Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 92-489; 92-490

IN THE MATTER OF	
ROBERT A. HOLLIS, AND JOHN P. LIBRETTI,	
ATTORNEYS AT LAW	

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 25, 1993

Decided: April 14, 1993

David T. Robertson appeared on behalf of the District IIB Ethics Committee.

Nino D. Caridi appeared on behalf of respondent Robert A. Hollis.

John L. Weichsel appeared on behalf of respondent John P. Libretti.

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

These matters were before the Board based on a recommendation for public discipline made by the District IIB Ethics Committee ("DEC"). The formal complaint charged respondents with lack of diligence (RPC 1.3), gross neglect (RPC 1.1(a)), failure to communicate with the client and to explain the matter to the client to the extent reasonably necessary to permit him to make informed decisions regarding their representation (RPC 1.4(a)(b)), failure to withdraw from representation (RPC 1.16(a)(1)), and failure to make reasonable efforts to expedite the matter (RPC 3.2).

Additionally, respondent Hollis was charged with conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)), and respondent Libretti was charged with failure to make reasonable efforts to insure that respondent Hollis conformed to the Rules of Professional Conduct (RPC 5.1).

Respondent Libretti was admitted to the New Jersey bar in 1978. He has no prior disciplinary history. Respondent Hollis was admitted to the New Jersey bar in 1971. On February 3, 1984, he was suspended for three years, effective January 21, 1982. On March 12, 1985, he was restored to the practice of law, subject to the condition that he be supervised by a proctor for two years. Respondent Libretti was appointed respondent Hollis' proctor and also employed him as an associate at a compensation rate of $150 a week plus one-third of the fees generated by any matters brought in by respondent Hollis. On May 24, 1988, the Court lifted the proctorship, whereupon respondent Hollis started his own practice of law. He currently shares office space with respondent Libretti.

* * *

Respondents Libretti and Hollis have known each other since 1980. They shared office space until respondent Hollis' suspension in 1982. In fact, respondent Libretti, along with Nino Caridi, Esq., respondent Hollis' counsel in the within proceedings, represented respondent Hollis in the disciplinary matter that culminated in his three-year suspension. As noted above, after

respondent Hollis' reinstatement to the practice of law, respondent Libretti became his proctor and also his employer. In May 1988, after the proctorship was lifted, respondent Hollis disassociated himself from respondent Libretti's firm. They continued, however, to share office space in the same building.

Shortly after respondent Hollis was reinstated, he was entrusted with the handling of the Reigle matter, a potential death penalty case. The defendant, Thomas Reigle, had been previously represented by respondent Libretti in certain juvenile proceedings. When Reigle was arrested and charged with murder, felony murder, two counts of aggravated assault, robbery and burglary, his family contacted respondent Libretti. According to the latter, he would not have accepted the case if respondent Hollis had not been associated with his firm. Respondent Libretti explained that he would not have been able to handle the trial because of his inexperience in criminal matters. Relying on respondent Hollis' expertise — respondent Hollis had worked at the Office of the Public Defender for several years — respondent Libretti agreed to accept the case and to turn over the representation to respondent Hollis. Following a ten-day trial, on July 17, 1985, the jury returned a verdict of guilty on all six counts.[1] On August 16, 1985, Reigle was sentenced to a term of fifty years, with a thirty-year parole ineligibility.

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[1] The victims of Reigle's alleged crimes were his elderly uncle, who was murdered, and his elderly aunt, the deceased uncle's sister.

On August 6, 1985, respondent Hollis, still an associate in respondent Libretti's law firm, wrote to Reigle urging him to file an appeal from his conviction for murder. In that letter, respondent Hollis advised Reigle that he "should appeal [his] conviction under all of the circumstances," that he was "quite optimistic as to [his] chances on [his] appeal," and that he had "everything to gain by appealing and nothing to lose" (Exhibit G-1). Relying on respondent Hollis' advice, Reigle decided to file an appeal, for which respondent Libretti's firm was paid $15,000. Respondent Libretti kept all but $2,250, which he gave to respondent Hollis.

On September 3, 1985, respondent Hollis filed a notice of appeal and, at the same time, a notice of motion for free transcripts, based on Reigle's indigency status (Exhibits I-1 and J-1). On September 23, 1985, the Appellate Division sent a notice of docketing addressed to respondent Libretti's law firm. The letter also enclosed a case information statement and advised that, upon its filing, a scheduling order might be issued listing deadlines for, among other things, the filing of transcripts and briefs. The letter further advised that, if a scheduling order were not received, the time limits set forth in the rules governing appellate practice should be followed (Exhibit K-1).[2]

On October 16, 1985, the motion for free transcripts was granted (Exhibit L-1). Four months later, on February 13, 1987,

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[2] The relevant section provides for the filing of the appellant's brief within forty-five days after the delivery to appellant of the transcript. R. 2:6-11(a).

respondent Hollis wrote to the court reporters asking for all transcripts, with the exception of those related to the jury's selection (Exhibit M-1). Six months later, on August 27, 1987, the Appellate Division wrote to respondent Hollis notifying him that two of the transcripts that were due on April 2, 1987 had not been received (Exhibit N-1); those were the transcripts related to the jury's selection, not ordered by respondent Hollis. By letter dated September 23, 1987, respondent Hollis forwarded to the Appellate Division a copy of the transcript request form for the two missing transcripts (Exhibit O-1). Although the record does not so reflect, presumably all transcripts were ultimately supplied to the Appellate Division — albeit two years after the filing of the appeal[3] — and a scheduling order was issued for the filing of briefs; in the alternative, the time limitations contained in the appellate rules applied. The next step would be, thus, the filing of the appellant's brief.

On March 17, 1988, the Appellate Division dismissed the appeal, with prejudice, for failure to prosecute. Respondents had failed to file a brief on Reigle's behalf. It is undisputed that respondent Hollis knew about the dismissal, although he contended that he had not become aware of it until April 1988, one month or so after the dismissal. It is not so clear, however, that respondent Libretti knew about the dismissal until sometime in

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[3] The delay involving the transcripts was allegedly caused solely by the court reporters' failure to supply expeditiously the names of the reporters for each trial date and also by the inordinate period of time that elapsed before they returned the transcripts.

1990, as seen below.[4] Although respondent Hollis testified that "the moment that [he] was aware of [the dismissal]" he discussed it with respondent Libretti, the latter vehemently denied having such knowledge until at least the spring of 1990. It is also undisputed that respondent Hollis did not inform Reigle of the dismissal of the appeal and repeatedly misrepresented the status of the matter to him (T3/30/1992 43).

In any event, the dismissal of the appeal did not cause respondent Hollis to worry. As he testified before the DEC, he was confident that, because the case involved a long sentence, Reigle would not have been deprived of his right to appeal; he believed that the appeal would be reinstated after the payment of monetary sanctions. In his own words, he "wasn't panicked, because [he knew] these things happen routinely, and [he knew] that routinely Restoration Motions are granted" (T3/30/1992 53).

As mentioned above, respondent Hollis remained in respondent Libretti's employment and under his proctorship until May 1988; thereafter, he became a sole practitioner, but continued to share office space with respondent Libretti. He also remained the attorney primarily in charge of the Reigle matter. Although respondent Libretti contended that respondent Hollis had retained

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[4] During his opening statement, the presenter addressed the hearing panel as follows: "As to Mr. Libretti, he's charged with all of the same violations except as follows: Mr. Libretti denies he was ever aware that this appeal had been dismissed with prejudice. Mr. Hollis admits he received the order from the court. There is an argument between Mr. Hollis and Mr. Libretti as to whether Mr. Libretti knew the appeal was, in fact, dismissed with prejudice. Respectfully, I felt there was a sufficient doubt in my mind so as not to charge Mr. Libretti with having made a knowing misrepresentation to his client in that regard" (T3/2/1992 14).

the file and had officially become the attorney of record, no substitution of attorney was ever filed with the court. Moreover, the client believed that respondent Libretti was also his attorney and respondent Libretti had benefitted from the payment of the $15,000 fee.

Setting aside for the moment the issue of which attorney had responsibility for the file, it is unquestionable that neither filed an appellate brief on Reigle's behalf after the appeal was dismissed with prejudice in March 1988. For the next two years, there followed a series of polite but indignant letters by Reigle inquiring about the status of the brief, based on respondent Hollis' information to him that the next step in prosecuting his appeal would be the filing of a brief. Until October 1988, Reigle's letters were addressed to respondent Hollis only. In those letters, Reigle complained about his great difficulty in reaching respondent Hollis, including his office's refusal to accept Reigle's collect calls from jail.[5] Dissatisfied with respondent Hollis' inaction, Reigle wrote to respondent Libretti on October 29, 1988. In that letter (Exhibit II-1), Reigle complained that he had "tried [his] best to be very patient with Bob" and that it seemed that respondent Hollis was "to [sic] busy to file my brief [] or just does not want to file it." Reigle added that he could not "help feeling this way because Bob keeps postponing it and now he tells me that it should have been filed in September

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[5] Respondent Hollis' secretary testified that, at times, Reigle's collect calls were declined even when respondent Hollis was in the office.

1988 [] and for me not to worry about it because it would only be a fine or penalty. I'm very much worried about this because its [sic] the only thing that will get me out of prison. I'm sure you can understand how I feel." The letter ended by saying "I'm telling you all this because: #1. you recommended him. #2. you were always not only my initial lawyer but I felt you were a friend that I could turn to for an opinion. Please talk to Bob for me and find out why he is doing this to me."

According to respondent Libretti's testimony, after the receipt of that letter, he assured Reigle that he would do everything in his power to "get this taken care of" (T3/2/1992 162). As he testified before the DEC,

A. "Right after I talked to [Reigle], I sat down and confronted Bob, told Bob that the situation was unbelievable and that the situation was going to cause severe problems if it hasn't already caused the client severe harm. We have to get this brief in. And he assured me we would, not to worry, we are not going to get in trouble, [Reigle]'s going to get a good brief. We are going to do it. I offered to help him. I told [Reigle] I'd offered to help Bob. And I did, in effect, tell [Reigle] that I would get reinvolved again because he asked me to get Bob to do what he had to do. No doubt I made that representation to him.

. . .

For the next few months it was just a constant badgering of Bob, talking to him about the case. I was still in the office at the time and was keeping [Reigle] informed.[6] I was talking to him. I told him where we were going to. Bob had the biggest job to do at that time, he had to read the transcripts, and there were boxes of it. And, you know, I really thought he was going to do it. 10 years before, I wouldn't have thought

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[6] In January 1990, respondent Libretti became a general counsel and tax analyst for Property Evaluation Services, a property tax consulting company in Wayne, New Jersey.

he would have done it because it was too much of a task. I really thought he was going to do it. And it was alot [sic] of work he had to do, but I was going to help him. I knew where Bob needed help, I thought I did, and that was getting the papers together, physical work, that's where I had to come in to get the brief together, get it typed up, get it done. Bob was the brains, he knew the law. He would dictate. He would lead me in the right direction for the research. And hopefully, we can rectify the situation. And that's how I approached it at that time. And that's how I went full tilt. As far as I was concerned, the appeal was still viable, a motion to file out of time was going to be made. But that's how I approached it.

Q. Did he dictate a motion for permission to file a brief out of time?

A. No.

Q. Did you ever see such a motion?

A. No.

Q. Okay. November of '88, December of '88, January '89, the next time contact is -- when is next time you had any contact with Tommy Reigle?

A. I can't recall, but I'm sure Tommy's letters in evidence will indicate I was in touch with him rather frequently. I was taking his phone calls, trying to send him copies or writing to him whenever we had to. But I can't say I did anything -- I can't say that I did what I was supposed to do. I know what I did do, and it wasn't enough, and it wasn't the right thing to do, but I basically went after Bob to try to get him to do it. And I should have done it. But Bob would tell me we were going to do it. And whatever Bob would represent to me, like a fool, I would just pass it right on to Tommy, almost word for word. I would get a promise out of Bob and I would promise Tommy.

[T3/2/1992 162-165]

On November 16, 1989, Reigle received a letter ostensibly signed by both respondents:[7]

> Dear Tom,
>
> Bob and I truly regret the delay in completing the brief for your Appeal. Specifically, I am researching the area of your statements or confessions, and their legality. The key issue appears to be whether your taped confessions should have been admitted.
>
> . . .
>
> Bob has been trying to frame this one very narrow legal issue into an argument under the New Jersey constitution rather than under the Federal constitution.
>
> . . .
>
> Bob is doing all of the procedural history, all of the facts, and is covering all of the other areas relating to your Appeal including judicial error in instructions to the jury, the admission of the question as to whether you married Kathy to prevent her from testifying, and some other minor procedural points that were raised at trial. I expect to have a final brief done, printed and given to your sister or mailed to you within the near future. If it takes another three [3] weeks or four [4] weeks, this is being done to make sure that the best possible job is being done on your behalf. Please be patient. If you have any questions, please give us a call.
>
> Very truly yours,
>
> Robert Hollis
> &
> John P. Libretti

[Exhibit MM-1]

According to both respondents, it had been agreed that respondent Hollis would prepare the statement of facts, the procedural history, and an outline of the issues to be researched

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[7] At the DEC hearing, respondent Hollis denied that he had signed that letter. In fact, he testified that he had never seen it until these ethics proceedings began.

by respondent Libretti. Respondent Libretti, in turn, would do the necessary legal research, after the issues on appeal had been narrowed down by respondent Hollis. Even after this division of tasks, however, neither respondent fulfilled his end of the bargain. This is the area that generated much finger pointing at the DEC hearings. According to respondent Libretti, respondent Hollis never really gave him an outline of the relevant issues, but only "half-[baked] conversations as to where to go" (T3/2/1992 172). He then researched "a couple of hundred cases" and, on February 5, 1990, prepared a two-page memorandum to the file, with a copy to Reigle, embodying his conclusions (Part of Exhibit R-1).[8] Respondent Hollis, in turn, countered that he "did not do what he was supposed to do because respondent Libretti did not do what he was supposed to do" (T3/30/1992 100). He contended that an outline of the issues was unnecessary because the issues on appeal had been listed in the case information statement filed with the appeal; additionally, he had discussed them with respondent Libretti on numerous occasions. He also contended that, when respondent Libretti finally supplied him with some legal research, it was totally inadequate. He blamed respondent Libretti for not providing him with a "rough" brief. As he testified at the DEC hearing,

> I write terrible briefs. If somebody gives me a rough, I do a pretty good job of turning it into a nice finished product, and I had no trouble going down and arguing it in front of the Appellate Division.

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[8] The record reflects that even Reigle was conducting legal research in order to assist respondents in the preparation of the brief.

> John's always been a little gun shy of getting on his feet. I wanted help on the research. The issues were really clear. They were the Miranda issues. The major issue was just the Miranda issue. . . .
> [T3/30/1992 40]

Asked by the presenter what he had done to advance the preparation of the brief, respondent Hollis replied:

> I didn't do anything. I had the procedural stuff laid out. The facts were pretty simple. It wasn't a long trial, and it was almost all Rule Eight issues so you highlight those facts.
> [T3/30/1992 58]

Queried about what respondent Libretti had done on the brief, respondent Hollis answered:

> He yelled at me alot [sic]. He yelled at me about I should [sic] borrow the $15,000 to pay back to the Reigle family.
>
> . . .
>
> At one point he gave me a memo about a page and a half, and told me how to write the Miranda warnings.
>
> . . .
>
> And at one point he gave me a couple of Arizona Supreme Court decisions of six or seven or eight pages dealing with confessions which didn't have an awful lot to do with the taint issue of Reigle.
> [T3/30/1992 58]

Respondent Hollis admitted, however, that he might not have filed or prepared a brief even if respondent Libretti had given him a "rough" draft:

> Maybe it's wishful thinking on my part that if he had given me a rough brief in terms of the law I would have done it. I don't know. I would like to think that I would have gotten it done.
> [T3/30/1992 95]

On April 9, 1990, Reigle wrote to respondent Hollis, with a copy to respondent Libretti, asking respondent Hollis to make himself available for a meeting with respondent Libretti and Reigle's sister, Dorothy Martin, so that his sister could "see any and all research that has been done in the past fifty-six (56) months" (Exhibit UU-1). At that meeting, respondent Libretti, still allegedly unaware that the appeal had been dismissed, discussed the filing of the brief with Reigle's sister. In his own words, "I told her that, you know, it's horrible what happened and we have to get this done. And she was going to have a meeting with us" (T3/2/1992 176). Thereafter, Reigle's sister consulted with another attorney, Miles Feinstein, Esq., who, during a conversation with respondent Libretti, informed him that the appeal had been dismissed with prejudice in March 1988.

The record is silent as to what, if anything, either respondent did after that. The record discloses only that, upon being apprised of the dismissal of the appeal, respondent Libretti was allegedly too angry to discuss the matter with respondent Hollis for fear that he, respondent Libretti, "might not be able to just talk to him" (T3/2/1992 158). Respondent Libretti then asked respondent Hollis' secretary to attempt to find the dismissal order, which, according to respondent Libretti, was not in the file. The secretary found the order on top of a filing cabinet in respondent Hollis' office.

Asked, at the DEC hearing, if he had not suspected, at some point, that respondent Hollis had not mended his ways, respondent Libretti replied:

A. I started having worries about him not having changed and being the old Bob towards the end of '89. It should have happened sooner, but it didn't. That's when I started having those feelings and definitely when Miles told me, as a matter of fact, that --

. . .

Q. Why didn't you go out and hire another lawyer to write another brief?

A. Why didn't I just not believe Bob and call the Appellate Division and find out the case was dismissed? That's what I should have done. I don't know why I didn't think that way -- I just -- whatever Bob told me, I bought. I clearly look back now and know that, and I'm sure that this is not in my best interest, I'm going to say it anyway, I clearly know that a simple phone call in October of '88 -- I should have known that no court allows a case to drag on this long without some sort of prosecution of it. I mean, in October of '88 when Tommy wrote to me it was over three years and nothing, no brief was filed. And I should have known because I see another case even in municipal court, if you don't move a case, the court dismisses it. All I had to do was just ignore what was told to me and make the phone call. And I would either have hired a lawyer then or I don't know what I would have done. That's all I had to do. I didn't do it. I didn't do it. I just bought whatever he told me hook, line and sink [sic].

Q. Do you acknowledge that the fees are due and owing to Mr. Reigle?

A. Without a doubt and probably then some.

[T3/2/1992 177-178]

Respondent Libretti added that, although it was his conviction that the fee should be returned to Reigle, financial difficulties prevented him from doing so. He advised Reigle, however, to contact his malpractice carrier and, in fact, a complaint for

malpractice was filed, in April 1992, against respondent Hollis, respondent Libretti and the partnership of Libretti and Weston (Weston was respondent Libretti's partner in 1985).

Respondent Hollis offered no excuse or mitigation to explain his conduct. He asserted that, although he had been hospitalized on four occasions between February 1986 and March 1987, he could not advance illness as mitigation. As he testified,

> I'm not using a medical condition here to say I was non-functional or say I couldn't work. I just got behind. You know, I was -- you go in the hospital for a week and a half, you come out, you're medicated, you can't put the time in.
>
> I went back to work the day after I got released every time. You don't get caught up. I'm not offering as a defense, I'm offering as something that got me behind. I mean, I don't know if I've been in the hospital that much in 12 years. I was in a couple of times when I was suspended with pneumonia, but I haven't been in the hospital since '87. It's not an excuse, it's not an excuse for what I wrote to Tom Reigle. I misrepresented to him. That had nothing to do with my being sick.
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> [T3/30/1992 96]

Respondent Hollis argued, however, that the within infractions were aberrational, instead of part of the pattern of misconduct that led to his three-year suspension.

Respondent Hollis also acknowledged that respondent Libretti had been of invaluable assistance to him both as a friend and an employer. In his own words, ". . . the man was like a brother to me. I took a lot from him over the years. He also did a lot for me" (T3/30/1992 92).

Ultimately, the Appellate Division reinstated the appeal, but denied it on the merits. Thereafter, according to respondent Hollis, Miles Feinstein petitioned the Supreme Court for certiorari. As of the date of the DEC hearings, the outcome of the latter proceeding was unknown.

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At the conclusion of the ethics hearings, the DEC found that respondent Libretti had violated RPC 1.3 (lack of diligence), RPC 1.1(a) (gross neglect), RPC 1.4(a) and 1.4(b) (failure to communicate with his client and to explain the case to permit the client to make informed decisions), RPC 1.16(a)(1) (failure to withdraw from representation), RPC 3.2 (failure to expedite the appeal and to treat his client with courtesy and consideration), and RPC 5.1 (failure to insure that Hollis conformed to the Rules of Professional Conduct). The DEC recommended that he receive a public reprimand.[9]

As to respondent Hollis, the DEC concluded that he had committed the same violations as respondent Libretti, with the exception of RPC 5.1. In addition, the DEC found that respondent Hollis had engaged in conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)),[10] by misleading Reigle on

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[9] During his summation, the presenter argued that there was virtually no distinction between respondent Libretti's and respondent Hollis' conduct. The DEC rejected this argument, remarking that "[i]t is the panel's belief that Mr. Libretti's conduct did not warrant sanctions as severe as that imposed upon Mr. Hollis" (Hearing Panel Report at 6).

[10] The DEC mistakenly cited RPC 8.4(a), instead of RPC 8.4(c).

numerous occasions. The DEC recommended that respondent Hollis receive public discipline, stressing that "[t]his panel is mindful of the fact that whether to suspend or disbar, and if so for what period, is not within our jurisdiction" (Hearing Panel Report at 6).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondents acted unethically is fully supported by clear and convincing evidence. Both respondents violated RPC 1.3, RPC 1.1(a), RPC 1.4(a)(b), RPC 1.16(a)(1), and RPC 3.2. Respondent Libretti also violated RPC 5.1(a),(b), and(c).[11] Respondent Hollis, in turn, violated RPC 8.4(c).

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[11] Respondent Libretti was not charged with breach of his proctorship duties. As a frame of reference, the proctorship was lifted on May 24, 1988. Respondent Hollis' improprieties did not begin until, presumably, the end of 1987 or the beginning of 1988 (the record shows that the last transcript was finally supplied to the Appellate Division late in 1987. There is no allegation that, at least until that date, respondent Hollis had not properly pursued the appeal). It is respondent Hollis' conduct following the filing of the transcripts with the Appellate Division that is the subject matter of these proceedings. It is not known, however, exactly when that conduct began. Indeed, because the record does not contain a scheduling order by the Appellate Division, it is not known when he failed to abide by the deadline for filing an appellate brief. It is equally unknown whether the Appellate Division issued a scheduling order or whether the time limitations of R.2:6-11(a) were to be followed (brief and appendix to be filed within forty-five days after the delivery to appellant of the transcript). More simply stated, in not charging respondent Libretti with violation of his proctorship duties, the DEC must have concluded that there was no evidence that respondent Hollis's first unethical act was committed before the end of the proctorship, May 1988. Indeed, respondent Libretti testified that there was no indication, during the period of the proctorship, that respondent Hollis was mishandling the Reigle matter.

AS TO RESPONDENT LIBRETTI

As noted above, no charges were made against respondent Libretti alleging violation of his proctorship duties through May 1988, the date when the proctorship requirement was lifted. This is not to say, however, that he was not responsible, even before May 1988, for the improprieties that took place in the Reigle matter. Indeed, his responsibility stemmed from his position as respondent Hollis' employer and supervisor, and also from his direct involvement, as the attorney to whom Reigle entrusted the case. Accordingly, even if he did not discover respondent Hollis' misdeeds until October 1988, when he was contacted by the client, respondent Libretti cannot be exonerated from responsibility for respondent Hollis' mishandling of the matter before October 1988, as he would have it. Despite his contention that respondent Hollis took over the representation of the matter when he disassociated himself from respondent Libretti's employment in May 1988, no substitution of attorney was ever filed and the client reasonably believed that respondent Libretti was also his attorney. Moreover, it was respondent Libretti who primarily benefitted from the payment of the $15,000 fee paid by the client.

The bulk of his misconduct, however, occurred after October 1988, when he claimed that he first became aware that respondent Hollis had not filed an appellate brief. Respondent Libretti had no knowledge of the dismissal of the appeal by that time. It was only then that he learned, for the first time, that respondent Hollis had still not filed the brief, had made numerous

misrepresentations to Reigle about the status of the appellate matter, and was dodging Reigle's telephone inquiries as well as Reigle's sister's requests for information (Reigle complained to respondent Libretti that respondent Hollis had canceled six appointments with his sister).

According to respondent Libretti, there ensued a series of "screaming sessions" directed at respondent Hollis, followed by the latter's hollow promises to respondent Libretti that he would have the brief filed in a short time. This went on for two or three years. What is difficult to accept is respondent Libretti's professed belief, during that time, that respondent Hollis would ultimately fulfill his promise to prepare and file the brief. A more likely explanation for his forbearance of respondent Hollis' unkept promises was that, not being financially able to return the $15,000 fee to the client,[12] he had no choice but to hope that, sometime soon, respondent Hollis would come to his senses and file the brief.[13] Respondent Libretti's reliance on respondent Hollis' assurances was doubly unreasonable: first, because, even in the absence of similar past misconduct by respondent Hollis, a two-or three-year delay in filing a brief, standing alone, is outrageous; second, because the first instance of unfulfilled promise by respondent Hollis should have given respondent Libretti clear

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[12] During his summation, respondent Hollis told the DEC that he was "covering for both John and I [sic] when I misadvised John [sic] Reigle because neither of us had $15,000 or anything close to it" (T5/1/1992 67).

[13] The fact that respondent Libretti was unable to return the fee to the client also serves to explain why he did not advise the client to retain other counsel.

notice that respondent Hollis had, once again, strayed from his ethical path.

Respondent Libretti's own conduct, too, was inexcusable. Because of his alleged inability to return the $15,000 fee, he allowed his personal interests to be placed above those of his client's. Like respondent Hollis, he exhibited avoidant behavior, which included his failure to contact the Appellate Division to determine the true status of the appeal — dismissed or in good standing — after Reigle wrote to him in October 1988.

Considering that this is respondent Libretti's first ethics infraction, that he was cooperative with the DEC, that he acknowledged his mistake, and that he might not have been embroiled in this unfortunate situation if not for his desire to help respondent Hollis, the Board's majority recommends that he be publicly reprimanded. One member would have imposed a three-month suspension. Two members did not participate.

AS TO RESPONDENT HOLLIS

The inescapable conclusion is that respondent Hollis did not learn from his past serious mistakes. He was reinstated in March 1985. Not long thereafter — less than one year later — he resumed (at least as to Reigle) his former practice, which took him perilously close to disbarment, of not pursuing matters diligently, not keeping clients informed of the status of their matters, and making misrepresentations to the clients. In the within matter, respondent Hollis' failure to file the appellate brief on time,

which caused the dismissal of the appeal, his failure to have the appeal reinstated after its dismissal with prejudice in March 1988, and his misrepresentations to the client for a period of three years were simply inexcusable. No amount of mitigation — he offered none — would be sufficient to lessen the seriousness of his unethical conduct. His indifference to the clients' interests, to the image of the profession held by the public, and to the disciplinary system evokes nothing short of outrage. There should be no disagreement that the public must be protected from this respondent.

In two recent cases, the Court disbarred recividist attorneys after becoming convinced that their conduct could not be improved. See In re Ritger, 128 N.J. 112 (1992) (where the attorney's two-year suspension in 1979 for misappropriation of trust funds and six-month suspension in 1989 for a pattern of neglect and misrepresentation were followed by conduct involving failure to communicate with his client, misrepresentation, and violation of proctorship requirements), and In re Cohen, 120 N.J. 304 (1990) (where the attorney was suspended in 1989 for a period of one year following numerous serious ethics violations and, in the matter that led to his disbarment, misrepresented the status of the matter to his client for two years, altered the filing date on a pleading, failed to cooperate with the disciplinary system, and violated Administrative Guideline No. 23 of the Office of Attorney Ethics).

Here, too, the appropriate sanction for respondent Hollis' pattern of disturbing misconduct should be nothing short of

disbarment. This recommendation is grounded on the Board's conviction that he is beyond redemption. A four-member majority of the Board recommends that respondent Hollis be disbarred. Two members would have imposed a lengthy suspension, followed by a proctorship for an indefinite period of time. One member would have imposed a one-year suspension, also followed by an indefinite proctorship and a psychiatric examination. Two members did not participate.

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

Dated: 4/14/1993 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board