SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-377
District Docket No. VIII-2012-0041E
(formerly VIII-10-0008E)

IN THE MATTER OF	:
CURTIS J. ROMANOWSKI	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 18, 2013

Decided: May 6, 2013

Patricia M. Love appeared on behalf of the District VIII Ethics Committee.

David H. Dugan III appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (censure) filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b)

(failure to keep a client reasonably informed about the status of a matter and failure to comply with a client's reasonable requests for information), RPC 1.5(a) (charging an unreasonable fee), and RPC 1.16(d) (failure to protect a client's interests on termination of the representation). For the reasons expressed below, we determine to dismiss the complaint in its entirety.

Respondent was admitted to the New Jersey bar in 1991. He has no history of discipline.

The facts that gave rise to this matter are as follows:

Melanie Dillon retained respondent, on February 18, 2008, to represent her in a matter in Superior Court, Family Part. She paid him a $5,000 retainer. By way of background, Dillon had maintained an "on-again-off-again relationship" with Jason Bixler for ten years. The two had a son, Jeremiah. In March 2007, Dillon refinanced her home in Ocean Gate, New Jersey, and added Bixler to the deed and mortgage. Thereafter, in November 2007, Dillon moved out of the house, following alleged threats of domestic violence on Bixler's part. There was, in fact, a history of domestic violence in the

relationship.[1] Dillon relocated to Secaucus, New Jersey, approximately seventy miles away from Ocean Gate.

In January 2008, Bixler, through his attorney, Nola Trustan, filed a motion with the Superior Court, asking for an order directing that 1) the house jointly owned by Dillon and Bixler be listed for sale; 2) each party contribute one-half of the mortgage payment and the home equity loan on the property until it was sold; 3) Bixler be permitted specific parenting time with Jeremiah and with Dillon's son from another marriage, with whom Bixler had a relationship; 4) Bixler receive a $2,560 credit toward his child support obligations; and 5) each party provide one-half of the transportation for Bixler's parenting time, with pick up and drop off of the children at the Garden State Arts Center.

During respondent's initial consultation with Dillon, he suggested that the case be handled by another attorney, Jenny Berse, who had an of-counsel relationship with his firm, and

[1] In July 2000, Dillon obtained a temporary restraining order against Bixler, which was made permanent the following month. The restraint was dissolved in February 2001, at Dillon's request. Subsequently, in March 2007, Dillon obtained a temporary restraining order. Bixler filed a simple assault charge against Dillon arising from the same incident. In April 2007, her case was dismissed and the temporary restraining order was vacated.

whose fee would be lower than respondent's. Berse met with Dillon, spoke with her on the phone, and seemingly was preparing her reply to the motion. However, on March 13, 2008, one week before the return date of the motion, Berse returned Dillon's file to respondent's office. Respondent was then left to prepare Dillon's matter. Dillon testified that respondent told her that Berse was on vacation. After respondent received the file, he requested an adjournment from the court, which was denied.

Respondent prepared a certification in opposition to Bixler's motion, which Dillon signed electronically, on March 15, 2008. Respondent had a number of telephone conversations with Dillon after his receipt of the file.[2]

There was a dispute in the record as to whether respondent prepared Dillon for their scheduled court appearance. Respondent contended that, during their conversations, he was "basically counseling her and preparing her for trial and preparing her for difficult questions and pushing her buttons on

[2] According to Dillon, their lengthy conversations often had nothing to do with her case but, rather, focused on respondent's personal household issues. In respondent's reply to the grievance, he acknowledged that there may have been brief discussions about such matters, but that they were not nearly as long as Dillon had suggested.

the phone to see how she reacted to various accusatory questions." Dillon testified to the contrary, that respondent did not prepare her for her testimony. Moreover, she did not think that respondent was familiar with her file.

Respondent testified that he read Dillon's entire file, after Berse left it for him. The file included records of the domestic violence incidents, as well as the records of litigation between Dillon and Bixler, over their son's last name. Respondent explained that, because Dillon's case had a docket number that began with FD, rather than FM, "[y]ou have to be ready to do just about anything," in terms of how it would proceed.[3] When questioned by his counsel, respondent testified as follows about his preparation for Dillon's matter:[4]

> Q. Look again at your time. Particularly the time on the 15th and 16th — excuse me. 15th and 19th.

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[3] See pages 16 to 19 for a discussion of the distinction between FD and FM cases.

[4] Because the reasonableness of respondent's fee was challenged, the time respondent spent preparing for Dillon's court proceeding was a major issue before the DEC. Thus, we focused on this section of his testimony. See, also, 2T204-2T209.
1T refers to the transcript of the DEC hearing on February 14, 2011.
2T refers to the transcript of the DEC hearing on February 15, 2011.

A. Okay.

Q. Okay. How do you justify that much time that's been criticized in this case? How do you justify that much time in your preparation for the trial?

A. Easy. It's not as much time as I would like to have had. This has to be one of the only, if not the only, trial prep case I've ever had other than cases where I was like representing service men and stuff like that who are on deployment where I had to do a hundred percent the trial preparation without ever seeing [the client], and that's a challenge.

I reached out for her. I said we need to get together for trial prep. She said absolutely not. Why not? I sold my car. Well, can't somebody drive you down here? No. Okay. Can you get a cab? Can't afford it. Can you take a train? Can't afford it.[5]

So after I went through this whole, you know, list of why I can't, you know, get down there to see you I realized that I was wasting my time, time better spent actually for trial preparation. So I had to basically imagine who it was I was dealing with and going by content of her statements and the response time and tension of the voice and various other emotional indicia that I could pick up over the phone.

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[5] Dillon testified to the contrary, that she asked respondent if he wanted her to come to his office and he stated that "he [had] no time."

I think we did a very complete job of preparing her for a hearing. My rule of thumb presuming I'm going to have a hearing I'd like to have two full days of preparation for every anticipated day of the hearing or of a trial. And I usually go beyond that because I'm very, very thorough. I never lost a custody trial in my life. All cases that I've tried here in New Jersey in any category. I think I only had one that I felt bad about the results.

So I am — I do an immense, very careful preparation. I prepare the other guy. That's my big non-secret secret.

Q. Now, if you look at your entries for March 19 and 20 on Exhibit C-8 it shows you spent time in the evening on the 19th from 7 through 10:40.

Then the next morning, day of the hearing but before you went to court, you said you're doing trial and negotiations preparation from 4 a.m. through 7:30 a.m.?

A. Yes. Yes.

Q. Really?

A. Is that a question?

Q. That's a question.

A. Actually, that's very typical for me. I can't remember the last time that I had any kind of hearing where I wasn't

preparing to go into the hearing at around 4 a.m.[6]

My wife works in a hospital and I just got used to waking up at that time as well. And I'm a night person. And I need to be up working on stuff for a while. And so I never, never wake up at 7:30. I get up and I get my game together razor sharp. I'm there ready to go. Ready to do business.

Q. Okay. By the 19th you had already completed the certification document?

A. Right.

Q. So that was done. What were you doing in terms of preparation? What did it consist of for this period of time?

A. Well, I have to – first of all, I do a lot of like what athletes do. I'm a visual thinker. I have a much better than average memory. I'm a walking around evidence book. I have to lock things into my memory by vividly imagining that I'm them visually.

So a case like this – you know, we have a ranch. So I'm sure it drives my wife crazy but a few rooms away from our bedroom is our study.

Q. You mean ranch type house?

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[6] Ex.R5, a character letter prepared by an attorney who previously worked with respondent, states that it was not unusual for respondent to prepare cases in the later part of the evening and very early in the morning.

A. Yes. So I'll put a chair there. Various other things. I'll make believe the Judge is asking me questions. Maybe her questions. Make believe that the adversary is much better than I am. You know, torturing my witness with all the right cross questions.

I anticipate any appropriate, you know, objections based on the rules of evidence. The questions that are asked. If I need to ask them things. I'll anticipate any objections that might be based on the rules of evidence. That the questions that I'm asking and responses that I'm seeking. And I would prepare in my mind a counter argument to convince the Judge [to] either sustain my objection or overrule the other guy's objection.

And it's one of the best ways I found, you know, to prepare for trial. Advocacy, people that want to think I'm natural, I'm not. I just work very hard. I imagine every scenario possible. I try to get myself ready so that I can be glib when the actual situation comes because you can't be thumbing through rule books. You can't be with your head in the notes. Yet, you have to be watching the Judge watching your witness and be there in real time.

It's almost a meditation being at trial so you can function and flow in a way that's going to continue to drive your client towards their objectives. And that's thematically as well. Every case has various themes. You have to be able to — yourself back on to

> themes. You have to keep in mind that you have to have a rhetorical presentation to the Judge. The Judge is going to hear your themes over and over again. I practice my lines. I mean I'll ask the question. I'll get a fact as result [sic] of that question. I'll take that fact that I got and I'll make that fact part of my next question. I just accumulate them and go back to my themes.
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> It's really very complicated but I make sure that I am not surprised by anything the other side has unless my client is totally selling me out, selling me down the river, telling me things that are false that the other side can prove. [An] [e]xample would be I never said that to her. I never had sex with that woman, or whatever. And then somebody produces a videotape or an audio tape. That's always a bummer. But that was not the case. In this case it's extensive. It's very cerebral.
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> [2T122-1 to 2T127-8.]

Respondent appeared in court with Dillon, on March 20, 2008. The parties were directed to attempt to settle the matter through mediation. Dillon and Bixler reached an agreement and executed a consent order on that date. Among other provisions, the parties agreed that, for up to six months or until Dillon obtained a vehicle, whichever came first, Bixler would transport the children for visitation, with pick up and drop off at

Dillon's mother's house. Thereafter, pick up and drop off would take place at the Aberdeen train station, which is approximately mid-way between the parties' homes.[7] Also pursuant to the agreement, Bixler would continue to pay child support of $222 per week.

As to the Ocean Gate house, respondent testified that he suggested to Dillon that what they wanted was for Bixler to agree to "take over the house and the responsibility of selling it and the debt" and to hold her harmless. Paragraph nine of the consent order states as follows:

> The defendant [Dillon] agrees to transfer the deed of the Ocean Gate home to the plaintiff [Bixler] and complete any necessary paperwork to have her name removed from the mortgage and home equity line of credit. The defendant will turn over the checkbook for the home equity credit to the plaintiff. The defendant will have no additional entitlement to equity in the home

[7] Dillon wanted the pick up and drop off of the children to take place at a police station. Respondent testified that he asked for the police station location in the agreement, which the mediator did not prefer as an option. Similarly, Dillon testified that the mediator indicated that the judge would not agree to it. According to Dillon, respondent did not raise concerns for her safety to the mediator, despite her history with Bixler.

nor any responsibility to debt or carrying costs.

[Ex.C7.]

Respondent testified that, prior to Dillon's signing the consent order, he told her that they could appear before the judge, where the result could be the same, better or worse. He went over the agreement "line-by-line" with her, assuring himself that she understood the terms of the consent order. Respondent testified that he told Dillon "that it is likely that the bank would not allow her whatever, lending institution, would not allow her to get her name off the mortgage." Dillon stated to the contrary, that respondent did not explain the provision about the Ocean Gate property and that she did not understand it.

Dillon testified that she agreed to the consent order because respondent had made her fearful that, if she appeared before a judge, she could lose custody of her son. Respondent told her that, because she had moved, the judge could feel that she had "kidnapped" her son. Respondent, in turn, testified, that he was preparing Dillon for a possible "chewing out" from the judge for moving, which had resulted in Bixler's inability to see his son.

The day after the mediation, Dillon contacted respondent because she was dissatisfied with the terms of the consent order. She wanted to set aside the order. Respondent advised her that she was unable to do so.

In late March or early April 2008, after Dillon placed two calls to respondent's office that went unreturned, she went to his office to retrieve her file, at which time she was told that respondent had it at home. In mid-April 2008, she received respondent's bill for $14,091.80 for his representation from March 13, 2008 through March 20, 2008, including $281.80 for costs and disbursements. Although this is unclear in the record, at some point respondent advised Dillon that she had to pay for her file to be copied, if she wanted it returned. She sent him $150 in September 2008, believing that was the amount due. He sent her a subsequent letter, stating that she owed him an additional $116.50.[8]

[8] There is a discrepancy in the record about the number of pages in the file: 866, according to respondent, and 801, according to the presenter. The copying charge was $.25 per page plus a $50 administrative fee. Parenthetically, N.J.S.A. 47:1A2 provides for higher charges: $.75 for the first ten pages, $.50 for pages eleven to twenty, and $.25 for all pages over twenty.

In October 2008, Dillon pursued a fee arbitration proceeding. In December 2008, the fee arbitration panel issued its determination, reducing respondent's fee by $3,581.77.[9] Dillon paid the balance she owed respondent in July 2009. She did not include the additional amount due for copying because she thought it had been included in the amount directed to be paid by the fee arbitration committee.[10] Respondent never received the additional $116.50. He ultimately turned the file over to the presenter.

As of the date of the DEC hearing, Bixler was not living in the house, which was in foreclosure. Despite Dillon's efforts, her name remained on the mortgage. She testified as follows on that issue:

> . . . cause the house is in foreclosure, so when the mortgage people are calling me and they -- I read -- I was like, can I send this to you, and they were like, no. They were like, first of all, they don't do

[9] It is not clear if the reduction included a lowered amount for costs or only the fee. Presumably, the reduction covered just the fee.

[10] In respondent's September 26, 2008 letter to Dillon, he stated that he would bring the file to the fee arbitration proceeding and, on receipt of $116.50, would turn it over to her. In his reply to the grievance, respondent stated that he had the file with him at the proceeding and that Dillon neither paid the balance due nor asked for the file.

> anything unless the bank is present. Like, this is nothing. That's what they pretty much told me. They told me I could stand on my head, and I think the guy told me I could whistle dixie and that this means nothing, that I just, I pretty much signed, I signed the Deed and I am absolutely responsible and that there was nothing that -- that this wasn't even -- the mortgage guy told me this wasn't even worded right.
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> [1T49-15 to 1T50-3.]
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> The mortgage guy told me that this was not worded correctly because there's no way that I can take my name off the mortgage, that Mr. Bixler would have had to refinance. He explained it all to me, that Mr. Bixler would have had to refinance and if he could get a mortgage then he could refinance without my name on it and that I would sign something then, but there was, there was no way that I could take my name off the mortgage. He also said that -- he told me that a judge, that the judge should have held the Quick [sic] Claim Deed until he got a mortgage, and I was like, okay, I didn't understand any of that, so --
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> [1T51-3 to 15.]

As of the day of the DEC hearing, Bixler had not listed the house for sale. To Dillon's knowledge, he had not tried to refinance the mortgage.

For his part, respondent testified that he told Dillon that he did not handle real estate matters and that she should retain an attorney who practiced real estate law to assist her with the

Ocean Gate property. He claimed that he offered to refer her to an attorney, but that she never contacted him for a reference.

Respondent presented the testimony of attorney Mark H. Sobel, who has been a member of the New Jersey bar for thirty-five years and whose practice is seventy-five to eighty percent matrimonial law. When queried by respondent's counsel, Sobel testified as follows about the significance of the FD designation in Dillon's case:

> Q. Is there a difference that you can detect from your experience between how these cases are processed in the court system whether it's an FM over FD type of docket?
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> A. There are definitely differences.
>
> Q. What are they?
>
> A. Well, first of all, the FD docket tends to move more quickly. It's a more narrow parameter in terms of the types of matters that you will be dealing with.
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> Just to give an example of FM docket, dissolution of a marriage you would spend a lot of time dealing with the issues regarding equitable distribution. What's in the pot. What's not in the pot. What's the distribution. We are in [sic] equitable distribution state, not a community property state.

I could go on for hours about that. But it drives aloft those types of FM dockets because that's where a lot of money is, FD. And, as I said before, [they] deal with custody support of children. We have child support guidelines. They help assist.

But mainly you're dealing with a very large calendar that they try to process as quickly as they can. AOC Office. The Administrative Office of the Courts tries to do that. So you will get actions that move more quickly with shorter time frames with Judges looking to resolve these cases as quickly as possible.

That probably generally would be the major difference or differences.

Q. Now, you'll notice that this is a notice of motion as the start-up document in this matter. It doesn't have a return date in that line where one might have been shown on that first page, but I'll represent to you that there was a date assigned to it. And the date assigned to it for hearing was March the 20th, 2008.

A. Yes. I'm familiar with the general chronology.

Q. As an FD docket case with a return date in which you are to appear with your client for the motion situation, what do you expect if it's an FD docket will occur on that date that's assigned for the case?

A. There are a wide variety of things that could happen. First of all, you have

to plan that the court is going to resolve the requests for relief in the notice of motion and/or cross motion, if there is one.

Secondly, you have to understand that in this area the Judges — and hopefully to know the individual Judges, someone like Mr. Romanowski, now who would do that because he's practiced here long enough. And certain Judges actually question the litigants themselves right there from the bench on motions. Subject [sic] that the attorneys have been in conflict with Judges for a long period of time, but the Judges rule their own courtroom. So you have to prepare for that as well.

In addition Judges will, just as I was sworn in, swear in the litigants before them and ask them for sworn testimony. And under an FD docket it's very conceivable this would turn into some sort of a plenary hearing or hearing of limited testimony and determinations made by the court.

But beyond that generally in this particular case — there's something going on in this particular case that an attorney would have had to have been aware of and plan for and deal with, which was in this particular specific case, the defendant had utilized what I'm going to call what I hate to refer to as "self help" to remove herself from the specific area where she andthe child had been living up to northern New Jersey. I think Secaucus. And the plaintiff had made allegations that he hadn't seen his child in four months.

> A Judge with those facts and with a defendant who had moved, was not working, did not move for a job, I believe may have towed her car, and I think you need to plan for inquiry about doing that.
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> Whether it's an FD or FM docket when Judges make determinations. Whether it's on the return date of a motion. I've even had them done in case management conferences which can alter fundamentally the playing field. And in this case a Judge could have done that sua sponte as custody [sic] of this little child that would have dramatic effects on the case.
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> A lawyer representing the defendant in this case under these facts would have had to have prepared for that.
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> [2T11-7 to 2T15-1.]

Sobel also testified that respondent had to review Dillon's underlying file to see if it contained anything significant. In sum, Sobel testified that respondent's fee was reasonable, the time spent preparing Dillon's certification was what Sobel would expect, and respondent's work in the matter "exceeded the standards of a competent lawyer."[11]

[11] Respondent submitted in evidence an expert report prepared by Sobel.

Three attorneys testified about respondent's competence, reputation, and character. The three, along with two other attorneys, submitted character letters in respondent's behalf.[12]

The DEC concluded that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.16(d).[13] The DEC did not find a violation of RPC 1.5(a).

As to RPC 1.1(a), the DEC stated:

> Throughout this hearing, there was never an allegation that the Respondent had completed neglected the file. He responded to the motion served against the Complainant, and appeared in court on behalf of the Complainant.
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> Nonetheless, the panel finds that the way the matter was handled rises to the level of gross negligence. Specifically we point to the Consent Order and the Respondent's failure to adequately advise the Complainant of its practical consequences.

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[12] One of the character witnesses listed respondent as of counsel to his firm and vice-versa.

[13] The DEC did not include RPC 1.3 in the summary of its findings. This was presumably an oversight. In addition, the DEC did not analyze the RPC 1.4(b) charge. Indeed, the only reference to that rule in the DEC's report is in the list of charged violations. It is not apparent from the record if this was an oversight or if the DEC meant to make no finding on that score.

By its own construction, Paragraph 9 of the Consent Order put the Complainant in greater peril than she was in prior to its assent, despite any other benefit she may have received. It was the testimony of the Complainant that at the time of the Consent Order, she was unemployed, without a vehicle and had trouble meeting her day-to-day expenses. She stated the same in her Certification Exhibit "D" and in her emails to the respondent Exhibit "I" in evidence. Clearly unable to maintain her end of the carrying costs, [she] agreed to be removed from the deed.

Yet it must have been clear to the respondent that transferring the Complainants' [sic] name from the deed, in no way relieved her of any financial obligation on the Ocean Gate property regardless of what it may have promised. The promise to pay on the Note and the Mortgage remained. Knowing the Complainant's financial condition, we find it grossly negligent to advise a client to consent to that paragraph of the order, when the client's specific goal was to shed debt, rather than maintain it.

To a layman, Paragraph 9 of the Consent Order seems plain enough. It appears comforting and promises to hold the Complainant harmless with regard to carrying costs and liability for debt. In pertinent part, it reads:

> "The defendant agrees to transfer the deed of the Ocean Gate home to the plaintiff and complete any necessary paperwork to have her name removed from the mortgage and home equity line of credit. The defendant will turn over the

> checkbook for the home equity line of credit [sic] to the plaintiff. The defendant shall [sic] have no additional entitlement to equity on [sic] the home nor any responsibility to debt or carrying costs."
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> To a seasoned practitioner, the phrase "the defendant shall have no responsibility to debt or carrying costs" should mean absolutely nothing in the context of a property encumbered by a mortgage and a note. In short, the lender must be present to assent to the Order. We believe that the Respondent knew this. We believe the Respondent took advantage of this language in order to conclude the matter. When questioned the Respondents [sic] own expert, Mr. Sobel who [sic] stated himself that in this circumstance "it is best that the bank be there".
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> [HPRIV.][14]

The DEC stated that its opinion was based in part on respondent's experience and "impressive credentials," and concluded that he knew or should have known that, despite the language in the consent order, Dillon would still be held liable for her debt. Moreover, the DEC noted that the consent order had been drafted over a five-hour period and that, accordingly, respondent had time to suggest alternate terms, such as

[14] HPR refers to the hearing panel's report.

refinancing or schedule the case for trial. According to the DEC, in light of respondent's testimony that he had read Dillon's 866-page file in its entirety and rehearsed for trial, he would have been prepared to proceed with either option.

With regard to the language in paragraph 9 of the consent order, stating that Dillon was to "complete any necessary paperwork to have her name removed from the mortgage and the home equity line of credit," the DEC found credible Dillon's testimony that she thought that respondent would assist her on that score. Based on the witnesses' testimony, the DEC concluded that "it was never Respondent's intention to assist Complainant even it [sic] were possible," pointing to his advice to Dillon that she consult with a real estate attorney.

The DEC also pointed to the strained relationship between respondent and Dillon. Respondent testified about Dillon's highly emotional state and admitted that he once hung up on her, in an attempt "to keep [her] in the right frame of mind." Nonetheless, the DEC remarked, respondent told Dillon, at the March 20, 2008 proceeding, that she could be charged with kidnapping and lose visitation, if she did not settle her matter. The DEC noted that, although FD matters have relaxed

rules, it was unlikely that the court would have taken such action:

> The panel believes that the Respondent used the circumstances as a tool to coax the Complainant to assent to the Order. The panel believes that this sense of urgency whether real or contrived was the genesis of the Complainants' [sic] assent. We believe that the Complainant [sic] should have known better and [respondent] was grossly negligent by using these circumstances to put his client in a worse position.
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> [HPRIV.]

As to RPC 1.3, the DEC recognized that respondent was given the file on short notice, with little more than a week to prepare. In the DEC's view, assuming that respondent had read Dillon's entire file to prepare for a possible trial, he nonetheless, did not act with diligence. Here, too, the DEC pointed to the consent order, specifically, to the arrangements made for visitation. Given the history of domestic violence between the parties, over a ten-year period, there was no provision for adequate protection for Dillon at the Aberdeen train station. Although it was a convenient mid-way location, a police station or community center would have been better suited. Thus, the DEC concluded that respondent did not exercise diligence in representing Dillon.

As to RPC 1.5(a), although the fee arbitration committee reduced respondent's fee from $14,091.00 to $10,510.03, the DEC found not credible respondent's justification for the remainder of the fee. Nevertheless, the DEC determined "to abide by the decision of the Arbitration Determination." The DEC did not find that respondent violated RPC 1.5(a).

With regard to RPC 1.16(d), which addresses an attorney's obligations on termination of the representation, the rule states, in part, that "[t]he lawyer may retain papers relating to the client to the extent permitted by any other law." Respondent asserted his right to hold the file under a common law theory, until his fee and copying costs were paid. The DEC found respondent's assertion "erroneous," pointing to Frankel v. Frankel, 252 N.J. Super. 214 (1991), where the Court recognized an attorney's common law lien, but held that it was a passive lien that cannot be enforced through legal proceedings. The Court stressed that a lien must not interfere with a client's right to pursue a matter further, after the representation has ended. (See discussion of the common law lien, infra, at 31-32.)

The DEC also pointed to Advisory Committee on Professional Ethics Opinion 554, 115 N.J.L.J. 565 (1985), acknowledging that, "under any circumstances, if a law firm is not fully paid, the

firm has no justification for failing to deliver to the client what they are entitled to receive." Here, Dillon wanted to immediately undo the consent order and, without her file, "her hands were tied." Thus, the DEC found that respondent violated RPC 1.16(d). In the DEC's view, "[p]articularly troublesome, is that the Respondent either failed to recognize the immediacy of the Complainant's concern or he completely ignored it." Dillon had an "immediate need" to rectify the order and respondent intentionally failed to turn over the file "in an effort to leverage payment from the Complainant."

As noted previously, the DEC recommended that we impose a censure.

Following a de novo review of the record we are unable to find clear and convincing evidence that respondent is guilty of violating the charged RPCs.

The DEC found respondent guilty of gross neglect and lack of diligence in his representation of Dillon. We are unable to agree. RPC 1.1(a), which is captioned "Competence," states: "A lawyer shall not (a) Handle or neglect a matter entrusted to the lawyer in such a manner that the lawyer's conduct constitutes gross negligence." RPC 1.3 states: "A lawyer shall act with reasonable diligence and promptness in representing a client."

As to the latter, respondent's representation of Dillon lasted one week. In that time, he familiarized himself with an 800-page file (although the extent to which he familiarized himself is uncertain), prepared an opposition to a motion, and appeared at a mediation session. It cannot be said that respondent was not diligent in completing those tasks in a one-week period. We, therefore, dismiss the charged violation of RPC 1.3.

As to RPC 1.1(a), respondent did not neglect Dillon's case. Again, he familiarized himself with the file, prepared a certification, and appeared at the mediation session. That does not evidence neglect. As to the quality of the work, the provisions of the consent order with which Dillon appeared dissatisfied were the location for pick up and drop off for Bixler's visitation with their son and the agreement about the Ocean Gate property. As to the former, Dillon wanted the exchange to take place at a police station. Both she and respondent testified that the mediator stated that that location was not acceptable. Although Dillon may not have been happy with the Aberdeen train station location, respondent's arriving at that resolution to the issue was not grossly negligent.

As to the provision for the Ocean Gate property, respondent did not accomplish the end that his client sought, that is, to

have her name removed from the mortgage. Based on the record before us, we cannot find his conduct was unethical. Respondent testified that he explained the agreement to Dillon, advised her to hire a real estate attorney to help her, and told her that she might not be released from the mortgage. She testified to the contrary, that she did not understand the meaning of the language of the consent order or its consequences.

The DEC did not make a wide-sweeping determination about the witnesses' credibility in its report. Rather, the DEC noted, on two specific occasions, that it found Dillon credible: first, with regard to her belief that respondent would assist her in completing the paperwork to have her name removed from the mortgage and second, in connection with her claim that she immediately wanted to undo the consent order. Thus, it is difficult to say that the DEC found Dillon to be the more credible witness, overall. However, it is clear that, despite respondent's testimony that he went over the consent order with her "line-by-line," Dillon did not understand to what she had agreed. Respondent should have been charged with violating RPC 1.4(c). Because respondent was not properly charged with misconduct in Dillon's lack of understanding of the agreement,

we cannot find that he violated RPC 1.4(c).[15] As to the quality of the work, although the consent order did not achieve the result Dillon sought, respondent's work was not grossly negligent. The alleged violation of RPC 1.1(a) is, thus, dismissed.

As to RPC 1.5(a), the DEC did not find respondent's justification of his fee credible. Nevertheless, the DEC decided to abide by the fee arbitration committee's determination (presumably, that the fee was not so excessive as to evidence an intent to overreach) and, therefore, did not find a violation of that rule.

The DEC reached the right conclusion - that respondent did not violate RPC 1.5(a) - but for the wrong reason. It relied on the fee arbitration determination, rather than on the language of RPC 1.5(a) and on the actual amount of the fee. As to the former, RPC 1.5(a) sets out eight factors that are to be considered, in determining the reasonableness of the fee:

> (1) the time and labor required, the novelty and difficulty of the questions

[15] R. 1:20-4(b) requires that the complaint "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated."

> involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

As to the first factor, there was some amount of time involved in reading Dillon's substantial file (over 800 pages) and preparing her certification, as well as the time spent at the mediation. There is no way to know how much time respondent actually spent. The questions involved in Dillon's case, however, were not particularly novel or difficult. Thus, factor (1) goes both for and against respondent.

As to the fourth factor, the total fee involved was $13,810, not an extraordinarily high figure, but, on one aspect of Dillon's case, the result obtained was not beneficial to her. Thus, again, the analysis goes both for and against respondent.

With regard to the fifth factor, the time constraints,

respondent had one week to file the certification and prepare for the mediation. On one hand, the time constraint was Berse's fault for essentially abandoning the file. On the other hand, the time constraint was Dillon's fault for waiting until one month before her hearing date to retain counsel. This factor is in respondent's favor.

Finally, as to the seventh factor, the attorney's experience and reputation, the record reveals that respondent is recognized as an expert in the field of family law. Again, this factor favors respondent. On balance, thus, it is difficult to find by clear and convincing evidence that the fee was excessive. Although respondent's fee may give pause, there is no clear and convincing evidence that his fee was so unreasonable as to violate RPC 1.5(a) and the charge is dismissed. The fee arbitration committee apparently agreed with this assessment, given that it did not refer the case to the district ethics committee, as the rule requires it to do. R. 1:20A-4.

Finally, as to RPC 1.16(d), the DEC found that respondent violated that rule by not turning over Dillon's file when she needed it to rectify the court order. However, Opinion 554 makes it clear that an attorney has the right to be paid for

copying costs. That opinion states that an attorney must comply with a request to turn over a file, but it is the obligation of either the new attorney or the client to pay for the copying of the file or, if there is pending litigation, to make arrangements for payment to be made out of the proceeds of the litigation. There was no pending litigation here. Thus, respondent should have been paid by Dillon or her new counsel, if any. Moreover, as was pointed out during the DEC hearing, much, if not most of the file was irrelevant to the issues in the consent order. Dillon could have paid to copy only the documents needed at that time. The violation of RPC 1.16(d) is, therefore, dismissed.[16]

As stated previously, we dismiss this case, albeit with some reluctance. Respondent gave Dillon poor advice and did not assist her in her goal of having her name removed from the

[16] As of April 1, 2013, lawyers are no longer able to retain client files and papers to collect fees. An amendment to RPC 1.16(d), effective that date, states, "No lawyer shall assert the common law retaining lien." The Court ordered abolition of the lien, at the suggestion of the ACPE. The ACPE cited the need to protect clients, the potential for attorney overreaching and breach of fiduciary duty, and the concern that assertion of the lien could exert pressure on a client that is disproportionate to the size or validity of the lawyer's fee claim.

mortgage. He should have known that the section of the consent order pertaining to the property was essentially meaningless. Whether he told Dillon to obtain the assistance of a real estate lawyer is of no moment. Respondent did not aid Dillon in achieving her goal. The difficulty for us, however, is that he was not charged with having violated an RPC applicable to his conduct (RPC 1.4(c)).

Thus, we determine to dismiss the complaint.

Member Clark did not participate.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Curtis J. Romanowski
Docket No. DRB 12-377

Argued: April 18, 2013

Decided: May 6, 2013

Disposition: Dismiss

Members	Disbar	Suspension	Admonition	Dismiss	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark						X
Doremus			X			
Gallipoli				X		
Yamner				X		
Zmirich			X			
Total:			2	4		1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel