.1:20-11(d), as respondent's conduct predated the rule.[10]

Recordkeeping

The OAE asked respondent to turn over his files in these four matters, as well as his client ledger cards and trust account records. Respondent was unable to comply with the OAE's demand, as he did not have possession of his files. Respondent explained that, after his suspension, his files had been placed in a storage

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[9] There was some discrepancy between respondent's testimony and his reply to the grievance about supplying documents to the DEC investigator. Respondent explained that his recollection was faulty when he prepared his written reply.

[10] The record is silent as to why the complaint was not amended to charge respondent with a violation of the correct rule. In any event, because the issue was not fully explored at the DEC hearing, the Board was unable to find a violation in this regard.

facility. When he was unable to maintain the payments on the facility, his files and office equipment had been auctioned off. Indeed, the record contains communication between respondent and counsel for the storage facility, as late as March 1995, in which respondent sought information on the matter. By letter to the OAE dated June 2, 1995, respondent explained his position with regard to his files.

The complaint charged respondent with a violation of RPC 1.15(d) and R.1:21-6. The special master determined that respondent violated both of the cited rules.

The special master noted respondent's "propensity to misrepresent the facts" and his inconsistent testimony from one day to the next. The special master urged the Board to consider respondent's failure to acknowledge the seriousness of the allegations or to take responsibility for his conduct. The special master pointed to respondent's attack on the witnesses against him and OAE counsel, suggesting that the complaint against him was an attempt to make certain that "one less African-American male" would be allowed to practice law in New Jersey.

The special master recommended public discipline and that respondent be required to prove his fitness to practice law.

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Upon a de novo review of the record, the Board is satisfied that the conclusion of the special master that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The issue of misrepresentation pervaded each of these four matters. Respondent was guilty of presenting a fraudulent document to the fee arbitration committee in Oliveira; gross neglect, lack of diligence, failure to communicate, misrepresentation and failure to cooperate with the DEC in Elsawi; misrepresentation to a tribunal in JAG; gross neglect, lack of diligence, failure to communicate and improper termination of representation in Bowen, and failure to maintain his attorney books and records.[11]

There was, in addition to the above matters, some question of respondent's cooperation with the DEC. After an October 1, 1993 meeting with the DEC investigator, it was agreed that respondent would appear for a second meeting on October 12, 1993. Respondent failed to appear. Respondent also failed to reply to an October 14, 1993 letter from the DEC investigator inquiring about his failure to appear and asking for documents that respondent had to supply. Respondent testified that his agreement with the investigator after the October 1, 1993 meeting was only that he

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[11] With regard to respondent's recordkeeping violation, according to the rules only respondent's financial records needed to be maintained. Although respondent is, allegedly through no fault of his own, guilty of a violation in this regard, that violation should not increase the quantum of discipline imposed for the other acts of misconduct.

would forward additional information in Bowen, if he located any. Respondent stated that, with regard to the document request, he "thought it was a bit much and it was an evasion [sic] of [his] privacy." The Board found that respondent violated RPC 8.1(b).

One more point warrants mention. During his statement to Judge Ricciardello in the JAG matter, respondent represented that he was then admitted to the New York bar. In fact, a May 7, 1996 letter from the New York Unified Court System reveals that no one by respondent's name was a member of the New York bar. During the DEC hearing, respondent refused to answer questions about his New York license and why he no longer holds it. The special master found that respondent's refusal to answer the questions constituted a failure to cooperate with the disciplinary authorities. (The special master did not cite the specific rule violation).

Respondent refused to answer questions about his membership/standing in the New York bar, other than to say that he is not currently licensed there. Respondent asserted that the issue was not relevant to the proceedings before the special master. The Board made no determination with regard to respondent's misrepresentation about his membership in the New York bar or in connection with his refusal to address the issue before the DEC.

Respondent is not a stranger to the disciplinary system. In addition to his temporary suspension arising from the fee arbitration proceeding, he was suspended for a period of six months for misconduct in five matters. The matters at issue here

occurred, for the most part, prior to the imposition of respondent's temporary suspension. (There is some continuing misconduct in Bowen where, although the judgment was entered after respondent's suspension, the client went unrepresented due to respondent's failure to advise her of his suspension). It could still be said, however, that respondent did not learn from his past mistakes, because, although his troubling, non-cooperative behavior during the earlier disciplinary proceedings was spelled out in the Board's decision, respondent persisted in assuming the same willful posture, as seen most clearly in his brief, where he insults the OAE attorney, and in his reply to the special master's report, where the special master, too, does not go unscathed.

It is then the totality of the circumstances in these matters, respondent's insulting attitude toward the officers of the disciplinary system and the contradictions in his testimony and in his replies to the grievances that undermine his credibility. In light of these factors, the Board drew adverse inferences against respondent and found that he was guilty in each of the above matters. Of special note was respondent's lack of remorse for his misconduct.

The Board unanimously determined that respondent be prospectively suspended for one year. See In re Herron, 140 N.J. 229 (1995). In addition, prior to reinstatement, respondent is to complete the Skills and Methods core courses offered by the Institute for Continuing Legal Education (ICLE). Respondent is not to be reinstated until all matters currently pending against him at

the DEC level are completed. Upon reinstatement, respondent is to practice under the supervision of a proctor for a period of two years.

Two members did not participate.

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

Dated: 3/10/11

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board