Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 91-235 & 91-236

IN THE MATTER OF :
:
LARRY A. CHAMISH, V :
AND :
FREDERIC C. RITGER, JR. :
:
ATTORNEYS AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 23, 1991

Decided: January 21, 1992

Lewis B. Cohn appeared on behalf of the District VA Ethics Committee.

Daniel M. Hurley appeared on behalf of respondent Larry A. Chamish.

Frederic C. Ritger, Jr. 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 recommendation for public discipline filed by Special Master Sherwin D. Lester.

Larry A. Chamish was admitted to the New Jersey bar in 1983; his office is located at 1180 Raymond Boulevard, Newark, New Jersey. Frederic C. Ritger, Jr. was admitted to the New Jersey bar in 1950 and worked for Chamish from approximately December 1986 to May 1989.

Prior to the instant matter, Ritger had been suspended from the practice of law on June 11, 1979, for a period of two years, for conduct unrelated to the within violations. In re Ritger, 80 N.J. 1 (1979). As a condition to his reinstatement, Ritger was prohibited from practicing as a sole practitioner and was limited to "working in partnership with, or for and under the supervision of other attorneys." (emphasis supplied) Id. at 5. Initially, upon Ritger's reinstatement, he was supervised by S.M. Chris Franzblau of Franzblau and Falkin. Thereafter, Chamish agreed to supervise Ritger's work, pursuant to the above Supreme Court directive. A second suspension was imposed against Ritger effective May 29, 1989. In re Ritger, 115 N.J. 50 (1989). This suspension was predicated on Ritger's conduct while working with the firm of Franzblau and Falkin, under Franzblau's supervision. The suspension did not take effect until the time period during which he worked for and under the supervision of respondent Chamish.

An initial consolidated formal complaint was filed against Ritger and Chamish on November 20, 1989; thereafter, a second amended formal consolidated complaint (the "complaint") was filed on or about May 29, 1990. The latter complaint is the pleading under which hearings were held before Special Master Sherwin D. Lester on August 6 through August 9, 1990, September 24 and 25, 1990, and October 5 and 8, 1990. The complaint consisted of seven counts. The third count to the complaint, the Gunie Trimmings matter, primarily a charge against Ritger, was stayed by consent

order dated August 23, 1990, until such time as a pending malpractice action against the respondents is fully resolved.

Only one count of the complaint charged Ritger with unethical conduct. That count involved his dealings with grievant Brad Shifrin and his partner Richard Gerstein (See Count One). As of the first day of hearings, Ritger had failed to file an answer to the complaint and, in fact, had planned to sign a statement withdrawing from the practice of law in lieu of disbarment. Instead, Ritger orally filed his answer on the record, did not voluntarily withdraw from practice and participated in the ethics proceedings. He failed, however, to provide a defense on his own behalf or to explain the reasons for his conduct. Count one of the complaint also charged Chamish with failing to properly supervise Ritger's actions.

FACTS AS TO RITGER

THE SHIFRIN MATTER

Ritger's involvement with Brad Shifrin and his partner Richard Gerstein predated his association with Chamish's law practice. Shifrin and Gerstein had retained the law firm of Franzblau and Falkin to recover monies that had been improvidently invested in an alleged record company, Asparagus Productions.[1] The partners invested approximately $32,000 in the company, which was apparently run by Louis and Daniel Giuliano. At some point, Shifrin and

[1] Ritger was, at that time, working for the Franzblau and Falkin firm.

Gerstein discovered that their monies had been used improperly. They believed that they had been defrauded and, therefore, retained the Franzblau firm to recoup their money. A complaint was timely filed by the firm and Ritger was assigned to work on the matter.

Sometime after the complaint was served, Giuliano went to Gerstein's home and threatened him. As a result, Shifrin and Gerstein succumbed to Giuliano's threats and, against the advice of counsel, agreed to withdraw their suit and settle out of court. Shifrin and Gerstein agreed to have Giuliano repay them $1,000 per week. The agreement between the parties was never memorialized. Shifrin and Gerstein, however, only recovered $2,000 before the payments stopped. Thereafter, Shifrin and Gerstein approached Franzblau and asked him to reopen the matter. Franzblau declined the case as he was in the midst of merging with another law firm. He, however, recommended that they retain the Chamish firm to handle the matter. At that point in time, Ritger, who was familiar with the matter, was already affiliated with Chamish.

In the fall of 1987, Shifrin and Gerstein met with Chamish to discuss their case. Ritger was unavailable during the initial meeting. A second meeting, approximately two weeks later, was scheduled in order to include Ritger in the discussions. They did not discuss fees during either meeting, nor was a retainer agreement ever signed. Chamish's uncontroverted testimony was that he had informed grievants that no work would be done until their

file had been reviewed. T8/9/90, Vol. II, 20.[2] Grievants never provided Chamish with any documents from their earlier case. Ritger, therefore, attempted to obtain Franzblau's file from the initial matter. Franzblau was unable to locate the file. Thereafter, Ritger purportedly attempted to obtain the pleadings from the court, but to no avail. Approximately two weeks after the second meeting, Ritger informed Chamish that he was unable to locate grievants' file. Chamish instructed Ritger to forget the case and to notify Shifrin and Gerstein that the office would not be representing them in that matter. T8/9/90, Vol. II, 24. At the district ethics committee hearing (DEC), Chamish also testified that he believed that, if Franzblau had refused to pursue the matter, it was probably not a case worth pursuing. T8/9/90, Vol. II, 23. Ritger confirmed that Chamish had advised him to get rid of the case. T8/9/90, Vol. II, 45. Ritger, however, failed to so notify grievants and, instead, for approximately one and one-half years, misled grievants to believe that he was actively pursuing their case. During that time period, Ritger misrepresented that pleadings had been filed and that he was pursuing discovery. He also failed to respond to grievants' telephone inquiries, failed to keep grievants up-to-date on the status of their case, although there was no case, diverted grievants' messages from Chamish and defied Chamish's instructions to notify grievants that the firm

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[2] T denotes the hearing transcript and every transcript is identified by date.

would not pursue their case. Ritger also concealed from Chamish the fact that he was misleading grievants about their case.

It is uncontroverted that Chamish was not aware of Ritger's actions until after Ritger's second suspension became public. Until that time, grievants had dealt solely with Ritger. After Ritger's suspension, Shifrin contacted Chamish to determine the status of the matter and was, at that time, informed by Chamish that his firm was not handling the case.

Notwithstanding Ritger's malfeasance and nonfeasance, grievants' earlier matter has apparently been dismissed without prejudice. Grievants were, therefore, not harmed because the statute of limitations had apparently not yet run. Grievants could have obtained alternate counsel to pursue their case. Finally, grievants did not suffer any pecuniary harm because they had never paid Chamish or Ritger a retainer or any fees.

The special master found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b) and RPC 8.4(c). He additionally found that respondent violated the spirit of the Supreme Court order prohibiting his practice of law without supervision. Further, by way of answer, Ritger admitted all violations alleged in the complaint, including violations of gross neglect, RPC 1.1(a) failing to act with reasonable diligence and promptness, RPC 1.3, failing to keep his clients reasonably informed, RPC 1.4; and making misrepresentations to his client, RPC 8.4(c). T8/6/90, 8/7/90, 257.

Ritger provided no explanation for his actions in this matter. He, however, accepted full responsibility for all wrongdoing and also admitted diverting all of grievants' telephone calls so that Chamish would not discover his wrongdoing. Based on the foregoing, the special master recommended that Ritger be disbarred.

As to Chamish, the special master found that he had violated RPC 5.1(a) and (b), for failing to understand or carry out his obligations as a supervisory attorney.

FACTS AS TO CHAMISH

The remaining counts of the complaint, excluding count three, deal solely with charges against Chamish. Chamish's practice primarily involved personal injury litigation. He testified that, in 1987, his office had between three and four hundred active files. T8/9/90, Vol. II, 99. The charges against Chamish did not involve typical cases or average clients. The testimony at the DEC hearing established that each case presented Chamish with some type of problem, either because of the client, or because of the proofs of the case or because of both. Nevertheless, the testimony relating to the remaining counts clearly and convincingly demonstrates that, at the very least, Chamish failed to keep his clients reasonably informed with regard to the status of their cases, failed to respond promptly to his clients' inquiries, and failed to act with due diligence.

THE BERARDI MATTER

Berardi was involved in a motor vehicle accident on January 29, 1987. While Berardi was waiting for his wife in their parked vehicle, his neighbor's car slid on ice and backed into the Berardis' vehicle. Berardi testified that the neighbor claimed to be in a hurry and, thus, did not wait for the police to arrive at the scene of the accident. Berardi further contended that, when the police officers arrived, they failed to complete a report because they were friends of the neighbor. T8/9/90, Vol. I, 40. As a result, Berardi had to go to the police station to file the accident report.

Berardi met with Chamish in February 1987, at which time Chamish agreed to represent him. Following the meeting with Berardi, Chamish assigned the matter to Vanessa Hicks, his office manager/senior claims analyst. After Hicks reviewed the matter with Chamish, she was to prepare the file for settlement. The first step in the process was to obtain the police report in order to identify the owner of the other vehicle. According to Chamish, the police report was difficult to obtain because 1) Berardi was not the registered owner of the vehicle in which he had been sitting at the time of the accident and 2) because the other driver was identified in the report solely as "Bob." Eventually, the police report was located; however, the other vehicle's owner was not identified therein. Based on the vehicle's license plate number, Hicks requested a motor vehicle search from the Department of Motor Vehicles ("DMV"). When DMV did not respond to Hick's

initial request, a second request had to be made. Further problems arose when Hicks discovered that the license plate number submitted to DMV turned up a different make of vehicle from that identified in the police report. Eventually, Hicks determined that neither vehicle involved in the accident was insured and the case had to be treated as an uninsured motorist case. While these problems created a legitimate delay in the pursuit of the Berardi matter, it did not excuse a delay from January 1987 until December 1988, when the complaint was finally filed with the court; nor did it excuse the fact that, from the time of their initial meeting, Chamish did not have any further direct contact with his client until May 1990.

Three months following his initial consultation with Chamish, Berardi testified that Chamish suggested that the matter be dropped because the driver of the other vehicle denied that there had been an accident and they, therefore, would have to go to trial.[3] Berardi rejected Chamish's advice, decided to go forward with the case and signed a retainer agreement.

Berardi's testimony was grossly exaggerated. He claimed that he had called Chamish's office hundreds of times and had sent several letters to Chamish, including a registered letter. He claimed that sometimes he had called Chamish twice a day. He also alleged that he had spoken to thirty different employees at Chamish's office (Chamish did not have thirty different employees). What is clear, however, is that Berardi called Chamish on numerous

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[3] It is curious that Chamish would have advised Berardi to drop his law suit if his client had actually sustained compensable injuries.

occasions and that Chamish never replied to Berardi's calls or inquiries. Instead, other employees dealt with Berardi's calls. Eventually, Berardi grew dissatisfied with Chamish. In November 1988, he wrote to Chamish in an attempt to secure his file. T8/9/90, Vol. I, 16. He was, at that time, informed that his file had been lost. Apparently, in June 1988, Chamish's paralegal, Kelly Seabright, left the office on maternity leave. She took home a number of files on which to work during her leave, including the Berardi file. Contrary to Chamish's instructions, Seabright removed the original files from the office, rather than make a set of copies for her use at home. An intensive search was conducted to locate the Berardi file, but to no avail. Nevertheless, Berardi was misinformed, on several occasions, that his file had been located. On one occasion, he even went to Chamish's office to retrieve the file, only to be informed that the file had again been lost.

Chamish testified that, on December 30, 1988, one month short of the running of the statute of limitations, a John Doe complaint was filed to protect Berardi's interests. A settlement offer was eventually received in April 1990 and Berardi received a settlement in the amount of $4,500 in May 1990, almost three and one-half years after the original accident. The record reflects that Chamish failed to have any direct contact with Berardi for the majority of that time period, approximately three years.

Despite Chamish's claims that Berardi had given him little information about the case, that Berardi's memory was faulty and

that it was Berardi who held the matter up, Chamish failed to take appropriate action in the matter. He failed to respond to Berardi's calls, failed to properly supervise his staff and failed to follow through, or have his staff follow through, in the matter until after Berardi attempted to remove his file from the office and after Berardi filed a grievance.

Fortuitously, Berardi was not harmed by Chamish's actions. The special master found that Chamish had violated RPC 1.4(a) and RPC 1.3. The special master also found that Chamish was responsible for statements made by his employees: he had delegated his duty to respond to Berardi's calls and was, therefore, responsible for any of their misstatements in violation of RPC 8.4(c).

THE APONTE MATTER

Chamish had represented Victoria Aponte in connection with an automobile accident that occurred on March 18, 1986. That matter was satisfactorily concluded after Aponte's death. The grievance herein does not relate to that matter, but to Aponte's purported slip-and-fall accident, which occurred approximately four to six weeks after the car accident. At the DEC hearing, there was no direct evidence presented with regard to Aponte's slip-and-fall accident. T10/8/90 69. Aponte's daughter and husband (who explained that he only spoke a little English, T10/8/90 69), testified with regard to Aponte's alleged attorney/client relationship with Chamish.

As a result of Aponte's alleged fall, she had to have her teeth extracted and a full set of dentures made. Apparently, the dental work was not related to the earlier car accident. Chamish testified that he did meet with Aponte in May 1986. He did not, however, know the date of her second accident, nor how it was caused. It was apparent from Aponte's husband's recitation of the accident, and was also noted by Chamish, that there were significant proof problems. Chamish claimed that he had advised Aponte that he would not take the case. T10/8/90 123.

While Aponte allegedly fell some time in late April or early May, she did not seek dental services until August 1986. The bill she incurred for the dental services amounted to $1,090. Of significance was her husband's testimony that, a few days after the accident, Aponte sought the advice of Chamish first, rather than go to the dentist. T10/8/90 79. Chamish purportedly advised Aponte to go to the dentist. The Apontes did not carry any dental insurance or other insurance to cover the cost of the dental work.

The testimony in this matter was very unclear. Aponte's daughter, Leonarda Martinez, testified that she had gone to Chamish's office in November 1987 to receive the settlement check from the first accident. T10/8/90 48. At that time, Martinez inquired about the status of her mother's slip-and-fall accident. She claimed that Chamish had advised her to "give him about a year." T10/8/90 49. The next contact she had with Chamish's office was not until May 1989. She testified that another attorney, whom she was unable to identify, had advised her and her father that a

suit had never been filed on her mother's behalf. T10/8/90 52. She further claimed that, in June or July 1989, her father had received dental bills for work that had been done on Aponte. T10/8/90 55.

Aponte had signed a retainer agreement for the car accident. However, there was no corresponding evidence that a retainer agreement had been signed for the slip-and-fall accident. Thus, there was no clear and convincing evidence that an attorney/client relationship ever existed. Likewise, the record did not establish by clear and convincing evidence that Chamish had clearly informed Aponte's husband that he had not agreed to pursue an action on Aponte's behalf. The standard, however, is to the contrary: that there exist clear and convincing evidence that Aponte's family was misled by the respondent's conduct or statements. That standard was not met. As noted above, the record did establish that there would have been significant proof problems, had an action been instituted and most likely a valid cause of action did not exist on Aponte's behalf.

Because there was no proof that Chamish had taken the slip-and-fall case, the special master found that he could not be charged with any unethical conduct with regard thereto. He did, however, find that, as a result of his lax office procedures, Chamish had violated RPC 1.1(b).

THE MYERBERG MATTER

In 1986, Jonathan Myerberg lent $1,900 to Lois Wiss, a/k/a Lois Larkey. Myerberg made the loan to Larkey without his wife's

knowledge or consent. Larkey, a friend of the Myerbergs, was at the time going through a divorce and needed the money to make her mortgage payments. Although Larkey had apparently orally agreed to reimburse Myerberg within a one-year period, she failed to repay him.

After a year had passed, Myerberg contacted his lawyer in New York, who referred him to Chamish. Myerberg met with Chamish in January 1988. Myerberg claimed that, during that meeting, he had offered Chamish one-half of any recovery. No retainer agreement was ever signed. Chamish denied that a fee arrangement was ever discussed. He claimed that he was generally unfamiliar with collection actions and that he, therefore, could not assess how long the case would take and what fees would be appropriate.

Chamish turned the matter over to Frederick Ritger. Myerberg testified that, between January and April 1988, he telephoned Chamish's office on an average of two or three times a week to inquire about the status of his case. Chamish did not return the calls.

A complaint was filed against Larkey in May 1988. Shortly thereafter, Larkey forwarded a check to Ritger for the full amount of the loan, payable to Myerberg's wife. Because Myerberg had deceived his wife regarding the loan, he refused to accept the check and, instead, instructed Ritger to have Larkey reissue another check in Myerberg's name alone. In accordance with Myerberg's instructions, Ritger returned the original check to Larkey and advised her to issue a new check. She failed, however,

to comply with Ritger's instructions. A default judgment against Larkey was, thereafter, issued in September 1988. Myerberg was advised of same and told that the judgment would be collected shortly.

Myerberg continued to call Chamish on a regular basis. Although he could not get through to Chamish, he was advised that either Chamish or Ritger would return his calls. Neither one of them did so, however. Instead, Myerberg dealt primarily with Nancy Roberts, one of the firm's paralegals.

Roberts was responsible for preparing a certification on behalf of Myerberg to be submitted to the court. Myerberg calculated the amount of interest due to him on his award. Myerberg, however, used an inappropriate percentage in calculating the interest. Roberts did not check Myerberg's calculations and, in fact, incorporated them into a certification filed with the court. Roberts testified that the court returned the papers on three separate occasions because of various problems, including the use of the wrong interest. T8/6/90, 8/7/90 130. These mistakes further delayed the recovery of any money.

In early 1989, Myerberg informed Chamish's office that Larkey owned a Jaguar. The car was eventually levied upon by the county constable. The constable received a check from Larkey in the amount of $1,800, made out to Myerberg and his wife. The constable deposited the check, deducted his fees and mailed the balance, $1,660, to respondent. Myerberg was notified that the firm had received the $1,660 but, as both Myerberg and Roberts testified,

Myerberg instructed Roberts to keep the money. T8/6/90, 8/7/90 105, 132. He did not want the money disbursed until the firm had received the full amount of the judgment.

It was not until after Myerberg filed a grievance that he notified the DEC investigator that he wanted his money. The investigator notified Chamish of same and, on November 11, 1989, the money was forwarded to Myerberg. T8/6/90, 8/7/89 215.

The special master found that, while Myerberg was responsible for much of the delay in this matter, Chamish was not totally blameless. He found that Chamish had failed to respond to Myerberg's telephone calls, a violation of RPC 1.4(a), and that his overall conduct in this and the other matters constituted a pattern of neglect.

THE SHEALY MATTER

On February 27, 1986, Gloria Shealy and her son were passengers in a vehicle involved in a car accident. Shealy did not own the vehicle or have any type of insurance coverage. When Shealy met with Chamish, she misinformed him as to the name of the driver of the vehicle in which she had been a passenger. Moreover, Shealy did not know the name of the other driver involved in the accident. Nevertheless, Chamish agreed to represent Shealy and her son.

Several months following the accident, Shealy moved to South Carolina to care for her grandmother. While in South Carolina, she attempted to contact Chamish on a number of occasions, but was

never able to speak with him. Eventually, Shealy spoke to Chamish; he informed her that, based on her injuries and treatment for same, she did not pass the $200 tort threshold and neither did her son. Shealy informed Chamish that she still suffered from pain resulting from the accident. Chamish advised her, if that were so, she should see a doctor. On July 30, 1987, almost a year and one-half after the accident, Shealy and her son went to see Dr. Bud Pierce. Chamish testified that Dr. Pierce had contacted him late in July 1987, for assurances that his bills would be paid. Chamish advised him that his bills would be paid from the settlement proceeds of Shealy's accident. T10/5/90 17. The doctor forwarded his reports to Chamish near the end of 1987.

Chamish did not file a complaint until January 1988. Because the statute of limitations was about to run and because of Chamish's failure to act on the matter, he was forced to file a John Doe complaint. Shealy returned from South Carolina in August 1988. It was not until her return, that Chamish finally obtained the police report.

While Shealy's absence from the state made it difficult to proceed with her action, Chamish, nevertheless, abrogated his responsibility to insure that the matter was proceeding properly. After the complaint was finally filed, there were two motions filed to dismiss the matter for lack of prosecution. Chamish took action with regard to the first motion, but testified that he had been unaware of the second motion and the matter was, therefore,

dismissed. Upon discovering that the matter had been dismissed, he moved to have the matter reinstated.

The Shealy matter was finally settled in February 1991. During the course of the matter, Chamish failed to keep Shealy reasonably informed as to the status of the case and failed to pursue the matter diligently. The special master concluded that, with regard to the Shealy matter, "Chamish and his office did sloppy work and only by the stroke of fortune was there no loss to his client. . . ." Special Master's Opinion, at 42. He found that Chamish had failed to follow through on the matter, had permitted long periods of time to pass without pursuing the case, and had failed to keep Shealy reasonably informed as to the progress of the case. Chamish, therefore, violated RPC 1.3, RPC 1.4(a) and (b) and 8.1(b). His actions in this matter further demonstrated a pattern of neglect.

THE LAMBERT MATTER

The most troublesome charges against Chamish arose from his conduct in the representation of Lucille Lambert and her daughter, Joann Rose. Lambert and Rose were injured in a car accident on December 23, 1985. Lambert was the passenger of a vehicle owned by Eduardo Gilbert, which was driven by Joann Rose. On the day after the accident, Lambert and Rose met with Chamish and were advised that they had a strong case. During a second meeting with Chamish, on January 3, 1986, both mother and daughter signed retainer

agreements. There was never any discussion that Chamish's representation of both might create a conflict of interest.

Lambert testified that she had a ninth grade education. T8/7/90 15. As was quite clear from the record, she had difficulty understanding and relating to various legal matters. Rose and Lambert testified that Rose often provided Lambert with a good deal of assistance and Rose often read letters to her mother and explained their contents to her. T8/7/90 59, T9/24/90 6. Lambert's testimony was, nevertheless, credible. She testified that Chamish had advised her that the case would be resolved within six to seven months and that he would get back to her regarding the matter. However, over the course of almost two years, Lambert had no direct contact with Chamish, despite the fact that she had called his office on numerous occasions. In addition, Lambert went to Chamish's office on two separate occasions, but was never able to meet with him. Further, Lambert testified that she had not been contacted by Chamish until after she had filed a grievance against him with the DEC on or about May 4, 1989, three and one-half years after their initial meeting.

Chamish eventually filed Lambert's complaint on December 3, 1987, several weeks short of the running of the statute of limitations. The complaint named Lambert as plaintiff and Rose as defendant. Chamish had never advised Rose or Lambert that he intended to sue Rose on Lambert's behalf. To compound matters, Chamish never served the complaint on Rose who was, at that time, still his client.

Chamish also arranged to file a complaint on Rose's behalf on December 3, 1987. The complaint was purportedly prepared by Anthony Bisignano, Esq. and appeared to have been signed by him as well. However, Bisignano, a long time acquaintance of Chamish, did not prepare, sign or file the complaint on Rose's behalf. Bisignano never agreed to represent Rose nor did he ever receive the file. Instead, Chamish signed Bisignano's name on the Rose complaint and, thereafter, filed it with the court.

At some point Chamish drafted a letter to Rose, dated December 1, 1987, indicating that a conflict existed and that the matter had, therefore, been forwarded to Bisignano, so that he could represent her. While the letter appeared to have been drafted two days before the complaint was filed, Rose denied any knowledge of the letter and, in fact, did not become aware that a complaint had ever been filed on her behalf until after her mother filed a grievance against Chamish. T9/24/90 41. It is, therefore, questionable whether Chamish actually drafted the letter on December 1, 1987 or some time significantly thereafter, in an attempt to cover his tracks.

A complex scheme was thereafter devised, whereby Chamish turned over the Rose file to Frances Amendola, as the superseding attorney in the matter. Amendola then prepared a substitution of attorney and forwarded it to Bisignano for his signature as the substituted attorney. This, however, was not accomplished until May 1990. Exhibit GR-69. According to a certification prepared by

Bisignano,[4] after receiving the substitution of attorney, he discussed it with Amendola and advised her that he "had never represented Joann Rose in this or any other matter."

Thereafter, he drew a line above the signature line, designated for the withdrawing attorney, and mailed the substitution back to Amendola. Amendola then filed the substitution with the court. According to Amendola's testimony at the DEC hearing, she was not familiar with Bisignano's signature and, thus, assumed that the line drawn by Bisignano was, in fact, his signature. All of the above took place without Rose's knowledge or consent. Amendola then transferred the matter to another attorney, Luanne Peterpaul, purportedly because Amendola began renting office space from Chamish and doing per diem work for him and, in the process, became familiar with the Lambert/Rose matters. The substitution of attorney form from Bisignano to Amendola, dated May 1, 1990 (Exhibit GR-70), and the substitution from Amendola to Peterpaul, dated May 15, 1990 (Exhibit GR-71), were both filed with the court on May 16, 1990, more than a year from the time Lambert filed a grievance against Chamish.

Through all of this, Chamish failed to advise Rose of the conflict of interest or of her options and he failed to obtain her consent to transfer the matter to any other attorney.

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[4] Bisignano's certification was not identified as an exhibit. It appears that it was not introduced at the hearing, but it was subsequently forwarded for the special master's consideration.

The special master found that Chamish's conduct in this matter constituted violations of RPC 1.4(a) and (b), RPC 1.3, RPC 1.7 and RPC 8.4(c).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the special master in finding Ritger and Chamish guilty of unethical conduct are fully supported by clear and convincing evidence.

AS TO RITGER

Ritger was charged in only one count of the complaint. The charges therein, however, are serious. The evidence presented at the hearing, as well as Ritger's own admissions, proved by clear and convincing evidence that Ritger defied Chamish's directive to turn away the Shifrin-Gerstein matter. Unbeknownst to Chamish, Ritger led Shifrin and Gerstein into believing that their matter was being actively pursued, that an action had been commenced on their behalf and that discovery was ongoing. In addition, Ritger failed to promptly respond to grievants' inquiries and admitted diverting their calls to conceal his deceptive acts. Ritger provided no explanation for his mysterious actions. He did,

however, admit that he was solely responsible for the improper and unethical manner in which the case was handled. Ritger's failure to institute, prosecute or litigate the matter constituted lack of diligence and gross neglect, in violation of RPC 1.3 and RPC 1.1(a). His failure to keep grievants reasonably and accurately informed and his misrepresentations of the status of the matter constituted violations of RPC 1.4(a) and RPC 8.4 (c). Finally, Ritger's actions in defying Chamish's order to get rid of the case gives rise to a violation of the Supreme Court order prohibiting him from practicing law without supervision.

Absent some mental impairment on Ritger's part, his conduct in the Shifrin matter was intolerable and inexcusable. To compound matters, Ritger has a significant disciplinary history. Effective May 29, 1989, Ritger was suspended for a six-month period for his conduct in an estate matter where he had engaged in a pattern of neglect, failed to keep his clients reasonably informed, and misrepresented the status of the estate by composing false and misleading letters to lull his client into believing that the estate was receiving proper attention. In re Ritger, 115 N.J. 50 (1989). Ten years earlier, and prior to In re Wilson, 81 N.J. 451 1979, Ritger had been suspended for two years for misappropriating $34,000 in client funds for his personal use; for accepting service of a complaint and agreeing to the entry of a judgment without the consent of his co-defendants; and for falsely testifying at a deposition that he had the co-defendants' authorization thereto. In re Ritger, 80 N.J. 1 (1979).

Ritger has not been reformed by his prior encounters with the disciplinary system. His case is therefore reminiscent of In re Cohen, 120 N.J. 304 (1990). While Ritger's conduct is not analogous to that of the attorney in Cohen, that attorney also was a recidivist in the New Jersey disciplinary system. In Cohen, the attorney's final brush with the disciplinary authorities involved multiple acts of misconduct, including misrepresenting the status of the case to his client and altering the filing date on the complaint in an attempt to deceive his client. Id. at 305. As in the case at bar, Cohen failed to offer any explanation or mitigating factors for his egregious conduct. In considering all of the relevant factors, including Cohen's unresponsive and uncooperative behavior during the proceedings and his lack of remorse and absence of improvement in his conduct, the Court concluded that disbarment was the only appropriate discipline.

Here, too, it is clear that Ritger's past encounters with the disciplinary system have not improved his conduct. By his own admission, he is "a three-time loser." BT4[5]. Ritger's seeming indifference to the disciplinary process, his proven inability to learn from prior discipline, and his failure to offer any valid explanation or mitigation for his misconduct require nothing short of disbarment. The Board unanimously so recommends. One member did not participate.

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[5] BT denotes the transcript of the Board hearing on October 23, 1991.

AS TO CHAMISH

The evidence presented in the grievances against Chamish, excluding the Aponte matter, established that, in each matter, Chamish failed to respond to his clients' requests for information and failed to keep his clients reasonably informed about the status of their cases, in violation of RPC 1.4(a) and (b). He also failed to pursue his clients' cases with due diligence and promptness, in violation of RPC 1.3. In addition, he waited until the statute of limitations was about to run before filing complaints on behalf of his clients. In two cases, complaints were dismissed: in Shealy, for failure to prosecute the matter and in Lambert, for failure to respond to discovery requests. In each case, Chamish was required to move to have the matter reinstated. In each matter, Chamish failed to diligently pursue his clients' cases until he learned that grievances had been filed against him.

Chamish was fortunate that none of his clients was irreparably harmed. Had his violations been limited to the above acts, a public reprimand might have been warranted. See, In re Breingan, 120 N.J. 161 (1990) (where a public reprimand was imposed when the attorney who had been previously privately reprimanded, exhibited a pattern of neglect, failed to communicate with clients in three matters, failed to diligently pursue a client's claim in one matter and failed to cooperate with the ethics committee).

Chamish's conduct, however, was compounded by his egregious acts in the Lambert/Rose matter. Chamish originally agreed to represent both the driver and passenger involved in the car

accident, ultimately the defendant and plaintiff in the ensuing court action, an obvious violation of RPC 1.7. Once Chamish realized that the mother/passenger would have to sue her daughter/driver, he should have known that it was improper to represent both. When he failed to diligently pursue the matter, and the statute of limitations was about to run, he forged Bisignano's signature on the Rose complaint, filed it and then attempted to cover up his deception by pretending to transfer the case to Bisignano. No substitution of attorney form was ever filed between Chamish and Bisignano.

In furtherance of this scheme, Chamish drafted a letter to Rose, notifying her that there was a conflict and that the matter was being transferred to Bisignano. Rose never received the letter, raising the distinct possibility that the letter was drafted merely to cover up Chamish's conduct. Also, Bisignano never received the file. Afterwards, Chamish convinced Amendola to take on the Rose matter. She prepared a substitution of attorney form for Bisignano's signature, mailed it to him and received it back with a line through his name. Amendola then filed the substitution with the court. Neither substitution of attorney was filed with the court until May 16, 1990, almost two and one-half years after the Rose complaint was filed and after the conflict-of-interest letter was purportedly drafted and mailed to Rose. Amendola became familiar with the Lambert/Rose matter while renting space from Chamish and performing per diem work for him. She purportedly determined that she could not properly represent Rose.

Thus, another substitution of attorney was made to Peterpaul. Rose was neither consulted with regard to any of the substitutions nor notified of same.

The extent of the misrepresentation or fraud involved in the substitutions of attorney was never satisfactorily explored. It is clear, however, that Chamish's involvement and conduct in the filings and transfers were fraught with wrongdoing. Chamish may have filed the Rose complaint in order to preserve the client's interests, because the statute of limitations was about to run. However, he could have, and indeed, should have, signed the complaint himself, rather than forge Bisignano's name. Thereafter, he could have transferred the case to another attorney. The excessive delay in filing the substitutions of attorney dilutes the argument that Chamish was merely attempting to protect his client's interests. The inescapable conclusion is that his conduct was also geared to shield himself from a claim that he had engaged in a conflict of interest. While initially his actions may have been undertaken in the best interests of the client, they were wrong nevertheless. His conduct in the matter violated RPC 8.4(c).

There remains the issue of appropriate discipline herein. Prior cases, while not specifically on point, are nevertheless helpful in assessing the appropriate scope of discipline. As noted above, Chamish's most serious ethics offense was forging an official document and then filing it with the court. In In re Weston, 118 N.J. 477 (1990), an attorney was suspended for a two-year period for his conduct in connection with an irregular real

estate transaction, which had been orchestrated to avoid legal requirements that would have called in a first mortgage on a condominium. In short, the attorney

> falsely signed the deed, the affidavit of title, and the discharge of the contract between [two investors]. In addition, the name of [one of the investors] had been falsely affixed to the check for the closing proceeds that went through [the attorney's] trust account for eventual disbursement to the investors in the chain. To compound the matter, when the corrective deeds were later obtained, [the attorney] had his secretary take the acknowledgement although the investor was in another state.
>
> [Id. at 480.]

To further aggravate matters, the attorney later insisted, in a letter to the purchaser's attorney, that the signatures were genuine. Id. at 481. Notwithstanding that the attorney did not reap any benefit from his conduct and that each investor was paid his due, the Court found that the case warranted a more serious level of discipline because the attorney had compounded his own wrongdoing by insisting, to a fellow attorney, that a signature was genuine, when in fact it was not. The Court stated that "[c]onveyancing, like so many aspects of the practice of law, depends greatly on mutual trust between lawyers. A lawyer's word must be a bond." Id. at 483.

Attorneys have been suspended for a period of one year where they have misrepresented material facts or executed documents reflecting misrepresentations. See In re Labendz, 95 N.J. 273 (1984) (submitting a false loan application containing material misrepresentations to a federally insured savings and loan

association). In In re Mocco, 75 N.J. 313 (1978), an attorney also received a one-year suspension, where, in an effort to assist a close acquaintance in a business transaction, he made various misrepresentations in business dealings; signed names of individuals on a mortgage without authorization; signed another's name as a notary public on an acknowledgement on a mortgage note; and prepared a form to be signed by another as president of a corporation, where he knew the individual did not hold such office. The Court found that, although the attorney was inexperienced and did not personally obtain any money by his wrongdoings, it could not "countenance such ineptitude involving as it [did] misrepresentations and violations of the law." Id. at 317.

While Chamish's conduct in the Lambert matter was extremely serious, he did not compound his wrongdoing by renouncing his conduct as did the attorney in Weston. Neither did he make false and misleading statements or execute documents containing material misrepresentations of fact, as in Labendz and Mocco. Chamish's conduct, however, was not as benign as that described in In re Spagnoli, 89 N.J. 128 (1982). In Spagnoli, the attorney prepared and filed two affidavits in connection with a Notice of Motion for Pendente Lite Relief, signed his client's name on both affidavits and also acted as the witness to the forged signatures. On a subsequent occasion, the attorney conformed and filed copies of an additional affidavit for his client, the original of which was never signed by her. The attorney alleged, in mitigation, that his actions were due to inexperience and expediency and that he allowed

himself to become overly involved with his client's emergent situation. The attorney received a public reprimand.

In the case at bar, Chamish's conduct in filing the Rose complaint under Bisignano's signature was intended to cover up his mishandling of the Lambert/Rose matter. His misconduct, on the whole, was extensive and significant, though not undertaken for personal gain or motivated by malice. Rather, his misconduct appears to have resulted more from misdirection and mismanagement of his cases and his office. Chamish's misconduct, while technically not a violation of RPC 3.3, (candor toward the tribunal), was nevertheless serious. He instituted litigation on behalf of a client in the name of another attorney without that attorney's knowledge or consent, forged the attorney's signature and then filed the pleading with the court. Such behavior, coupled with his misconduct in four other cases, cannot be tolerated and requires a sanction commensurate with the seriousness of his offenses.

In light of the foregoing factors, the Board unanimously recommends that Chamish be suspended for six months. One member did not participate.

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

Date: 1/21/1992 By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board