SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-278

IN THE MATTER OF :

DWAYNE C. VAUGHN :

AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 28, 1990

Decided: January 8, 1991

Hayden Smith appeared on behalf of the District VA Ethics Committee.

Respondent appeared pro se.

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

This matter is before the Board based upon a presentment filed by the District VA Ethics Committee.

Respondent, Dwayne C. Vaughn, was admitted to the New Jersey bar in 1981. In March 1986, respondent and another attorney formed a law partnership that dissolved in May 1987, when the association became disharmonious. In August 1987, respondent and his family relocated to Georgia, where respondent did not engage in the

practice of law until February 1989. Since that time, he has been associated with a law firm in Atlanta.

The Pomona Gardens Tenants' Association Matter
(Total Property Concepts, Inc. - VA-87-32E)

In August 1985, respondent was retained by the Pomona Gardens Tenants' Association ("The Tenants' Association") to attempt to resolve certain problems between the residents and the owner of the Pomona Gardens apartment complex. As La Francis Rodgers-Rose (hereinafter "Rose"), the then president of the tenants' association testified, the conditions of the building at that time were deplorable: it was infested by rats, with no garbage pick-up service, in dire need of repairs and improvements, easily accessible to "walk-ins" from the street, and about to have its electricity disconnected for thousands of dollars in arrearages. Moreover, the owner had announced his intention to tax the residents with a rent increase.

Respondent was introduced to the tenants by Rose, who had met him at a ceremony in which he had received a special award for his work for the Black United Fund of New Jersey. After Rose convened a meeting of the tenants' association, which respondent attended, the association voted to engage respondent's legal services. It was agreed that all future rent payments would be entrusted to respondent who, in turn, would apply the monies toward maintenance, repair, and improvement expenses.

Indeed, the evidence shows that, from the $40,197.50 escrowed with respondent between August 1985 and January 1986, respondent expended $33,719.36 for emergent repairs, purchase of appliances, installation of an intercom system, installation of a fence around the building, and overdue electricity payments totalling $4,000, to name a few. The ethics complaint does not charge -- and the record does not show -- any impropriety on respondent's part in utilizing the escrow funds.

According to respondent's testimony, which was corroborated by Rose, at each meeting of the tenants' association, respondent would present a verbal "general report" on the rents received and the funds disbursed, including certain breakdowns. Rose testified that respondent always kept her apprised of his activities on behalf of the tenants' association and that she never felt that respondent "was holding anything back."

In January 1986, the building was sold to a new owner, at which time the tenants' association decided to turn over the rent payments directly to the new owner, as a "vote of confidence" in new management. Although no further funds were entrusted to respondent after January 1986, there remained an outstanding balance in the escrow account and some bills to be satisfied.

In the spring of 1986, Rose stepped down as president of the tenants' association, whereupon Gwendolyn LaMarr became the new president. Although there is no dispute as to when respondent's

legal representation terminated, LaMarr's and respondent's testimony are at variance as to which party ended the attorney-client relationship. According to LaMarr, early in 1986, the tenants received a notice of rent increase. When she contacted respondent about representing the tenants' association at a hearing in connection with the rent increase, respondent replied that he was unable to do so because of a "conflict of interest." Still according to LaMarr, the tenants' association ended up representing itself after her efforts to be represented by legal aid services proved unsuccessful.

Respondent, in turn, testified that, at a telephone conversation with LaMarr, she announced the tenants' association's intention to be represented at the rent increase hearing not by respondent, but by legal services. Respondent then instructed LaMarr to obtain a letter of representation from new counsel, whereupon respondent would turn over the file and the balance of the escrow funds to the new attorney. Respondent testified further that he never received any such letter.

What is undisputed is that, by letters dated July 7 and September 3, 1986 (Exhibits C-25 and C-26), LaMarr requested that respondent provide an accounting of all receipts and disbursements between August 1985 and January 1986, to no avail. Similarly, the owner of the building asked respondent for a formal accounting, without success. LaMarr did acknowledge, however, that, during

Rose's term as president of the tenants' association, respondent dealt directly with Rose with regard to the rent payments received, and that respondent would provide "updates" at the monthly meetings of the tenants' association. LaMarr also remembered that, at a particular meeting, respondent disclosed exactly what had been paid out and that Rose announced that not much money remained in the escrow account.

When asked, at the district ethics committee hearing, why he had not submitted a formal accounting to LaMarr following her two requests therefor, respondent explained that it was his belief that he had already furnished an accounting by means of his oral monthly reports at the tenants' association meetings, his disclosures to Rose in her capacity as president of the tenants' associations, and his numerous letters to management (Exhibits A through J attached to Exhibit R-1, answer to amended complaint). Indeed, Rose acknowledged having received copies of all said reports presented to management, with the exception of the last two pages of Exhibit I and Exhibit J.

With respect to his compensation for legal services, respondent contended that, at his first meeting with the tenants' association, he quoted an hourly rate of $75.00. As respondent testified at the committee hearing:

> Q. Did you specify to either Dr. Rose, Miss LaMarr or any of the other members of the Association what your fee agreement would be, what you would be paid?

A. Yes, in the initial meeting with Dr. Rose, I told her that since there was no money in this, there was [sic] only three ways. There was a flat fee, contingent basis or hourly. I told her there was no money, there could be no contingent basis. A flat fee wouldn't be the best thing because I couldn't tell how many hours I would have to put in to straighten these matters out. So an hourly fee would be, at that time, $75 an hour for out-of-court time and $100 an hour to be in court.

. . .

Q. Did you ever follow-up [sic] with her to determine if that was acceptable to members of the Association?

A. I believe in my presentation, I mentioned what my hourly rates were. I'm not sure. And when I say my presentation, I mean my addressing the Association.

. . .

Q. . . . When you indicated to the Association in August of 1985 that the fees that you would charge, $75 an hour or $100 an hour, depending on the type of service, did you indicate how you were expected to be paid?

A. I think at that time we talked in terms of the Tenant's Association paying something up front for two reasons. One, to let them feel like they had an attorney and I had a client. Two, sometimes when people don't pay anything, they don't appreciate what they're getting. I think the other aspect was going to be -- at some point, there was going to be an apportionment of the fees between the Tenant's Association and the owners . . . . It was an expectation that out of the escrow money there was going to be an apportionment because I was doing exactly what [management] should be doing; collecting the rent, paying the bills, et cetera.

Q. But when you say an expectation, this is an expectation in your mind?

> A. Yes. And I had a conversation with Dr. Rose. I believe I might have had a conversation with [management], but I can't be sure about that . . . [2T173, 174, 175.]

It is undisputed that there was no written retainer agreement. Respondent was unable to provide a plausible explanation for his failure to prepare a retainer agreement:

> Q. Is there any reason why you didn't have a fee agreement?
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> A. I don't know. I've been asking myself that question as I went through the file . . . . I got so involved in this matter that a formalized agreement never occurred to me. [2T173.]

Although LaMarr was not present at that first meeting and Rose had no recollection of any discussions about respondent's hourly fees, all parties agreed that, at a subsequent meeting of the tenants' association, fifteen to twenty-five tenants who attended contributed $10 each toward respondent's legal fees. Indeed, Rose gave the following testimony at the committee hearing:

> Q. Was there any discussion at that first meeting in August of the manner in which Mr. Vaughn would be compensated for his services?
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> A. I can't remember that there was. I know shortly thereafter, I had asked that each of the tenants give $10 toward a kind of fee to at least show some kind of good faith. [2T134.][1]

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[1] 2T denotes the transcript of the district ethics committee hearing on April 3, 1990.

Respondent received no further payments by way of legal fees nor did he request any until sometime after January 1986, when he paid $3,864.67 to himself from the escrow funds.[2] Respondent calculated that the above sum constituted forty percent of legal fees and costs. Although neither Rose nor LaMarr specifically authorized respondent to withdraw his legal fees at that time, Rose testified as follows, in response to a question posed by respondent:

> Q. Were there any conversations that you recall with respect to a certain portion of the fees coming out of the escrow monies?
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> A. I cannot say that the Tenant's Association, as a body, had that kind of a discussion. But I think that the two of us, in conversation, might have had a discussion that said you've got to be paid some kind of way. And as I understand, previously this money that we were collecting at this particular point, I didn't really see it belonging to anybody but the tenants at this point . . . . So if I can abate that I said that, I have no problems with that. That, I could have said, yes. I think he should have been paid out of somebody else's fee. [2T153.]

Later on, when a panel member asked whether she had authorized the payment of the legal fees in writing, Rose testified as follows:

> A. I think -- I think it was sort of like a -- it was agreed upon, but not stated specifically that, okay, you can get your money out of the escrow

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[2] The exact date when respondent withdrew his legal fees is not clear.

> funds. I just kind of assumed, although I know that's not the way it goes.
>
> Q. Then is it fair to say you were concerned there was nothing wrong with that then?
>
> A. As far as I was concerned.
>
> Q. You don't know what the other tenants might have thought about that one way or the other?
>
> A. No. And I still say, no, I don't.
> [2T157, 158.]

Rose testified further that she ". . . personally [had] no problem with Mr. Vaughn taking the lawyer's fee out of the funds because I think he worked very hard for the Tenant's Association in terms of representing us for all these many months" (2T141). Rose informed the committee that respondent had spent at least 100 hours working for the tenants' association and that she was satisfied with respondent's representation.

As of the date of the committee hearing, a balance of $2,613.47 still remained in escrow with an unidentified attorney in Jersey City. As a result of litigation over the dissolution of respondent's law partnership, that lawyer, appointed by the court, is currently holding the balance of any escrow or trust funds pertaining to the partnership. No legal action to determine the disposition of the $2,613.47 balance has been taken by any party.

At the conclusion of the committee hearing, the panel found as follows:

> By failing to provide the formal accounting when requested by various parties in interest during 1986,

> Vaughn violated RPC 1.4(a). Vaughn also violated RPC 1.15(c) by taking legal fees and costs [albeit reasonable in amount] without specific authorization and before an accounting was provided. Vaughn also failed to demonstrate the existence of bookkeeping records pertaining to the escrow funds, thereby violating RPC 1.15(d).
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> [Hearing panel report at 3.]

It must be noted, however, that the amended complaint did not charge respondent with either the unauthorized retention of legal fees nor the failure to maintain the relevant escrow account records.

The Farmer Matter - (VA-87-33E)

In June 1985, Marcellus H. Farmer retained respondent to represent him in connection with a discrimination claim against Chevron Chemical Company. After a hearing before the Division on Civil Rights ("Division"), respondent requested the termination of the proceedings without a decision in order to allow the Division to transfer the case to the Equal Employment Opportunities Commission ("EEOC"). In 1986, respondent received a "right to sue" letter from the EEOC.

Early in 1987, respondent filed a complaint on Farmer's behalf in the United States District Court for the District of New Jersey. The complaint, however, was never served on the defendant. Similarly, although respondent gave Farmer a copy of Interrogatories and Requests for Production of Documents in April 1987, they were not executed or ultimately utilized.

Shortly thereafter, Farmer began to experience difficulty in reaching respondent. Many of Farmer's telephone calls went unanswered. In June 1987, Farmer wrote to respondent complaining about respondent's failure to return the telephone calls.

At the conclusion of the committee hearing, the panel found that respondent had failed to act with due diligence on behalf of Farmer, in violation of RPC 1.3, and had failed to keep Farmer reasonably informed about the status of the matter, in violation of RPC 1.4(a).

The Williamson Matter - (VA-88-7E)

The formal complaint alleged that, in May or June 1986, respondent was retained by Diana L. Williamson, M.D., to represent her in connection with certain forged checks charged against her bank account. After Williamson and respondent discussed the status of the matter in May 1987, Williamson's several attempts to contact respondent were unavailing. The complaint charged respondent with violation of RPC 1.1(a) (gross neglect), 1.3 (failure to act with diligence), 1.4 (a) (failure to communicate with a client), and 8.4(a)(conduct violative of other provisions of the Rules of Professional Conduct).

At the hearing before the committee, the Williamson matter was dismissed when the client failed to appear for testimony and no other evidence of an ethics violation was introduced.

The Popick Matter - (VA-88-8E)

In November 1985, Fred R. Popick signed a retainer agreement and paid respondent $2,500 to pursue a claim against Ciba Geigy Company ("Ciba") for wrongful termination of employment and severance pay. It appears that Popick had been suspended from his employment following his and his wife's arrest for certain criminal offenses. After Popick and his wife completed a Pre-Trial Intervention Program, the criminal charges were dismissed. In the interim, however, Ciba had discharged Popick.

With some assistance from Popick, respondent undertook to expunge Popick's criminal records, as respondent believed that to be a prerequisite to the filing of the suit against Ciba. Thereafter, in December 1986, respondent filed the complaint against Ciba. The complaint, however, was not timely served on Ciba, of which fact respondent was unaware. He testified that he properly assumed that service had been made because he had so instructed his secretary. In any event, the complaint was subsequently served by an attorney, A.M., who, at respondent's request, was monitoring some of respondent's files after respondent moved to Georgia.

During the early months of 1987, Popick unsuccessfully attempted to reach respondent to ascertain the status of the matter. After Popick was notified that respondent had relocated to Georgia and that A.M. was overseeing some of respondent's files,

Popick spoke to A.M. by phone on a number of occasions. Popick also was able to inspect his file, which had remained in respondent's Plainfield office.

Ultimately, through the efforts of newly retained counsel, Popick recovered $12,000 in severance pay and released all other claims against Ciba.

The panel concluded that respondent's failure to keep Popick informed of the status of the matter during the early months of 1987 had violated RPC 1.4(a). The panel did not find that respondent had failed to act diligently or had exhibited gross negligence in the handling of the matter. The panel dismissed the charge that Popick allegedly obtained an unfavorable settlement with Ciba as a result of service of the complaint while Popick and Ciba were undergoing settlement negotiations, and contrary to Popick's direction.

The Thurman Matter - (VA-88-16E)

Marjorie E. Thurman retained respondent in November 1985 to pursue a claim against a Garden State Farms store from which Thurman had purchased some spoiled doughnuts. It appears that, shortly after eating the doughnuts, Thurman developed a serious allergic reaction, necessitating medical treatment and causing her to be out-of-work for two weeks. After their initial conference, respondent sent Thurman a letter on November 7, 1985, outlining (1)

the circumstances leading to her potential claim, (2) Thurman's efforts in resolving the matter with the store's representatives, and (3) the course of action to be pursued. Respondent enclosed a retainer agreement and medical authorization forms (Exhibit C-15). Thereafter, respondent turned the matter over to a law graduate who worked at respondent's office. According to respondent, the law graduate "specialized in personal injury matters."

Although the record is not entirely clear whether Thurman signed and returned the medical authorization forms to respondent's office, on at least three different occasions, May 6, May 29, and June 9, 1986, the law graduate wrote letters either to Thurman or to the store representative (Exhibit 23). According to respondent,

> [b]asically when I turned over the file to [the law graduate], he would make periodic status reports, but for the most part, there wasn't a constant supervision.
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> . . .
>
> What was envisioned was [the law graduate] would technically report to me and give status reports to both of us as to on-going cases.
> [1T118,121.][3]

Thurman testified that the last time she had a conference with respondent was in April 1987. Thereafter, she attempted to contact respondent about thirty times, to no avail. On July 29, 1987, she

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[3] 1T denotes the transcript of the district ethics committee on January 24, 1990.

wrote to respondent asking for a written status report of her case (Exhibit C-16), without success. On August 6, 1987, she sent respondent another letter requesting the return of her file (Exhibit C-17). Respondent did not comply with her request.

When Thurman was unsuccessful in reaching respondent, she had two other attorneys telephone respondent's office. Respondent assured those attorneys that he would take care of the matter. Notwithstanding, no complaint was ever filed and the statute of limitations expired. Thurman ultimately received the file from respondent's former law partner, who indicated to Thurman that she did not know whether the returned file was complete.

Respondent conceded that he had failed to communicate with Thurman and that the complaint had not been filed. Respondent acknowledged that it was his responsibility to handle the matter, not the law graduate's.

The panel concluded that, by failing to act diligently and promptly in representing Thurman, respondent had violated RPC 1.3 and, by failing to comply with her requests for information about the matter, he had violated RPC 1.4(a).

The Wright Matter - (VA-88-17E)

At the recommendation of another attorney, in June 1986, Robert L. Wright retained respondent to recover a $7,000 deposit from an automobile dealer. Wright gave respondent a $750 retainer.

During the next year, respondent made some cursory efforts to pursue Wright's claim, without success. After Wright and respondent discussed the status of the case on ten to twelve occasions, respondent ceased to communicate with Wright. Wright's numerous attempts to contact respondent were unsuccessful, as were similar efforts undertaken by the referral attorney. Wright then hired new counsel, who obtained the refund of the $7,000 deposit by making one telephone call to the dealer.

The panel concluded that respondent's conduct had violated RPC 1.3 and 1.4(a).

Pattern of Neglect

The panel concluded that respondent's "actions during the 1987 problem period constitute[d] a pattern of neglect in violation of RPC 1.1(b)." (Hearing panel report at 5.).

Failure to Cooperate with the Ethics Proceedings

On June 27 and June 30, 1988, the committee investigator forwarded copies of the written grievances to respondent. By letter dated June 30, 1988, respondent replied that he would be in a position to determine his next course of action after he reviewed the grievances. He never complied with the investigator's requests for information.

On February 6, 1989, respondent was served with a formal ethics complaint by certified and regular mail sent to the address to which he had instructed the investigator to forward all correspondence. Although the certified mail was returned as "unclaimed", the regular mail was not. On September 12, 1989, respondent was personally served with the complaint through the cooperation of Georgia officials. Respondent did not file an answer to the complaint.

On the first scheduled date of the committee hearing, January 24, 1990, respondent appeared without prior notice to the committee. An amended complaint was filed before the second hearing date. Respondent did file an answer to the amended complaint and appeared at the second committee hearing.

The panel concluded that respondent's failure to reply to the committee investigator's letters and to file an answer to the complaint prior to the first hearing constituted a violation of RPC 8.1(b).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are fully supported by clear

and convincing evidence. The Board disagrees, however, with the committee's conclusion that respondent violated RPC 1.15(c), in the Pomona Gardens Tenants' Association Matter, by removing legal fees without the client's authorization, and RPC 1.15(d), by failing to maintain proper escrow account records.

As to the latter finding, the Board noted that the formal ethics complaint does not charge respondent with such a violation, and that the record does not show that the issue was fully litigated in the proceedings below. Accordingly, it cannot be said that the pleadings conformed to the proofs and that the issue was properly before the Board. The Board's consideration of the record is limited to proven allegations.

As mentioned in the above factual recitation, the panel found that respondent's failure to furnish a formal accounting, when requested by the various parties in interest in 1986, violated RPC 1.4(a).[4] Although the Board agrees that respondent's failure to reply to LaMarr's requests for a formal accounting was improper, the Board is convinced that respondent did not deliberately ignore her requests or willfully refuse to provide an accounting of the rents received and the monies expended in the five or six months that the rents were escrowed with him. Indeed, respondent

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[4] The Board did not pass upon the issue of whether respondent had a duty to give an accounting of the monies to the owners of the complex or to their agent, the management company.

testified -- and Rose so confirmed -- that, at each meeting of the tenants' association, he would give an oral report on the receipts and disbursements of the escrow funds. Even LaMarr acknowledged that (1) respondent dealt directly with Rose with regard to the rents received, (2) respondent furnished "updates" at the monthly meetings, and (3) at one particular meeting, respondent made a full disclosure of the funds disbursed, at which time Rose indicated that not much money remained in the account. In addition, Rose testified that she received copies of several letters that respondent wrote to the management company accounting for the rents received in the relevant months. True, the more appropriate course of action would have been for respondent to submit written reports at the monthly meetings and to keep detailed records of the expenses paid. At a minimum, respondent should have replied to the owners' and LaMarr's letters requesting a formal accounting by letting them know that, in his view, the funds had already been accounted for by means of the interim, verbal reports given to the tenants and to Rose.

There is no doubt that respondent was charged with the obligation to submit a final accounting of the escrow funds to the tenants' association. His failure to do so violated RPC 1.15(b). But this is certainly not a case where the attorney refuses to provide an accounting or blatantly ignores a client's requests therefor. Respondent was operating under the belief that, having

already accounted for the funds to the tenants and to Rose, he needed to go no further.

As to respondent's removal of legal fees from the escrow funds, the Board is not persuaded that the record shows, to a clear and convincing standard, that respondent did so without Rose's authorization or acquiescence or, at a minimum, that he did not have a good faith belief that the taking of the funds was authorized by Rose, as president of the tenants' association. The evidence shows that (1) respondent had an "expectation" that at least part of his legal fees would come from the escrow funds, which expectation was confirmed by a conversation with Rose (2T175-19 to 21); (2) Rose told respondent that he "would have to be paid some kind of way"; (3) Rose conceded that she "could have said yes, a portion of the fees could come out of the escrow monies'" (2T153-1 to 19); (4) Rose acknowledged that, although it was not specifically stated that respondent could remove the fees from the escrow funds, "it was sort of like a -- it was agreed upon . . . and I just kind of assumed, although I know that's not the way it goes" (2T158-19 to 25); (5) Rose saw nothing wrong with that course of action (2T158); and (6) there is no dispute that the amount of legal fees to which respondent was entitled exceeded the amount withdrawn. [5] The above leads to the conclusion that, at best,

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[5] Respondent removed only a portion (forty percent) of what he estimated his total legal fees to be, and not the total balance in the account, $6,478.01 (legal fees of

The above leads to the conclusion that, at best, Rose and respondent had agreed that he could withdraw his fee from the escrow monies or, at worst, that respondent had the honest belief that the taking of the fee was authorized. In this instance, respondent's violation of RPC 1.15(c), if any, was purely technical.

With regard to the remaining allegations, the Board agrees with the committee's conclusions that respondent violated RPC 1.4(a) in the Farmer, Popick, Thurman, and Wright matters, RPC 1.3 in the Farmer, Thurman, and Wright matters, and RPC 1.1(b), by displaying a pattern of neglect. The Board further concurs with the committee's finding that respondent violated RPC 8.1(b), prior to the first hearing, by not replying to the investigator's requests for information, and by not filing an answer to the original complaint. Respondent did appear at the first hearing, however, having travelled from Georgia. He also filed an answer to the amended complaint and attended the second hearing.

As respondent testified, his failure to reply to the investigator's inquiries and his failure to file an answer to the original complaint were the direct result of his disillusionment with the practice of law at that time. The disastrous consequences of his law partnership and its subsequent dissolution had left him so despondent that he considered resigning from the three bars of which he is a member (New Jersey, New York and Georgia). He

struggled with the idea of not participating in the ethics proceedings, not because of any contemptuous attitude toward the disciplinary system, but because of his disenchantment with the practice of law. When reason prevailed, however, he appeared at the scheduled committee hearing.

The foregoing shows that, while respondent's conduct cannot be condoned, it was not caused by cavalierism or disdain for the ethics proceedings but, rather, by his despondent state of mind at that particular time.

As to the appropriate discipline for respondent's ethical derelictions, had his misconduct been confined to the failure to provide a final, formal accounting to his client, it would have merited a private reprimand. Viewed in conjunction with the other infractions, however, respondent's conduct is deserving of a public reprimand.

A review of recent cases shows that the Court has imposed a public reprimand where the ethical violations have been a mixed combination of gross neglect, pattern of neglect in three or four matters, failure to communicate, and failure to cooperate with the committee. In some cases, two or three of these violations are present, either alone or coupled with a different violation, such as misrepresentation or failure to keep proper trust account records.

In Matter of Mahoney, 120 N.J. 155 (1990), the Court imposed a public reprimand on an attorney who lacked diligence in four matters, failed to communicate with his clients in four matters, exhibited a pattern of neglect, failed to maintain trust account records in one matter, and made a misrepresentation in another matter.

Other attorneys have been publicly reprimanded for: lack of diligence and failure to communicate in two matters, gross neglect in a third matter, and improperly sharing a legal fee with a non-attorney, Matter of Wall, ___ N.J. ___ (1990); failure to pursue the clients' interests diligently and failure to communicate in four matters, and failing to return a retainer, despite promises to the client and requests by new counsel, Matter of Clark, 118 N.J. 557 (1990); gross neglect in two matters, and the submission of untimely and uncandid answers to the ethics complaints, Matter of Lester, 116 N.J. 774 (1989); gross neglect and failure to communicate in one matter, failure to cooperate with the committee investigator, and failure to answer to the ethics complaint, Matter of Williams, 115 N.J. 667 (1989).

Several mitigating circumstances militate against discipline more severe than a public reprimand in this case. Respondent testified -- and the record corroborates -- that, with the exception of the within matters, respondent always replied to his clients' inquiries in writing and represented them in a diligent

manner. Indeed, Exhibit C-15 is a two-page letter to Thurman outlining in detail the contents of the conversation at their initial meeting and the course of action to be pursued. If it was respondent's practice to memorialize in detail the initial conference with a client and to outline the appropriate future course of action, then it cannot be said that his representation of clients was anything but very diligent. It would, thus, be reasonable to infer that respondent's trangressions during the first half of 1987 were aberrational and situational, and not the reflection of sloppy practices as a whole. Indeed, at that time respondent was involved in the bitter dissolution of his law partnership, which ultimately led to protracted litigation. While this fact does not excuse respondent's conduct, it tends to mitigate the lack of diligence displayed and the failure to communicate with his clients.

Respondent's candor and contrition are also to be taken into account. He readily acknowledged that, between December 1986 and April 1987, it was difficult to communicate with him because he was not in the office for weeks at a time. He blamed, in part, the problems with his law partnership and the difficulty in finding competent support staff. Further, there is no doubt that respondent appeared truly remorseful at the committee hearing, as well as at oral argument before the Board.

In view of the foregoing, five members of the Board recommend that respondent receive a public reprimand. Out of those five members, two are of the opinion that respondent's removal of the legal fees in the Pomona Gardens Tenants' Association matter was unauthorized. A separate minority of three members would impose a private reprimand. Out of those three members, one member also believed that respondent withdrew his legal fees without the client's consent. One member did not participate.

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

Dated: 11/8/1991

By: Raymond R. Trombadore
Chair
Disciplinary Review Board